

Dated 201[•]

TUBE LINES LIMITED (1)

and

Sixt rent a car (2)

**FRAMEWORK AGREEMENT
for the supply of Short Term Vehicle Hire and Related Services**

Lot 1, 2

CONTRACT REFERENCE NUMBER: TFL 00215

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THIS AGREEMENT is made on

2015

BETWEEN:

- (1) **Tube Lines Limited** (company number 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**” which expression shall include its successors and assigns); and
- (2) **Sixt rent a car** (company number **00440897** whose registered office is at Durrant House, 47 Holywell, Street, Chesterfield, Derbyshire, S41 7SJ (the “**Supplier**”).

BACKGROUND

- (A) The Supplier carries on the business of hiring out the Goods and providing the Services.
- (B) The Company wishes to hire the Goods and buy the Services and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Agreement.
- (C) This Agreement may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Agreement.

THIS DEED WITNESSES that:

1 Definitions and Interpretation

- 1.1 In the Agreement and each Contract the following definitions shall have the following meanings:

“**Additional Goods**” means any goods which the Company requests the Supplier to provide in accordance with the terms of any Contract in addition to those set out in the Specification.

“**Additional Services**” means services which are requested by the Company to be provided by the Supplier in accordance with the terms of any Contract in addition to those set out in the Specification.

“**Agreement**” means these terms and conditions, including the Schedules, as amended, varied or supplemented from time to time.

“**Applicable Laws and Standards**” 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 relevant Contract, any agreement or document referred to in such Contract (including for clarity any standard referenced in any Order), or the Goods and Services.

“BAFO” means ‘best and final offer’.

“Cessation in the Supply of Goods or Services” means any cessation in the supply of the Goods or Services.

“Cessation Plan” means a plan agreed between the parties or determined by the Company in accordance with Clause 41.1 to give effect to a Declaration of Ineffectiveness.

“Commencement Date” means the date of the Agreement.

“Company Documents” means any plans, drawings, documents, handbooks, codes of practice or other information provided by the Company to the Supplier in accordance with each Contract.

“Company’s Representative” means Keith Lambourne, Framework and Fines Manager at Distribution Services, Acton Works, 130 Bollo Lane, London, W3 8BZ on **REDACTED**

(**REDACTED**) or such other person as notified to the Contractor from time to time by the Company;

“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.

“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.

“Contract” means a contract as defined in Clause 3.1.

“Contract Information” means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 8.4 and 8.5 which shall consist of the Supplier's name, the order numbers, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Reference Number” means the number shown on the front page of the Agreement.

“Contract Variation Procedure” means the procedure set out in Schedule 2.

“Contractor's Representative” means the person set out in clause 34. **“Declaration of Ineffectiveness”** means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

“Default Interest Rate” means 2% above the base rate from time to time of the Bank of England.

“Defect” means that the Goods or any part of them do not comply with the requirements of any Contract, or are not fit for their intended purpose, or are of unsatisfactory quality whether in consequence of faulty design, faulty materials, negligence, bad workmanship or in consequence of any other reason attributable to the Supplier or its suppliers or the employees of any of them. For the avoidance of doubt, this shall include damage which occurs during transit from the Supplier to the Company.

“Delivery Address” means the address at which the Supplier shall deliver the Goods to the Company and which is set out the Order or such other destination as may be notified by the Company to the Supplier.

“Delivery Note” means the Rental Agreement.

“Dispute” has the meaning given to that term in Clause 35.1.

“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 Supplier in the performance of each Contract and whether in paper form or stored electronically.

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced).

“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.

“Excess Costs” has the meaning given to that term in Clause 17.5.

“Expected Order Delivery Date” means the date set out in each Order upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

“Force Majeure Event” means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a party affected by such an event or circumstances and which have an adverse effect on the party affected by such an event or circumstances and such party's ability to perform its obligations under the Agreement or any Contract and is not an event or circumstances (i) whose effect the party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under the Agreement or any Contract or (ii) which the party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;

- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of LUL's network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse as defined in the Tube Lines Contract;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993 in accordance with clause 44 (Railways Act Obligations during Hostilities over Acts of Violence) of the Tube Lines Contract;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (k) strikes, lock outs or other industrial action being in each case industry-wide.

"Goods" means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to hire under Clause 6.

"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.

"Initial Period" means the number of years from the Commencement Date stated in the Order.

"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.

“Key Personnel” means Supplier Personnel identified as such in the Order (if any) and any changes to the same that are made in accordance with Clause 22.

“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 Mayor or any other relevant Competent Authority.

“Losses” means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Company, its employees or agents (which for the avoidance of doubt, shall include a Replacement Supplier).

“LUL” means London Underground Limited, whose registered office is at 55 Broadway, London SW1H 0BD, Registered Company Number 1900907.

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

“Nominated Representatives” has the meaning given to that term in Clause 35.2.

“Notice to Proceed” has the meaning given to that term in Clause 17.6(b).

“Notified Sum” has the meaning given to that term in Clause 8.10.

“Order” means an order which shall be entered into by the Company and the Contractor.

“Order Completion Date” means the date by which the Services are to be performed as notified to the Supplier or such other date as may be agreed between the parties in accordance with the terms of each Contract

“Order Delivery Date” means the date upon which the Goods or any part of them are actually delivered to the Delivery Address by the Supplier to the Company.

“Order Price” means the amount the Company shall pay the Contractor as detailed in Schedule 5.

“Order Programme” means the programme of work for the provision of the Services which has been submitted by the Supplier 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 Supplier and the Company.

“Prescribed Period” has the meaning given to that term in Clause 8.11.

“Prohibited Act” means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or 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, any Contract or any other contract with LUL or the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement, any Contract or any other contract with LUL or the Company; or
- (b) entering into the Agreement, any Contract or any other contract with LUL or the Company with which commission has been paid or has been agreed to be paid by the Supplier 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, any Contract or any other contract with LUL or the Company; or
- (d) defrauding or attempting to defraud LUL or the Company.

“Regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

“Rejected Goods” has the meaning given to that term in Clause 14.2.

“Rejection Notice” has the meaning given to that term in Clause 14.2.

“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).

“Rental Agreement” means the rental agreement provided by the Supplier to the Company for signature on delivery of the Goods detailing, inter alia, the date of delivery of the Goods and which evidences receipt but not acceptance of the Goods and as more particularly described in Clause 9.5.

“Replacement Supplier” means any replacement provider of the Goods or Services appointed by the Company from time to time.

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

“Safety Breach” means a material breach of any obligation under any Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on behalf of the Supplier) or any of its agents which has materially affected the safe operation of the LUL network or the safety of LUL's customers, staff or any other person.

“Services” means the collection of the Goods as detailed in the Specification to be performed by the Supplier and any Additional Services

“Specification” means the description of the Goods and Services set out in Schedule 1

“Step-in Notice” means a notice issued by LUL to the Company if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract advising the Company that it will, from the date specified in the said notice, exercise its rights to step-in under the Tube Lines Contract.

“Step-out Notice” means a written notice served by LUL on the Supplier that it has exercised its right under the Tube Lines Contract to give a step-out notice to the Company.

“Supplier Personnel” means all employees, agents or consultants of the Supplier and the Supplier's subcontractors from time to time.

“Supplier Personnel Information” means information about the numbers of Supplier Personnel involved in providing the Good and Services and their approximate full time equivalents; their location; the skill sets in each location; role definitions; employment status; details of any previous transfer(s) pursuant to the Employment Regulations; information regarding overall annual remuneration (including benefits); length of service; notice period; details of terms and conditions of employment (including pension schemes, annual leave, bonus entitlement, share options, car allowance, health insurance, life assurance and trade union recognition); details of any current grievances or disciplinary issues and any other information relating to Supplier Personnel reasonably requested by the Company.

“Supplier’s Representative” means the person set out in the section headed ‘Supplier Representative’ in the relevant Order.

“Term” means the period of four (4) years from the Commencement Date unless extended in accordance with Clause 2.3 or Clause 2.4.

“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.

“TfL Supplier Diversity Policy” means the policy document entitled "Supplier Diversity Policy" developed by TfL, issued in November 2006 and as may be amended.

“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.

“Tube Lines Contract” means the service agreement dated 31 December 2002 made between LUL and the Company, as subsequently amended by the Company and LUL.

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing.

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

“Variation Proposal” means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 2.

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

- 1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement or any Contract include its recitals and Schedules.
- 1.5 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.
- 1.6 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.
- 1.7 References to the **“Company”** shall include its successors, transferees and assignees.

2 Duration and Option to Extend

- 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 an expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract. To the extent that any provision of this Agreement is relevant to the Contract, such provisions shall survive expiry or termination of this Agreement.
- 2.3 The Company shall at its own discretion be entitled at any time to notify the Supplier in writing of its intention to extend the Term of this Agreement by a period no longer than one (1) calendar year on the same terms and conditions as the Agreement other than this Clause 2.3. On receipt of such notice from the Company by the Supplier this Agreement shall be deemed extended accordingly.

- 2.4 Thereafter, following exercise of the Company's right to extend under Clause 2.3, at any time during the last six months of the Agreement (as extended), the Company may give to the Supplier written notice that the Company wishes to extend the duration of this Agreement by a period no longer than one (1) calendar year on the same terms and conditions as this Agreement other than Clauses 2.3 and 2.4. On receipt of such notice from the Company by the Supplier this Agreement shall be deemed to be extended accordingly.
- 2.5 For the avoidance of doubt, no extension under this Clause 2 shall extend the total duration of this Agreement beyond six (6) years from the Commencement Date.

3 Supplier's Primary Obligations

- 3.1 The Supplier shall supply the Goods and shall perform the Services to the Company in accordance with:
- (a) the terms set out in the Agreement (including the Schedules); and
 - (b) the Orders which may from time to time be entered into by the Company and the Supplier,
- each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a "**Contract**",
- 3A The Parties agree that any Delivery Note and any terms contained or referenced therein shall not form part of a Contract.
- 3.2 When Goods and Services are required by the Company, the Company shall give the Supplier an Order for the Goods to be delivered and the Services to be performed and each Order so given shall be final.
- 3.3 The Supplier shall ensure and warrants to the Company that the Goods will:
- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description;
 - (b) be of satisfactory quality and fit for the purpose for which they are intended; comply with all Applicable Laws and Standards (including but not limited to any law and regulations applicable to LUL or the LUL network);
 - (c) comply with all standards referred to in the Order.
 - (d) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

- 3.4 The Supplier shall ensure and warrants to the Company that the Services will:
- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
 - (b) be in accordance with the standards or methods (if any) detailed in the Order and where standards or methods are not detailed in the Order, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
 - (c) be performed in accordance with the Order Programme;
 - (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable to LUL or the LUL network); and
 - (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.
- 3.5 The Supplier shall perform its obligations under each Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and provision of the Services or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.6 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.7 Unless otherwise stated in any Order, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.8 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.

4 Records and Audit

- 4.1 The Supplier 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 each

Contract and all transactions related to each Contract and the Agreement. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

4.2 The Supplier 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 Supplier shall retain his records in an orderly and logical fashion.

4.3 The Company and its authorised representatives and LUL, its authorised representatives and any party legally authorised to inspect any part of the LUL network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time during the period referred to in Clause 4.2.

4.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
- (b) 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 Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company and/or LUL's auditor and/or granting copying facilities to the Company and/or LUL's auditor for the purposes of making such copies; and
- (e) complying with the Company and/or LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.

4.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.

