

DATED 3 APRIL 2023

LONDON UNDERGROUND LIMITED

and

DRALLIM INDUSTRIES LIMITED

**MANUFACTURE, SUPPLY AND SERVICES
AGREEMENT**

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION	6
2.	AGREEMENT TO SUPPLY	24
3.	COMMENCEMENT, DURATION AND EXTENT OF SUPPLY	25
4.	REPRESENTATIONS AND WARRANTIES.....	25
5.	SUPPLIER'S GENERAL OBLIGATIONS	26
6.	CONFLICTS AND DISCREPANCIES	29
7.	SPECIFICATION AND DEVELOPMENT OF DESIGN	30
8.	CONTRACT PROGRAMME	34
9.	KEY PERSONNEL, MEETINGS AND REPORTS	35
10.	MANUFACTURING FACILITIES AND RIGHTS OF AUDIT AND INSPECTION	36
11.	SPARES	38
12.	TESTING, ACCEPTANCE AND DELIVERY PROCEDURE.....	40
13.	LIQUIDATED DAMAGES	43
14.	REJECTION	44
15.	EXTENSIONS OF TIME	44
16.	TRANSFER OF TITLE AND RISK	47
17.	DEFECT RECTIFICATION	48
18.	SUSPENSION	49
19.	HEALTH AND SAFETY	50
20.	PAYMENT	50
21.	VAT	53
22.	SECURITY	54
23.	VARIATION PROCEDURE.....	56
24.	INTELLECTUAL PROPERTY RIGHTS	60
25.	TERMINATION.....	65
26.	SURVIVAL OF CLAUSES.....	72
27.	FORCE MAJEURE	72

28.	INSURANCE.....	74
29.	INDEMNITIES AND LIMITATIONS ON LIABILITY.....	74
30.	CONFIDENTIALITY.....	76
31.	FREEDOM OF INFORMATION.....	78
32.	DISPUTE RESOLUTION.....	79
33.	PROHIBITED ACTS.....	79
34.	ASSIGNMENT, TRANSFER AND SUB-CONTRACTING BY THE SUPPLIER.....	79
35.	ASSIGNMENT AND NOVATION OR GRANTING OF SECURITY BY THE PURCHASER.....	80
36.	NOTICES.....	81
37.	ENTIRE AGREEMENT.....	82
38.	RIGHTS CUMULATIVE WITH THOSE AT LAW.....	83
39.	FURTHER ASSURANCE.....	83
40.	SET-OFF.....	83
41.	WAIVER.....	83
42.	SEVERANCE.....	84
43.	COSTS.....	84
44.	LANGUAGE.....	84
45.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	84
46.	COUNTERPARTS.....	84
47.	GOVERNING LAW AND JURISDICTION.....	84
48.	RESPONSIBLE PROCUREMENT.....	85
49.	CRIME AND DISORDER.....	85
50.	LONDON LIVING WAGE.....	85
51.	DATA TRANSPARENCY.....	86
52.	DATA PROTECTION AND CYBER SECURITY.....	86
53.	CONFLICT OF INTEREST.....	87
54.	CRIMINAL RECORDS DECLARATION.....	87
55.	BEST VALUE.....	88
56.	WORK RELATED ROAD RISK.....	88

57. ACCESS	92
SCHEDULE 1A : SPECIFICATION	95
1 INTRODUCTION	99
2 OPERATIONAL REQUIREMENTS	106
3 DESIGN REQUIREMENTS	108
4 MATERIALS	113
5 COMPONENTS	113
6 INSTALLATIONS	114
7 QUALITY CONTROL	116
7.2 INSPECTION AND TEST PLANS	117
8 IDENTIFICATION AND TRACEABILITY	118
9 SYSTEM INTEGRITY REQUIREMENTS	119
10 HANDLING, PACKAGING, STORAGE AND DELIVERY	119
11 TRAINING REQUIREMENTS	120
12 SUPPORT REQUIREMENTS	121
13 DELIVERABLES	122
14 ACCEPTANCE AND HANDOVER	122
15 SUPPORTING DOCUMENTS	122
6 APPENDIX A - DESIGN ACCEPTANCE	124
17 APPENDIX B – SCHEDULE OF DELIVERABLES	131
PART A : PROJECT EXECUTION PLAN	144
PART B : RISK MANAGEMENT	148
PART A : MAINTENANCE SPARES	161
PART B : ADDITIONAL SPARES	162
- PRICING PREAMBLES	163
- PAYMENT	165
- CONTRACT PRICE BREAKDOWN	166
- PAYMENT MILESTONES	167
- VALUATION OF VARIATIONS	170
- SCHEDULE OF RATES AND PRICES	171

PART A : FORM OF PRODUCT ACCEPTANCE CERTIFICATE	175
PART B : FORM OF UNIT ACCEPTANCE CERTIFICATE.....	176
PART A - STORAGE	178
PART B – TRANSPORTATION OF THE GOODS.....	180
PART A : EQUALITY AND SUPPLIER DIVERSITY.....	203
PART B : ETHICAL SOURCING.....	215

THIS MANUFACTURE AND SUPPLY AGREEMENT is made on **28 APRIL 2023**

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED**, (Registered No: 1900907) a company incorporated under the laws of England and Wales whose registered office is at 5 Endeavour Square, Stratford, London E20 1JN (the "**Purchaser**"); and
- (2) **DRALLIM INDUSTRIES LIMITED**, (Registered No: 00606278) a company incorporated under the laws of England and Wales whose registered office is at Millwood House Drury Lane, Ponswood Industrial Estate, St Leonards On Sea, East Sussex, TN38 9BA (the "**Supplier**").

WHEREAS:

- (A) The Purchaser wishes to procure the Goods and Services for use on the London Underground.
- (B) The Purchaser and the Supplier have agreed to enter into an agreement for (among other things) the design, manufacture and supply of the Goods and Services, on the terms and conditions set out hereinafter.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Additional Goods**" has the meaning ascribed to it in paragraph 1.1 of Schedule 14 (*Optional Orders*);

"**Additional Maintenance Spares Price**" means the amount agreed between the Parties pursuant to paragraph 1 of Schedule 14 (*Optional Orders*) to be payable by the Purchaser to the Supplier following the delivery of Optional Order Maintenance Spares;

"**Additional Units Order**" means an order for the manufacture of Additional Goods submitted by the Purchaser to the Supplier in accordance with paragraph 1 of Schedule 14 (*Optional Orders*);

"**Additional Spares**" means Spares for use in planned or unplanned maintenance, an indicative list of which is included in Schedule 3 (*Spares*), to be made available by the Supplier in accordance with Clause 11.5;

"**Agreement**" means this Agreement including the Schedules;

"**Applicable Laws**" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have force of law, directives, regulations, Industry Standards, 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) retained or modified by the

EUWA at any time or from time to time in force in the whole or any part of the United Kingdom and which are or may become applicable to this Agreement, any agreement or document referred to herein, any item of Goods, the Services and/or the Supplier's obligations (including their performance) under this Agreement;

"Base Order" means the quantity of Goods to be manufactured and delivered by the Supplier as at the date of this Agreement, comprising the Base Order Units, the Initial Maintenance Spares and any other Goods required to be delivered in accordance with this Agreement;

"Base Order Units" means the P-CRID Units to be manufactured and delivered by the Supplier pursuant to the Base Order, the number of which is specified in the Contract Particulars;

"Base Order Unit Price" means the amount payable by the Purchaser to the Supplier under this Agreement following delivery of each Base Order Unit, as specified in the Contract Particulars and as further detailed in 0 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Bond Provider" means a bond provider having a credit rating of at least the Required Rating and having been approved in writing by the Purchaser (in its absolute discretion);

"Change in Law" means the application to any person of any Applicable Laws and/or LU Standards which did not apply to them at the Commencement Date, or any change in the application or interpretation after the Commencement Date of any Applicable Laws and/or LU Standards, but excluding any Foreseeable Change in Law;

"Commencement Date" means the date specified as such in the Contract Particulars, or if no date is specified, the date specified in a written notice by the Purchaser to the Supplier instructing it to commence the Services under this Agreement;

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

"Concept Design" means the concept design more particularly described in Schedule 1A (*Specification*);

"Concept Design Approval" means the concept design review approval more particularly described in Schedule 1A (*Specification*) and described as a Milestone in Schedule 4 (*Contract Price*);

"Concept Design Review" means the concept design review more particularly described in Schedule 1A (*Specification*);

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

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

"Continuing Support Services" means the technical and quality support Services more particularly described in Schedule 20 (*Continuing Support*);

"Continuing Support Term" means the period specified as such in the Contract Particulars, during which the Supplier shall provide the Continuing Support Services, as the same may be extended in accordance with paragraph 2 (*Continuing Support Extension*) of Schedule 14 (*Optional Orders*);

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

"Contract Particulars" means the contract particulars set out in Schedule 17 (*Contract Particulars*);

"Contract Payment" means an amount payable by the Purchaser to the Supplier under this Agreement by way of a Milestone Payment or a Support Charge, as determined and payable in accordance with Clause 20 (*Payment*);

"Contract Price" means the amount payable by the Purchaser to the Supplier under this Agreement in respect of the design, manufacture, supply, testing, commissioning and delivery of the Goods as specified in the Contract Particulars and as further detailed in 0 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Contract Programme" means the programme of work for the provision of the Goods and Services which has been prepared by the Supplier and accepted by the Purchaser, as set out in Schedule 3 (*Contract Programme*) or, where no programme is so included or the included programme has subsequently been revised (and such revisions have been accepted by the Purchaser), the latest programme accepted by the Purchaser pursuant to Clause 8. The latest programme accepted by the Purchaser supersedes previous Contract Programmes;

"Contractual Date" means, in relation to the Goods, the scheduled date(s) specified in Schedule 3 (*Contract Programme*) for:

- (A) achieving Product Type Acceptance of the Goods; and
- (B) achieving Unit Acceptance of each batch of the P-CRID Units,

as may be varied from time to time in accordance with the terms and conditions of this Agreement or otherwise by written agreement between the Supplier and the Purchaser;

"Core Services" means the Continuing Support Services more particularly described in paragraph 3 (*Core Services*) of Schedule 20 (*Continuing Support*);

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

"Data Protection Legislation" means:

- (A) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (B) any statutory codes of practice issued by the Information Commissioner's Office of the United Kingdom in relation to such legislation; and
- (C) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

"Declaration" has the meaning ascribed to it in Clause 54.1;

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016;

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

"Defect" means that the Goods or any part of them are defective, damaged, of unsatisfactory quality or not Fit for Purpose whether in consequence of:

- (A) defective materials, workmanship or design;
- (B) transit of the Goods, including from the Supplier's Works to the Delivery Location, or from the Delivery Location to the Supplier's Works; or
- (C) any act or omission of the Supplier during the Defect Rectification Period,

and is not principally caused by:

- (i) any failure by the Purchaser or any third party appointed by the Purchaser to use, operate or maintain the Goods in accordance with the Manuals, and/or any Applicable Laws and applicable LU Standards (or, to the extent there is non-compliance with an applicable law or standard, in accordance with a valid derogation therefrom); or
- (ii) vandalism, collision or accidental damage caused by any person other than the Supplier, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them;

"Defect Rectification Period" means (without prejudice to the further provisions of this definition) in relation to any Goods supplied under this Agreement, the period of 24 months commencing on the date that the Goods have achieved Unit Acceptance;

"Delivery Date" means the date upon which the Goods or any part of them are actually delivered to the relevant Delivery Location by the Supplier to the Purchaser;

"Delivery Location" means:

- (A) in relation to the Goods (including the Supplementary Spares), save as detailed in (B) and (C), the relevant delivery location as notified in writing by the Purchaser to the Supplier;
- (B) in relation to the Training Programme and Training Materials, the Purchaser's premises as notified in writing by the Purchaser to the Supplier and to the Purchaser's maintenance team at a location as notified in writing by the Purchaser to the Supplier; or
- (C) in relation to the Design, to the Purchaser electronically;

"Design" means all design documentation (whether in written or electronic form) produced by or on behalf of the Supplier for the Goods;

"Detailed Design Approval" means the detailed design review approval more particularly described in Schedule 1A (*Specification*) and described as a Milestone in Schedule 4 (Contract Price);

"Detailed Design Review" means the detailed design review more particularly described in Schedule 1A (*Specification*);

"EDI Policy" means a written policy provided by the Supplier setting out how it will promote equality, diversity and inclusion;

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

"Equality & Diversity Infraction" has the meaning ascribed to it in Schedule 18 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);

"EUWA" means the European Union (Withdrawal) Act 2018;

"Excepted Liabilities" means:

- (A) the Supplier's liability in respect of death or personal injury, or fraud, fraudulent misrepresentation or corruption;
- (B) the Supplier's liability under this Agreement in respect of any Losses to the extent such amounts are recoverable under any policies of insurance that the Supplier is required to maintain under this Agreement (or would have been recoverable but for any breach or failure to maintain such insurance), subject to any limits on such Losses stated in Schedule 9 (*Insurance*);
- (C) the Supplier's liability for Environmental Damage;

- (D) the Supplier's liability for liquidated damages under Clause 13;
- (E) the Supplier's liability in respect of its express obligations in relation to warranty claims and for the rectification of any Defect pursuant to each of the Supplier's obligations under Clause 17;
- (F) the Supplier's liability in respect of any IPRs pursuant to Clause 24.6;
- (G) the Supplier's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (H) any Default Interest on any payments falling within (A) to (G) above;
- (I) the Supplier's liability (on termination or cancellation of this Agreement or otherwise) to refund and pay to the Purchaser all payments previously paid by the Purchaser in respect of the Goods and Services which are the subject of termination or cancellation in accordance with this Agreement (together with all Default Interest payable on such refund or payment), as such refund is calculated in accordance with Clause 25.5;
- (J) any costs or expenses which the Supplier is obliged or does expend during the term of the Agreement in carrying out its obligations; or
- (K) the Supplier's liability in respect of any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;

"Fit for Purpose" means, in relation to any Goods or Services to be provided under this Agreement:

- (A) that it is of satisfactory quality and, in the case of the Goods, fit for the purpose for which they are intended;
- (B) that it complies with all requirements and provisions of this Agreement including the Specification;
- (C) that it complies with all Applicable Laws, Relevant Consents and applicable LU Standards and, to the extent that there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom; or
- (D) where it is a Part and/or Spare, that if such Part or Spare is incorporated into the Goods, such incorporation does not prevent the Goods from complying with (A), (B) or (C) above;

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

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

"FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the

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

"Force Majeure Event" means any 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 this Agreement 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 this Agreement 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 the LUL Network or any other location being used for delivery of the Goods and Services;
- (D) fire, lightning, earthquake or subject to (E) below, extraordinary storm;
- (E) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (F) tunnel collapse;
- (G) compliance with the provisions of sections 118 to 121 of the Railways Act 1993;
- (H) 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;
- (I) the discovery of fossils, antiquities or other material which in each case is required to be exhumed, or unexploded bombs;
- (J) unavailability of electronic componentry; and
- (K) strikes, lock outs or other industrial action not solely affecting the FM Affected Party's employees or those of any of its Subcontractors;

"Foreseeable Change in Law" means any Change in Law which:

- (A) is a requirement under the Specification;
- (B) is, provided it comes into force in the same or substantially similar form:

- (i) enacted prior to the Commencement Date as coming into effect on a specified future date;
 - (ii) in a draft bill or statutory instrument published on or before the Commencement Date;
 - (iii) in a draft Industry Standard published on or before the Commencement Date by Transport for London, the Secretary of State for Transport, RSSB, Network Rail, or the European Rail Agency;
- (C) a prudent supplier of electrical systems should have reasonably known about on or before the Commencement Date; and/or
- (D) otherwise arises on or before the Commencement Date;

"GLA Act" means the Greater London Authority Act 1999;

"Goods" means the P-CRID Units, the Prototype Units, the Pre-Production Units, Spares, Supplier Documentation and other items to be provided by the Supplier in accordance with this Agreement;

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

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

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

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

"Independent Auditor" has the meaning ascribed to it in Clause 25.11.6;

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Goods which are or have been issued by the Secretary of State, Network Rail, the Office of Rail and Road, Rail Safety & Standards Board, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry in the United Kingdom and shall include, without limitation, Railway Group Standards, the Rule Book, Notified National Technical Rules and Technical Specifications for Interoperability;

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

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

"Initial Maintenance Spares" means those Spares listed in Schedule 4 (*Spares*) Part A (*Maintenance Spares*), being the Maintenance Spares forming part of the Base Order;

"Initial Variation Appraisal" has the meaning ascribed to it in Clause 23.1.1;

"Insolvency Event" in relation to any person means:

- (A) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (B) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (C) any step being taken to enforce Security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (D) a receiver, administrative receiver, monitor, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (E) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (F) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors, or applying to court for, or obtaining, a moratorium under Part A1 of the Insolvency Act 1986; or
- (G) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

"Installation Instructions" means the instructions produced by the Supplier for installing the P-CRID Units to each location on the LUL Network so that they are fully functional in accordance with the Specification;

"Installation Tests" means the tests specified by the Supplier to demonstrate that an installed P-CRID Unit functions as required;

"Installer" means the Purchaser or such other party that will install the P-CRID Units on the LUL Network on behalf of the Purchaser, as the Purchaser may notify to the Supplier in writing in accordance with this Agreement;

"Intellectual Property Rights" or "IPRs" means any intellectual property rights in any part of the world, including any rights to, and any interest in, any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names,

rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"IPR Claim" has the meaning ascribed to it in Clause 24.6.1;

"Key Date" means a scheduled date by which the activities constituting a Milestone are to be carried out, as stated in Schedule 2 (*Contract Programme*) unless later changed in accordance with this Agreement;

"Key Personnel" means the persons listed in Schedule 6 (*Key Personnel*) (or any replacements appointed in accordance with Clause 9.1);

"Key Subcontractor" means any Subcontractor designated as such by the Purchaser in accordance with Clause 34.1.1;

"London Living Wage" means the London rate for the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime), or as may be revised from time to time and published annually by the CCSS (or any relevant replacement organisation) on its website (www.livingwage.org.uk);

"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 a Party, an Indemnified Party or, in each case, its employees or agents or any other person;

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

"LU Standards" means the various standards documents and associated codes of practice identified in Schedule 1A (*Specification*);

"Maintenance Spares" means the Spares to enable the Purchaser to carry out all maintenance of the Goods during the time period stated in Clause 11.3, comprising the Initial Maintenance Spares and (if applicable) the Optional Order Maintenance Spares;

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

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

"Milestone" means, in the case of the Goods, the achievement of each of the stages in the design, manufacture, testing, commissioning, product approval and delivery of the Goods, in each case as more particularly set out in the table in 0 (*Contract Price*) Part 4 (*Payment Milestones*);

"Milestone Payment" means a payment due from the Purchaser to the Supplier in respect of:

- (A) completion of a Milestone; or
- (B) another activity in the design, manufacture, testing, commissioning, product approval and delivery of the Goods;

in each case as expressly provided for in this Agreement;

"OIL" has the meaning ascribed to it in Clause 7.3.3;

"Optional Order Maintenance Spares" means those Spares agreed between the Parties pursuant to paragraph 1 of Schedule 14 (*Optional Orders*) to be required, in addition to the Initial Maintenance Spares, to enable the Purchaser to carry out all maintenance of the Goods during the time period stated in Clause 11.3, being the Maintenance Spares forming part of the Optional Order;

"Optional Order Unit Price" means the applicable amount payable by the Purchaser to the Supplier under this Agreement following delivery of each P-CRID Unit comprising an Additional Units Order, being either the Optional Order 1 Unit Price or the Optional Order 2 Unit Price in accordance with paragraph 1.3.2 of Schedule 14 (*Optional Orders*), in each case as further detailed in Part 4 of 0 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Optional Order 1 Unit Price" means the Optional Order Unit Price payable following delivery of each P-CRID Unit comprising an Additional Units Order placed in accordance with sub-paragraph (A) of paragraph 1.3.2 of Schedule 14 (*Optional Orders*), as further detailed in Part 4 of 0 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Optional Order 2 Unit Price" means the Optional Order Unit Price payable following delivery of each P-CRID Unit comprising an Additional Units Order placed in accordance with sub-paragraph (B) of paragraph 1.3.2 of Schedule 14 (*Optional Orders*), as further detailed in Part 4 of 0 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"Optional Services" means the Continuing Support Services more particularly described in paragraph 5 (*Optional Services*) of Schedule 20 (*Continuing Support*);

"Part" means any equipment, component or furnishing forming part of the Goods or Spare;

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

"P-CRID Unit" means a Permanent-Current Rail Indicating Device designed, manufactured, tested and delivered by the Supplier to the Purchaser in accordance with the terms and conditions of this Agreement;

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

"Payment Certificate" has the meaning ascribed to it in Clause 20.2.2;

"Performance Bond" means, where the Contract Particulars specifies a Performance Bond is required, a performance bond issued by a Bond Provider in favour of the Purchaser in substantially the form set out in Schedule 12 (*Form of Performance Bond*);

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

"Pre-Production Design Approval" the pre-production design review approval more particularly described in Schedule 1A (*Specification*) and described as a Milestone in Schedule 4 (*Contract Price*);

"Pre-Production Design Review" means the pre-production design review more particularly described in Schedule 1A (*Specification*);

"Pre-Production Units" means the goods provided as agreed at the Detailed Design Approval for the purposes of demonstrating design compliance for the Pre-Production Design Review;

"Proceedings" has the meaning ascribed to it in Clause 47.2;

"Processing" or **"processing"** has the meaning given to it in the Data Protection Legislation

"Product Type Acceptance" means the successful completion of the Pre-Production Design Review and all associated testing activities, as evidenced by and occurring upon the issue by the Purchaser of a Product Type Acceptance Certificate for the Goods;

"Product Type Acceptance Certificate" means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part A (*Form of Product Type Acceptance*);

"Product Type Acceptance Criteria" means the criteria as detailed in Clause 7.7.1;

"Prohibited Act" means:

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

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

"Project Execution Plan" means the project execution plan for delivery of the Goods and Services, that is prepared by the Supplier and agreed by the Purchaser in accordance with Part A of Schedule 1B (*Contract Management*), as updated (with the agreement of the Purchaser) from time to time;

"Prototype Design" means all Prototype design documentation (whether written or in electronic form) produced by or on behalf of the Supplier;

"Prototype Design Approval" means the prototype design review approval more particularly described in Schedule 1A (*Specification*) and described as a Milestone in Schedule 4 (*Contract Price*);

"Prototype Design Review" means the prototype design review more particularly described in Schedule 1A (*Specification*);

"Prototype Units" means the goods provided as agreed at the Prototype Design Approval for the purposes of demonstrating design compliance for the Detailed Design Review;

"Public Procurement Termination Event" means:

- (A) this Agreement has been subject to any substantial modification that would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (B) the Purchaser determines that this Agreement should not have been awarded to the Supplier in view of a serious infringement of the

obligations contained under the EU Treaties as retained by the EUWA and applicable procurement regulations;

"Purchaser's Premises " means such premises as owned or occupied by the Purchaser;

"Purchaser Termination Notice" has the meaning ascribed to it in Clause 25.2.2;

"Railway Group Standards" means, to the extent applicable to the Goods and their operation:

- (A) technical standards with which railway assets, or equipment used as part of railway assets, must conform; and
- (B) operating procedures with which the operation of railway assets must comply,

known generally as the Railway Group Standards and which are established and maintained by the RSSB and in each case as authorised pursuant to the document known as the Railway Group Standards Code;

"Recurrent Defect" means a Defect in any Spare or Part and which:

- (A) in any consecutive 12-month period occurs in or affects two or more items of the same or equivalent Spares or Parts; or
- (B) occurs two or more times in the same Spare or Part in any consecutive 12-month period;

"Relevant Consents" has the meaning ascribed to it in Clause 5.5;

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

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

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

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

"Required Insurances" means the insurances specified in Schedule 10 (*Insurance*);

"Required Rating" means a long term, stable credit rating of at least "A+" or better from Standard & Poor's or the equivalent rating from Moody's or Fitch;

"Responsible Procurement Principles" means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in June 2017 and as may be further updated from time to time, and which is available from the Purchaser on request;

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

"Routine Production Tests" means each item of equipment shall be tested in the factory to ensure correct function in accordance with the equipment specification;

"Routine Production Test Specifications" means the test plan to be developed and provided by the Supplier and agreed with the Purchaser in accordance with Schedule 1A (*Specification*);

"RSSB" means the Rail Safety and Standards Board;

"Safety Breach" means a material breach of any obligation under this Agreement 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 the Purchaser's customers, staff or any other person.

"Security" means:

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

"Services" means:

- (A) the design of the Goods;
- (B) the Training Services;
- (C) the technical and quality support to be provided by the Supplier in accordance with Schedule 20 (*Continuing Support*),

and any other support services provided by the Supplier during the term of this Agreement;

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

- (A) to define the functions of microprocessors and similar devices installed on any Goods or any part thereof or in equipment to be used in conjunction with, or for the operation, testing,

commissioning, modification and/or refurbishment of; any Goods or any part thereof; and/or

(B) to run programmes, spreadsheets and/or databases in connection with the operation, testing, commissioning, modification and/or refurbishment of the Goods,

which (i) form part of the Goods, and (ii) are not Third Party Software, and (iii) are not standard commercially available off-the shelf products, usable as made, and which have not been modified in order to perform any of the tasks set out in paragraphs (A) or (B) above; "**Source Code**" means the source code version of any Supplier-owned Software which is licensed to the Purchaser pursuant to this Agreement, in a form capable of being read and interpreted by humans, together with interpretative documentation and material;

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

"**Specification**" means the specification set out in Schedule 1A (*Specification*), as such requirements may be amended in accordance with this Agreement;

"**SRS Acceptance Design Approval**" means the SRS Acceptance design review approval more particularly described in Schedule 1A (*Specification*) and described as a Milestone in Schedule 4 (Contract Price);

"**SRS Acceptance Design Review**" means the SRS Acceptance design review more particularly described in Schedule 1A (*Specification*);

"**Subcontract**" means any contract awarded by, or to be awarded by, the Supplier in relation to, or connected with, the carrying out of any of the Supplier's obligations under this Agreement and, unless the context herein requires otherwise, includes a subcontractor or supplier of any such person;

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

"**Supplementary Spares**" has the meaning ascribed to it in Clause 11.4.1;

"**Supplier Documentation**" means the documentation to be provided by the Supplier, as more particularly described in Appendix B (*Schedule of Deliverables*) to Schedule 1A (*Specification*) including, but not limited to, O&M Manuals, the Installation Instructions and the Training Programme for Operators;

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

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

"**Supplier Guarantee**" means, where the Contract Particulars specifies a Supplier Guarantee is required, the parent company guarantee of the Supplier's obligations under this Agreement provided by the Supplier Guarantor in favour of the Purchaser and substantially in the form set out in Schedule 8 (*Form of Supplier Guarantee*);

"Supplier Guarantor" means the Supplier's parent company (if any) identified as such in the Contract Particulars;

"Supplier IPR" means any existing or new Intellectual Property Rights owned by the Supplier, any Subcontractor or other third party that:

(A) are used for, or;

(B) arise in connection with,

the performance by the Supplier of its obligations under this Agreement, including design, manufacture, supply, testing, maintenance and delivery of the Goods and Services;

"Supplier Risk Register" has the meaning ascribed to it in Schedule 1B (*Contract Management*) Part B (*Risk Management*);

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

"Supplier's Works" means the premises specified as such in the Contract Particulars;

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

"Tests" means the tests identified in the Specification to be carried out by the Supplier in accordance with Schedule 1A (*Specification*) and **"Testing"** shall be construed accordingly;

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

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

"Third Party Software" means software owned by third parties prior to the Commencement Date which has not been produced in connection with or for the purpose of the Goods;

"Training Programme" has the meaning ascribed to it in Schedule 19 (*Training*);

"Training Materials" means all of the training materials further described in the Training Schedule;

"Training Schedule" means Schedule 19 (*Training*);

"Training Services" means the training services stated in the Training Schedule to be provided by the Supplier;

"Transparency Commitment" means TfL's commitment (applying to TfL, the Purchaser and the rest of the TfL Group) to publish contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments;

"Unit Acceptance" means in respect of any P-CRID Unit, that it complies with the Unit Acceptance Criteria as evidenced by and occurring upon the issue by the Purchaser of a Unit Acceptance Certificate for those Goods and "Unit Accepted" shall be construed accordingly;

"Unit Acceptance Criteria" means the criteria as detailed in Clause 12.5.1;

"Unit Price" means the amount payable by the Purchaser to the Supplier under this Agreement following delivery of each P-CRID Unit, being either the Base Order Unit Price or the applicable Optional Order Unit Price;

"Variation" means any addition, omission or other change whatsoever to or in respect of this Agreement, including the Specification and/or the Goods and/or any other technical requirement contained in this Agreement;

"Variation Appraisal" has the meaning ascribed to it in Clause 23.4.1;

"Variation Procedure" means the variation procedure set out in Clause 23;

"Variation Valuation" has the meaning ascribed to it in Clause 23.1.1(C);

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any tax replacing, or adding to, the same or of a similar nature; and

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

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

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

1.2.2 a reference to an enactment, statutory provision or Industry Standard shall unless otherwise expressly specified in this Agreement include a reference to any subordinate legislation made under the relevant enactment, statutory provision or Industry Standard and unless otherwise expressly specified in this Agreement is a reference to that enactment, statutory provision, Industry Standard or subordinate legislation as from time to time amended, consolidated, modified, reenacted or replaced;

1.2.3 words in the singular shall include the plural and vice versa;

1.2.4 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors or administrators;

1.2.5 a reference to a Clause or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause or schedule (as the

case may be) of or to this Agreement and a reference in a Schedule to a paragraph shall mean a reference to a paragraph of that Schedule;

- 1.2.6 if a period of time is specified as "from" or "within" a given day, or "from" or "within" the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.7 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.8 references to writing shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- 1.2.9 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.10 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.11 references to this Agreement include this Agreement as amended, varied or supplemented in accordance with its terms and references to other agreements or instruments shall also be to those as amended, varied or supplemented;
- 1.2.12 a reference to the "Purchaser" or the "Supplier" includes its respective (and any subsequent) successors in title, and its respective permitted transferees or assignees;
- 1.2.13 references in the Agreement to costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar tax properly chargeable therein in any jurisdiction;

2. AGREEMENT TO SUPPLY

The Supplier shall supply each item of Goods to the Purchaser and perform the Services, in each case by the relevant Key Date or Contractual Date (as applicable) for that item in consideration for the Purchaser procuring payment to the Supplier of the Contract Price in respect of each such item of Goods or such Services, in each case in accordance with the terms of this Agreement.

3. COMMENCEMENT, DURATION AND EXTENT OF SUPPLY

3.1 Commencement

The Supplier shall design, manufacture, supply, test, commission and deliver the Goods commencing on the date of this Agreement, or such later date as may be agreed in writing between the Supplier and the Purchaser.

3.2 Extent of Supply

The Supplier shall supply to the Purchaser the Base Order Units and the Initial Maintenance Spares, in each case comprising the Base Order unless and until the Purchaser, at its sole discretion, issues an Additional Units Order for the delivery of Additional Goods in accordance with paragraph 1 of Schedule 14 (*Optional Orders*).

3.3 Provision of Services

3.3.1 The Supplier shall, subject to Clause 3.3.2, provide the Continuing Support Services from the Delivery Date of the first P-CRID Unit(s) for the duration of the Continuing Support Term.

3.3.2 The Purchaser shall be entitled to issue a notice in writing in accordance with paragraph 2 of Schedule 14 (*Optional Orders*) to extend the period for provision of the Continuing Support Services by an additional period of up to five (5) years.

4. REPRESENTATIONS AND WARRANTIES

4.1 Supplier's Representations and Warranties

The Supplier represents and warrants to the Purchaser that, as at the date of this Agreement:

4.1.1 it is validly incorporated and has the power, capacity and legal right to enter into this Agreement and any related ancillary documents to which it is a party and perform its obligations and exercise its rights, hereunder and thereunder and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;

4.1.2 this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;

4.1.3 the entry by it into this Agreement and performance of its obligations under this Agreement will not conflict with its constitutional documents, which are true, accurate and up-to-date;

4.1.4 the entering into or the performance of its obligations or the exercise of its rights under this Agreement and any related ancillary documents to which it is a party will not breach, or cause to be breached, any restriction (whether arising in contract or otherwise), that is binding on the Supplier or any of its assets or undertakings;

- 4.1.5 the Supplier has not knowingly provided any information or made any statement of fact (whether oral or in writing) to the Purchaser which is untrue or inaccurate or which was intended by the Supplier to mislead the Purchaser;
- 4.1.6 except as disclosed on or before the Commencement Date, no legal proceedings are pending or, to the Supplier's knowledge, threatened against it which if decided against the Supplier would have a material adverse effect upon the Supplier's financial condition or business or its ability to perform its obligations under this Agreement and any related ancillary documents; and
- 4.1.7 no Insolvency Event has occurred or is reasonably likely to occur in relation to the Supplier; and
- 4.1.8 it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016.

4.2 Reliance

The Supplier acknowledges and agrees that the Purchaser is relying on the representations and warranties above and is entering into this Agreement on the basis of them.

5. SUPPLIER'S GENERAL OBLIGATIONS

5.1 General Undertaking and Warranties - Goods

The Supplier undertakes and warrants to the Purchaser, for the benefit of the Purchaser that it shall design, manufacture, supply, test, commission and deliver the Goods:

- 5.1.1 so that the Goods:
 - (A) are Fit for Purpose;
 - (B) satisfy the Product Type Acceptance Criteria and the Unit Acceptance Criteria;
 - (C) are manufactured in accordance with the design agreed in accordance with this Agreement and all lawful and reasonable directions of the Purchaser;
- 5.1.2 in accordance with, and so that the Goods shall function in accordance with, sound modern design and engineering principles and practices in the rail industry except where these would conflict with Clause 5.1.1;
- 5.1.3 in accordance with the Specification and the Contract Programme so as to achieve Product Type Acceptance and/or Unit Acceptance of the Goods on their respective Contractual Dates;

- 5.1.4 in compliance with all Applicable Laws and all applicable LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom);
- 5.1.5 in accordance with good industry practice and with all due skill, care and diligence to be expected of appropriately qualified and experienced professional designers and engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;
- 5.1.6 using materials and goods that comply with the Specification and all Applicable Laws and LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom) and so that the Goods will be of new manufacture and comply with the Specification;
- 5.1.7 in accordance with the requirements of any instructed Variation and in all other respects in accordance with this Agreement, including any specifications as to quantity, quality and description; and
- 5.1.8 in respect of the Spares, so that each of those is sufficient and adequate to enable maintenance to be carried out on the Goods.

5.2 General Undertaking and Warranties - Services

The Supplier undertakes and warrants to the Purchaser, for the benefit of the Purchaser that the Services will:

- 5.2.1 be performed by appropriately qualified and trained personnel in accordance with good industry practice and with all due skill, care and diligence to be expected of appropriately qualified and experienced professional designers and engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;
- 5.2.2 be performed in accordance with the Specification and the Contract Programme;
- 5.2.3 comply with all Applicable Laws and all applicable LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom); and
- 5.2.4 comply with the requirements of the Purchaser set out in this Agreement and all lawful and reasonable directions of the Purchaser.

5.3 Third Party Warranties

The Supplier shall use its best endeavours to extend to the Purchaser the benefit of any guarantee, condition or warranty which may have been expressly given to it by any of the Key Subcontractors in respect of the Goods, and shall use reasonable endeavours to extend to the Purchaser the benefit of any guarantee, condition or warranty which may have been expressly given to it by any other person in respect of such Goods.

5.4 Compliance

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

- 5.4.1 comply with the version of the Contract Programme in place from time to time; and
- 5.4.2 comply with all Applicable Laws, all applicable LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom) and all directions of the Purchaser and any other Competent Authority.

5.5 Licences and Consents

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

5.6 Imports

Without prejudice to the generality of clause 5.5, the Supplier shall ensure that, to the extent applicable, all the Goods shall be imported in accordance with all Applicable Laws and the Supplier shall obtain all required approvals, licences and permits and pay or procure the payment of all taxes, import or export duties and tariffs relating to and/or incurred in connection with and/or arising out of the performance of the Goods and further, the Supplier shall indemnify and keep the Purchaser indemnified against all costs, damages and losses that the Purchaser may suffer or that may arise as a result of and/or in connection with the importation of the Goods into the United Kingdom. The Supplier (or its subcontractor(s)) shall be the importer of record in respect of any of the Goods which is subject to any Applicable Laws relating to the importation of goods into the United Kingdom.

5.7 Tax Allowances

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

5.8 Intellectual Property Rights

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

5.9 Key Dates

The Supplier shall perform its duties and obligations under this Agreement so that each Key Date is met.

5.10 Project Execution

The Supplier shall perform its obligations under this Agreement in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of the Goods and the Services (or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Purchaser), and the Project Execution Plan.

6. CONFLICTS AND DISCREPANCIES

6.1 Priority of provisions in the Agreement

Unless expressly stated otherwise, where there is any conflict, error, inconsistency or other discrepancy between any Clause of this Agreement and the provisions of any Schedule(s) or between the provisions of any Schedules to this Agreement, the order of priority shall be as follows:

- 6.1.1 first, the Contract Particulars (as set out in Schedule 17 (*Contract Particulars*));
- 6.1.2 second, the Clauses comprising the main body of this Agreement;
- 6.1.3 third, the Specification (excluding the LU Standards);
- 6.1.4 fourth, the LU Standards; and
- 6.1.5 fifth, the remaining Schedules to this Agreement.