4.6 The Supplier shall permit the Company's authorised representatives and/or LUL, 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 Supplier shall provide the Company and/or LUL with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's and/or LUL's request for the same.

5 Company's Obligations

5.1 The Company shall pay the Supplier the Order Price for the Goods and Services in accordance with the terms of this Agreement and Schedule 5.

5.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.

5.3 The Agreement is not an exclusive arrangement and nothing in the Agreement operates to prevent the Company from engaging any other organisation or person to supply goods and services similar to, or the same as, the Goods and Services.

6 Additional Goods and Services

- 6.1 The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, the Order shall be amended to include such Additional Goods and/or Services, the Expected Order Delivery Date and/or Order Completion Date for them and the quoted price.

7 Variation

- 7.1 Unless the parties agree otherwise in writing, any variation to any Contract shall be made under the Contract Variation Procedure.
- 7.2 The Supplier shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

8 Price and Payment

- 8.1 The prices for the Goods and Services, shall be the Order Price set out in the Order using the rates and prices set out in Schedule 5 and shall be inclusive of costs of packaging, carriage and insurance. The prices for the Goods and Services in this Agreement or in respect of any Order shall only be changed in accordance with the Contract Variation Procedure.
- 8.2 The Company shall be entitled to the Supplier's standard discount for prompt payment.
- 8.3 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the rates and prices set out in Schedule 5, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Order Price and the lower price in respect of its hire of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 8.3, 'comparable' means a customer that hires products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 8.4 The Supplier shall comply with the Company's payment procedures and requirements as detailed in this Agreement. The Company shall pay for the Goods and Services in accordance with the Contract.
- 8.5 An invoice bearing all information required by the Company including the Order number delivery Address (where applicable) and a brief description of the Services performed and/or Goods hired under the relevant Contract shall be sent by the Supplier to the Company at the address for invoices stated in Schedule 1 (or such other address as the Company may notify from time to

time) after the satisfactory completion of performance under the relevant Contract. Any invoice shall be accompanied by an advice note signed by an authorised representative of the Company as proof that delivery of the invoice has taken place.

- 8.6 The Supplier shall provide the Company with its bank account details promptly following delivery of the first invoice issued under this Agreement and any change in such details thereafter. The Company shall pay the amount specified in the invoice less any amounts due from the Supplier (in accordance with clause 8.12) within 30 days of receipt of an invoice that complies with the provisions of clause 8.5. Payments shall be made by direct bank to bank transfer (using Bank Automated Clearance System) or such other method that the Company may choose from time to time).
- 8.7 Not used.
- 8.8 Not used.
- 8.9 Not used.
- 8.10 The Order Price shall be fixed and inclusive of all expenses and disbursements.
- 8.11 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 invoice and will be shown as a separate item on all such invoices.
- 8.12 In addition to any other rights of the Company whether at law or equity under a Contract, whenever under or arising out of a Contract or any other contract between the Company and the Supplier:
- (a) any sum of money is recoverable from or payable by the Supplier; or
 - (b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the TfL Group
- 8.13 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 Supplier under a Contract. .
- 8.14 Not Used.
- 8.15 All sums payable to the Company by the Supplier 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 Supplier is compelled by law to make any deduction or withholding, the Supplier 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.

9 Delivery of Goods and Time for Performance of Services

- 9.1 The Goods shall be delivered by the Supplier to the Company at the Delivery Address, on the Expected Order Delivery Date and at the times stated on the Order. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 9.2 Not used.
- 9.3 If the Goods are not supplied on the Expected Order Delivery Date and at the time stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods for delay the amount described in Schedule 10 (Performance Damages). The Company shall not be entitled to deduct such amount from the price payable for such Goods for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) (save as in accordance with the terms of this Agreement) or (ii) a Force Majeure Event.
- 9.4 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition, clean and with a full tank of fuel and otherwise in a condition which fully complies with the requirements of each Contract. If the Goods are not clean and/or not in good condition and/or do not have a full tank of fuel or are damaged, the Company shall be entitled to refuse delivery of the Goods and will be entitled to additional remedies as detailed in Schedule 10 (Performance Damages) or as otherwise determined by the Company.
- 9.5 The Supplier shall provide a Delivery Note stating the Contract Reference Number, Order number and giving full particulars of the Goods to be supplied. A copy of the Delivery Note shall be delivered with the Goods and if requested a copy be sent by facsimile to the Company on the Order Delivery Date in accordance with Clause 34.
- 9.6 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and, save where the failure to accept delivery is due to the Goods being delivered in an unacceptable state, the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing
- 9.7 Not Used

- 9.8 Not Used
- 9.9 Not Used.
- 9.10 The Supplier shall ensure that the Services are satisfactorily performed by the Order Completion Date. If the Services are not performed by the Order Completion Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Services for delay the amount as described in Schedule 10 (Performance Damages). The Company shall not be entitled to deduct such amount from the price payable for such Services to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.
- 9.11 Without limiting any other remedy, if the Services are not performed in accordance with any Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with such Contract at no extra cost within five (5) Working Days.
- 9A.1 Notwithstanding the above, on the date that the Company's Representative receives the first invoice under a Contract and every 4 weeks after that date until the completion of performance under the Contract, the Company assesses the Supplier's performance under the Contract in accordance with Schedule 10.
- 9A.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 10; and
 - (b) use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 10.

10 Work on Company's Sites

- 10.1 During the term of each Contract, the Supplier shall:
- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
 - (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;

- (c) notwithstanding the terms of Clause 10.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Supplier including any of the Supplier's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, LUL or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Agreement and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and
- (g) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway.

10.2 Without prejudice to Clauses 10.1(a) to (g) 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 each Contract.

11 Not Used.

12 Environmental Claims

- 12.1 The Supplier 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 Supplier'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 Supplier, its employees, subcontractors or agents.
- 12.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.
- 12.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the

identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

12.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company and LUL can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

12.5 The Supplier shall provide to the Company's Representative:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the provision of the Goods and Services (for the purposes of this Clause 12.5, 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.

13 Risk and Ownership

13.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 14.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 14.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.

13.2 The Supplier shall retain at all times title to the Goods.

13.3 Risk of damage to, or loss of, the Goods shall pass back to the Supplier from the Company either

- (i) at the time and date of collection of the Goods by the Supplier; or
- (ii) three (3) days after the Company has notified the Supplier that the Goods are available for collection (as more particularly described in paragraph 5 of Schedule 1).

(whichever is the earlier).

14 Inspection of the Goods

- 14.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.
- 14.2 If, following the inspection referred to in Clause 14.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, conforming to the Specification, the Quality and Safety Plan and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company may by notice in writing (the “**Rejection Notice**”) to the Supplier reject all or any part of the Goods (the “**Rejected Goods**”).
- 14.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company’s option:
- (a) replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
 - (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
 - (c) pay the Company’s Losses resulting from the Supplier’s delivery of Goods that were not in conformity with the terms of the relevant Contract.
- 14.4 The Company’s rights and remedies under this Clause 14 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into each Contract by the Supply of Goods and Services Act 1982 (as amended).
- 14.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 14.3(a), the Company may, without affecting its rights under Clause 14.3(c), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall reimburse the Company for the costs it incurs in doing so.

15 Warranty

- 15.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.
- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15.2, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of each Contract and the provisions of Clauses 9, 13 and 14 shall apply to such re-delivered Goods.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.
- 15.4 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.
- 15.5 The provisions of this Clause 15 shall survive the termination of the Agreement and each Contract for whatever reason.

16 Intellectual Property Rights

- 16.1 Intellectual Property Rights owned by the Supplier at the date of the Agreement shall continue to vest in and remain the sole property of the Supplier. Intellectual Property Rights owned by the Company at the date of the Agreement shall continue to vest in and remain the sole property of the Company. Intellectual Property Rights created by or on behalf of either party in respect of any Contract at any time after the date of the Agreement shall vest in and shall continue to vest in and remain the sole property of the Company.
- 16.2 Any specification (which term shall include but is not limited to the Specification, any documents, drawings, items, designs, software and processes) supplied by the Company or its agents to the Supplier, or specifically produced or developed by the Supplier for the Company in connection with each Contract (whether in conjunction with the Company or its agents or not), together with the Intellectual Property Rights in such specification, shall be the exclusive property of the

Company, and the Supplier shall assign with full title guarantee to the Company all such Intellectual Property Rights for no further consideration. The Supplier shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of each Contract.

- 16.3 Without prejudice to any other rights which each party may have against the other, if, notwithstanding Clause 16.1, a party acquires any proprietary rights in or to any Intellectual Property Rights referred to in Clause 16.1 as belonging to the other party, that party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other party, or to its nominee, and to deliver to the other party, or to its nominee, such materials as it may reasonably require in this regard.
- 16.4 All royalties or other sums payable to any third party in respect of the use of any Intellectual Property Rights necessary for the performance of each Contract shall be paid by the Supplier.
- 16.5 The Supplier shall grant to the Company and to LUL and shall procure that its subcontractors and suppliers grant to the Company and LUL a perpetual, irrevocable, transferable, royalty-free, non-exclusive licence (with rights to transfer, assign and sub-license on the same terms) to use and copy all Intellectual Property Rights owned, controlled or used by the Supplier in connection with each Contract.
- 16.6 Not Used.
- 16.6A The Supplier agrees to provide to the Company or any person nominated by the Company's Representative immediate access to all Documentation in whatever form requested by the Company's Representative at any time but at the latest on termination or expiry of each Contract.
- 16.7 The Company shall grant to the Supplier a royalty free, non-exclusive licence (without a right to assign or sub-license save in respect of a sub-licence to any subcontractor for the purposes of each Contract) to use all Intellectual Property Rights it owns and has the rights to sub-license, for the sole purpose of performing its obligations under each Contract. In the case of Intellectual Property Rights which are licensed to the Company and which the Company has the right to sub-license, any sub-licences granted under this Clause 16.7 shall be granted subject to all the terms, conditions, restrictions and limitations contained in the licence to the Company .
- 16.8 The Supplier shall indemnify the Company from and against all Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights arising out of the performance of each Contract including (but not limited to) any claim that the Goods

and/or Services infringe, or their importation, use or resale, infringes the Intellectual Property Rights of any other person.

- 16.9 Not Used.
- 16.10 Not Used.
- 16.11 The parties shall notify the other as soon as either becomes aware that:
- (a) any Intellectual Property Rights of any person are infringed (or are likely to be infringed) in connection with any Contract; or
 - (b) the Company is prevented from using the Goods and Services as a result of the infringement of any Intellectual Property Rights of any person.
- 16.12 The Company may provide an instruction to obviate any infringement referred to in Clause 16.11 and in such circumstances the Supplier, at the Company's option, shall:
- (a) modify or replace the Goods and/or modify or re-perform the Services or any infringing parts to avoid the infringement; or
 - (b) remove the infringing part of the Goods and/or not perform the infringing Services, and the Order Price shall be reduced accordingly.
- 16.13 The Supplier shall not be entitled to any addition to the Order Price or extension to the Expected Order Delivery Date or Order Completion Date as a result of any instruction in respect of an infringement of the Intellectual Property Rights of others.
- 16.14 Save for the licence granted in accordance with Clause 16.7, no Intellectual Property Rights shall pass from the Company to the Supplier.
- 16.15 The Supplier shall use and shall procure that its subcontractors and suppliers shall use the trade marks, trade names and other Intellectual Property Rights as amended by the Company from time to time (the “**Corporate IPRs**”) in compliance with any relevant LUL standards from time to time in force.
- 16.16 The Supplier shall not use and shall procure that its subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trade marks, trade names and other Intellectual Property Rights without the Company's and LUL's prior written consent.
- 16.17 On written request from the Company and/or LUL, the Supplier shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company and/or LUL reasonably determines that any use of the Corporate IPRs

falls below the quality standards notified to it in accordance with Clause 16.15, the Company shall give the Supplier written notice of that fact and the Supplier shall correct the use so as to comply with such quality standards taking into account the Company's and/or LUL's instructions.