6.2 Supplier's acknowledgements regarding discrepancies and errors

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

- 6.2.1 it has considered in detail this Agreement and has satisfied itself that no conflicts, inconsistencies, discrepancies or errors exist within the Agreement; and
- 6.2.2 it has:
 - (A) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and
 - (B) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws; and
- 6.2.3 as to the feasibility of the Specification with respect to the design, manufacture, supply, assembly, testing, commissioning and delivery of the Goods.

6.3 Notification of errors and inconsistencies

- 6.3.1 Without prejudice to Clause 6.3.3, the Supplier shall notify the Purchaser in writing forthwith upon becoming aware of any conflict, inconsistency, discrepancy or error within the Agreement that cannot be resolved in accordance with Clause 6.1 and the Supplier shall provide with such notice detailed written proposals for resolving such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Supplier of such decision within fifteen (15) Working Days of the Supplier's notice of such conflict, inconsistency, discrepancy or error. The Supplier shall immediately proceed to comply with such decision. The Purchaser's notification under this Clause 6.3.1 shall constitute a Variation provided that the Supplier shall not be entitled to any increase in the Contract Price or any other payment, compensation, extension of time or relief in respect of such Variation instructed in accordance with this Clause 6.3.1.
- 6.3.2 Without prejudice to Clause 6.3.1 and subject to Clause 6.3.3, whenever a conflict, inconsistency, discrepancy or error appears within this Agreement, the Parties shall consult with each other over, and seek to agree, the manner in which the conflict, error, inconsistency or discrepancy should be resolved.
- 6.3.3 Where any conflict, inconsistency, discrepancy or error appears within the LU Standards, or between a LU Standard and the equivalent Industry Standard, each Party shall notify the other forthwith in writing upon becoming aware of such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Supplier within fifteen (15) Working Days of receiving or issuing the notice (as the case may be). The Supplier shall comply with such decision in carrying out the manufacture of the Goods. The Purchaser's notification under this Clause 6.3.3 shall constitute a Variation and the provisions of Clause 23 shall apply.

6.4 Exclusions of Claims or Relief

The Supplier acknowledges and agrees that it accepts all risks arising from any conflicts, errors, inconsistencies or discrepancies that subsequently appear within this Agreement or between any provisions and/or Schedules of this Agreement and that, subject as aforesaid, it shall not be entitled to make any claim against the Purchaser for any additional payment or compensation, adjustment to the Contract Price, extension of time or relief from the due performance of its obligations, in respect of any such conflicts, errors, inconsistencies or discrepancies.

7. SPECIFICATION AND DEVELOPMENT OF DESIGN

7.1 Specification

The Supplier acknowledges and agrees that it has reviewed and considered the Specification and is satisfied:

- 7.1.1 as to its feasibility with respect to the design, manufacture, supply, testing, commissioning and delivery of the Goods; and
- 7.1.2 that it will be able to implement them within the timescales set out in the Contract Programme.

7.2 Design Procedures

The Supplier shall undertake the design of the Goods in accordance with the requirements of this Agreement and the Specification.

7.3 Design Acceptance Process

7.3.1 The Supplier shall provide the required Design review submission documents to the Purchaser in accordance with the Design acceptance process detailed in Schedule 1A (*Specification*).

7.3.2 Following submission of such Design review submission documents, the Purchaser shall respond to the submissions in the Design review meetings as envisaged in Schedule 1A (*Specification*).

7.3.3 Where a Design review submission document(s) does not provide evidence of compliance with this Agreement and Schedule 1A (*Specification*), the Purchaser shall in consultation with the Supplier, prepare an open issues log whereby actions, action holders and close out dates shall be assigned and agreed (the "OIL").

7.3.4 Following agreement of the OIL to the satisfaction of the Purchaser, or if there are no outstanding issues, the Purchaser shall have the sole discretion as to whether to instruct the Supplier to the next Design review stage.

7.3.5 Clauses 7.3.1 to 7.3.4 inclusive shall apply to each stage in the Design review process.

7.3.6 Following the completion of:

- (A) the Prototype Design Review to the satisfaction of the Purchaser, the Supplier shall manufacture the Prototype Units in accordance with the Prototype Design Approval and deliver them for a field trial for the purposes of the Detailed Design Review process; and
- (B) the Detailed Design Review to the satisfaction of the Purchaser, the Supplier shall manufacture the Pre-Production Units in accordance with the Detailed Design Approval and deliver them for a field trial for the purposes of the Pre-Production Design Review process.

7.3.7 If the Supplier proceeds with the manufacture of:

- (A) the Prototype Units before it has achieved Prototype Design Approval; or

- (B) the Pre-Production Units before it has achieved Detailed Design Approval, it does so at its own risk.

7.3.8 Following the completion of the Pre-Production Design Review to the satisfaction of the Purchaser, the Supplier shall have achieved Product Type Acceptance.

7.3.9 The Supplier shall not commence the manufacture of the Goods until it has achieved Product Type Acceptance in accordance with Clause 7.3.8, and the Purchaser has given the instruction to proceed with production of the Goods.

7.4 Design Liability

All design liability in relation to the Goods shall be borne solely by the Supplier.

7.5 Liability for Performance

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

7.6 Pre-Production Units

7.6.1 The Supplier shall manufacture the Pre-Production Units in accordance with the Detailed Design Approval.

7.6.2 The Pre-Production Units will be installed on to the LUL Network by the Installer in accordance with the Installation Instructions, for the purposes of conducting non-operational field trials in accordance with Schedule 1A (*Specification*).

7.6.3 The Supplier shall carry out the Tests and commissioning of the Pre-Production Units once installed on the LUL Network in accordance with Schedule 1A (*Specification*).

7.6.4 The Supplier shall remain on the Purchaser's Premises, as required by the Purchaser, for the period of the installation and Testing of the Pre-Production Units on the LUL Network.

7.6.5 The Supplier shall note the testing methodology and results and provide copies of the same to the Purchaser.

7.6.6 Any repetition or prolongation of the testing of the Pre-Production Units on the LUL Network which is necessary by reason of a failure of any of the Pre-Production Units to meet the requirements of the Pre-Production Design Review shall be at the Supplier's cost. The Supplier shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

7.7 Product Type Acceptance

7.7.1 The Product Type Acceptance Criteria shall be:

- (A) the Purchaser has received evidence acceptable to the Purchaser, including all relevant supporting documentation, that the Pre-Production Units have passed all applicable Tests on the LUL Network in accordance with the Specification;
- (B) the Goods meet in all material respects the Specification;
- (C) the Goods are Fit for Purpose and have no Defects, or items missing;
- (D) the Goods comply with Applicable Laws and LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom); and
- (E) the Goods have achieved all Relevant Consents.

If the Supplier meets the Product Type Acceptance Criteria, it shall be entitled to request the certification of Product Type Acceptance in accordance with Clause 7.7.2.

7.7.2 Where the Product Type Acceptance Criteria are satisfied in respect of the Goods, the Supplier shall be entitled to submit to the Purchaser a Product Type Acceptance Certificate signed by a duly authorised representative of the Supplier certifying that the Product Type Acceptance Criteria have been satisfied. Following receipt of a Product Type Acceptance Certificate from the Supplier in accordance with this Clause 7.7.2, the Purchaser shall within the period stated in the Contract Particulars (i) counter-sign and date that Product Type Acceptance Certificate and Product Type Acceptance shall occur, or (ii) refuse to do so under Clause 7.7.3.

7.7.3 The Purchaser may refuse to sign a Product Type Acceptance Certificate for the Goods if it, acting reasonably, believes the Product Type Acceptance Criteria have not been satisfied in full in which case it shall, within five (5) Working Days of such refusal, notify the Supplier in writing setting out which of the Product Type Acceptance Criteria have not been satisfied.

7.7.4 If the Supplier, acting reasonably, disputes any of the reasons set out in the notice issued by the Purchaser pursuant to Clause 7.7.3, it shall notify the Purchaser of this in writing within five (5) Working Days of receipt of such notice and the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

7.7.5 The Purchaser may, at its option at any time after Product Type Acceptance, instruct the Supplier to commence the manufacture of the Goods. Such manufacture shall be in accordance with the Contractual Dates and the Contract Price.

8. CONTRACT PROGRAMME

8.1 Contract Programme

8.1.1 The Supplier shall provide a programme to the Purchaser for his acceptance (such acceptance to be achieved on or prior to the date stated in the Contract Particulars) showing:

- (A) the Commencement Date, Key Dates, Contractual Dates and payment dates;
- (B) the sequence and timing of activities by which the Supplier proposes to carry out the Agreement (including design, manufacture, testing, commissioning and delivery);
- (C) the respective dates for submission by the Supplier of the Design, Manuals and the Installation Instructions for approval thereof by the Purchaser;
- (D) the dates by which, in order to carry out the Agreement, the Supplier will need (to the extent provided for under this Agreement):
 - (i) access to the Purchaser's Premises;
 - (ii) acceptances or approvals from the Purchaser and/or Purchaser;
 - (iii) any plant, materials, drawings, information or other things to be provided by the Purchaser;
- (E) the dates when the Supplier plans to conduct the Tests or inspections; and
- (F) any other information which the Specification requires the Supplier to show on the Contract Programme.

8.1.2 The Supplier undertakes to carry out the design, manufacture, supply, testing, commissioning and delivery of the Goods in a regular and diligent manner and in accordance with the Contract Programme.

8.1.3 The matters set out in the Contract Programme shall be wholly without prejudice to the Supplier's obligation to achieve Product Type Acceptance and (as appropriate) Unit Acceptance for the Goods on their respective Contractual Dates.

8.2 Form of programme

The programme shall be in such form as may be specified in the Contract Particulars or, if not so specified, as may reasonably be required by the Purchaser.

8.3 Acceptance of programme

8.3.1 The Purchaser shall, within fifteen (15) Business Days of submission by the Supplier, either accept a programme (or any revised programme

submitted pursuant to Clauses 8.5 or 8.6) or notify the Supplier of his reasons for not accepting it. Reasons for not accepting the programme may include:

- (A) the Supplier's plans shown on it are not practicable;
- (B) it does not show the information which this Agreement requires;
- (C) it does not represent the Supplier's plans realistically; or
- (D) it does not comply with the Contract Particulars or Specification.

8.3.2 Acceptance by the Purchaser of the programme shall not relieve the Supplier of any of his obligations under this Agreement, and in particular shall not, in and of itself, represent an agreement by the Purchaser to change any of the Contractual Dates or Key Dates in accordance with Clause 15 (*Extensions of Time*).

8.4 Alterations to programme

The Supplier shall not without the Purchaser's prior written consent make any alteration to the Contract Programme.

8.5 Revision of programme

The Supplier shall submit a revised programme to the Purchaser, such programme to be acceptable to the Purchaser:

- 8.5.1 every four weeks from the Commencement Date pursuant to Schedule 1B (*Contract Management*); and
- 8.5.2 if instructed to do so pursuant to Clause 8.6.

8.6 Rate of progress

8.6.1 The Purchaser may notify the Supplier if it assesses that any of the Goods will not be capable of any of their respective Key Dates and/or Contractual Dates and that this is not due to a circumstance for which the Supplier is entitled to an extension of time pursuant to Clause 15.

8.6.2 Following receipt of such notice the Supplier shall take such steps as may be necessary and as the Purchaser may approve to remedy or mitigate the likely delay, including submitting a revised programme to the Purchaser for acceptance. The Supplier will not be entitled to additional payment or an extension of time for taking such steps.

9. KEY PERSONNEL, MEETINGS AND REPORTS

9.1 Key Personnel

The Supplier shall not replace any Key Personnel without:

- 9.1.1 giving not less than sixty (60) days' notice; and

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

9.2 Management of Delivery

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

10. MANUFACTURING FACILITIES AND RIGHTS OF AUDIT AND INSPECTION

10.1 Manufacturing facilities

The Supplier shall ensure that the design, manufacture, assembly and Routine Production Testing of the Goods shall be carried out by the Supplier at the Supplier's Works and the Supplier shall not use any other manufacturing facility for such manufacture, assembly and testing without the prior written agreement of the Purchaser.

10.2 Access to Facilities for Purpose of Audits

For the purposes of exercising any of their rights under Clause 10, the Supplier shall (a) grant the Purchaser access on reasonable prior notice to any of the Supplier's premises involved in the design, manufacture, supply, testing, commissioning and delivery of the Goods including the Supplier's Works and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.

10.3 Right of Audit and Inspection

10.3.1 The Supplier shall, and shall (unless the Purchaser otherwise agrees in writing) procure that its Key Subcontractors (and use reasonable endeavours to procure that its other Subcontractors) shall:

- (A) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Supplier's obligations under this Agreement and all transactions and Subcontracts entered into by the Supplier for the purposes of performing its obligations under this Agreement (in respect of the Supplier) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor), in each case excluding documents (i) produced solely for the purpose of obtaining legal advice in relation to the Supplier's performance under this Agreement, or (ii) which would be subject to legal professional privilege (the "**Supplier's Records**"); and
- (B) retain all the Supplier's Records until the date six (6) years (or such longer period as may be required by law or specified in the Contract Particulars) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").

10.3.2 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Supplier's performance of

and compliance with the Agreement the Purchaser shall be entitled, subject to Clause 10.4, on reasonable notice (whether in writing or verbally), either itself or using agents or representatives:

- (A) audit, inspect or witness any aspects of the manufacturing, testing or commissioning of the Goods or any other item of Goods or any of their Parts and to audit the design and certification thereof including being present at, and participating in, amongst other things:
 - (i) any inspection and conformance control of subsystems supplied by Subcontractors;
 - (ii) any inspection and conformance control of the Goods construction at stages to be agreed between the Purchaser and the Supplier;
 - (iii) any system tests (at stages to be agreed) during construction;
 - (iv) any dynamic run testing of the completed Goods; and
 - (v) any inspection and certification of the Goods' compliance with the Specification after completion of manufacture and dynamic testing;
- (B) inspect any and all of the Supplier's Records during the Retention Period as are reasonably necessary to investigate the Supplier's (and any Subcontractor's) performance of its obligations under this Agreement;
- (C) audit the management systems of the Supplier and those of any Subcontractor; and
- (D) inspect and/or audit compliance by the Supplier and its Subcontractors with the Supplier's obligations under this Agreement.

10.4 Co-operation with Audit Procedure

To the extent necessary for the purpose of exercising any of the rights granted under Clause 10.3.2 the Supplier shall provide, and shall procure that its Key Subcontractors (and use reasonable endeavours to procure that its other Subcontractors) shall provide, all reasonable co-operation to the Purchaser including:

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

10.5 No Claim for Relief

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

10.6 Corrective Actions Arising

10.6.1 Any actions found to be reasonably necessary having regard to the Supplier's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "Corrective Action") shall be carried out by the Supplier. The Supplier shall acknowledge formally within five (5) Working Days' receipt of any request for a Corrective Action raised by the Purchaser, together with the Supplier's confirmation of the timescale allocated by the Purchaser for the Supplier to close out the Corrective Action. The Supplier shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 10.2 to 10.5.

10.6.2 If the Supplier (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Supplier and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Supplier may refer the dispute for determination in accordance with Clause 32.

10.7 Plans for Remedial Action

If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 10.3 and 10.6, the Purchaser reasonably determines that any item of Goods does not, or is unlikely in the future to comply with any of the Specification or the requirements of Clause 5.1, the Purchaser shall notify the Supplier of such determination. The Purchaser and the Supplier shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Supplier, at the Supplier's cost, to ensure that that the item of Goods does or will conform to the Specification and the requirements of Clause 5.1.

11. SPARES

11.1 Quality and Identifiability

The Supplier shall ensure that:

11.1.1 each of the Spares is a brand new part manufactured using materials and goods that comply with the Specification and all Applicable Laws and LU Standards (or, to the extent there is non-compliance with an applicable law or LU Standard, that there is a valid derogation therefrom), is Fit for Purpose and has no Defects; and

11.1.2 each Spare is clearly labelled or otherwise identifiable as being the property of the Purchaser.

11.2 Time for Delivery

11.2.1 Without prejudice to Clause 5.1, the Supplier shall deliver all Initial Maintenance Spares to the relevant Delivery Location in accordance with the requirements of Schedule 4 (Spares) by no later than the Delivery Date of the first P-CRID Unit.

11.2.2 The Supplier shall deliver the minimum quantity of each type of Maintenance Spare as specified in Schedule 4 (Spares) Part A (Maintenance Spares) (unless the Parties otherwise agree, acting reasonably).

11.3 Sufficiency of Maintenance Spares

The Supplier warrants to the Purchaser at the date of this Agreement that the Maintenance Spares to be delivered to the Purchaser pursuant to Clause 11.2 are sufficient (in terms of both quality and quantity) to enable the Purchaser to carry out, or procure the carrying out of, all maintenance of the P-CRID Units during the period from the Delivery Date of the first P-CRID Unit to the expiry of the initial (three (3) year) Continuing Support Term, and for the Purchaser to operate the P-CRID Units on the LUL Network in accordance with the Manuals. If this warranty proves to have been incorrect when made, the Supplier shall at its own cost procure and supply the necessary additional Maintenance Spares.

11.4 Supplementary Spares

11.4.1 The Supplier shall, following the Unit Acceptance of the first P-CRID Unit(s), be responsible for acquiring at its own cost new or overhauled Spares (the "Supplementary Spares") to replace any Maintenance Spare which is installed by the Installer (or such other party as may be nominated by the Purchaser) on the LUL Network to remedy a Defect, in order to maintain the stock of Maintenance Spares in accordance with the levels specified in Schedule 4 (Spares) Part A (Maintenance Spares).

11.4.2 The Supplier shall ensure any Supplementary Spares are delivered to the relevant Delivery Location within fourteen (14) days (or such longer time as the parties may agree, acting reasonably) of notification by the Purchaser that installation of a Spare in accordance with Clause 11.4 has occurred.

11.4.3 Title and risk in each Supplementary Spare shall, from the earlier of the date of (i) their delivery to the Delivery Location or (ii) their installation on the LUL Network, pass to the Purchaser with full unencumbered legal and beneficial title.

11.5 Additional Spares

11.5.1 The Purchaser may from time to time prior to the Unit Acceptance of the first P-CRID Unit(s), instruct the Supplier in writing to provide Additional Spares by instructing a Variation setting out reasonable details of its requirements, and the provisions of Clause 23 shall apply.

11.5.2 The Supplier shall use all reasonable endeavours to make Additional Spares available to the Purchaser by delivering them to the Purchaser

within the time period specified in the Variation, and at the rates and prices set out in Part B (*Additional Spares*) of Schedule 4.

11.5.3 Following the Unit Acceptance of the first P-CRID Unit(s), the Purchaser may from time to time request the provision of Additional Spares by the Supplier in accordance with the provisions of paragraph 4 (*Supply of Additional Spares*) of Schedule 20 (*Continuing Support*).

12. TESTING, ACCEPTANCE AND DELIVERY PROCEDURE

12.1 Compliance with the Programmes and Procedures

The Supplier shall ensure that:

12.1.1 the Goods are delivered, tested and made ready for Installation, Installation Tests and Unit Acceptance by the Purchaser in accordance with the Specification, the Contract Programme, and the other provisions of this Agreement; and

12.1.2 no Goods are delivered to the relevant Delivery Location prior to the applicable Key Date or Contractual Date respectively unless otherwise agreed by the Purchaser in its absolute discretion. For the avoidance of doubt the Purchaser is not obliged to accept early delivery of any Goods.

12.2 Routine Production Testing

12.2.1 The Supplier shall develop and submit to the Purchaser a Routine Production Test Schedule in accordance with Schedule 1A (*Specification*).

12.2.2 Following approval of the Routine Production Test Schedule in accordance with Schedule 1A (*Specification*), the Supplier shall conduct the Routine Production Tests at its own cost in accordance with the production plan.

12.2.3 The Purchaser shall be entitled to attend any Routine Production Tests together with such other representatives of the Purchaser and the Supplier shall be responsible for providing such access. The Supplier shall provide the Purchaser with not less than fifteen (15) Working Days' notice of the time, location and subject matter of any such Routine Production Tests.

12.2.4 The Supplier shall be responsible for all costs and expenses associated with the Routine Production Tests.

12.2.5 Any repetition or prolongation of the Routine Production Tests which is necessary by reason of a failure of any of the Goods to meet the requirements of the Routine Production Tests shall be at the Supplier's cost. The Supplier shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure.

12.3 Storage

12.3.1 The Purchaser may notify the Supplier that:

- (A) it does not want P-CRID Unit(s) or quantities of Maintenance Spares set out in Clause 11.2.1 to be delivered to the relevant Delivery Location on the relevant Contractual Date for such P-CRID Unit(s) or Spares; and
- (B) it requires the Supplier to continue to store and maintain such P-CRID Unit(s) and/or Spares in Storage in accordance with the Storage Instructions and in a manner that would enable the P-CRID Unit(s) and/or Spares to be delivered to the Delivery Location on a revised Contractual Date specified by the Supplier and achieve Unit Acceptance at the relevant revised Contractual Date. ("Storage Option")

12.3.2 If the Purchaser exercises the Storage Option pursuant to Clause 12.3.1, then any increase in the Contract Price to pay for the Storage Option as envisaged by this Clause 12.3 shall be calculated in accordance with Schedule 9 (*Storage*).

12.3.3 If the revised Contractual Date for Unit Acceptance pursuant to the Storage Option is delayed for:

- (A) more than six (6) months from the original Key Date for delivery of the relevant P-CRID Unit(s) and/or Spares to the Delivery Location, then there will be a partial Milestone Payment payable for storing such P-CRID Unit(s) and/or Spares in Storage, being 30 percent of the aggregate Unit Price of the relevant P-CRID Unit(s), as specified in Schedule 4 (*Contract Price*) Part 4 (*Milestone Payments*); and
- (B) more than twelve (12) months from the original Key Date for delivery of the relevant P-CRID Unit(s) and/or Spares to the Delivery Location, then there will be a further partial Milestone Payment payable for maintaining such relevant P-CRID Unit(s) and/or Spares in Storage, being 30 percent of the aggregate Unit Price of the relevant P-CRID Unit(s), as specified in Schedule 4 (*Contract Price*) Part 4 (*Payment Milestones*), and the Supplier shall be entitled to a Variation.

12.4 Delivery

In relation to the P-CRID Units, the Supplier shall (at its own cost) deliver the P-CRID Units to the Delivery Location together with such evidence as the Purchaser may reasonably require that the Goods have passed the Routine Production Tests on the relevant Contractual Date for such Goods.

12.5 Unit Acceptance

12.5.1 The Unit Acceptance Criteria for each P-CRID Unit shall be:

- (A) the Purchaser has received evidence acceptable to the Purchaser (acting reasonably), including all relevant supporting documentation, that the relevant P-CRID Unit has passed all Routine Production Tests. Each item of equipment shall be tested in the factory to ensure correct function in accordance with

the Specification. Routine test certificates shall be supplied by the Supplier to the Purchaser in relation to all Goods; and

- (B) there are no outstanding Recurrent Defects affecting the Goods, or if there are, the Supplier has provided evidence satisfactory to the Purchaser (acting reasonably) that it has implemented the Recurrent Defect is not present in and/or will not occur in the relevant P-CRID Unit.

If the Supplier meets the Unit Acceptance Criteria in respect of P-CRID Units that have been delivered to the Delivery Location, it shall be entitled to request the certification of Unit Acceptance for those P-CRID Units in accordance with Clause 12.5.2.

- 12.5.2 Where the Unit Acceptance Criteria are satisfied in respect of the Goods, the Supplier shall be entitled to submit to the Purchaser a Unit Acceptance Certificate signed by a duly authorised representative of the Supplier certifying that the Unit Acceptance Criteria have been satisfied for the P-CRID Units identified therein. Following receipt of a Unit Acceptance Certificate from the Supplier in accordance with this Clause 12.5.2, the Purchaser shall within the period stated in the Contract Particulars (i) counter-sign and date that Unit Acceptance Certificate and Unit Acceptance shall occur in respect of the P-CRID Units identified in that Unit Acceptance Certificate, or (ii) refuse to do so under Clause 12.5.3.

- 12.5.3 The Purchaser may refuse to sign a Unit Acceptance Certificate for P-CRID Units if it, acting reasonably, believes the Unit Acceptance Criteria have not been satisfied in full in which case it shall, within five (5) Working Days of such refusal, notify the Supplier in writing setting out which of the Unit Acceptance Criteria have not been satisfied.

- 12.5.4 If the Supplier, acting reasonably, disputes any of the reasons set out in the notice issued by the Purchaser pursuant to Clause 12.5.3, it shall notify the Purchaser of this in writing within five (5) Working Days of receipt of such notice and the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

12.6 Installation Tests

- 12.6.1 Following Unit Acceptance of the P-CRID Units:

- (A) the Purchaser shall procure that the Installer will install the P-CRID Units on to the LUL Network in accordance with the Installation Instructions; and
- (B) the Installation Tests will be conducted by the Installer on behalf of the Purchaser in accordance with the Specification.

- 12.6.2 The Supplier undertakes, at its own cost, to provide to the Purchaser (or, at the Purchaser's direction, its nominee Installer) the Training Programme and Training Materials to enable the Purchaser to procure the installation of the Goods and to conduct the Installation Tests on the LUL Network in accordance with the Contract Programme.

12.6.3 In the event that any Goods installed on the LUL Network do not pass any Installation Test because of the presence of a Defect in the Goods, the Supplier shall be responsible at its own cost for:

- (A) carrying out the works required to ensure that the failed Installation Test(s) can be passed (the "**Rectification Works**");
- (B) (if required by the Purchaser) removing the relevant Goods from the Delivery Location;
- (C) re-delivering the relevant Goods to the Delivery Location once the Rectification Works are complete on a date to be arranged with the Purchaser; and
- (D) the repetition and/or prolongation of the Installation Test(s) necessary by reason of the failure of any of the Goods to meet the requirements of the Installation Test(s);

and, for the avoidance of doubt, the Supplier shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure, provided that the costs of undertaking any Rectification Works and/or repeated/prolonged Installation Test(s) shall be met by the Purchaser if the Supplier can demonstrate that the failure of such Goods to meet the requirements of the Installation Test(s) arose wholly and solely due to a failure by the Purchaser or the Installer to install the Goods in accordance with the Installation Instructions

13. **LIQUIDATED DAMAGES**

13.1 **Late Product Type Acceptance**

13.1.1 If Product Type Acceptance has not been achieved by the date falling 30 days after the applicable Contractual Date ("**Late Product Type Acceptance**"), the Supplier shall pay to the Purchaser on demand liquidated damages calculated in accordance with this Clause 13 for the period commencing on the date falling 30 days after the applicable Contractual Date and ending on the actual date when Product Type Acceptance has been achieved.

13.1.2 Such liquidated damages shall (without prejudice to the provisions of Clause 25) be the sole and exclusive remedy of the Purchaser in respect of such late delivery. Any liquidated damages payable shall accrue at the rate specified in the Contract Particulars.

13.1.3 The Supplier acknowledges and agrees that the liquidated damages specified in Clause 13.1.1 represent a genuine pre-estimate of the Purchaser's losses arising from Late Product Type Acceptance.

13.2 **Late Unit Acceptance**

13.2.1 If Unit Acceptance for any P-CRID Units (other than the Prototype Units) has not been achieved by the date falling 30 days after the applicable Contractual Date ("**Late Unit Acceptance**"), the Supplier shall pay to the Purchaser on demand liquidated damages calculated in accordance with

this Clause 13 for the period commencing on the date falling 30 days after the applicable Contractual Date and ending on the actual date when such Unit Acceptance has been achieved.

13.2.2 Such liquidated damages shall (without prejudice to the provisions of Clause 25) be the sole and exclusive remedy of the Purchaser in respect of such late delivery. Any liquidated damages payable shall accrue at the rate specified in the Contract Particulars.

13.2.3 The Supplier acknowledges and agrees that the liquidated damages specified in Clause 13.1.1 represent a genuine pre-estimate of the Purchaser's losses arising from Late Unit Acceptance.

14. REJECTION

14.1 Rejection

In the event that the Purchaser, acting reasonably, at any time prior to the achievement of Product Type Acceptance, believes that any Goods (or any part thereof) will not meet the Unit Acceptance Criteria, the Purchaser shall be entitled to notify the Supplier in writing that it rejects such Goods or relevant part (as applicable) pursuant to this Clause 14, and Clause 14.2 shall apply.

14.2 Consequences of rejection

Forthwith upon rejection of the relevant Goods or relevant part (as applicable) pursuant to Clause 14.1:

14.2.1 the Supplier shall, at its own cost, remove any of its equipment, plant or materials (including, where applicable, the Goods or parts that have been rejected but not any other Goods) from any of the Purchaser's Premises (including the Delivery Location and the LUL Network) where so instructed by the Purchaser; and

14.2.2 the Supplier shall pay to the Purchaser, as a debt, the aggregate of all amounts paid by the Purchaser to the Supplier in respect of the relevant Goods or relevant part (as applicable) pursuant to this Agreement and all other reasonable costs suffered or incurred by the Purchaser in respect of rejection of such Goods or relevant part (as applicable), together with Default Interest thereon from the Commencement Date to the date of rejection.

14.2.3 For the avoidance of doubt the Purchaser's right to reject any Goods pursuant to this Clause 14 will be without prejudice to the Supplier's obligations under this Agreement, including Clauses 12 and 17.

15. EXTENSIONS OF TIME

15.1 Permitted Delays

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

- 15.1.1 a Force Majeure Event which prevents the Supplier from performing its obligations under this Agreement;
 - 15.1.2 any breach by the Purchaser of an express obligation under this Agreement;
 - 15.1.3 the suspension of this Agreement in accordance with Clause 18 (other than where the suspension results from the circumstance in Clause 18.3.1 or 18.3.2);
 - 15.1.4 any Variation instructed pursuant to the Variation Procedure including any Variation instructed to:
 - (A) resolve a Change in Law; or
 - (B) a conflict, inconsistency, error or discrepancy other than a Variation instructed pursuant to Clause 6.3.1;
 - 15.1.5 the Supplier is denied access to the LUL Network in the circumstances described in Clause 57.12; and
 - 15.1.6 the Purchaser exercises the Storage Option pursuant to Clause 12.3,
- but in each case only insofar as any of the events described in Clauses 15.1.1 to 15.1.6:
- (A) has a direct and material adverse effect on the Supplier's ability to achieve any of the Key Dates or the Contractual Dates; and
 - (B) has not been caused or contributed to by the act, omission or default of the Supplier.

15.2 Qualification to Permitted Delays

Where any delay in achieving the applicable Key Date or a Contractual Date for the Goods(s) arises, the Supplier shall be entitled to an extension to the applicable Key Date or a Contractual Date for the Goods but only to the extent that such delay is directly caused by a Permitted Delay Event and provided that the Supplier:

- 15.2.1 has fully complied with the requirements of Clause 15.3 and subsequently provided such further information as the Purchaser may reasonably require regarding the nature and likely duration of such event;
- 15.2.2 has provided the Purchaser with reasonable access to the Supplier's Works and/or the facilities of its Subcontractors for investigating the validity of the potential Permitted Delay Event;
- 15.2.3 has used its reasonable endeavours to mitigate the delay to the applicable Key Date or the Contractual Date for the Goods; and
- 15.2.4 shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, neglect or default of the Supplier, its Subcontractors or the directors, agents, representatives or employees of any of them and/or any breach of this

Agreement by the Supplier, its Subcontractors or the directors, agents, representatives or employees of any of them.

15.3 Notification of Permitted Delay Event

The Supplier shall give notice to the Purchaser of the occurrence of a Permitted Delay Event promptly and in any event no later than ten (10) Working Days of when the Supplier became aware of such occurrence. Any notice given under this Clause 15.3 shall specify the Permitted Delay Event upon which the claim for an extension of time is based. Within twenty (20) Working Days (or such other period as the parties may agree) of:

- 15.3.1 in the case of a Permitted Delay Events under Clauses 15.1.1, 15.1.2 and 15.1.5, the Supplier serving notice on the Purchaser of such event; and
- 15.3.2 in the case of a Permitted Delay Event under Clauses 15.1.3 or 15.1.4, the Purchaser instructing a Variation or a suspension of this Agreement (as the case may be),

the Supplier shall provide the Purchaser with the following details:

- (A) full and detailed particulars of the cause and extent of the delay and the effect of the Permitted Delay Event on the Supplier's ability to comply with its obligations under this Agreement;
- (B) details of the documents and records which the Supplier will rely upon to support its claim for an extension of time; and
- (C) details of the measures which the Supplier has adopted and/or proposes to adopt to mitigate the consequences of the Permitted Delay Event.

Save with respect to Variations instructed under the Variation Procedure, if the Supplier fails to notify the Purchaser of any Permitted Delay Event or fails to provide details of any Permitted Delay Event, in either case within the time periods specified in Clause 15.3, the Supplier shall not be entitled to an extension of time, other relief from its obligations under this Agreement and/or compensation to the extent that the amount of such extension, other relief and/or compensation has been increased as a result of the delay in providing such information.

15.4 Grant of Extension of Time

Subject to the Supplier complying with the requirements of this Clause 15 and the Purchaser, acting reasonably, being satisfied that a Permitted Delay Event has occurred, the Purchaser shall, as soon as reasonably practicable and in any event within 15 Working Days of receipt of the Supplier's submission of information under Clause 15.3, agree with the Supplier a reasonable extension of time to the relevant Key Date and/or Contractual Date and any such extension shall amend the Contract Programme and each relevant Key Date and/or Contractual Date.

15.5 Extensions of Time – General

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

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

16. TRANSFER OF TITLE AND RISK

16.1 Title to Items of Goods

16.1.1 Title to each item of Goods shall pass to the Purchaser either immediately upon (i) delivery to the Purchaser in respect of the relevant item of Goods or (ii) the Purchaser exercising its option in accordance with Clause 12.3, on delivery into Storage, and such title shall be full unencumbered legal and beneficial title to that item of Goods.

16.1.2 Until delivery of any item of Goods to its applicable Delivery Location (including while any item of Goods is in Storage), the Supplier shall ensure that all items of Goods are readily identifiable as the Purchaser's property, including by marking them as the Purchaser's property. The Supplier shall provide access to any premises at which such items are stored, including where the Goods are in Storage in accordance with Clause 12.3, so that the Purchaser can verify compliance with this Clause 16.1.2.

16.2 Risk of loss

Risk of loss, theft, damage or destruction of an item of Goods shall pass to the Purchaser immediately upon delivery of the relevant item of Goods to the Delivery Location. The Supplier shall be responsible for the safe custody and transit of any item of Goods until the relevant item of Goods has been delivered to the Delivery Location.

16.3 Warranty in respect of Title

The Supplier warrants to the Purchaser that the title to the Goods transferred to it under this Agreement shall be with full title guarantee and free and clear of all Security.

16.4 Prohibition on Creating Security

The Supplier undertakes that it shall not at any time create or purport to create any Security over the Goods (including any Manual, Installation Instructions or other documentation) to be Product Accepted in accordance with this Agreement and which has been, or is to be, supplied to the Purchaser under and in accordance with the terms of this Agreement.

17. DEFECT RECTIFICATION

17.1 Removal of defective Parts

Where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall notify the Supplier of such Defect within a reasonable time of its discovery. The Purchaser reserves the right to remove the affected item of Goods, send the affected item of Goods to the Supplier for rectification pursuant to Clause 17.2 (*Rectification of Defects*) and replace the affected item of Goods with a Spare.

17.2 Rectification of Defects

17.2.1 The Supplier shall:

- (A) at its own cost rectify (which, for the purposes of this Clause 17, means repair, replace, modify or (as appropriate) amend) each Defect which arises, occurs or becomes apparent in relation to any item of Goods during the Defect Rectification Period for that item and where necessary shall execute or procure the execution by another of all rectification works; and
- (B) submit to the Purchaser a report identifying the root cause of the Defect within fourteen (14) days after having identified, or been notified pursuant to Clause 17.1, of such Defect.

17.2.2 The Supplier shall commence the rectification of any Defect as set out in Clauses 17.2.1 without delay and complete the rectification within a reasonable period (as agreed between the parties having regard to the circumstances).

17.2.3 The Supplier agrees that, if the Supplier fails to rectify a Defect in accordance with Clauses 17.2.1 and 17.2.2, the Purchaser may instruct third party personnel or resources to carry out any rectification works on any item of Goods supplied by the Supplier to the Purchaser hereunder in accordance with Clause 17.4.1.

17.3 Extended Defect Rectification Period

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

17.4 Rectification by the Purchaser

17.4.1 Subject to Clause 17.2.3, where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall be entitled to remedy such Defect at any time using its own or third party personnel or resources.

17.4.2 If, in order to remedy a Defect, the Purchaser must install a Maintenance Spare on the LUL Network, the Supplier shall provide the Purchaser with a Supplementary Spare in accordance with and within the timeframes specified in Clause 11.4.

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

17.5 Recurrent Defects

If, during the Defect Rectification Period, either Party identifies that a Recurrent Defect has occurred, that Party shall notify the other Party of such occurrence. The Supplier warrants to the Purchaser that it shall, at its own cost, remedy such Recurrent Defect and undertake necessary rectification on all Goods, Spares and Parts (as appropriate), and undertake such work as may be feasible in order to enable such Goods, Spares or Parts (as the case may be) to continue in operation in compliance with the terms of this Agreement pending such rectification. Within twenty (20) Working Days of having identified, or having been notified of, such Recurrent Defect, the Supplier shall submit to the Purchaser a report of the root cause and possible solution(s) that it intends to implement, including a programme for rectification of such Recurrent Defect and any necessary rectification required on any Goods, Spares or Parts (as the case may be) as soon as is practicable, and the Parties shall negotiate and agree such programme in good faith, within a period of twenty (20) Working Days after receipt of such programme.