- 16.18 The provisions of this Clause 16 shall survive the termination of the Agreement and each Contract for whatever reason.

17 Termination and Suspension

- 17.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:

- (a) the Supplier commits a breach of any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay liquidated damages is reached or exceeded;
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under each Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same; or
- (e) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 10.

- 17.2 Without prejudice to Clause 17.1, the Company shall have the right:

- (a) to terminate the Agreement or any individual Contract (in which case the remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or

- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a “**Suspension Notice**”) to the Supplier.

17.3 In the event that the Company terminates the Agreement or any Contract for any reason under this Clause 17, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under such Agreement or Contract or under general law, permit the Company, at the Company’s option, to:

- (a) enter the Supplier’s premises and, solely in respect of the Agreement or Contract that has been terminated, take possession of any equipment or goods which are the property of the Company, the Specification and any applicable Company Documents; and
- (b) place an order for the remaining Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services by its own workmen.

In either such case, the Company shall be entitled to retain those Goods and the benefit of any part of the Services already provided by the Supplier in accordance with the Agreement and any Contract, at the material time.

17.4 In the event that the Agreement and/or any Contract is terminated, the liability of the Company shall be limited to payment to the Supplier for those Goods and Services provided in accordance with the Agreement and such Contract(s) up until the date of such termination.

17.5 Where the Company exercises its rights under Clause 17.3(b), following a termination in accordance with Clause 17.1 (but not a termination in accordance with Clause 17.2(a)) and in so doing and securing the full provision of the Goods (or equivalent goods) and Services, incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Agreement and the relevant Contract(s) (“**Excess Costs**”), the Supplier shall be liable to the Company for such Excess Costs in addition to being liable to the Company for any Losses of whatever nature arising out of or in connection with the relevant breach.

17.6 In the event that any Contract is suspended in accordance with Clause 17.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of those Goods and Services provided to the Company in accordance with the Agreement and each Contract up until the date of such suspension; and
- (b) not carry out any further work in connection with the provision of the Goods and Services until such time as the Company issues a notice lifting the suspension (a “**Notice to Proceed**”).

- 17.7 In the event that any Contract is suspended in accordance with Clause 17.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 17.8 In the event that the parties are unable to agree upon the variation requested under Clause 17.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 35.
- 17.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and such Contract(s) as at the date of termination and in particular but without limitation the right to recover damages against the other party. All provisions which are expressed to survive the Agreement and each Contract shall remain in full force and effect.
- 17.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision of the Goods and Services at the Company's absolute discretion.

18 Indemnity and Insurance

- 18.1 The Supplier acknowledges that the Company shall in the course of the provision of the Services be relying on:
- (a) the Supplier's skill, expertise and experience in the provision of the Services;
 - (b) the accuracy of all representations or statements made by the Supplier to the Company;
 - (c) the advice given by the Supplier to the Company in connection with the Services; and
 - (d) the accuracy of all documentation and information agreed to be delivered by the Supplier in accordance with each Contract.
- 18.2 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers on an after-tax basis against all Losses suffered or incurred by the Company and/or any third party, arising from or in connection with the performance or non-performance of the Supplier under any Contract:
- (a) in respect of sickness, disease, death or injury to any person;

- (b) in respect of loss of or damage to any property (including any rail vehicles and property belonging to the Company or for which it is responsible);
- (c) in respect of any Defect, including, but not limited to, any Defects in the workmanship and materials of the Goods or their packaging or breach of warranty;
- (d) in respect of the presence of the Supplier, its employees or agents on the Company's premises whether such Losses be caused by negligence or otherwise;
- (e) arising out of or in the course of or by reason of any negligence or breach of contract or breach of statutory duty, wilful misconduct or other wrongful act or omission of the Supplier, its employees, agents or subcontractors in manufacturing, supplying, delivering and installing (as the case may be) the Goods or providing the Services, except to the extent that such Losses result solely from the negligence, breach of contract or other wrongful act or omission of the Company, its employees and agents;
- (f) arising out of or in the course of or by reason of the Supplier's performance, non performance or part performance of each Contract; and
- (g) in respect of any liability under the Consumer Protection Act 1987 or any other similar statutory provisions,

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

- 18.3 For the avoidance of doubt any Losses suffered or incurred by the Company under Clause 18.2(c) shall include but not be limited to any damages claims made against the Company by LUL as a result of any Defect.
- 18.4 The Supplier shall keep the Company indemnified against all claims arising as a result of the Supplier failing to comply with any relevant Applicable Laws and Standards, including but not limited to any liquidated damages claims made against the Company by an operator of a rail vehicle in circumstances where that rail vehicle is taken out of service as a result of the Supplier failing to comply with a relevant Applicable Law and Standard, provided always that the Supplier shall not be required to indemnify the Company for claims directly arising solely out of the wrongful acts or omissions of the Company, its employees or agents, and provided further that the Supplier's liability to indemnify the Company shall be reduced proportionately to the extent that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.
- 18.5 The Supplier's indemnity under Clause 18.2 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of twelve

(12) years after the Order Delivery Date and/or Order Completion Date or earlier termination of each Contract.

- 18.6 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clauses 18.2 to 18.4 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 18.7 Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Agreement or any Contract.
- 18.8 Without prejudice to the obligation to indemnify the Company set out in Clauses 18.2 and 18.4, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost public liability insurance in respect of the Supplier's liability for death or injury to any person in an amount not less than five million pounds (£5,000,000), for any one occurrence or series of occurrences consequent on one event or original cause;
 - (c) maintain at its own cost public liability insurance in respect of the Supplier's liability for loss or damage to any property arising out of its performance of each Contract in an amount of not less than five million pounds (£5,000,000), for any one occurrence or series of occurrences consequent on one event or original cause;
 - (d) maintain at its own cost professional indemnity insurance to ensure that its activities under each Contract are insured and remain insured in an amount not less than five million pounds (£5,000,000), for any one occurrence or series of occurrences consequent on one event or original cause;
 - (e) maintain at its own cost third party motor liability insurance, as required by law to ensure that its activities under this Agreement and each Contract are insured and remain insured
 - (f) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the delivery of the Goods and completion of the Services (whichever is the later);

- (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any Services or the provision of any of the Goods by the Supplier under each Contract satisfactory evidence confirming the existence of insurance in accordance with the terms of this Clause 18.

18.9 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 18.8.

18.10 If the Supplier fails to maintain the insurance policies as provided in this Clause 18, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

Not used.

19 Force Majeure

Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under such Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of such Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Supplier to perform its obligations under such Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

20 Safety

20.1 The Supplier 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 Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.

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

(a) the provisions of the LUL category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in the Specification (“**QUENSH**”) as amended from time to time; and

(b) the Company’s drug and alcohol principles as amended from time to time.

20.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to each Contract as if the term “LU Premises” means any of LUL’s and/or the Company’s property and/or where the Services are carried out and as if references to “LU” are references to the Company.

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

21 Independent Supplier

The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier’s employees or subcontractors or their employees hold themselves out as, an agent of the Company. All personnel used by the Supplier in the performance of its obligations under any Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

22 Supplier Personnel

Commencement of the Services

22.1 The Company and the Supplier agree that the commencement of the supply of the Goods and the Services on the Commencement Date will not constitute a relevant transfer for the purposes of the Employment Regulations.

22.2 If the contract of employment of any individual is found or alleged to have effect on or after the Commencement Date as if originally made with the Company by reason of the Employment Regulations, the Supplier agrees that:

- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the Commencement Date; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Commencement Date; and
- (c) it will do nothing to discourage the acceptance of the offer.

22.3 Upon that offer being made in accordance with Clauses 22.2(a) and 22.2(b) (or after fourteen (14) days, if the offer is not made as requested), the Company may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company in respect of (i) the employment of such person after the Commencement Date until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

Supplier Personnel

22.4 The Supplier will be responsible and liable for the recruitment, training, management, removal and termination of all Supplier Personnel and the acts and omissions of the Supplier Personnel in connection with or relating to the supply of the Goods or Services and will indemnify the Company on demand in respect of all Losses that may be suffered or incurred by the Company in connection with the acts or omissions of Supplier Personnel in connection with or relating to the supply of the Goods or Services and/or when dealing with any individuals employed or engaged in any capacity by the Company.

22.5 The Supplier will, to the extent required, secure the consent of Supplier Personnel to the disclosure of data falling within the scope of the Data Protection Act 1998.

Supplier Personnel Information and Supplier Personnel Indemnity

22.6 The Supplier

22.6.1 will, on request at any time (including for the avoidance of doubt after the expiry of the Contract), provide to the Company, the Supplier Personnel Information. Such Supplier Personnel Information shall be provided to the Company as soon as reasonably practicable and in any event no later than twenty eight (28) days after such a request;

- 22.6.2 warrants and undertakes to the Company that any Supplier Personnel Information disclosed pursuant to Clause 22.6.1 above is complete and accurate; and
- 22.6.3 will indemnify and hold harmless the Company and any Replacement Supplier from and against all Losses incurred or suffered by the Company and any Replacement Supplier in connection with, or as a result of, any claim or demand:
- (i) by any Supplier Personnel which relates wholly or in part to the Supplier Personnel's employment in the period on or after the Commencement Date;
 - (ii) by any Supplier Personnel which relates to the Supplier's failure or alleged failure to employ such Supplier's Personnel on the terms and conditions which they enjoyed immediately prior to the Commencement Date;
 - (iii) by or on behalf of any Supplier Personnel which relates to a breach of any of the warranties and undertakings given by the Supplier in this Clause 22; or
 - (iv) relating to any incomplete or incorrect information relating to the Supplier Personnel which the Supplier has provided to the Company pursuant to this Clause 22 or otherwise and which the Company has relied upon.
- 22.6A The Company will keep such Supplier Personnel Information confidential although such information may be disclosed to a prospective Replacement Supplier in any tender exercise.

22.7 Not Used.

22.8 Not Used.

Surplus Supplier Personnel

22.9

- 22.9.1 The Supplier shall deal with any Supplier Personnel as follows:
- (a) where Supplier Personnel become surplus to requirements and are displaced, the Supplier shall use reasonable endeavours to identify and offer one suitable alternative job to each such Supplier Personnel elsewhere in the Supplier;
 - (b) where within one (1) month of the displacement of Supplier Personnel, the Supplier is unable to identify a suitable alternative job within its respective organisation the Supplier shall ask the Company whether there are any suitable vacancies within its organisation or other subcontractor organisations;

- (c) where the Company is asked by the Supplier whether there are any suitable vacancies within its organisation, the Company shall use reasonable endeavours to identify a suitable alternative job and shall notify the Supplier in writing within one (1) month of the request being made whether such an alternative position has been identified;
- (d) where the Supplier is asked by another subcontractor whether there are any suitable vacancies within its organisation, the Supplier shall use reasonable endeavours to identify a suitable alternative job and shall notify the other subcontractor in writing within one (1) month of the request being made whether such an alternative position has been identified; and
- (e) where the Company or another subcontractor has a suitable vacancy for that Supplier Personnel and is prepared to offer that vacancy to such employee, it shall provide full details of that vacancy to the Supplier (together with the notification as to whether the position has been identified and that Supplier Personnel shall upon accepting an offer from the Company or the other subcontractor (as the case may be) transfer on the standard terms and conditions for that organisation unless otherwise agreed between the Supplier Personnel and, as the case may be, the Company or the other subcontractor.

22.9.2 In the event that the Supplier, having complied with its obligations under this Clause 22.9 is unable to identify a suitable alternative job for the displaced employee or the displaced employee rejects any suitable alternative job offer (including any job offer made by the Company or another subcontractor), then the Supplier may dispense with the services of the displaced employee.

Key Personnel

22.10 Unless otherwise stated in any Order, the following Clauses shall apply in respect of Key Personnel:

- (a) The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the supply of the Goods and Services. The Supplier 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.
- (b) The Supplier 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 Supplier's employment.

- (c) The Supplier 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 supply of the Goods or Services). The Supplier 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 Supplier 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.
- (d) A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- (e) The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.

Cessation in the Supply of Goods or Services

- 22.11 The Company and the Supplier agree that no Cessation in the Supply of Goods or Services will constitute a relevant transfer for the purposes of the Employment Regulations.
- 22.12 If the contract of employment of any Supplier Personnel is found or alleged to have effect on or after a Cessation in the Supply of Goods or Services as if originally made with the Company or a Replacement Supplier by reason of the Employment Regulations, the Supplier agrees that:

- (a) in consultation with the Company, it shall, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the relevant Cessation in the Supply of Goods or Services; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Cessation in the Supply of Goods or Services; and
- (c) it will do nothing to discourage the acceptance of the offer.

22.13 Upon that offer being made in accordance with Clauses 22.12(a) and 22.12(b) (or after fourteen (14) days, if the offer is not made as requested), the Company or the Replacement Supplier may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company and the Replacement Supplier against any Losses in respect of (i) the employment of such person after the Cessation in the Supply of Goods or Services until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company or the Replacement Supplier under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

22.14 The Supplier shall indemnify the Company and any Replacement Supplier against any Losses in respect of any claim to the extent that it is in relation to:

- (a) the employment and termination of the employment of any Supplier Personnel up to and including the Cessation in the Supply of Goods or Services;
- (b) all emoluments and other benefits of Supplier Personnel arising in respect of the period up to and including the Cessation in the Supply of Goods or Services regardless of when they fall due for payment;
- (c) any act, fault or omission up to and including Cessation in the Supply of Goods or Services in respect of the employment of Supplier Personnel;
- (d) any claim by any Supplier Personnel relating to that person's employment or its termination after the date of the Cessation in the Supply of Goods or Services.

22.15 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 22 at any time during performance of the Contract and during the twelve (12) year period following completion of performance.

- 22.16 The obligations of the parties under this Clause 22 shall survive the expiry or termination of the Contract for whatever reason.

23 London Living Wage

- 23.1 The Supplier shall, to the extent each Contract is for the provision of Goods and Services to be undertaken within Greater London or on the LUL network:
- (a) ensure that none of its employees engaged in the provision of Goods and Services under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - (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 23 and the provisions of this Clause 23 are included in any subcontract (of any tier).
- 23.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 23.

24 Responsible Procurement

- 24.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries to do all things reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities.
- 24.2 The Supplier 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.

- 24.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services 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 Supplier shall and shall procure that all of its subcontractors shall comply with the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 24.4 The Supplier 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).
- 24.5 The Supplier 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).
- 24.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 24 and the provisions of this Clause 24 are included in any subcontract (of any tier).
- 24.7 The Supplier 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 24.

25 Confidentiality

- 25.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of his obligations under each Contract.
- 25.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
 - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and

- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.

- 25.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform its obligations in Clauses 25.1 and 25.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by its subcontractors, suppliers, employees and agents in breach of such obligations.
- 25.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 25.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, LUL, any Contract or the Goods and Services without the prior written consent of the Company.
- 25.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Goods and Services, or any Dispute arising under or in connection with any Contract.
- 25.7 The provisions of Clauses 25.1 to 25.6 shall not apply:
 - (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 25.8 The obligations of the parties under this Clause 25 shall survive the expiry or the termination of the Agreement and each Contract for whatever reason.

26 Assignment, Subcontracting and LUL Step-In Rights

- 26.1 The Supplier shall not assign, novate 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.

- 26.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under any Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 26.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any parts thereof) to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 26.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 4 in favour of any person to whom the Agreement and/or any Contract is being novated.
- 26.5 Not Used.
- 26.6 The Supplier acknowledges that if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract then LUL may issue a Step-in Notice to the Company advising the Company that it shall, from the date specified in the Step-in Notice, exercise its rights to step-in. The Supplier acknowledges LUL's rights to step-in under the Tube Lines Contract and accepts the Step-in Notice as conclusive proof of LUL's entitlement to step-in.
- 26.7 The Supplier acknowledges and accepts that, from the date specified in the Step-in Notice to the relevant date specified in any Step-out Notice served on the Supplier by LUL as referred to in Clause 26.11, it:
- (a) shall comply with the reasonable instructions of LUL or its appointee given in accordance with the Agreement and any Contract; and
 - (b) is not in breach of the Agreement or any Contract by complying with the instructions of LUL.
- 26.8 Subject to Clause 26.9 the Company shall remain liable to the Supplier for all amounts due and payable to the Supplier under each Contract and for all the Company's obligations under each Contract.
- 26.9 If LUL serves a notice on the Supplier requiring the Supplier to accept instructions from LUL or its appointee in respect of the Agreement or any Contract, then all amounts due and payable to the Supplier, or which may become due to the Supplier under such Contracts without right of retention or set off in respect of any prior breach of such Contracts (and which have not been discharged by the Company or any other person) shall be paid directly to the Supplier by LUL or its appointee.

- 26.10 The Supplier shall not hinder or prevent LUL or its appointee from exercising its step-in rights under the Tube Lines Contract. The Supplier shall not exercise any Intellectual Property Rights owned by it so as to prevent or hinder LUL or any third party appointed by LUL in accordance with its step-in rights from exercising its step-in rights.
- 26.11 If LUL serves a Step-out Notice on the Supplier then, if so required by the Step-out Notice, from the relevant date specified in the Step-out Notice, the Supplier shall comply with the instructions of the Company on the terms and conditions of the Agreement and each Contract.
- 26.12 The Supplier and the Company shall not be in breach of the Agreement or any Contract for complying with the obligations imposed by Clauses 26.6 to 26.12.

27 Company's and Supplier's Representative

Each party shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract. The names and contact details of the representatives shall be recorded in the Order. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

28 Costs

Except as otherwise agreed, each party shall bear its own costs incurred in connection with the negotiation, preparation and execution of the Agreement and each Contract.

29 Severance

If a provision of any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of such Contract, provided that the operation of this Clause 29 would not negate the commercial interest and purpose of the parties under such Contract. The provisions of this Clause 29 shall survive the termination of any Contract for whatever reason.

30 Publicity

The text of any press release or other communication to be published by or in the media concerning the subject matter of any Contract or the Agreement shall require the prior written

approval of the Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

31 Corrupt Gifts and Payments of Commission

- 31.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 31.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 31.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 31 at any time during performance of each Contract and during the twelve (12) year period following completion of performance.

31A Criminal Record Declarations

- 31A.1** For the purposes of this Clause 31A:

“Relevant Individual” means any servant, employee, officer, consultant or agent of either the Supplier or any subcontractor or supplier carrying out, or intended to carry out, any aspect of the Services; and

“Relevant Conviction” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

- 31A.2 The Supplier 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. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 31A.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 31A.4 The Company and/or LUL shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 31A at any time during performance of the Agreement and/or any individual Contract.
- 31A.5 If the Supplier fails to comply with the requirements under Clause 31A.2 and/or Clause 31A.3 the Company may, without prejudice to its rights under Clause 17.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 31A.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 31A.2.
- 31A.6 A persistent breach of Clause 31A.2 and/or Clause 31A.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any individual Contract in whole or in part with immediate effect in accordance with Clause 17.1(a).
- 31A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 31A.8 Nothing in this Clause 31A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any individual Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 31A.

32 No Waiver

No failure or delay on the part of either party to exercise any right or remedy under 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 any Contract are cumulative and are not exclusive of any rights or remedies provided by law. The provisions of this Clause 32 shall survive the termination of any Contract for whatever reason.

33 Entire Contract

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 such Contract. Except in the case of fraud neither party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in such Contract.

34 Notices and Service of Process

34.1 Any notice or other document given under, or in connection with, the Agreement or any 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 below. The notice or other document will be effective as follows:

- (a) if the notice or other document is sent by letter, it will be effective when it is delivered;
- (b) if the notice or other document is 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
- (c) if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered.

The address and fax numbers of the Company and the Supplier are as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

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

Attn: Guy Miller

Facsimile: **REDACTED**

Supplier: Durrant House, 47 Holywell, Street, Chesterfield, Derbyshire, S41 7SJ

Attn: Matthew Horsfield

Facsimile: **REDACTED**

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 34.1.¹

35 Dispute Resolution

- 35.1 Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause 35.
- 35.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company’s Representative and a suitably qualified and duly authorised representative of the Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.
- 35.3 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 35.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 35.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director or their deputies in accordance with Clause 35.3 either party may refer the matter for resolution in accordance with the provisions of Clause 36.
- 35.5 Clauses 35.1 to 35.4 are subject to the Supplier’s rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company’s Adjudication Rules. For the purposes of this Clause 35.5, “**Adjudication Rules**” means the most recent edition of the Company’s adjudication rules on the date of the notice referring adjudication.

36 Governing Law and Jurisdiction

The Agreement and each Contract and any non-contractual obligations connected with the Agreement and each Contract shall be governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

37 Contracts (Rights of Third Parties) Act 1999

- 37.1 Subject to:
- (a) LUL’s rights under Clause 26;

- (b) LUL's rights in accordance with Clauses 4.3, 4.4 and 4.6;
- (c) LUL's rights in accordance with Clauses 16.5 and 16.16;
- (d) LUL's rights in accordance with Clause 12.4, and
- (e) the Replacement Supplier's rights in accordance with Clauses 22.6.3, 22.13 and 22.14

no person except any member of the TfL Group may enforce any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

37.2 Notwithstanding LUL's rights referred to in Clause 37.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

38 Bonds, Warranties and Guarantees

38.1 If required by the Company, the Supplier shall provide within seven (7) days of the Company's request any or all of the following:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

38.2 The Supplier shall ensure that any bond required under Clause 38.1 provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the aggregate of the Order Price of each Contract at all times until the Order Delivery Date or Order Completion Date

38.3 If at any time the existing bond and/or parent company guarantee cease to meet the requirements of Clauses 38.1 and 38.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

38.4 If requested by the Company the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 38.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident, in the form attached to Schedule 8.

- 38.5 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:
- (a) a collateral warranty in the form set out in Schedule 9 in favour of:
 - (i) the Company;
 - (ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Agreement or any Contract;
 - (iii) any persons who have acquired or may acquire an interest in or over the Agreement, any Contract or any part of the Goods and/or Services or in relation to any infrastructure or works to which the Goods and/or Services relate; and
 - (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 38.5.
- 38.6 In addition to the obligation to procure warranties as set out in Clause 38.5(a), the Supplier shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Goods and Services in favour of any of the parties referred to in Clause 38.5(a)(ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request

39 Default Interest

- 39.1 If either party fails to pay to the other any amount payable in connection with any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default Interest Rate. Any interest accruing under this Clause 39.1 shall be immediately payable by the paying party on demand.
- 39.2 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.
- 39.3 The Late Payment of Commercial Debts (Interest) Act 1998 and related Regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under any Contract.