18. SUSPENSION

18.1 Right to Suspend Work

The Purchaser may at any time instruct the Supplier to suspend the design, manufacture, supply, testing, commissioning or delivery of the Goods (or any part thereof) or performance of the Services (or part thereof).

18.2 Protection of Work in Progress

The Supplier shall during any such suspension take reasonable steps to protect, secure and insure the Goods affected at the Supplier's premises (or other location agreed with the Purchaser).

18.3 Entitlement to Costs for Suspension

If a suspension occurs, the additional reasonable and documented costs incurred by the Supplier in complying with an instruction under Clause 18.1 (including those costs incurred in protecting, securing and insuring the items described in Clause 18.2) shall be reimbursed by the Purchaser save that the Supplier shall not be entitled to be paid any additional costs:

18.3.1 where the suspension arises by reason of material default on the part of the Supplier or any of its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them; or

18.3.2 arising from remedying any deterioration, defect or loss caused by the Supplier's faulty workmanship or materials or by the Supplier's failure to comply with any of its obligations under this Agreement, including under Clause 18.2.

18.4 Prolonged Suspension

Unless otherwise agreed, if any suspension lasts for three hundred and sixty (360) or more days the Purchaser shall, if requested to do so by the Supplier, terminate this Agreement in accordance with Clause 25.7.

18.5 Resumption

Subject to Clause 18.4, the Purchaser may at any time instruct the Supplier to resume any activities suspended pursuant to Clause 18.1.

18.6 Making Good Deterioration

Upon receipt by the Supplier of an instruction from the Purchaser to proceed with any suspended activities pursuant to Clause 18.5, the Supplier shall examine the Goods affected by the suspension. The Supplier shall make good any deterioration or defect in or loss of such Goods that may have occurred during suspension.

18.7 Entitlement to Costs for Resumption

The additional reasonable and documented costs incurred by the Supplier in complying with an instruction under Clause 18.5 and its obligations under Clause 18.6 shall be added to the Contract Price, provided that the Supplier shall not be entitled to be paid any cost arising from:

18.7.1 remedying any deterioration, defect or loss caused by the Supplier's faulty workmanship or materials; or

18.7.2 the Supplier's failure to comply with any of its obligations under this Agreement, including under Clause 18.2.

19. HEALTH AND SAFETY

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

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

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

19.3 comply with Schedule 15 (*QUENSH*).

20. PAYMENT

20.1 Payment

20.1.1 In consideration of performance of the Supplier's obligations under this Agreement, the Purchaser shall pay to the Supplier the Contract Price and the Support Charges in the manner set out in this Clause 20.

20.1.2 The Contract Price is comprised of the Milestone Payments:

- (A) for the Design to Product Type Acceptance fixed price element of the Contract Price set out in paragraph 1 of Part 4 (*Payment Milestones*) of 0 (*Contract Price*);
- (B) for the Unit Acceptance element of the Contract Price set out in paragraph 2 of Part 4 of 0; and
- (C) for the Maintenance Spares element of the Contract Price set out in paragraph 3 of Part 4 of 0.

20.1.3 Each Milestone Payment shall be sequential and no Milestone Payment shall be due to the Supplier unless and until:

- (A) if no programme is included in Schedule 3 (*Contract Programme*), the Supplier has submitted an initial programme to the Purchaser showing the information required under Clause 8.1.1 and which is capable of acceptance in accordance with Clause 8.3.1; and
- (B) the Performance Bond or the Supplier Guarantee (as applicable) are in place in accordance with Clause 22.

20.1.4 The Support Charges in respect of the Training Services and the Continuing Support Services, determined in accordance with Schedule 18 (*Training*) or Schedule 19 (*Continuing Support*), are comprised of:

- (A) the fixed rate Support Charge for the Core Services element of the Continuing Services payable on a quarterly basis as set out in paragraph 4 of Part 4 of 0;
- (B) the amounts payable to the Supplier following the delivery of Additional Spares pursuant to paragraph 4 (*Supply of Additional Spares*) of Schedule 20 (*Continuing Support*), on the basis of the prices and rates set out in Part B (*Additional Spares*) of Schedule 4 (*Spares*); and
- (C) the amounts payable to the Supplier following the provision of Optional Services pursuant to paragraph 5 (*Optional Services*) of Schedule 20, on the basis of the prices and rates set out in Part 6 (*Schedule of Rates and Prices*) of Schedule 4.

20.2 Payment applications

20.2.1 On completion of each Milestone, or at the relevant time(s) in respect of the Support Charges the Supplier shall submit a payment application for:

- (A) the amount it considers to be due to it at such time, being (i) the Milestone Payment amount set out against the relevant Milestone in Part 4 (*Payment Milestones*) of 0 (*Contract Price*) (or expressed elsewhere in this Agreement), or (ii) the amount of the

relevant Support Charge determined as described in Clause 20.1.4, in each case setting out in reasonable detail a description of the Milestone achieved or the Continuing Support Services provided (as applicable); and

- (B) any amounts due (less any payments already made) pursuant to Clause 23.4, and in accordance with the principles set out in paragraph 2 of 0 (*Contract Price*) Part 2 (*Payment*), in respect of any properly completed Variation (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation) provided that the Supplier's payment application sets out the details and value of any Variation payment being sought,

to the Purchaser at the address specified in Clause 36. The Supplier shall ensure that each payment application is dated and issued no earlier than the date on which the relevant Milestone, the relevant Continuing Support Services and/or the Variation to which it relates has been completed.

- 20.2.2 The Purchaser shall consider the Supplier's payment application and assess and verify the amount due in respect of the application in a timely manner, which shall then constitute the Contract Payment. The Purchaser shall certify the Contract Payment (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Supplier details of how the Contract Payment due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 20.2.4 and there is an undue delay in considering and verifying the Contract Payment, the Payment Certificate shall be regarded as issued for the purposes of Clause 20.2.6 after a reasonable time has passed.

20.3 VAT invoice

- 20.3.1 Within ten (10) days of receipt of the Payment Certificate the Supplier shall issue a corresponding VAT invoice for the amount of the relevant Contract Payment, accompanied by a copy of the Payment Certificate, to the Purchaser in accordance with any instructions received from him. The Supplier shall ensure that such VAT invoice:

- (A) is dated and issued no earlier than the date when the Payment Certificate was issued; and
- (B) clearly states the purchase order number.

- 20.3.2 The Supplier may submit any VAT invoice as a PDF Invoice by email to the email address in Schedule 1. The Supplier shall ensure that each PDF Invoice has a unique file reference and be a separate PDF file.

20.4 Payment due date

Subject to Clause 20.8, the Purchaser shall, on receipt by it of an appropriate VAT invoice in accordance with Clause 20.3.1, pay to the Supplier within ten (10) days of receipt by it of such VAT invoice the relevant Contract Payment calculated in accordance with Clause 20.2.2. If the Supplier fails to issue a VAT

invoice that complies with the requirements of this Clause 20 then the time period for payment of the relevant Contract Payment set out in this Clause 20.2.6 shall be automatically extended by the number of days that the VAT invoice remains outstanding.

20.5 Payments owed by Supplier

Where a payment application shows a net amount owed by the Supplier to the Purchaser the Supplier shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser or, at the option of the Purchaser, carry forward that amount to the next Contract Payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Supplier.

20.6 Payment recovery

Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Supplier by mistake of law or fact.

20.7 Late payment

Save where otherwise specifically provided where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier is not entitled to suspend works under the Agreement or delivery of the Goods as a result of any sums being outstanding.

20.8 Disputed Payment Applications

The Purchaser shall notify the Supplier in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in accordance with Clause 32. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser in accordance with this Clause 20.

21. VAT

21.1 Payment of VAT

The Contract Price is, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of the Contract Price and the Supplier is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Supplier to the Purchaser at the rate in force on the date of the relevant payment application and must be shown as a separate amount on such

payment application and shall accordingly be paid by the Purchaser to the Supplier. To the extent that VAT is chargeable in respect of the Contract Price and the Purchaser is liable to account for such VAT to any Competent Authority, the Contract Price shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Supplier pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

21.2 Reimbursement of VAT

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

21.3 VAT Credit Note to be Issued on Repayment

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

22. SECURITY

22.1 Performance Bond

22.1.1 Where the Contract Particulars specify a Performance Bond is required, this Clause 22.1 shall apply.

22.1.2 On or prior to the date of this Agreement, the Supplier shall procure at its cost a valid and effective Performance Bond in favour of the Purchaser. The Performance Bond shall:

- (A) be in the amount stated in the Contract Particulars;
- (B) substantially in the form set out in Schedule 12 (Form of Performance Bond);
- (C) expire upon the final Unit Acceptance; and
- (D) be duly executed and delivered by a Bond Provider.

22.2 Supplier Guarantee

22.2.1 Where the Contract Particulars specify a Supplier Guarantee is required, this Clause 22.2 shall apply.

22.2.2 On or prior to the date of this Agreement, the Supplier shall procure at its cost a valid and effective Supplier Guarantee in favour of the Purchaser. The Supplier Guarantee shall:

- (A) substantially in the form set out in Schedule 8 (Form of Supplier Guarantee);
- (B) expire upon the final Unit Acceptance; and
- (C) be duly executed and delivered by the Supplier Guarantor.

22.3 Replacement Bonds

22.3.1 If at any time:

- (A) a Performance Bond ceases to be in full force and effect;
- (B) the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable;
- (C) the Bond Provider ceases to meet the Required Rating; or
- (D) an Insolvency Event occurs in relation to a Bond Provider;

then the Supplier shall provide a replacement Performance Bond (as the case may be) issued by a Bond Provider and that otherwise complies with this Clause 22 within ten (10) Working Days of the Performance Bond (as the case may be) ceasing to meet the relevant requirement(s) of this Clause 22.3.

22.3.2 In the event that the Supplier does not provide a replacement Performance Bond in accordance with Clause 22.3.1, the Purchaser may at its option:

- (A) make a demand upon the full amount (or remaining balance thereof if a demand or demands have already been made) of the Performance Bond which amount shall be paid to the Purchaser and retained by the Purchaser pending receipt of a replacement Performance Bond meeting the requirements of this Clause 22 (provided that if, prior to receipt of such Performance Bond this Agreement is terminated, the Purchaser may apply such amount towards any sums owing to it under this Agreement); or
- (B) procure the issue of a replacement Performance Bond meeting the requirements of this Clause 22 and invoice the Supplier for the cost thereof. The Supplier shall reimburse the Purchaser for the amount of such cost, together with Default Interest from the date of such invoice until the date on which the invoice is paid.

23. VARIATION PROCEDURE

23.1 Right to request a quote

23.1.1 The Purchaser shall, prior to instructing a Variation, request the Supplier to provide, in writing, a written report in respect of any variation envisaged (an "Initial Variation Appraisal"), such report to set out:

- (A) whether, in the reasonable opinion of the Supplier, including an explanation of the Supplier's reasons for such an opinion, the proposed Variation would:
 - (i) be technically unfeasible or impossible;
 - (ii) be illegal or put the Supplier or the Goods in breach of Relevant Consents where such illegality or breach could not be remedied by the Supplier making other changes to the Goods in order to accommodate such Variation; or
 - (iii) materially and adversely affect the ability of the Supplier to provide the Goods and/or Services;
- (B) the Supplier's initial assessment of any effect on the dates or activities referred to in the Contract Programme as a result of implementing the proposed variation; and
- (C) the Supplier's initial estimate of any adjustment to the Contract Price as a result of implementing the proposed variation (the "Variation Valuation"), determined in accordance with the principles set out in Clause 23.2.

23.1.2 The Supplier shall:

- (A) provide the Purchaser with an Initial Variation Appraisal within ten (10) Working Days (or such longer period as the Purchaser may agree) of a request from the Purchaser; and
- (B) hold any prices in its Initial Variation Appraisal open for sixty (60) Working Days and shall endorse the Initial Variation Appraisal to this effect.

23.1.3 The Purchaser may, in its absolute discretion, accept the Initial Variation Appraisal and instruct the Supplier to proceed with preparation for the implementation of a Variation or to prepare a Variation Appraisal in accordance with Clause 23.3.1, and the remaining provisions of this Clause 23 shall apply in respect of such Variation.

23.1.4 The Supplier shall be responsible for all of its own costs and expenses associated with the preparation of any Initial Variation Appraisal and/or Variation Appraisal that is requested prior to the achievement of Product Type Acceptance. The costs and expenses associated with the preparation of an Initial Variation Appraisal and/or Variation Appraisal that is requested on or after the achievement of Product Type Acceptance

shall be shared by the Supplier and the Purchaser in equal amounts subject to a capped contribution by the Purchaser of £5,000.

23.2 Valuation of Variations

23.2.1 Subject to Clause 23.2.2, the Variation Valuation shall be determined:

- (A) in the case of a Variation instructed for the supply of Additional Spares pursuant to Clause 11.5, in accordance with the prices stated in the price list set out in Schedule 4 (*Spares*) Part B (*Additional Spares*) in the case of a Spare of the kind listed in that list, and for other Additional Spares at cost plus 3%;
- (B) in all other cases, in accordance with the rates and prices set out in 0 (*Contract Price*) or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates.
- (C) Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.

23.2.2 The Supplier shall not be entitled to any increase in the Contract Price with respect to any Variation:

- (A) instructed pursuant to Clause 6.3.1;
- (B) to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Supplier its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Supplier has failed to take all reasonable steps to mitigate any actual or potential increase in the Contract Price; or
- (C) save to the extent that such increase directly arises from the Variation.

23.2.3 Any Variation Valuation accepted by the Purchaser or agreed or determined in accordance with Clause 23.4.3 shall be binding on both Parties in full and final settlement of all costs incurred by the Supplier and any impact (whether arising directly or indirectly as a result of the Variation) on the Milestone Payments and any other element of the Contract Price notwithstanding that the actual costs or impact may be greater or less than the Variation Valuation accepted, agreed or determined as the case may be.

23.3 Right to vary

23.3.1 Subject to Clause 23.3.2, the Purchaser may at any time within twenty (20) Working Days after receipt of a Initial Variation Appraisal, instruct the Supplier in writing:

- (A) where the Initial Variation Appraisal is sufficiently clear for implementation without further discussion and the Purchaser

accepts the terms thereof, to proceed with the implementation of the Variation on the terms of the Initial Variation Appraisal in accordance with the provisions of this Clause 23;

- (B) to prepare a Variation Appraisal in accordance with Clause 23.4 in respect of the proposed Variation; or
- (C) that the Purchaser is withdrawing the Variation proposal, provided that the Purchaser shall not be entitled to withdraw a Variation proposal that has been created to address a Change in Law.

23.3.2 If the Initial Variation Appraisal states that, in the Supplier's opinion, the proposed Variation falls within one or more of the restrictions set out in Clause 23.1(A)(i) to (iii), then the Purchaser shall withdraw the Variation proposal unless it disagrees with the Supplier's opinion. If the Purchaser disagrees with the Supplier's opinion, then the Parties shall seek to resolve the matter(s) in dispute and, if agreement has not been reached within 10 Working Days of receipt of the Variation Appraisal, the Purchaser may refer the matter for resolution under the Dispute Resolution Procedure. If the Purchaser has not referred the matter to the Dispute Resolution Procedure within 20 Working Days of receipt of the Variation Appraisal, the Purchaser's Variation proposal shall be deemed to be withdrawn.

23.3.3 Nothing in this Clause 23 shall prevent the Supplier from making a proposal to the Purchaser for a Variation by way of submission of a written proposal containing the information described in Clause 23.1.1 (which shall constitute the applicable Initial Variation Appraisal), but no Variation so proposed shall be carried out by the Supplier except as directed in writing by the Purchaser.

23.4 Variation Appraisal

23.4.1 As soon as possible after having received an instruction to do so under Clause 23.3.1, the Supplier shall prepare and deliver to the Purchaser a further written report (a "Variation Appraisal") in respect of the proposed Variation, setting out:

- (A) the Supplier's detailed assessment of the matters referred to in Clauses 23.1.1(B) and (C) and any other impact of the proposed Variation on the provision of the Goods and Services, including an explanation of any changes from its initial assessment(s) of such matters set out in the applicable Initial Variation Appraisal;
- (B) the proposed method of certification of any design, construction or operational aspects of the Goods and Services required by the proposed Variation if not covered by the procedures specified in this Agreement;
- (C) whether relief from compliance with the Supplier's obligations under this Agreement is required, including the obligations of the Supplier to achieve Product Type Acceptance or any Unit Acceptance by the applicable Contractual Date; and

- (D) any other amendments required to this Agreement (including any amendments to the Specification) as a result of the proposed Variation.

23.4.2 The Supplier shall:

- (A) provide the Purchaser with a Variation Appraisal within ten (10) Working Days (or such longer period as the Purchaser may agree, taking account of the subject-matter of the Variation) of the Purchaser's instruction; and
- (B) ensure that any prices in its Variation Appraisal are open for sixty (60) Working Days and shall endorse the Variation Appraisal to this effect.

23.4.3 As soon as practicable after the Purchaser receives the Variation Appraisal, the Parties shall discuss and endeavour to agree, acting reasonably, the matters set out in the Variation Appraisal. During such discussions, the Purchaser may request that the Supplier provide any further evidence or information in respect of the matters referred to in Clause 23.4.1. If the Parties cannot agree on the contents of the Variation Appraisal, then either Party may refer the Dispute for resolution under the Dispute Resolution Procedure (with any Dispute concerning the applicable Variation Valuation being determined in accordance with the principles set out in Clause 23.2).

23.4.4 As soon as practicable, and in any event within 20 Working Days, after the contents of the Variation Appraisal have been agreed or determined in accordance with Clause 23.4.3, the Purchaser shall either:

- (A) issue a written notice, instructing the Supplier to proceed with the implementation of the Variation in accordance with the Variation Appraisal (as agreed or determined in accordance with Clause 23.4.3); or
- (B) withdraw the proposed Variation.

23.4.5 If the Purchaser has not issued an instruction to proceed within such 40 Working Day period, then the Variation proposal shall be deemed to have been withdrawn.

23.5 Notice of variations

When instructing any Variation, the Purchaser shall, to the extent possible, give the Supplier such reasonable notice as will enable him to make its arrangements accordingly.

23.6 Progress with variations

23.6.1 The Supplier shall, on receipt of an instruction from the Purchaser to proceed with a Variation in accordance with Clause 23.3.1(A) or 23.4.4,

immediately proceed to carry out such Variation in accordance with its terms;

- 23.6.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation agreed or determined in accordance with this Clause 23.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 Ownership of IPR

Nothing in this Agreement shall operate to transfer the ownership of any Intellectual Property Rights of either Party (or of either Party's Affiliates or subcontractors) to any other person. All Intellectual Property Rights developed or created by a Party, or on behalf of that Party, in the course of performing that Party's obligations under this Agreement shall belong to that Party or its subcontractors, as appropriate.