40 Freedom of Information

- (a) For the purposes of this Clause 40:

“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 for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

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

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

- (b) The Supplier acknowledges that the Company:

- (i) is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
- (ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

- (c) Without prejudice to the generality of Clause 40(b) the Supplier shall and shall procure that its subcontractors (if any) shall:

- (i) transfer to the Company’s Representative (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to the Agreement and/or any individual Contract, the supply of Goods and Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (ii) in relation to Information held by the Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

- (d) The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

40A Data Transparency

- 40A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 25 and Clause 40, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 40A.2 The Company 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 Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 40A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

41 Transport for London Group

41.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any individual Contract under Clause 17.1, Clause 17.2(a) or at common law, the Company may terminate the Agreement and/or any individual Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 41.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 41.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 17.1 and this Clause 41.1 or the Cessation Plan, the provisions of this Clause 41.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the

absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (i) an orderly and efficient cessation of the supply of Goods and Services or (at the Company's request) a transition of the supply of Goods and Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 41.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any individual Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and/or any individual Contract in accordance with this Clause 41.1.

41.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 (as amended by the Police and Justice Act 2006 and the Policing and Crime Act 2009) to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its 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, in its area:
 - (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - (ii) the misuse of drugs, alcohol and other substances; and
 - (iii) re-offending,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall, and shall use reasonable endeavours to procure that its subcontractors shall assist and co-operate with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

41.3 **The Company's business**

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the supply of Goods and Services;
- (b) is aware of the Company's processes and business;
- (c) has made all appropriate and necessary enquiries to enable it to carry out the supply of Goods and Services in accordance with the Agreement and/or any individual Contract;
- (d) is aware of the purposes for which the supply of Goods and Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and/or any individual Contract due to any misinterpretation or misunderstanding by it of any fact relating to the supply of Goods and Services.

41.4 **Best value**

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Company to discharge TfL's duty where possible, and in doing so, shall carry out any review of the supply of Goods and Services reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to the Agreement and/or any individual Contract in order for the Company to achieve best value.

41.5 **Data Protection**

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the supply of Goods and Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time

to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.

- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
 - (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
 - (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Agreement and/or any individual Contract.

41.6 **Conflict of Interest**

- (a) The Supplier 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 the carrying out of the supply of Goods and Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and/or any individual Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the supply of Goods and Services under the Agreement and/or any individual Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the supply of Goods and Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and/or any individual Contract.

41.7 Not used.

41.8 **Equality and Diversity**

41.8.1 The Supplier, at no additional cost to the Company:

- (a) shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

- (b) acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “Relevant Protected Characteristic”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In the performance of the Agreement and/or any individual contract, the Supplier shall assist and cooperate with the Company where possible in satisfying this duty;
- (c) acknowledges that the Company is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
 - (i) Promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion
 - (ii) Eliminate unlawful discrimination; and
 - (iii) Promote good relations between persons of different racial groups, religious beliefs and sexual orientations.

41.8.2 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement comply with the Company’s policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

41.9 **Work Related Road Risk**

41.9.1 For the purposes of Clauses 41.9.2 to 41.9.9 (inclusive) of this Contract, the following expressions shall have the following meanings:

“Bronze Accreditation”	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
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“Car-derived Vans”	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;
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“Collision Report”	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Goods;
“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It 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”	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
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	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”	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”

the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Van”

a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

41.9.2 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the “Alternative Scheme”); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and 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 Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

41.9.3 The Supplier shall ensure that every Lorry, which it uses to provide the Goods, shall:

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;

- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

Driver Licence Checks

41.9.4 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, the Supplier shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (b) each of its Drivers engaged in the provision of the Goods has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods 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 the DVLA issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been Approved in writing by the Company within the last 12 months:
 - (i) 0 – 3 points on the driving licence – annual checks;
 - (ii) 4 – 8 points on the driving licence – six monthly checks;
 - (iii) 9 – 11 points on the driving licence – quarterly checks; or
 - (iv) 12 or more points on the driving licence – monthly checks.

Driver Training

41.9.5 Where the Supplier operates Delivery and Servicing Vehicles to supply the Goods the Supplier shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Contract.

Collision Reporting

41.9.6 Where the Supplier operates Delivery and Servicing Vehicles to supply the Goods, the Supplier shall:

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five working days of a written request from the Company.

Self Certification of Compliance

- 41.9.7 Where the Supplier operates Delivery and Servicing Vehicles to supply the Goods, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 41.9.3, 41.9.4 and 41.9.5 of this Contract (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Supplier Regarding Subcontractors

- 41.9.8 The Supplier shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to supply the Goods shall:
- (a) comply with Clause 41.9.2; and
 - (b) where its subcontractors operate the following vehicles to supply the Goods shall comply with the corresponding provisions of this Contract:
 - (i) For Lorries – Clauses 41.9.3, 41.9.4, 41.9.5 and 41.9.6; and
 - (ii) For Vans – Clauses 41.9.4, 41.9.5 and 41.9.6,

1.1.1 as if those sub-contractors were a party to this Contract.

Failure to Comply with Work Related Road Risk Obligations

- 41.9.9 Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with any of Clauses 41.9.2, 41.9.3, 41.9.4, 41.9.5, 41.9.6, 41.9.7 and/or 41.9.8:
- (a) the Supplier has committed a material breach of this Contract; and
 - (b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

Schedule 1

Specification

Range of cars from small 4 seat vehicles such as a Citroen C1 or Ford Ka, up to and including 7 seat derivatives such as the Ford Galaxy or VW Sharan. This Lot also includes estate and automatic variations. (The vehicles types stated above are for guidance purposes only).

1.0 GENERAL REQUIREMENTS

- 1.1 The Supplier shall supply Short Term Vehicle Hire vehicles as and when requested by the Company.
- 1.2 Vehicles including ACRISS Codes that are required are detailed in schedule 5 (Prices for Goods and Services). Any vehicle required not included in Schedule 5 will be subject to individual agreement on price with all other terms and conditions remaining unchanged.
- 1.3 The Supplier shall ensure that any vehicles supplied under this agreement are compliant with current legislation, as affecting their operation and use on the public highway.
- 1.4 The Supplier shall be responsible for advising the Company of any changes in legislation that effect the operation of any agreement between both parties.

2.0 ORDERING

- 2.1 All call off requirements by the Company shall detail the exact vehicle required and be confirmed by the Supplier's documentation. Any rental agreement shall be used solely for the purposes of vehicle receipt and will not change or effect the terms and conditions of this Contract. This would apply to any hires operated through the "secure" pool and would be advised at the time of the initial hire request.
- 2.2 The Supplier shall allow the Company to sub-hire vehicles as required internally within the Company's organisation and externally.
- 2.3 All vehicles supplied by the Supplier, either directly or through a sub-contractor, shall be covered by Company own insurance and subject to the conditions of this Contract, unless otherwise advised. Individual drivers shall not be required to submit any documentation relating to this Contract, including providing sight of individual driving licences nor any form of deposit.

3.0 VEHICLE DELIVERY

- 3.1 The Supplier shall ensure that all vehicles are compliant with the Company's requirements as detailed at the time of ordering. The Supplier shall ensure that the delivery driver is responsible and knowledgeable in all aspects of the operation of the vehicle.
- 3.2 Vehicles shall be delivered at the agreed time free of charge to any location within London

- 3.3 All vehicles will be delivered with a full tank of fuel. If the tank is not full on delivery, TfL may return the vehicle to the supplier after the hire period without a full tank of fuel. The difference will be calculated and included as a credit on the invoice.
- 3.4 The Supplier shall deliver such vehicle(s) to the Company at least 15 minutes before the agreed time without incurring additional charge. Failure to do so may result in the vehicle being rejected.
- 3.5 The mileage recorded at the time that the vehicle is delivered and accepted by the Company shall be the Contract start mileage and shall be used in all contractual calculations.
- 3.6 Vehicles are to be delivered in a condition allowing them to enter immediate service and continue for the initial period of hire. Failure to do so may result in the vehicle being rejected.
- 3.7 Upon delivery of a vehicle the Company may undertake an inspection to determine overall condition. Any defects or damage observed shall be advised to the delivery driver and recorded on the delivery sheet. Any defects considered unacceptable may result in the vehicle being rejected. The signing of any Supplier's documentation shall be solely for the purposes of receipt and acknowledgement of the vehicle condition only.
- 3.8 Where a vehicle is delivered without the facility for a driver signature, if upon inspection and prior to use, additional defects are noted then the Company shall immediately advise the Supplier.

4.0 VEHICLE MANGEMENT

- 4.1 The Company shall require notification and/or receipt of the following statutory and other requirements within the stated time scales.
- MOT reminders - are required one month prior to expiry.
 - Road Fund Licence – confirmation that vehicles have a current RFL.
 - Vehicle exchanges – a minimum of five working days' notice.
 - Vehicle Breakdown Assistance – Details to be included in each hired vehicle
- 4.2 In the event of the Supplier failing to undertake its obligations regarding statutory requirements resulting in the loss of use of the vehicle then the Supplier shall be required to provide a free replacement vehicle of a similar type and size until such time as the original vehicle is available or to substitute a like for like vehicle to continue the hire. Failure to do so will render the Supplier liable for any additional costs incurred by the Company resulting from sourcing an alternative vehicle.
- 4.3 The Company reserve the right to extend the duration of any vehicles hired and the vehicle will not be considered off hired until the Supplier has been notified.
- 4.3 The Supplier shall provide to the Company notice of manufacturers re-calls applicable to the vehicles on hire.
- 4.4 The Company may on an occasional basis require a vehicle to travel outside the UK national boundaries. The Supplier shall provide the required authorisation and documentation at no additional cost. The Company shall provide all necessary insurance and breakdown cover for any foreign travel.
- 4.5 The Company shall undertake the accident management of all vehicles, which will include but not be limited to inspection, repair and assessment of repairs.
- 4.5.1 Where the Company undertakes the repair work, the vehicle(s) shall remain on hire until the work is completed at which time the vehicle will be off-hired.

- 4.5.2 Where the Supplier undertakes the repair work they must submit an estimate within three working days of the date of off-hire. The Company will then agree the repair cost with the Supplier and authorise the repair work. Should the Supplier fail to submit the estimate within the required time or commence work prior to the Company's authorisation then the Supplier will become liable for the full repair costs.
- 4.5.3 Any vehicles repaired by the Supplier will not be subject to any loss of use claims.
- 4.5.4 The Supplier shall submit the recharge invoices at the cost agreed with the Company. These invoices will not be subject to any administration fee.
- 4.6 The Company shall be responsible for the payment of all parking and other vehicle and traffic related fines incurred whilst the vehicle is on hire to the Company. The Supplier shall either re-address it to the Company at the correspondence address within the qualifying time period or forward a copy of the original, directly to the Company, by e-mail, for processing by the Company. The Company shall not be liable for any increased costs resulting from any delays caused by the Supplier nor for any administration charges, unless the Supplier is sending a reminder or follow-up notice to the Company for action.
- 4.7 The Company reserves the right to purchase and fit such minor consumable spare parts (eg wiper blades, bulbs etc) as from time to time may be required and which may be re-charged to the Supplier. Such undertaking shall not give rise to invalidate any warranty in force on the vehicle.
- 4.8 The Company may require vehicles to be extended beyond the original expiry date. The Supplier shall not unreasonably withhold any request for such extension.
- 4.9 The hire rate shall be inclusive of all tyre requirements for the life of the vehicle except in the case where tyres are damaged by the Company's neglect or abuse. In such case the Supplier shall provide evidence of alleged abuse prior to any charge being levied. In the event of tyre(s) being damaged by neglect or abuse the Company shall pay the agreed price for the appropriate replacement tyre less a discount for the unused tread remaining.
- 4.10 Should vehicles require components which shall include but not be limited to exhausts, tyres and batteries, then the Supplier shall be responsible for arranging such items. Alternatively the Company will arrange for such items/work to be undertaken through the Supplier's authorised list of agents/dealers. All related costs will be borne by the Supplier.