24.2 Licence of Supplier IPR

The Supplier grants, or shall procure the grant of, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Supplier IPR, and (subject to Clause 24.8.3) the Software and Source Code for:

- 24.2.1 the testing, commissioning, operation, maintenance, modification or refurbishment of the Goods or any related activity, or permitting the Purchaser to use the Goods and/or any other item to be supplied pursuant to this Agreement for the purposes envisaged pursuant to the Specification;
- 24.2.2 modifying, refurbishing, repairing, maintaining and overhauling the Goods, supplied pursuant to this Agreement or any related activity;
- 24.2.3 complying with all Applicable Laws, LU Standards and all Relevant Consents;
- 24.2.4 using and copying the Manuals and/or Installation Instructions in order to perform any of the above;
- 24.2.5 training personnel to carry out any of the activities described in Clause 24.2.1, 24.2.2 and 24.2.4;
- 24.2.6 inviting tenders for any of the activities described in Clause 24.2.1 to 24.2.5 inclusive;
- 24.2.7 in the event of termination of this Agreement, procuring fulfilment and performance of the Supplier's obligations under this Agreement, including the manufacture of any Parts and Spares or other equipment for use in connection with the Goods; and
- 24.2.8 the Purchaser performing its obligations under this Agreement.

in each case in connection with the Purchaser's operation of public transport services on the LUL Network. Other than in accordance with this Clause 24, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 24 shall, have the right to manufacture (i) the Goods or (ii) any Part that is the subject of Supplier IPR.

24.3 Subcontractors

The Supplier shall: (i) ensure that all Subcontracts entered into by the Supplier with Key Subcontractors, and (ii) use reasonable endeavours to ensure that all Subcontracts entered into by the Supplier with its other Subcontractors, permit the Supplier to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor, and that such Subcontracts shall specify the Purchaser as a permitted assignee.

24.4 Documentation

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

24.5 Warranties

The Supplier represents and warrants to the Purchaser that:

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

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

24.5.3 use of any Supplier IPR, Software, the Goods, Part, Supplier Documentation or part thereof does not infringe any Intellectual Property rights of another person.

24.6 Indemnity

24.6.1 The Supplier shall defend the Purchaser and any member of the TfL Group against any third party claim that the Purchaser's use or possession of any of the Goods as authorised under this Agreement infringes the Intellectual Property Rights of a third party (an "IPR Claim"), and indemnify and hold the Purchaser and any member of the TfL Group harmless from and against any Losses, costs, charges or expenses incurred by such person or damages finally awarded by a court of competent jurisdiction or required to be paid under the terms of a settlement as a direct result of the IPR Claim, provided that:

(A) the Indemnified Party promptly notifies the Supplier in writing on becoming aware of any reasonably likely or actual IPR Claim (such notice to include full details as to the nature and basis of the IPR Claim);

(B) the Indemnified Party makes no admission of liability, communication or payment to the third party making the IPR

Claim or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;

- (C) the Supplier is granted, at its request, the sole control and conduct of the defence of the IPR Claim and of any related settlement or negotiations; and
- (D) the Indemnified Party, at the Supplier's request and expense, provides the Supplier with all reasonable assistance, information and authority, and acts in accordance with the reasonable instructions of the Supplier, in the circumstances described in this Clause 24.6.

24.6.2 The Supplier shall not have any liability or obligation under this Clause 24.6 in respect of any IPR Claim to the extent that it results from or arises in connection with:

- (A) the Purchaser's breach of this Agreement;
- (B) the possession or use (whether by the Purchaser or any other person granted a sub-licence by the Purchaser in accordance with Clause 24.2) of the Goods and/or the Software, Source Code or Intellectual Property Rights referred to in Clause 24.2 (or any part of them), other than in accordance with the terms of this Agreement or the terms of any Manuals or other Supplier-produced documents or materials provided by the Supplier to the Purchaser; or
- (C) the Purchaser's wilful misconduct.

24.7 Remedy for Infringement

Without prejudice to the provisions of Clauses 24.5 and 29.2.4, if the use of any Supplier IPR, Software, Goods and/or Part thereof is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Supplier shall, at its cost, either:

- 24.7.1 procure for the Purchaser the right to continue to use that Supplier IPR, Software, Goods and/or Part; or
- 24.7.2 (to the extent Clause 24.7.1 is not applicable) modify the Goods and/or Part so that it no longer infringes those rights, or replace the item of Goods with a non-infringing Goods and/or Part provided however that the modified or replacement Goods and/or Part shall at all times comply with all the requirements of this Agreement.

24.8 Software

- 24.8.1 The Supplier shall ensure in respect of all Software that is used for the design, manufacture, testing, commissioning, supply, operation, maintenance, modification, refurbishment or sale of the Goods that:

- (A) there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process;
- (B) the documentation for Software is such as to enable an appropriately qualified person (who was not involved in the original design) to relate the Software to the performance of the relevant equipment under normal and fault conditions, and to verify its compliance with the functional requirements of that equipment; and
- (C) where no particular LU Standard is specified by the Specification, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

The Supplier shall provide copies of the documentation and information at Clause (A) and (B) above to the Purchaser on the request of the Purchaser.

24.8.2 The Supplier shall in respect of Supplier-owned Software, at all times during the period from the Commencement Date until the end of the twenty (20) year design life of the Goods:

- (A) retain updated "as made" copies, in machine readable form, of the final structure of the Software, and of the intermediate stages leading to it (including Source Code and object codes);
- (B) retain updated usable copies of any ancillary computer programmes used to generate such codes (such as, without limitation, compilers);
- (C) keep copies of the materials referred to in this Clause 24.8.2 in a secure manner and place such that they will not deteriorate;
- (D) retain the Software designed by the Supplier; and
- (E) allow the Purchaser reasonable access to the Software and the Source Code and its documentation.

24.8.3 The Purchaser shall, save with the prior written consent of the Supplier, be permitted to use Software supplied under this Agreement in object code form only. The Purchaser shall not have any entitlement to manufacture or distribute hardware or Software supplied under this Agreement on a commercial basis and shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or part except: (i) as provided for in the terms of Clause 24.2, or (ii) as permitted by law.

24.9 Cessation of Software Support

If the Supplier or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Supplier shall, without additional charge (save where the Subcontractor stops trading or

makes such intention to withdraw support known in which case the Purchaser shall pay the reasonable and properly incurred costs of the Supplier in complying with this Clause 24.9), use reasonable endeavours to procure the transfer to the Purchaser of all rights in and to the Software in question for the relevant type of Goods.

24.10 Supplier's Licence to the Purchaser's Intellectual Property Rights

The Purchaser hereby grants the Supplier a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the Purchaser (including for the avoidance of doubt the Corporate IPRs as such term is defined in Clause 24.11) which are required by the Supplier for the purposes of providing the Goods and Services. Such licence is granted for the duration of this Agreement solely to enable the Supplier to comply with its obligations under this Agreement and is conditional upon the Supplier using such Intellectual Property Rights in accordance with Applicable Laws and LUL Standards and such other quality standards as the Purchaser may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the Purchaser may be used in conjunction with any other trade marks without the prior written consent of the Purchaser.

24.11 Corporate IPRs

24.11.1 The Supplier shall use and shall procure that its subcontractors and suppliers shall use the trade marks, trade names and other Intellectual Property Rights belonging to the Purchaser or any other member of the TFL Group (as may be notified by the Purchaser to the Supplier on request from time to time) (the "Corporate IPRs") in compliance with any relevant LUL Standards from time to time in force.

24.11.2 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 Purchaser's prior written consent.

24.11.3 On written request from the Purchaser, 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 Purchaser reasonably determines that any use of the Corporate IPRs falls below the quality standards notified to the Supplier in accordance with Clause 24.11.1, the Purchaser 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 Purchaser's instructions.

24.12 Survival

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

25. TERMINATION

25.1 Supplier Events of Default

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

25.1.1 the Supplier commits a material breach of its obligations under this Agreement;

25.1.2 the Supplier commits a Persistent Breach as provided for in Clause 25.4;

25.1.3 the Supplier commits a breach of Clause 9.1;

25.1.4 the maximum amount of liquidated damages payable by the Supplier pursuant to Clause 13 shall have accrued; ;

25.1.5 an Insolvency Event occurs in relation to the Supplier;

25.1.6 the Supplier fails to make payment of any sum (including any liquidated damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;

25.1.7 the Supplier fails to take out and/or maintain any of the Required Insurances in accordance with Schedule 10 (*Insurance*);

25.1.8 the Supplier fails to provide (where the Contract Particulars specify a Performance Bond is required) a Performance Bond or any replacement thereof in accordance with Clause 22.3;

25.1.9 (where the Contract Particulars specify a Supplier Guarantee is required,) the Supplier Guarantor's obligations under the Supplier Guarantee are or become wholly or partly invalid or unenforceable or the Supplier Guarantor fails to comply promptly with any of its obligations pursuant to the Supplier Guarantee;

25.1.10 there is a breach by the Supplier of its obligations under Clause 34; or

25.1.11 the Supplier fails to remedy an Equality & Diversity Infraction to the satisfaction of the Purchaser or fails to terminate its Subcontract with a defaulting Subcontractor in accordance with and within the timeframes specified in paragraph 1.6 of Schedule 18 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);

25.1.12 the Supplier has, at the date of this Agreement, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016 (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015 or by Regulation 89(3) of the Utilities Contracts Regulations 2016);or

25.1.13 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Supplier's share capital, and for this purpose, a "**controlling interest**" being either:

- (A) the ownership or control (directly or indirectly) of more than 30% of the Supplier's voting share capital or the share capital of the Supplier's holding company; or
- (B) the ability to direct the casting of more than 30% of the votes exercisable at the Supplier's general meetings or those of the Supplier's holding company on all, or substantially all, matters,

save, in either case, as a result of a proposed transaction for assumption of a controlling interest in the Supplier's share capital that was notified to the Purchaser in writing prior to the Commencement Date.

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

25.2.1 The Supplier shall notify the Purchaser forthwith on the Supplier becoming aware of the occurrence of a Supplier Event of Default.

25.2.2 Following the occurrence of a Supplier Event of Default (and notwithstanding that the Supplier may not have notified it pursuant to Clause 30.2.1), the Purchaser may by notice in writing to the Supplier ("**Purchaser Termination Notice**") specifying the Supplier Event of Default in question terminate this Agreement either in respect of all of the Goods which have not been Accepted for Service or (as specified in the notice) in relation to specific items of Goods which have not been Accepted for Service, such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of Insolvency, forthwith) provided that, in respect of a Supplier Event of Default under Clauses 25.1.1, 25.1.3 or 25.1.6 which is capable of remedy, the provisions of Clause 25.3 shall apply.

25.2.3 This Clause 25.2 shall be without prejudice to the Purchaser's right to termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015.

25.3 Remedial Plan

25.3.1 Where a Supplier Event of Default that is capable of remedy arises under Clauses 25.1.1, 25.1.3 or 25.1.6, the Purchaser shall by notice in writing to the Supplier signed on behalf of the Purchaser (a "**Remedy Notice**") require the Supplier either:

- (A) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice or
- (B) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in reasonable detail and the

latest date by which it is proposed that that remedy will be completed.

25.3.2 Where the Supplier puts forward a Remedial Plan in accordance with Clause 25.3.1, the Purchaser shall notify the Supplier in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Supplier, the Purchaser shall be deemed to have accepted the Remedial Plan.

25.3.3 If the Purchaser notifies the Supplier that it does not accept that Remedial Plan pursuant to Clause 25.3.2, the Purchaser and the Supplier shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Supplier Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 25.2.2 (notwithstanding the proviso thereto). Where the Purchaser and the Supplier agree the form of the Remedial Plan, the Supplier shall forthwith implement such Remedial Plan in accordance with its terms.

25.3.4 If any breach specified in a Remedy Notice served under Clause 25.3.1 is not remedied

- (A) within the thirty (30) Working Day period specified in Clause 25.3.1(A) (if applicable); or
- (B) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Supplier otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may exercise its rights under Clause 25.2.2 as if the Supplier Event of Default is not capable of remedy.

25.4 Persistent breach

25.4.1 If the Supplier breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Supplier:

- (A) specifying that it is a formal warning notice;
- (B) giving reasonable details of such breach; and
- (C) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 25.4.

25.4.2 If, following service of such a warning notice pursuant to Clause 25.4.1, the breach specified has continued unremedied or a breach of the same

type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 25.4.1, serve another notice on the Supplier specifying that such breach constitutes a **"Persistent Breach"** for the purposes of Clause 25.1.2.

25.5 Consequences of Termination for Supplier Fault

25.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 25.2.2 (and, where relevant, the Supplier Event of Default has not been remedied pursuant to Clause 25.3), or (b) a notice of termination under Clause 33.3, the Purchaser shall be entitled (in its absolute discretion) to:

- (A) procure the completion of the Goods so that they satisfy the conditions necessary for the passing of title to the Purchaser and, upon completion, pay to the Supplier that part of the Contract Price for the Goods and any other item of Goods not yet paid as at the date of termination less the cost of completion including procurement of the same. Where this gives rise to a negative figure, the corresponding positive amount will be payable by the Supplier to the Purchaser together with Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Supplier); or
- (B) purchase any work in progress, wholly or partly manufactured Goods at an amount representing a fair assessment of the value of the Goods, less an amount equal to those instalments of the Contract Price and/or any advance payments already paid by the Purchaser in respect of such Goods; or
- (C) be reimbursed for all payments made to the Supplier in relation to the supply of the Goods (other than those in respect of which title has transferred to the Purchaser pursuant to Clause 16). The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Supplier);

25.5.2 Subject to Clause 29.4, if this Agreement is terminated at any time prior to Unit Acceptance of the final P-CRID Unit as a result of:

- (A) the occurrence of a Supplier Event of Default in accordance with Clause 25.2.2 (and, where relevant, the Supplier Event of Default has not been remedied pursuant to Clause 25.3); or
- (B) the occurrence of a Prohibited Act in accordance with Clause 33,

the Supplier shall, in addition to any amounts payable pursuant to Clause 25.5.1 above, be responsible for and release and indemnify the Indemnified Parties on demand on an after-Tax basis from and against all liability for the costs, losses and expenses suffered or incurred by the Indemnified Parties arising from the termination of this Agreement including, but not limited to:

- (i) the costs of procuring a replacement contract including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to such replacement contract;
- (ii) all other reasonable direct losses, costs and claims of the Indemnified Parties (including but without limitation, project management, legal and other professional costs and fees); and
- (iii) the costs of the Purchaser procuring replacement Goods.

25.6 Additional Remedies

Without prejudice to Clause 38, where this Agreement has been terminated pursuant to Clause 25.2, 33.3, 33.4, 53.2, 54.5 or 56.10, the Purchaser shall be entitled to require the Supplier:

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

25.7 Voluntary Termination

The Purchaser may terminate this Agreement without cause at any time by giving notice to the Supplier of such termination and the date when such termination shall become effective (being no sooner than 90 days after the date of such notice), and the termination shall take effect upon such date.

25.8 Declaration of Ineffectiveness and Public Procurement Termination Event

The Purchaser may terminate this Agreement at any time in the event that:

- 25.8.1 there is a Declaration of Ineffectiveness
- 25.8.2 a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

25.9 Consequences of Voluntary Termination or Termination for Force Majeure

25.9.1 Where this Agreement is terminated in whole or in part by the Purchaser either in accordance with Clause 25.7, or as a result of a Force Majeure Event in accordance with Clause 27, the Purchaser will acquire any:

- (A) Design that has been produced in connection with this Agreement prior to the date of the relevant termination; and

- (B) partially completed Goods or other item of Goods that is the subject of the termination.

25.9.2 The value of the Purchaser's acquisition will be assessed, where appropriate, in accordance with Schedule 4 (Contract Price) (and in particular the Contract Price Breakdown contained in Schedule 4 (Contract Price) Part 3 (Contract Price Breakdown)) or, to the extent that this is not appropriate due to the level of Design development, the costs and expenses reasonably and properly incurred by the Supplier in carrying out its obligations under this Agreement, less the amount of progress or advance Milestone Payments made to the Supplier. Where this gives rise to a negative figure, the corresponding positive amount shall be payable by the Supplier to the Purchaser on the same basis as set out in Clause 25.5.1(A).

25.9.3 Where this Agreement is terminated by the Purchaser either in accordance with Clause 25.7, or as a result of a Force Majeure Event in accordance with Clause 27, the Purchaser shall also pay to the Supplier, in each case subject to Clause 25.11:

- (A) such sum as represents the cost of labour and materials reasonably and properly incurred or committed on arm's length terms by the Supplier as at the termination date relating to the provision of the Goods and Services; and
- (B) redundancy payments for employees of the Supplier that have been or will be reasonably incurred by the Supplier as a direct result of termination of this Agreement; and
- (C) other costs, expenses and other liabilities reasonably and properly incurred by the Supplier as a direct result of the termination of this Agreement,

provided that the Supplier shall use all reasonable endeavours to mitigate all such costs, expenses and/or other liabilities.

The Supplier shall not be entitled to payment of any other loss and/or damage arising from such termination.

25.10 Consequences of Termination for other reasons

Where this Agreement is terminated by the Purchaser under Clause 33.3, 33.4, 53.2, 54.5 or 56.10, the provisions of Clause 25.5 and 25.6 shall apply.

25.11 General

25.11.1 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Clause 25 shall only be such

costs and/or expenses to be extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

25.11.2 The Parties shall each use all reasonable endeavours to mitigate all costs and expenses and other sums claims as part of any termination sums due pursuant to this Clause 25.

25.11.3 Subject to Clauses 25.11.6 to 25.11.9 (inclusive), the amount of any compensation paid pursuant to this Clause 25 including the identification and calculation of each element comprised in or to be deducted from it, the ascertainment of any amount or matter requiring to be estimated or anticipated and (where so required by the provisions of this Clause 25) the reasonableness of any amount or matter shall be as agreed between the Parties or, if they are unable to agree within a period which is reasonable in the light of the amounts and matters requiring to be so identified, ascertained or calculated, as referred to and determined in accordance with the Dispute Resolution Procedure.

25.11.4 If the payment of any part but not all of the amount payable pursuant to this Clause 25 is disputed then any undisputed element of that amount shall be paid in accordance with this Clause 25 and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

25.11.5 Payment of compensation in accordance with this Clause 25 shall be in full and final settlement of any claims and rights of the Supplier against the Purchaser for breaches and/or termination of this Agreement (whether under contract, tort, restitution or otherwise) save for any antecedent liability of the Purchaser which arose prior to the date of termination (but not from the termination itself) to the extent that such liability has not already been taken into account in the calculation of the compensation payable under this Agreement. The compensation payable under this Clause 25 shall be the sole remedy of the Supplier against the Purchaser on termination of this Agreement and the Supplier hereby waives any other right or redress it may have against the Supplier arising from such termination.

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

25.11.7 Where the Purchaser exercises its rights pursuant to Clause 25.11.6, it shall give written notice to the Supplier identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Supplier shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

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

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

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

25.12 Rejection

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

26. SURVIVAL OF CLAUSES

26.1 Consequence of Termination or Expiry

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

26.1.1 any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and

26.1.2 the provisions of Clauses 1, 10.2 to 10.7 inclusive, 16, 20, 21, 22, 25.5, 25.6, **Error! Reference source not found.**, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47 and 51 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

27. FORCE MAJEURE

27.1 Consequence of a Force Majeure Event and Notification Requirements

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

27.1.1 if any Party seeks to rely on this Clause 27 (the "FM Affected Party"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM

Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and

27.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 27.2 below.

27.2 Mitigation

27.2.1 An FM Affected Party shall:

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

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

27.3 Extensions of Time for Force Majeure

Subject to Clauses 27.2 and 27.4 the occurrence of a Force Majeure Event which directly causes delay to the supply of the Goods and/or any other item of Goods will constitute a Permitted Delay Event and the provisions of Clause 15 shall apply.

27.4 Termination for Force Majeure

Notwithstanding the provision of Clause 27.3 entitling the Supplier to a Permitted Delay Event, the Purchaser shall be entitled to terminate this Agreement by notice in writing (a "FM Notice") to the Supplier if the Acceptance for Service of the Goods or other item of Goods has been or would be delayed as the result of a Force Majeure Event for more than an aggregate total of ninety (90) days

following the Contractual Date for such Goods or other item. The provisions of Clause 25.10 shall apply in respect of such termination.

27.5 Effect on payments

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

27.6 Cessation of Force Majeure

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

27.7 Continuing Obligations

Save as provided in this Clause 27, the Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 27.4, remain in effect for the duration of a Force Majeure Event.

28. INSURANCE

The Supplier and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 10 (Insurance).

29. INDEMNITIES AND LIMITATIONS ON LIABILITY

29.1 Application

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

29.2 General Indemnities

Subject to Clause 29.3, the Supplier shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and TfL and any member of the TfL Group, including any of their respective employees, servants, agents, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all Losses suffered or incurred in respect of:

29.2.1 death or personal injury to any person;

29.2.2 any loss of, or damage to, any property or assets (including the LUL Network, the Goods or any other item of Goods);

29.2.3 any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;

29.2.4 breach of statutory duty;

29.2.5 any Environmental Damage;

arising from or in connection with:

- (A) the design, manufacture, supply, assembly, testing, commissioning and delivery of the Goods (and/or any subsystem or Part forming part of the Goods) ; and/or
- (B) the operation and/or use of the Goods in accordance with Manuals or Installation Instructions or as otherwise directed by the Supplier;
- (C) the performance or non-performance (including any negligent performance) of the obligations of the Supplier, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement; or
- (D) any acts or omissions, breach, negligence or wilful misconduct by the Supplier.

29.3 Qualifications

The Supplier shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 29.2 in the case of any loss referred to in Clauses 29.2.1 and 29.2.2 to the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

29.4 Limitation on Supplier's Liability

29.4.1 Subject to Clause 29.4.2, the Supplier's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited as set out in the Contract Particulars.

29.4.2 The Supplier's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 29.4.1.

29.5 Consequential Breach and Loss

29.5.1 Neither the Supplier nor the Purchaser shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.

29.5.2 Other than in respect of Excepted Liabilities, neither Party shall be liable for any matter howsoever arising out of or in connection with this Agreement (including Clause 29.2) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party, (or make any claim against that Party), the Purchaser or any member of the Tfl Group in respect of Consequential Loss.

29.6 No Double Recovery

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

29.7 Duty to Mitigate

The Supplier and the Purchaser shall each be under a duty to mitigate any damages and losses in respect of which it makes any claim pursuant to this Agreement.

30. CONFIDENTIALITY

30.1 Obligations of Confidentiality

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

30.1.1 disclose Confidential Information to any person whomsoever;

30.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or

30.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

30.2 Permitted Disclosure

Without prejudice to the Purchaser's rights under its licence granted pursuant to Clause 24.2, the restrictions in Clause 30.1 shall not apply to the disclosure of Confidential Information:

30.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 31) or LU Standard to do so;

30.2.2 to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;

30.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;

- 30.2.4 to any Competent Authority;
- 30.2.5 in the case of the Purchaser to the Mayor of London and/or the Greater London Authority and/or the Secretary of State for Transport;
- 30.2.6 in the case of the Purchaser to any member of the TfL Group;
- 30.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 30.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 30.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 30.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- 30.2.11 to any member of the Supplier Group for the purposes of the performance by the Supplier of its obligations under this Agreement.

30.3 Confidentiality Undertaking

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

30.4 Prior Notice of Disclosure

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

30.5 Standard of Care

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

30.6 Announcements

The Supplier shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the design, manufacture, supply, testing, commissioning, delivery, maintenance or support of any Goods.

30.7 Reputation

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

30.8 Survival

The obligations of the Parties under this Clause 30 shall survive the expiry or the termination of this Agreement for whatever reason.

31. FREEDOM OF INFORMATION

31.1 The Supplier acknowledges that the Purchaser:

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

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

31.2 Without prejudice to the generality of Clause 31.1, the Supplier agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

31.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Supplier each Information Request relevant to this Agreement or any member of the TFL Group that the Supplier or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and

31.2.2 in relation to Information held by the Supplier on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

31.3 The Purchaser (as may be directed by TFL) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not himself respond to any person making an Information Request,

save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.

- 31.4 The Supplier acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

32. DISPUTE RESOLUTION

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 11 (*Dispute Resolution Procedure*).

33. PROHIBITED ACTS

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

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

34.1 Subcontracting

- 34.1.1 The Supplier may sub-contract its obligations under this Agreement either in whole or in part to any Subcontractor provided that the written consent of the Purchaser is obtained by the Supplier prior to the Supplier entering into any Subcontract. The Supplier shall provide the company name, address and contact details for any Subcontractor, together with a description of the activities that the Subcontractor will undertake in

relation to the Supplier's obligations under this Agreement, when requesting consent of the Purchaser. The Purchaser, acting reasonably, respond promptly to such requests and include, for each Subcontractor that it does not object to, its determination of whether the Subcontractor will be treated as a Key Subcontractor.

34.1.2 Unless the Purchaser otherwise agrees in writing, the Supplier shall procure that each Key Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 16 (*Form of Subcontractor Warranty*).

34.1.3 The Supplier shall be fully responsible in accordance with the terms of this Agreement for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Supplier or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Supplier.

34.1.4 The Supplier shall ensure that it includes in any Subcontract with a key Subcontractor provisions on substantially similar terms to Clause 20 (*Payment*).

34.2 Assignment

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

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

35.1 Permitted Transfers

The Purchaser shall be entitled to assign (whether absolutely or by way of security and whether in whole or in part) transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement (including for the purposes of financing its obligations under this Agreement):

35.1.1 without the consent of the Supplier to any person who is:

- (A) a Minister of the Crown; or
- (B) the Mayor or the Greater London Authority or any statutory successor thereto; or
- (C) TfL or any statutory successor thereto; or
- (D) any public or statutory corporation or limited liability company which is owned and controlled directly or indirectly by any of the persons referred to in Clause 35.1.1(A) or (B); or

35.1.2 without the consent of the Supplier to a third party which is not described in Clause 35.1.1, where the manner of the assignment, novation, mortgage, charge or other disposal of the rights and/or obligations under this Agreement is such that where the assignee, novatee or other beneficiary of the transferred rights and/or obligations does not fully perform the transferred obligations then the responsibility for the discharge of such unperformed obligations shall revert to the Purchaser (or another entity described in Clause 35.1.1); or

35.1.3 otherwise subject to the prior written consent of the Supplier (such consent not to be unreasonably withheld)..

35.2 Implementation of Transfers

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

36. NOTICES

36.1 Form of Communications

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

36.1.1 must be in English and in writing;

36.1.2 must be sent by letter, email or fax or delivered by hand; and

36.1.3 (save for PDF Invoices sent by email) must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or sent by email to the email address of the addressee, in each case which is specified in this Clause 36.1 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number or email address in England or Wales, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 36.

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

Purchaser: as specified in the Contract Particulars

Supplier: as specified in the Contract Particulars

36.2 Each such communication shall, unless otherwise shown, be deemed to have been received:

36.2.1 if personally delivered, at the time of delivery;

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

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

36.2.4 in the case of electronic mail, five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in Clause 36.1 are used. The place of delivery of email will be deemed to be the postal address nominated by the recipient in Clause 36.1.

36.3 Not Used

36.4 Receipt on a Non-Working Day

A notice received or deemed to be received in accordance with Clause 36.2 above outside business hours in the place of receipt (business hours being, for these purposes, 9.00am and 5.00pm on a Working Day), the notice or other document will be deemed to be effective when business hours next resume.

36.5 Change of Address

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

36.6 Service of Proceedings

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

37. ENTIRE AGREEMENT

37.1 Whole Agreement

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

37.2 Non Reliance

Each Party acknowledges and agrees that:

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

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

38. RIGHTS CUMULATIVE WITH THOSE AT LAW

38.1 Rights Cumulative

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

38.2 Equitable Remedies

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

39. FURTHER ASSURANCE

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

40. SET-OFF

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

41. WAIVER

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

42. **SEVERANCE**

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

43. **COSTS**

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

44. **LANGUAGE**

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

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

45.1 With the exception of the right of:

45.1.1 any member of the TFL Group; and

45.1.2 any person expressly stated to be indemnified by a Party; and

45.1.3 the Installer,

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

46. **COUNTERPARTS**

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

47. **GOVERNING LAW AND JURISDICTION**

47.1 **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

47.2 **Exclusive Jurisdiction**

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

47.3 Forum

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

48. RESPONSIBLE PROCUREMENT

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

49. CRIME AND DISORDER

The Supplier acknowledges that the Purchaser is under a duty in accordance with 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:

49.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;

49.2 where appropriate, identify actions to reduce levels of crime and disorder; and

49.3 without prejudice to any other obligation imposed on the Purchaser, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area:

49.3.1 crime and disorder (including anti-social and other behaviour adversely affecting the local environment);

49.3.2 the misuse of drugs, alcohol and other substances; and

49.3.3 re-offending,

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

50. LONDON LIVING WAGE

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

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

50.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

50.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and

50.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

51. DATA TRANSPARENCY

51.1 The Supplier acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the Supplier hereby gives its consent for the Purchaser to publish the Contract Information to the general public.

51.2 The Purchaser may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 51.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

52. DATA PROTECTION AND CYBER SECURITY

52.1 The Supplier shall at all times comply with all of its obligations under the Data Protection Legislation and any policies issued by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.

52.2 The Supplier shall:

52.2.1 take appropriate technical and organisational security measures satisfactory to the Purchaser against unauthorised or unlawful Processing of Purchaser Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;

52.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Supplier with the requirements of this Clause 52; and

52.2.3 cooperate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Legislation.

52.3 The Supplier shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

53. CONFLICT OF INTEREST

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

54. CRIMINAL RECORDS DECLARATION

- 54.1 The 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 he has committed. A Declaration shall be procured prior to a Relevant Individual providing any of the Goods and Services. The Supplier shall confirm to the Purchaser 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 throughout the duration of this Agreement and the Supplier shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 54.2 The Supplier shall not engage or allow to act on behalf of the Supplier or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 54.3 The Purchaser may audit and check any and all such records of the Supplier as are necessary in order to monitor compliance with this Clause 54 at any time during performance of this Agreement.
- 54.4 If the Supplier fails to comply with the requirements under Clause 54.1 and/or 54.2, the Purchaser may, without prejudice to its rights under Clause 54.5, serve notice on the 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 this Agreement and/or 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 performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 54.1) within seven (7) days of receipt of the notice the Supplier confirms to the Purchaser that it has procured all of the Declarations required under Clause 54.1.

- 54.5 A persistent breach of Clause 54.1 and/or 54.2 by the Supplier shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 54, Clauses 25.5 and 25.6 shall apply.
- 54.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from this Agreement and/or 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 performance of any aspect of this Agreement.
- 54.7 Nothing in this Clause 54 in any way waives, limits or amends any obligation of the Supplier to the Purchaser arising under this Agreement and the Supplier's obligation to perform this Agreement remains in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 54.
- 54.8 The Supplier confirms that, for the duration of this Agreement, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

55. BEST VALUE

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

56. WORK RELATED ROAD RISK

56.1 Definitions

For the purposes of this Clause 56 of this Agreement, the following expressions shall have the following meanings:

"Alternative Scheme"	has the meaning ascribed to it in Clause 56.2.1 ;
"Approved Progressive Driver Training"	an ongoing programme of Drivers' training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment (including on-road experience from a cyclist's perspective) which is required to be completed at least once every 5 years;
"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;
"Category N2 HGV"	a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
"Category N3 HGV"	a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;
"CLOCS Standard"	the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: www.clocs.org.uk
"Collision Report"	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
"Delivery and Servicing Vehicle"	an HGV, 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 commercial vehicles, including vans, HGV, coaches and P2W. 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

56.4.2 The Supplier shall ensure that the conditions at all sites and locations where:

- (A) the Goods are being delivered, or
- (B) in connection with the performance of this Agreement, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N3 HGV being used in the provision of the Goods and Services.

56.5 Direct Vision Standard (DVS)

56.5.1 The Supplier shall comply with the DVS Schedule attached to this Agreement.

56.5.2 The Supplier shall ensure that:

- (A) all Category N3 HGVs used in the provision of Goods and Services achieve a minimum of a one (1) star Direct Vision Standard rating; and
- (B) from and including 26 October 2023 all Category N3 HGVs used in the provision of the Goods and Services achieve a minimum of three (3) star Direct Vision Standard rating.

56.6 Driver Training

Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, the Supplier shall ensure that each of its Drivers attends Approved Progressive Driver Training throughout the term of the Agreement.

56.7 Collision Reporting

Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, the Supplier shall 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.

56.8 Self Certification of Compliance

Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, within ninety (90) days of the Commencement Date, the Supplier shall provide a written report to Purchaser detailing its compliance with Clauses 56.2, 56.3, 56.4 and 56.5 (as applicable) of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Purchaser on each six month anniversary of its submission of the initial WRRR Self-certification Report.

56.9 Obligations of the Supplier Regarding Subcontractors

The Supplier shall ensure that those of its Subcontractors or suppliers who operate Category N2 HGVs, Category N3 HGVs, Vans and/or Car-derived Vans

to provide the Goods shall comply with the corresponding provisions of this Agreement:

56.9.1 comply with Clause 56.2; and

56.9.2 where its Subcontractors or suppliers operate the following vehicles to provide the Goods shall comply with the corresponding provisions of this Agreement:

(A) Clauses 56.2, 56.4, 56.5 and 56.6; and

(B) For Category N2 HGVs – Clause 56.3;

(C) For Category N3 HGVs - Clause 56.3,

as if those sub-contractors were party to this Agreement.

56.10 Failure to Comply

Without limiting the effect of any other clause of this Agreement relating to termination, if the Supplier fails to comply with any of Clauses 56.2, 56.3, 56.4 (if applicable), 56.5 (if applicable) 56.6 and/or 56.7:

56.10.1 the Supplier has committed a material breach of this Agreement; and

56.10.2 the Purchaser may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by Purchaser for any purpose (including but not limited to deliveries).

57. ACCESS

57.1 The Purchaser shall give the Supplier access to the parts of the LUL Network required for the performance of this Agreement in accordance with the provisions of this Clause 57.

57.2 Subject to the provisions of this Clause 57, the Purchaser shall use reasonable endeavours to give access to such parts of the LUL Network to the Supplier on the dates and times on which it has stated that it requires such access.

57.3 The Supplier acknowledges that the Purchaser does not guarantee uninterrupted or exclusive possession to any parts of the LUL Network and that its access to some parts of the LUL Network may be limited in accordance with the Agreement.

57.4 Where the Supplier requires access to the LUL Network to carry out its obligations under this Agreement, it shall

57.4.1 apply for access at the earliest available opportunity; and

57.4.2 provide the Purchaser without delay with such additional information as the Purchaser may reasonably require in respect of the Supplier's access request.

57.5 The Purchaser shall confirm access bookings in accordance with this Clause.

- 57.6 The Purchaser does not warrant or guarantee to the Supplier that such access will be granted. If any request for access is rejected, the Purchaser shall advise the Supplier and agree with the Supplier alternative dates for resubmission. The rejection of an access request shall not entitle the Supplier to an extension of time.
- 57.7 If the Supplier fails to apply for access in accordance with this Clause 57, the Purchaser shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Agreement.
- 57.8 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access.
- 57.9 If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Purchaser setting out all details including the part of the LUL Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Supplier is aware.
- 57.10 The Supplier shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the LUL Network. The Supplier shall make good any such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Purchaser.
- 57.11 Prior to returning any part of the LUL Network to the Purchaser at the end of any period of booked access, the Supplier shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the LUL Network in a clean and workmanlike condition to the satisfaction of the Purchaser.
- 57.12 Where the Supplier is denied booked access to any part of the LUL Network through no fault of the Supplier having fully complied with the requirements of Clause 57.4, this shall constitute a Permitted Delay Event.

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

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED

was affixed to **THIS DEED**

in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

.....
Shamus Kenny
Authorised Signatory
.....

EXECUTED AND DELIVERED AS A DEED

by **DRALLIM INDUSTRIES LIMITED**

acting by: **David Mooney (Managing Director)**

Signature of Director

Print name of Director

.....
DAVID RALPH MOONEY
.....

Signature of Director/Secretary

Print name of Director/Secretary

.....
JOHN MARTYN STAPLEHURST
.....