5.0 END OF HIRE

- 5.1 The Company shall advise the Supplier of those vehicles to be off-hired and available for collection. Hire charges will cease at the time and on the day that the Company advises the Supplier.
- 5.2 Vehicles shall be collected free of charge from any location within the agreed timescales.
- 5.3 The Company may be liable for the cost of replacement fuel at the prevailing pump price to a full tank plus the agreed re-fuelling administration fee under this agreement.
- 5.4 Upon the collection of a vehicle, the Company shall sign the Supplier's collection sheet. A copy of this documentation will be left with the Company's representative. If a dispute arises regarding the condition of a vehicle the Supplier shall advise the Company immediately of such condition, having taken due regard for fair wear and tear items. Both parties will then agree an appropriate course of action. Where a signature for collection is not available and additional damage noted, the vehicle must not be moved until the condition has been agreed. Failure to comply will render the Supplier liable for all repair costs.

- 5.5 In the event of a vehicle being involved in a write off situation through accident or theft then the Company may be liable for settlement costs. Both parties shall agree a market valuation for the vehicle based upon current market analysis taken from agreed industry recognised established sources. Rental charges shall cease two weeks after the date of the initial incident or when settlement is agreed whichever is the sooner.

Operation Requirements – LOT 2

General range of Light Commercial Vehicles (Vans) from small Vauxhall Corsa/Ford Fiesta types up to and including a maximum of 3.5 tonne gvw panel vans. This Lot will also include Luton box body vans with and without tail-lift. The maximum weight will be 3.5 tonne gvw. (The vehicle types stated above are for guidance purposes only).

1.0 GENERAL REQUIREMENTS

- 1.1 The Supplier shall supply Short Term Vehicle Hire vehicles as and when requested by the Company.
- 1.2 Vehicles including ACRISS Codes that are required are detailed in schedule X (Pricing schedule). Any vehicle required not included in Schedule x will be subject to individual agreement on price with all other terms and conditions remaining unchanged.
- 1.3 The Supplier shall ensure that any vehicles supplied under this agreement are compliant with current legislation, as affecting their operation and use on the public highway.
- 1.4 The Supplier shall be responsible for advising the Company of any changes in legislation that effect the operation of any agreement between both parties.

2.0 ORDERING

- 2.1 All call off requirements by the Company shall detail the exact vehicle required and be confirmed by the Supplier's documentation. Any rental agreement shall be used solely for the purposes of vehicle receipt and will not change or effect the terms and conditions of this Contract. This would apply to any hires operated through the "secure" pool and would be advised at the time of the initial hire request.
- 2.2 The Supplier shall allow the Company to sub-hire vehicles as required internally within the Company's organisation and externally.
- 2.3 All vehicles supplied by the Supplier, either directly or through a sub-contractor, shall be covered by Company own insurance and subject to the conditions of this Contract, unless otherwise advised. Individual drivers shall not be required to submit any documentation relating to this Contract, including providing sight of individual driving licences nor any form of deposit.

3.0 VEHICLE DELIVERY

- 3.1 The Supplier shall ensure that all vehicles are compliant with the Company's requirements as detailed at the time of ordering. The Supplier shall ensure that the delivery driver is responsible and knowledgeable in all aspects of the operation of the vehicle.
- 3.2 Vehicles shall be delivered at the agreed time free of charge to any location within London
- 3.3 All vehicles will be delivered with a full tank of fuel.

- 3.4 The Supplier shall deliver such vehicle(s) to the Company at least 15 minutes before the agreed time without incurring additional charge. Failure to do so may result in the vehicle being rejected.
- 3.5 The mileage recorded at the time that the vehicle is delivered and accepted by the Company shall be the Contract start mileage and shall be used in all contractual calculations.
- 3.6 Vehicles are to be delivered in a condition allowing them to enter immediate service and continue for the initial period of hire. Failure to do so may result in the vehicle being rejected.
- 3.7 Upon delivery of a vehicle the Company may undertake an inspection to determine overall condition. Any defects or damage observed shall be advised to the delivery driver and recorded on the delivery sheet. Any defects considered unacceptable may result in the vehicle being rejected. The signing of any Supplier's documentation shall be solely for the purposes of receipt and acknowledgement of the vehicle condition only.
- 3.8 Where a vehicle is delivered without the facility for a driver signature, if upon inspection and prior to use, additional defects are noted then the Company shall immediately advise the Supplier.

4.0 VEHICLE MANGEMENT

- 4.1 The Company shall require notification and/or receipt of the following statutory and other requirements within the stated time scales.
- MOT reminders - are required one month prior to expiry.
 - Road Fund Licence – confirmation that vehicles have a current RFL.
 - Vehicle exchanges – a minimum of five working days' notice.
 - Vehicle Breakdown Assistance – Details to be included in each hired vehicle
- 4.2 In the event of the Supplier failing to undertake its obligations regarding statutory requirements resulting in the loss of use of the vehicle then the Supplier shall be required to provide a free replacement vehicle of a similar type and size until such time as the original vehicle is available or to substitute a like for like vehicle to continue the hire. Failure to do so will render the Supplier liable for any additional costs incurred by the Company resulting from sourcing an alternative vehicle.
- 4.3 The Company reserve the right to extend the duration of any vehicles hired and the vehicle will not be considered off hired until the Supplier has been notified.
- 4.3 The Supplier shall provide to the Company notice of manufacturers re-calls applicable to the vehicles on hire.
- 4.4 The Company may on an occasional basis require a vehicle to travel outside the UK national boundaries. The Supplier shall provide the required authorisation and documentation at no additional cost. The Company shall provide all necessary insurance and breakdown cover for any foreign travel.
- 4.5 The Company shall undertake the accident management of all vehicles, which will include but not be limited to inspection, repair and assessment of repairs.
- 4.5.1 Where the Company undertakes the repair work, the vehicle(s) shall remain on hire until the work is completed at which time the vehicle will be off-hired.
- 4.5.2 Where the Supplier undertakes the repair work they must submit an estimate within three working days of the date of off-hire. The Company will then agree the repair cost with the Supplier and authorise the repair work. Should the Supplier fail to submit the estimate within the

required time or commence work prior to the Company's authorisation then the Supplier will become liable for the full repair costs.

- 4.5.3 Any vehicles repaired by the Supplier will not be subject to any loss of use claims.
- 4.5.4 The Supplier shall submit the recharge invoices at the cost agreed with the Company. These invoices will not be subject to any administration fee.
- 4.6 The Company shall be responsible for the payment of all parking and other vehicle and traffic related fines incurred whilst the vehicle is on hire to the Company. The Supplier shall either re-address it to the Company at the correspondence address within the qualifying time period or forward a copy of the original, directly to the Company, by e-mail, for processing by the Company. The Company shall not be liable for any increased costs resulting from any delays caused by the Supplier nor for any administration charges, unless the Supplier is sending a reminder or follow-up notice to the Company for action.
- 4.7 The Company reserves the right to purchase and fit such minor consumable spare parts (eg wiper blades, bulbs etc) as from time to time may be required and which may be re-charged to the Supplier. Such undertaking shall not give rise to invalidate any warranty in force on the vehicle.
- 4.8 The Company may require vehicles to be extended beyond the original expiry date. The Supplier shall not unreasonably withhold any request for such extension.
- 4.9 The hire rate shall be inclusive of all tyre requirements for the life of the vehicle except in the case where tyres are damaged by the Company's neglect or abuse. In such case the Supplier shall provide evidence of alleged abuse prior to any charge being levied. In the event of tyre(s) being damaged by neglect or abuse the Company shall pay the agreed price for the appropriate replacement tyre less a discount for the unused tread remaining.
- 4.10 Should vehicles require components which shall include but not be limited to exhausts, tyres and batteries, then the Supplier shall be responsible for arranging such items. Alternatively the Company will arrange for such items/work to be undertaken through the Supplier's authorised list of agents/dealers. All related costs will be borne by the Supplier.

5.0 END OF HIRE

- 5.1 The Company shall advise the Supplier of those vehicles to be off-hired and available for collection. Hire charges will cease at the time and on the day that the Company advises the Supplier.
- 5.2 Vehicles shall be collected free of charge from any location within the agreed timescales.
- 5.3 The Company may be liable for the cost of replacement fuel at the prevailing pump price plus the agreed re-fuelling administration fee under this agreement.
- 5.4 Upon the collection of a vehicle, the Company shall sign the Supplier's collection sheet. A copy of this documentation will be left with the Company's representative. If a dispute arises regarding the condition of a vehicle the Supplier shall advise the Company immediately of such condition, having taken due regard for fair wear and tear items. Both parties will then agree an appropriate course of action. Where a signature for collection is not available and additional damage noted, the vehicle must not be moved until the condition has been agreed. Failure to comply will render the Supplier liable for all repair costs.
- 5.5 In the event of a vehicle being involved in a write off situation through accident or theft then the Company may be liable for settlement costs. Both parties shall agree a market valuation for the vehicle based upon current market analysis taken from agreed industry recognised established

sources. Rental charges shall cease two weeks after the date of the initial incident or when settlement is agreed whichever is the sooner.

Schedule 2

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods to be supplied and extent of Services to be carried out.
- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.

- 8 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of each Contract, including, but not limited to the Specification and the Order Programme.
- 9 Strict adherence to the procedure described in this Schedule 2 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 2 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

Appendix 1

Form of Variation Proposal/Variation Order

To:	From:
------------	--------------

Contract Reference:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)

Description of change:		
Reason for changes and impact (if any) on Contract:		
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">Variation Proposal Authorised by:</td> <td style="width: 40%; padding: 5px;">Proposal Date:</td> </tr> </table>	Variation Proposal Authorised by:	Proposal Date:
Variation Proposal Authorised by:	Proposal Date:	

PART B (TO BE COMPLETED BY THE SUPPLIER)

Price Breakdown Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Delivery Date:	
Supplier's Representative:	
Print Name: Signature: Date:	
Completed document to be returned to the Company's Representative	

PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)

Comment on Parts A and B:		
Variation Authorisation		
Company's Representative:		
Print Name:	Signature:	Date:
LUL Representative (if applicable):		
Print Name:	Signature:	Date:

Schedule 3
Quality and Safety Plan

Not Used

Schedule 4
Deed of Novation

NOVATION / TRANSFER

Within 14 days of any written request by Tube Lines Limited to the Supplier, the Supplier shall execute one or more agreements substantially in the form specified in the Appendix to this Schedule 4 by which Tube Lines Limited shall transfer all or such part as may be specified by Tube Lines Limited of its rights and obligations under this Agreement to one or more third parties to be nominated by Tube Lines Limited.

APPENDIX
[NOVATION / TRANSFER] AGREEMENT

THIS DEED is made day of 201[]

BETWEEN:

Tube Lines Limited a company registered in England and Wales under number 3923425 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1 0TL (the "**Company**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**Supplier**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**New Company**").

WHEREAS:

- (A) The Company has an agreement dated [] and referenced [insert contract number] with the Supplier for the provision of [describe in brief the scope of work/services] (the "**Contract**").
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Supplier and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:

1.1 "**Transfer Date**" means [];

1.2 "**Transferred Part**" means all that part of the undertaking of the Company which consists of [describe part of undertaking that the New Company will be taking responsibility for].

2. With effect from the Transfer Date [and only in so far as the Contract relates to the Transferred Part]:
- 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
- 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;
- 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
- 2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and
- 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier.
- 2.4 the Company transfers its rights and obligations under the Contract to the New Company.

EXECUTED as a Deed and delivered the day and year first above written.

THE COMMON SEAL of)	_____
TUBE LINES LIMITED)	Director
was hereunto affixed in)	_____

the presence of:-) Director/Secretary

THE COMMON SEAL of) _____
[**SUPPLIER**]) Director
was hereunto affixed in) _____
the presence of:-) Director/Secretary

THE COMMON SEAL of) _____
[**NEW COMPANY**]) Director
was hereunto affixed in) _____
the presence of:-) Director/Secretary

Schedule 5
Prices for Goods and Services

REDACTED

REDACTED

Schedule 6

Not Used.

Schedule 7
Not Used

Schedule 8

Form of Parent Company Guarantee, Performance Bond and Form of Legal Opinion

THIS GUARANTEE is made the _____ day of _____ 20____

BETWEEN

- (1) [_____] whose registered office/principal place of business is at [_____] ("the **Guarantor**");
- (2) Tube Lines Limited (company registration number: 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1 0TL ("the **Company**" which expression shall include its successors in title and assigns); and
- (3) [_____] whose registered office/principal place of business is at [_____] ("the **Contractor**");

WHEREAS:

- A. This Guarantee is supplemental to a contract ("the **Contract**") for the carrying out of **[Works and Services]** at ● made between (1) the Company and (2) [_____] ("the **Contractor**").
- B. The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Contractor in the manner hereinafter appearing.
- C. The Contractor is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees the proper and punctual performance and observance by the Contractor of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Contractor and the Guarantor shall pay or be responsible for the payment by the Contractor of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Contractor.

2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Contractor under or arising out of the Contract have been duly and completely performed and observed in full.
3. The Guarantee is in addition to and not in substitution for any other security or warranty which Tube Lines may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced without first taking any proceedings or exhausting any right or remedy against the Contractor or any other person or taking any action to enforce any other security, bond or guarantee.
4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Contractor in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works to be carried out under the Contract;
 - (c) any extension of time being given to the Contractor or any other indulgence or concession to the Contractor or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Contractor under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Contractor;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Contractor;
 - (h) any legal limitation, disability or incapacity relating to the Contractor (whether or not known to you);

- (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Contractor under the Contract;
 - (j) the termination of the Contract; or
 - (k) anything the Company or the Contractor may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. So long as the Guarantor remain under any actual or contingent liability under this Guarantee, it shall not exercise any right of subrogation or any other right or remedy of a surety which we may have in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition with you for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us to take or hold any security from the Contractor in respect of any liability of us hereunder.
7. This Guarantee is irrevocable.
8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.
9. No person other than TfL and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
10. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that you have the right to bring proceedings in the courts of any other jurisdiction in which any of our assets may be situated.
- [11. *For non-UK resident Guarantors only:*
For the purposes of this Guarantee we hereby appoint of [to be a London address] to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment).]

EXECUTED as a DEED under)
THE COMMON SEAL of
of the Guarantor] in the)
presence of:-)

Director

Director/Secretary

EXECUTED as a DEED under)
THE COMMON SEAL of
TUBE LINES LIMITED in the)
presence of:-)

Director

Director/Secretary

EXECUTED as a DEED under)
THE COMMON SEAL of
the Contractor in the)
presence of:-)

Director

Director/Secretary

LEGAL OPINION 1

FOR USE WITH A GUARANTEE

TO: Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

Dear Sirs

I am general counsel to and I am giving this legal opinion in connection with the making by of the Document (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "**Document**") dated made between (the "**Guarantor**"), ("the **Contractor**"), and Tube Lines Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in on for an indefinite period as [a limited company] and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in has been taken to enable the Guarantor to:

- (i) sign and deliver the Document and perform the obligations undertaken by it thereunder; and
- (ii) guarantee the Company in respect of the obligations of the Guarantor under the Document;

and implementation by the Guarantor of the foregoing will not cause:

- (iii) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
 - (iv) any law or order to be contravened;
 - (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Guarantor is a party or by which it or any of its assets is bound;
- (c) the Document has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Guarantor under the laws of and in the courts of
- (d) the signature, delivery and performance of the Document by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (e) it is not necessary or advisable under the laws ofin order to ensure the validity, enforceability and priority of the obligations of the Guarantor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
- (f) the obligations of the Guarantor under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Guarantor;
- (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the

Guarantor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in;

- (h) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the signature, performance or enforcement by legal proceedings of the Document;
- (i) the Company will not violate any law or regulation in nor become liable to tax in by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Document;
- (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the Courts;
- (k) the consent to the jurisdiction by the Guarantor contained in the Document is valid and binding on the Guarantor and not subject to revocation;
- (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Guarantor would be recognised and accepted by the Courts without re-trial or examination of the merits of the case.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed.....

Model Performance Bond

Attached is a Form of On-Demand Performance Bond and also an alternative Form of Default Performance Bond.

All tenders should in the first instance include the Form of On-Demand Performance Bond as the preferred form of bond security. The Form of Default Performance Bond may be used as an alternative form of bond security subject confirmation with Legal. **[Note: Do not include both in your contract]**

FORM OF ON DEMAND PERFORMANCE BOND WITH SCHEDULE 1A, 1B, 2

TUBE LINES LIMITED

BOND

(Letterhead of Bank)

To: Tube Lines Limited (its successors and assigns)

Dear Sir/Madam,

Contract Bond No. []

Whereas our Clients [insert name of *Contractor*] (“the **Contractor**”) have entered into a contract with you dated [XXX XXXX] (“the **Contract**”) in respect of the [insert contract title] we (“the **Bank**” which term shall include its successors and assigns) hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you.

PROVIDED THAT

1. This Bond will come into force on the date hereof.
2. Any demand hereunder will be substantially in the form of either annex 1A or annex 2 to this Bond, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder.
3. Any demand in the form of annex 1A shall be accompanied by a copy of a letter from Tube Lines Limited sent to the Contractor by first class recorded post 14 or more days before the date of the demand, substantially in the form of annex 1B of this Bond.
4. For the purpose of this paragraph 4, the expression “**Expiry Date**” means [TBA]. Our liability hereunder shall be limited as follows:
 - a) We shall have no liability in respect of any demand received after the Expiry Date; and

- b) in respect of a demand or demands received on or before the Expiry Date our liability shall not exceed shall not exceed the aggregate sum of [£_____].
5. Our obligations hereunder shall remain in full force and effect and will not be affected or discharged by:
- (a) any alteration to the terms of the Contract made by agreement between you and the Contractor;
 - (b) any defence, counterclaim, set off or other deduction available to the Contractor under the Contract.
 - (c) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract;
 - (d) any time being given to the Contractor or any other indulgence or concession to the Contractor or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (e) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Contractor under the Contract;
 - (f) the release or waiver of any such other bond, security or guarantee;
 - (g) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Contractor;
 - (h) the termination of the Contract
 - (i) any other event which might operate to discharge a guarantor.
6. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond.
7. This Bond, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that you have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.
8. This Bond may not be assigned or transferred without the prior written consent of the Contractor, such consent not to be unreasonably withheld.

EXECUTED BY (Authorised Signatory):

ON BEHALF OF (Name of Bank):

UNDER REGISTERED POWER OF ATTORNEY NO:

ON THISDAY 201....

ANNEX 1A

Form of Demand from Tube Lines Limited to (the bank)

To be sent by first class recorded delivery post.

Dear Sirs

[Contract Title]

Contract No: [XXX XXXX]

We refer to the Bond given by you to us dated []. We enclose a copy of a letter from us to [insert name of Contractor] (“the **Contractor**”) which was sent to the Contractor by first class recorded post on [] which is more than 14 days before the date of this demand.

The Contractor has not taken steps to remedy the breach/breaches of the Contract.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by CHAPS in sterling payable to Tube Lines Limited.

Yours faithfully

.....
Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

ANNEX 1B

Form of letter from Tube Lines Limited to the Contractor

To be sent by first class recorded delivery post.

Dear Sirs

[Contract Title]

Contract No: [XXX XXXX]

As explained in [previous letters to you/ our letter dated], you are in breach of your obligations under contract No. [] and you have not proposed or implemented sufficient steps to remedy those breaches.

This letter therefore notifies you that unless within the next 14 days you take steps to remedy the breach/breaches we will be entitled without further notice to you to call for payment under the Bond given on your behalf by [.....] (name of bank).

Yours faithfully

.....

on behalf of
Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

ANNEX 2

Alternative form of demand from Tube Lines Limited to (the bank)

Dear Sirs

[Contract Title]

Contract No: [XXX XXXX]

We refer to the Bond given by you to us dated [].

An event has occurred of the type described in Clause [X] of the Contract.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by CHAPS made payable to Tube Lines Limited.

Yours faithfully

.....

Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

FORM OF DEFAULT PERFORMANCE BOND

THE PERFORMANCE BOND is made as a deed **BETWEEN** the following parties whose names and [registered office] addresses are set out in the Schedule to this Bond ("the **Schedule**"):

- (1) The "**Contractor**" as principal
- (2) The "**Guarantor**" as guarantor, and
- (3) the "**Company**" (which expression shall include its successors in title and assigns).

WHEREAS:

- (A) By a contract ("the Contract") entered into or to be entered into between the Company and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Company to execute works ("the Works") upon and subject to the terms and conditions therein set out.
- (B) The Guarantor has agreed with the Company at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Performance Bond subject to the limitation set out in clause 2.
- (C) Words and expressions used herein shall unless the contrary is stated bear the meanings set out in the Contract.

NOW THIS DEED WITNESSES as follows:

1.1 The Guarantor guarantees to the Company that in the event of a breach of the Contract by the Contractor or if the Contractor suffers an Insolvency Event the Guarantor shall subject to the provisions of this Performance Bond satisfy and discharge the damages sustained by the Company as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.

2.1 For the purposes of this Performance Bond:

- (a) "**Insolvency Event**" means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making an arrangement with his creditor;

- (b) no estimate, forecast or assessment of the Company's Representative (as defined in the Contract) shall be binding and conclusive against the Guarantor; and
- (c) the damages due and payable under this Performance Bond to the Company following termination of the Contractor's employment for an Insolvency Event shall be such amounts as shall represent the difference between:
 - (i) the amounts actually paid by the Company to complete the whole of the Works together with all direct loss and expense caused to the Company by reason of such termination; and
 - (ii) the amount that would have been payable to the Contractor in respect thereof but for such termination,

and so that the Company shall be placed in the same position (no better and no worse) than would have been obtained if the Contractor had duly performed and discharged its obligations under the Contract.