17 APPENDIX B – SCHEDULE OF DELIVERABLES

Schedule of Deliverables - Document Number - UIP3535-TFL-POW-A000-SCH-RS-00001				
No	Deliverable	Description	Acceptance Criteria	
1	Compliance Statement	Document clearly defining any proposed deviations from or required clarifications to the SRS	Signed off by LU Project Manager with no outstanding issues	
2	Initial Design Concept (CDS)	Initial design drawings, sketches, reports showing principle of proposed operation. Declaration of assumptions, design constraints, non-conformances	Signed off by LU Project Manager with no outstanding issues	
3	Design Review	Review of initial design with LU to discuss compliance with requirements and Standards. Supplier to price on attendance at the design review meetings.	Signed off by LU Project Manager/Lead Engineer with no outstanding issues	
4	Design Risk Assessment	Equipment Supplier's assessment of how failure of individual components within the P-CRID produces a positive failure indication.	Signed off by LU Project Manager/Lead Engineer with no outstanding issues	
5	Approval in Principle of Conceptual Design	The approval in principle of the Conceptual Design Statement that the designs have been accurately translated into the contract drawings and that the calculations and drawings have been checked within the design section.	Signed off by LU Project Manager with no outstanding issues	

6	Detailed Design Drawings	Manufacturing drawings, report, showing all details of P-CRID. Drawings of the physical arrangement and the schematic diagrams of all the circuitry. ALL drawings shall be in accordance with LU	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
		S1036 and S1037.	
7	Design Management Plan	Provision of Design Requirements with the milestone activities as outlined in the SRS identified	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
8	Project Execution Plan	This document acts as the central reference document for managing all aspects of the execution of the P-CRID Project – including project management, engineering / technical management, construction management, health, safety, environment and sustainability management, procurement, maintenance readiness, operational readiness and stakeholder management. This document supports compliance with the CDM 2015 Regs	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
9	Verification Activity Plan	This product describes the verification activities the supplier intends to carry out to gain assurance that requirements are being met, risks are being managed and that the expected benefits are realised to meet LU satisfaction	Signed off by LU Project Manager/Lead Engineer with no outstanding issues

10	Design Compliance	The works to be delivered by this project have been designed in accordance with LU requirements, standards and Railway Safety Principles and Guidance (apart from agreed deviations), and meet the relevant regulations and other applicable standards	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
11	Assurance Plan	Equipment Supplier's statement of their process to ensure compliance with LU Procedure in S1538 Assurance	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
12	RAM Plan	Provision of RAM Plan clearly showing how the P-CRIDs will fulfil the reliability, availability, maintainability and safety requirements through the design, construction and handover process.	Signed off by LU RAM Engineer with no outstanding issues
13	Engineering Management Plan	Provision of an ESMP clearly showing how the P-CRIDs will fulfil the safety requirements through the design, construction and handover process.	Signed off by LU Safety Engineer with no outstanding issues
14	Review of Final Designs	Review of final designs with LU to ensure full compliance with requirements and Standards. Supplier to price on attendance at the design review meetings.	Signed off by LU Project Manager/Lead Engineer with no outstanding issues

15	Human Factors Integration Plan	Plan to identify how and when Human Factors requirements and risks are going to be managed during the Design (for the CDM 2015 Regulations stages and including Operations) and how evidence of compliance shall be provided. Supplier to contribute to and review LU produced and managed Plan. The product shall comply with the requirements of the Human Factor Integration Plan.	Signed off by LU HF Engineer with no outstanding issues
16	Human Factors Issues Log	This document provides the management tool for the provision of HF Approval in support of Project Assurance Submissions. The document shall detail all Human Factors related deliverables, the Human Factors risks, issues and recommendations raised during the design process [for P-CRID] and how they have been addressed by the Project, taking into account the Project Scope. Supplier to contribute to and review LU produced and managed Log. The product shall comply with the requirements of the Human Factor Issues Log.	LU HF Engineer to undertake and Supplier to review and accept
17	Production Plan	Production Plan showing manufacturing milestone events as outlined in the SRS	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
18	EMC Plan	Preparation of EMC plan showing how the P-CRID will not cause undesirable or harmful effects to other system users and will not	Signed off by LU EMC Engineer with no outstanding issues

		be adversely affected by existing railway equipment.	
19	EMC Technical Document	Preparation of a Technical Document is required for selfcertification / UKCA marking. The purpose of the technical construction is to provide technical documentation for the product to demonstrate conformity for the relevant legislation.	Signed off by LU EMC Engineer with no outstanding issues
20	Factory Acceptance Test of P-CRIDs (FATS)	Report and test results after factory testing of prototype P-CRIDs demonstrating how component failure manifests itself.	Signed off by LU Project Manager/Lead Engineer/AO with no outstanding issues
21	Field Trials of P-CRIDs	Prototype P-CRIDs available for visual inspection and testing at non passenger locations	Signed off by LU Project Manager/Lead Engineer/AO with no outstanding issues
22	Delivery of P-CRIDs for installation by others	<p>Pre-production P-CRIDs to be handed over to LU for trials under operational conditions. The Equipment Supplier's nominated Engineer shall participate in the field trials. The on-going test measurements and results should be in the form of detailed test reports containing as a minimum the following:</p> <ul style="list-style-type: none"> •detail of the test methods •details of test equipment used (including calibration dates and certificates) •results •any corrective action •scope and results of any retesting 	Signed off by LU Project Manager/AO with no outstanding issues

			•test conclusion	
23	Final Design Package		Complete Final Design Package to enable full production of the units by Supplier or any other third party.	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
24	Preliminary Schedule Maintenance		The schedule should contain as a minimum but not limited to the following: list of safety related parts and related actions; Maintenance frequencies, specific tooling needed, procurement of spare parts; Estimated lead time to maintain versus resources	Signed off by LU Project Manager/AO with no outstanding issues

25	Operation & Maintenance Manuals	<p>O & M Manuals the self-testing P-CRID will be operated and maintained. One electronic copy, in unprotected PDF format, of a comprehensive operation and maintenance manual shall be supplied to LU.</p> <p>The O&M shall also include a full set of drawings and all drawings shall be in accordance with LU S1036 and S1037.</p>	Signed off by LU Project Manager/AO with no outstanding issues
26	Training Strategy	The Supplier shall produce a robust Training Strategy covering items such as Training Needs Assessment, Learning Objective and Training Material as a minimum	Signed off by LU Project Manager/AO with no outstanding issues
27	Training for Operators	Practical training on the use of the new P-CRID for LU Operators	Signed off by LU Project Manager/AO with no outstanding issues
28	Training for Maintainers	Practical training for LU specialist maintainer for the ongoing routine inspections, servicing, testing, repair and calibration of PCRIDs. Supplier to prepare syllabus and train for LU staff to a level that they can roll-out the training to LU - i.e. train LU Trainer	Signed off by LU Project Manager/AO with no outstanding issues
29	Specialist Equipment	Delivery of any equipment necessary for specialist maintainer's ongoing routine inspection, servicing, testing, repair and calibration of P-CRIDs.	Signed off by LU Project Manager with no outstanding issues
30	Supply Chain Support	Supply chain plan indicating how components and spare parts will be obtained. This shall include any dependencies on other	Signed off by LU Project Manager with no outstanding issues

		Supplier.	
31	Bill of Materials (BOM)	Prepare BOM that will be used by the Supplier to the current production configuration of the product. ALL Commercially Off the Shelf (COTS) products used for the Design and Manufacture shall be clearly listed along with its manufacturers' details	Signed off by LU Project Manager/AO with no outstanding issues
32	DFMEA and FMEA	A Risk analysis shall be performed to demonstrate the effectiveness of the proposed circuit arrangement at block level to obtain a "Fail Safe" arrangement for the detection of the presence of traction current based on its functionality	Signed off by LU Project Manager/Safety Engineer with no outstanding issues
33	Gerber Files	All Gerber files shall be sent to LU as Handover package part of O&M deliverables and these files shall be submitted to LU electronically	Signed off by LU Project Manager/CAD Team with no outstanding issues

34	Software used in the PCRID	<p>If Software is used in production of the PCRID, it shall be produced to LU S1210.Safety-Related Software standard. Modular programming shall be used in order to simplify software, which shall be flexible to enable the introduction of new revised software, with minimal re-writing of remaining programs. The Supplier shall provide valid licences to use the installed software. The Software Licenses shall be licences to use the software for the purpose of using the system only and for no other purpose. A detailed list of all software used in the system and licensing arrangements for each application is to be provided, together with copies of all software to submit to LU Electronically. The Supplier shall place the source Code of the Supplier's software in escrow with the National Computing Centre, Manchester, on the terms of</p>	Signed off by LU Project Manager/Lead Engineer with no outstanding issues
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		its standard tripartite agreement.	
35	Reliability Calculations (MTBF, MTTR, MTTF)	<p>This is looking into "end to end system" in regard to MTBF and MTTR and maintenance issues. The calculations shall demonstrate that the system will perform its required function as per SRS Document</p>	Signed off by LU Safety Engineer with no outstanding issues
36	System Assurance Plan	<p>The aim of System Assurance is to ensure that PCRID system meets the non-functional requirements such as HF, EMC, RAMS etc.....and will be accepted by LU</p>	Signed off by LU Safety Engineer/Lead Engineer with no outstanding issues

37	System Safety Case	This is to provide evidence for the safety of the system developed draws on safety records kept throughout the project and to assure the project, LU and safety authorities that it has met its statutory obligations to reduce safety risk to a level ALARP - this deliverable will be part of DRACCT submissions	Signed off by LU Safety Engineer/Lead Engineer with no outstanding issues
38	DRACCT Submissions	As per LU S1538, all items to which Schedule 4 of ROGS "Written Safety Verification Requirements" applies shall be reviewed by the LU Directors' Risk Assurance and Change Control Team (DRACCT). Submissions to DRACCT shall be made by the LU sponsor via the DRACCT Secretariat.	LU to submit to DRACCT for approval with Supplier providing all necessary Safety Case documentation to support the submissions
39	Value Engineering	This is to demonstrate various options have been proposed and reviewed to determine the most cost-effective product to meet safety and functionality requirements described in SRS Document, whilst maintaining a good Engineering practice.	Signed off by LU Project Manager with no outstanding issues
40	Test Plans	A Test plan to list the equipment which shall be subject to inspection and testing to be submitted to LU for approval and	Signed off by LU Project Manager/AO with no outstanding issues
		further detail shall be provided in FAT and SAT	
41	Type Test Report	For all Type Testing, test reports shall be produced for LU review and approval	Signed off by LU Project Manager/AO with no outstanding issues

42	Soak Test Requirements	<p>If software is used, Soak Testing is required to measure performance of the software application and to ensure whether the software application sustains high volume of usage. A Test specification shall be prepared by the Supplier and submitted to LU for approval, 28 days in advance of the Test commencement date.</p>	Signed off by LU Project Manager/AO with no outstanding issues
43	FAT Requirements	<p>Factory Acceptance Tests (FAT) shall be carried out before shipment to site of material to verify that it and its components are fit for its or their intended use and otherwise complies with the design. Upon completion of testing the Supplier shall issue the completed test records duly signed off with a Factory Acceptance Certificate (FAC) for the approval of LU. A FAT specification shall be prepared by the Supplier and submitted to LU for approval, 28 days in advance of the FAT commencement date.</p>	Signed off by LU Project Manager/AO with no outstanding issues
44	Routine Requirements Testing	<p>Each item of equipment shall be tested in the factory to ensure correct function in accordance with the equipment specification. Routine test certificates shall be supplied by the Supplier in advance of site installation works. A production test specification shall be prepared by the Supplier and submitted to LU for approval, 28 days in advance of the Test commencement date.</p>	Signed off by LU Project Manager/AO with no outstanding issues

45	Site Testing Specification	<p>The Supplier shall carry out Site Integration Tests on the supplied systems/equipment to the satisfaction of LU. The Test shall be undertaken after integration with each of the interfaced systems. The system testing shall demonstrate the functionality of the interfaces is in accordance with the interface specifications produced by the Supplier. A Test specification shall be prepared by the Supplier and submitted to LU for approval, 28 days in advance of the Test commencement date.</p>	Signed off by LU Project Manager/AO with no outstanding issues
46	Obsolescence Management	<p>This is essential to achieve optimum cost effectiveness throughout the lifecycle of a product. Obsolescence Management should also include the maintenance of the relevant knowledge and skill base sets. The Supplier shall produce an Obsolescence Management plan.</p>	Signed off by LU Project Manager/AO with no outstanding issues
47	Illustrated Component Lists	<p>To provide a comprehensive list of components used to Design and Manufacture of the PCRID. Components shall be Open Platform Communication (OPC) and Supplier shall provide list of subSupplier of the components purchased and to specify if components are COTS products and shall avoid singled source subSupplier where possible.</p>	Signed off by LU Project Manager/AO with no outstanding issues

48	Recommended Spares List	The Supplier shall provide an itemised and priced list of spares with the tender. Sufficient spare modules and components required to support the equipment for 2 years' operation, or a minimum of one, whichever is the greater, shall be supplied at the same time as delivery of the equipment to be installed	Signed off by LU Project Manager/AO with no outstanding issues
49	Maintenance Requirements List	The Supplier shall propose a list of recommended special tools and test equipment necessary for installation, commissioning, operation and maintenance the equipment supplied under this contract. The Supplier shall propose the list at tender stage. The recommended special tools and test equipment shall be included within scope of supply and be supplied prior to commissioning.	Signed off by LU Project Manager/AO with no outstanding issues
50	As Built Documentations	Post handover the Supplier shall provide as-built information, including H&S file, as details in the contract. The supplier may wish to follow LU Guidance G1353 Production Drawings, Red Line Information and As-Built Drawings	Signed off by LU Project Manager/AO with no outstanding issues
51	Delivery Requirements	The supplier shall provide LU with a methodology for planning the packaging, storage, handling and delivery of the PCRIDs for comment and approval prior to any shipping of the PCRIDs	Signed off by LU Project Manager/AO with no outstanding issues
	AO = Asset Operations (LU)		

SCHEDULE 2: CONTRACT MANAGEMENT

PART A : PROJECT EXECUTION PLAN

The Supplier is required to submit their proposed Project Execution Plan ("PEP") in the following format as a response to each of the individual deliverability submissions listed below. This PEP and any attached documents must be fit for inclusion in the Agreement as appropriate.

When the content of the PEP is approved by the Purchaser, it shall become the agreed PEP.

The agreed PEP will then be a working document for the duration of the Agreement. As such additional information will be added to the PEP from time to time.

The Supplier's PEP shall detail how the Supplier will manage the Design, manufacture and supply of all items of Goods and the Services in accordance with this Agreement. The PEP will set out the management structure that will be responsible and accountable for all items of Goods and the Services.

For the avoidance of doubt, this PEP will cover the duration of this Agreement, unless otherwise stated in this Schedule 1B Part A.

1. TRAINING STRATEGY

- 1.1 The Supplier shall provide a training strategy which shall outline how the Supplier will deliver Training Services in line with Schedule 18 (*Training*).

2. PROJECT GOVERNANCE PLAN

The Supplier shall produce a project governance plan, which shall include the following:

2.1 Governance Arrangements:

- 2.1.1 the Supplier's agreed internal governance process for the Design, manufacture and acceptance of the Goods, all items of Goods and the Services, and Variations to the delivery of the Supplier obligations under this Agreement;

- 2.1.2 (for the delivery of its obligations under this Agreement) the Supplier's agreed internal project controls including but not limited to the following:

- (A) organisation (responsibilities for project controls);
- (B) scope management (including requirements management, and configuration management);
- (C) change control (including design change control);
- (D) estimation of any Variations; and
- (E) the delivery of section 13 of the Specification in accordance with Schedule 1A of this Agreement;

- 2.1.3 details of the Supplier's project boards, or equivalent, that may affect the delivery of the Goods and the Services, including any terms of reference;

2.1.4 details of resources, processes, and procedures that will:

- (A) ensure that project progress is reviewed, assessed and reported on; and
- (B) demonstrate how all aspects of the development of the Goods and Services, requirements compliance and project risk are communicated to and agreed with the Purchaser.

2.2 Project Organisation:

2.2.1 a completed copy of the table set out below;

Role	Person	Directorate / Organisation	Commitment (hrs/wk)	Key Personnel (Y/N)
Project Manager SPOC Commercial			Variable as required	Y
Technical Lead SPOC Technical			Variable as required	Y
Engineer			Variable as required	Y
Engineer			Variable as required	Y
QHSE Engineer			Variable as required	Y
Technical Support			Variable as required	Y
Production Control / Procurement Lead			Variable as required	Y
Production Engineering			Variable as required	Y
Manufacturing Lead			Variable as required	Y
Test Engineer			Variable as required	Y
Validation Engineer			Variable as required	Y

2.2.2 an organisational chart showing a hierarchical management chart; and

2.2.3 key interfaces (including with the Purchaser, regulatory and approving bodies, sub-suppliers and other stakeholders).

3. DATA MANAGEMENT & COMMUNICATION PLAN

3.1 The method of data sharing and communication between the Supplier and Purchaser during this Agreement shall be the online contract management tool 'ASITE'. The Purchaser will provide the licences for 'ASITE' to the Supplier's Key Personnel at no charge.

- 3.2 The Supplier shall produce a data management and communication plan, which shall include:
- 3.2.1 document control;
 - 3.2.2 methods of communication;
 - 3.2.3 use of interface notices in accordance with Schedule 3A of this Agreement; and
 - 3.2.4 periodicity of meetings with the Purchaser, which shall be in accordance with paragraphs 3.3 and 3.4 of this Schedule 1B Part A.
- 3.3 A 2 weekly status review meeting shall be held in a manner, method and location which is agreed by both Parties. These meetings will include, but not be limited to:
- 3.3.1 current project status;
 - 3.3.2 a four (4) week look ahead review of the Contract Programme;
 - 3.3.3 reviewing any outstanding project communications;
 - 3.3.4 highlighting any additions to the Supplier Risk Register.
- 3.4 A project review meeting shall be held every four (4) weeks from the Commencement Date, in a manner, method and location which is agreed by both Parties (the "**Project Progress Meetings**"). Project Progress Meetings will include, but not be limited to:
- 3.4.1 a presentation from the Supplier on the current project status;
 - 3.4.2 a health, safety and environmental review;
 - 3.4.3 a review of the Contract Programme;
 - 3.4.4 a review of any outstanding project communications;
 - 3.4.5 a review of the Supplier Risk Register;
 - 3.4.6 a review of key performance indicators;
 - 3.4.7 a review of outstanding issues list; and
 - 3.4.8 a review of the change control log;
- 3.5 Three (3) days in advance of the Project Progress Meetings, the Supplier shall provide the Purchaser with a current progress report containing details of the design, manufacture, supply, testing, development and implementation of all items of Goods and the Services including but not limited to the following:
- 3.5.1 a report recording performance against specific key performance indicators, as agreed with the Purchaser;
 - 3.5.2 an updated Contract Programme with a specific report including but not limited to:
 - (A) all changes to critical path from previous update;

- (B) changes in activity float; and
 - (C) Milestone report;
- 3.5.3 a brief narrative describing progress since the previous report including photos and videos if required; and
- 3.5.4 progressed details and update on all items and infrastructure required to deliver the Goods and the Services (such as all spares, and long lead items).
- 3.6 Where required the Supplier may be requested to take part in a further meetings with the Purchaser during term of this Agreement, at the Purchaser's discretion. The topics of such meetings will include but are not limited to:
 - 3.6.1 reactions to commercial meetings via the ASITE process;
 - 3.6.2 arising issues;
 - 3.6.3 risk reduction reviews; and
 - 3.6.4 Outstanding Issues List (OIL).
- 3.7 If a Party submits an early warning notice to notify the other Party of a particular risk or issue in advance, then the Parties shall convene a risk reduction meeting within three (3) to five (5) Working Days to formally address and resolve the issue.

4. RISK

The Supplier shall produce a risk management plan as further detailed in Schedule 1B (*Contract Management*) Part B (*Risk Management*).

PART B : RISK MANAGEMENT

1. GENERAL

- 4.1 The Purchaser's risk management policy recognises that managing risk is critical to the successful delivery of this project, and the Purchaser has implemented a programme wide risk management