3. The maximum aggregate liability of the Guarantor and the Contractor under this Performance Bond shall not exceed the sum set out in the Schedule ("the Bond Amount") but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
4. The Guarantor shall not be discharged or released by any alteration of any of the terms and conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Company under or in respect of the Contract or the Works shall in any way release, reduce or affect the liability of the Guarantor under this Performance Bond.
5. Whether or not this Performance Bond shall be returned to the Guarantor the obligations of the Guarantor under this Performance Bond shall be released and discharged absolutely upon Expiry (as defined in the Contract) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.
6. The Contractor having requested the execution of this Performance Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Company or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
7. This Performance Bond and the benefits thereof may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted. Written notice of any assignment pursuant to this clause 7 shall be provided to the Contractor and the Guarantor following any such assignment
8. No person other than the Company (or a successor in title or permitted assignee of the Company) shall have any right claim or remedy under or pursuant to this Performance Bond and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

9. This Performance Bond shall be governed by and construed in accordance with the laws of England and only the courts of England shall have jurisdiction hereunder.

THE SCHEDULE

The Contractor: [name] whose registered office address is at [address]

The Guarantor: [name] whose registered office address is at [address]

The Company: Tube Lines Limited (Company registration number: 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1 0TL

The Contract: A contract dated [•] / [to be entered into] between the Company and the Contractor for the provision of Works and/or Services comprising [] for the original contract sum of [] £[]

The Bond Amount: The sum of [£] pounds sterling ([£]) [insert any provisions for the reduction of the Bond Amount].

IN WITNESS whereof the Contractor and the Guarantor have executed and delivered this Performance Bond as a Deed on [date]

[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]

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

LEGAL OPINION 2

FOR USE WITH A BOND

TO: Tube Lines Limited
15 Westferry Circus
Canary Wharf
London
E14 4HD

Dear Sirs

I am general counsel to and I am giving this legal opinion in connection with the making by of the Document (as defined below) in your favour.

1. I have examined the Deed of Bond (the "**Document**") dated made between..... (the "**Bank**") and Tube Lines Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of I am pleased to advise that in my opinion:
 - (a) the Document has been properly signed and delivered on behalf of the Bank and the obligations on the part of the Bank contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Bank under the laws of and in the courts of
 - (b) it is not necessary or advisable under the laws ofin order to ensure the validity, enforceability and priority of the obligations of the Bank or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;

(c) the obligations of the Bank under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Bank;

(d) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Bank pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in

(e) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the signature, performance or enforcement by legal proceedings of the Document;

(f) the Company will not violate any law or regulation in nor become liable to tax in by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Document;

(g) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the Courts;

(h) the consent to the jurisdiction by the Bank contained in the Document is valid and binding on the Bank and not subject to revocation;

(i) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Bank would be recognised and accepted by the Courts without re-trial or examination of the merits of the case.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed.....

Schedule 9

FORM OF WARRANTY

PROJECT : Nr. xxx

THIS AGREEMENT is made the _____ day of _____ 201[]

BETWEEN : -

- (1) **Tube Lines Limited** (Company registration number: 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**”);
- (2) [] (Company registration number: [.....]) whose registered office/principal place of business is at [.....] (the “**Sub-Contractor**”); and
- (3) [] (Company registration number: [.....]) whose registered office/principal place of business is at [.....] (the “**Contractor**”)

WHEREAS :-

- (A) The Company has entered into a contract with the Contractor (the “**Main Contract**”) pursuant to which the Contractor is to undertake and complete the following [design] services: [] (the “**Services**”).
- (B) The Sub-Contractor has submitted a tender to the Contractor for the carrying out and completion of certain parts (the “**Sub-Contract Services**”) of the Services referred to above as more particularly described in the tender.

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Company to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows:

1. The Sub-Contractor warrants to the Company that:

- (a) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional [designers] with experience in carrying out work of a similar type, nature and complexity to the Sub-Contract Services;
 - (b) reasonable skill and care has been and will continue to be exercised in connection with:
 - (i) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (ii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Contractor and the Sub-Contractor in relation to the Sub-Contract Services (the “**Sub-Contract**”);
 - (iii) the execution and completion of the Sub-Contract Services;
 - (c) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction.
2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Contractor is granted an extension of time under the Main Contract for completion of the Services:
- (a) execute, complete [and maintain]² the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
 - (b) ensure that the Contractor shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.

² Depending on Sub-Contract Services to be provided

3. The Sub-Contractor shall from time to time supply the Company and the Contractor with such information as either may reasonably require.
4. The copyright in all drawings, designs, specifications, calculations, sketches and other documents ("**Copyright Material**") prepared by the Sub-Contractor in connection with the Sub-Contract Services shall remain vested in the Sub-Contractor but the Sub-Contractor hereby grants to the Company with the consent and approbation of the Contractor a perpetual, royalty free, non-exclusive and irrevocable licence to copy and use such Copyright Material for any purpose related to Tube Lines Limited but not limited to the construction, completion, modification, extension, maintenance, reinstatement and repair of the London Underground network.
5. The parties hereby agree that:
 - (a) this Agreement shall be personal to the Sub-Contractor;
 - (b) the Company may assign the benefit of this Agreement to any third party;
 - (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.
6. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Services, he has professional indemnity insurance with a limit of indemnity of not less than *[two million pounds (£2,000,000)]*³ in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Services provided such insurance remains available at commercially reasonable rates and shall notify the Company 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 Sub-Contractor's insurance claims record.⁴

⁴ If the Sub-Contractor is not undertaking any design as part of the Sub-Contract Services Clause 6 can be stated as "Not Used".

7. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Contractor and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.
8. (a) Neither the Sub-Contractor nor the Contractor shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Contractor or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Contractor's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Contractor (a "**Step-in Notice**") that the Company or its appointee shall henceforth become the Contractor under the Sub-Contract in accordance with the terms of sub-clause (c) below.
- (c) With effect from the date of the service of any Step-in Notice:
- (i) the Company or its appointee shall be substituted in the Sub-Contract as the Contractor thereunder in place of the Contractor and references in the Sub-Contract to the Contractor shall be construed as references to the Company or its appointee;
- (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported

exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;

(iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Contractor thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

(iv) the Contractor shall be released from further performance of the duties and obligations of the Contractor under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:

(1) the Sub-Contractor against the Contractor in respect of any matter or thing done or omitted to be done by the Contractor on or before the date of the Step-in Notice; and

(2) the Contractor against the Sub- Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.

(d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to clause 8(b) above.

9. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Contractor and under the Sub-Contract.

10. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.

11. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS whereof these presents have been executed and delivered as a deed the day and year first before written.

THE COMMON SEAL of)
TUBE LINES LIMITED was)
hereunto affixed to this DEED in the)
presence of:-)

Authorised Signatory

Executed and Delivered as a DEED)
for and on behalf of)
[SUB-CONTRACTOR])
acting by)

Authorised Signatory

Authorised Signatory

Executed and Delivered as a DEED)
for and on behalf of)
[CONTRACTOR])
acting by)

Authorised Signatory

Authorised Signatory

FORM OF LEGAL OPINION

FOR USE WITH A SUB-CONTRACTOR WARRANTY

TO: Tube Lines Limited
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Dear Sirs

I am general counsel to and I am giving this legal opinion in connection with the making by of the Document (as defined below) in your favour.

1. I have examined the Sub-Contractor Warranty (the "**Document**") dated made between (the "**Sub-Contractor**"), ("the **Contractor**"), and Tube Lines Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of I am pleased to advise that in my opinion:
 - (a) the Sub-Contractor was incorporated in on for an indefinite period as [a limited company] and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Sub-Contractor;
 - (b) the Sub-Contractor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in has been taken to enable the Sub-Contractor to:
 - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder; andand implementation by the Sub-Contractor of the foregoing will not cause:
 - (ii) any limit on the Sub-Contractor or its directors (whether imposed by the documents constituting the Sub-Contractor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
 - (iii) any law or order to be contravened;
 - (iv) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Sub-Contractor is a party or by which it or any of its assets is bound;
 - (c) the Document has been properly signed and delivered on behalf of the Sub-Contractor and the obligations on the part of the Sub-Contractor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the

Sub-Contractor under the laws of and in the courts of

- (d) the signature, delivery and performance of the Document by the Sub-Contractor constitute private and commercial acts by it rather than public or governmental acts;
- (e) it is not necessary or advisable under the laws ofin order to ensure the validity, enforceability and priority of the obligations of the Sub-Contractor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
- (f) the obligations of the Sub-Contractor under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Sub-Contractor;
- (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Sub-Contractor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in
- (h) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the signature, performance or enforcement by legal proceedings of the Document;
- (i) the Company will not violate any law or regulation in nor become liable to tax in by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Document;
- (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the Courts;
- (k) the consent to the jurisdiction by the Sub-Contractor contained in the Document is valid and binding on the Sub-Contractor and not subject to revocation;
- (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Sub-Contractor would be recognised and accepted by the Courts without re-trial or examination of the merits of the case.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed.....

Schedule 10
Performance

SDI Performance Criteria / Service Delivery Indicators (SDI's)

The following Service Levels will be achieved by the Supplier. Performance will be reviewed at regular meetings between the parties and action plans established by the Supplier in the event of failure to meet the required levels.

SERVICE LEVEL	TARGET	METHOD OF MEASUREMENT	STANDARD
1. Service Delivery	Achieve delivery times to target	Deliveries made by the time specified in the order	95% without complaint
2. Service Delivery	Achieve collections to agree targets	Collections are undertaken by the next working day	100%
3. Service Performance	Satisfactory Vehicle Condition	Vehicles are delivered in an acceptable condition and to an acceptable level of cleanliness	100%
4. Service Performance	Delivery with full tank of fuel	Vehicles delivered with a full tank of fuel	100%
5. Supplementary Invoicing	Achieve compliance with the agreed process	All recharges are compliant with the agreed process including prior approval.	98%
6. End of Hire	Achieve compliance with the agreed process	All end of hire vehicles collected are compliant with the agreed process and timescales	100%

If any vehicle is rejected by the Company in accordance with clause 9.4, then a substitute vehicle must be provided if requested whilst the original vehicle is being rectified. If no substitute vehicle is available then the supplier will be liable for any costs incurred by the Company obtaining an alternative vehicle.

Please note that any vehicles delivered late may be rejected. If a vehicle is still accepted, will be subject to an amount of rental credit, up to a full days hire. The figure would be agreed between both parties at the time of the incident.

All vehicles will be delivered with a full tank of fuel. If the tank is not full on delivery, TfL may return the vehicle to the supplier after the hire period without a full tank of fuel. The difference will be calculated and included as a credit on the invoice.

Escalation Process

Should the Supplier fail to meet at least 2 or more of the “Standards” for 2 or more consecutive periods then the Supplier will be required to submit an Improvement Plan detailing the action that will be taken to address the unsatisfactory performance with precise end dates.

Failure to meet at least 2 or more of the “Standards” for 3 or more consecutive periods will result in a formal review of performance where the supplier will be required to submit an Improvement Plan detailing the action that will be taken to address the unsatisfactory performance with precise end dates. The Supplier will be required to attend further meetings to monitor progress against the Improvement Plan.

Failure to address unsatisfactory performance could lead to suspension of all or part of the services provided by the Supplier or termination of this Agreement.

EXECUTION PAGE:

Executed as a deed by the parties and delivered on the date of this Contract

Executed as a deed by affixing The Common
seal of)

Tube Lines Limited)

was affixed to this deed)

in the presence of:)

Authorised Signatory

Signature:

Name:

Executed as a Deed by CONTRACTOR)

acting by)

Authorised Signatory

Signature:

Name:

and)

Authorised Signatory

Signature:

Name: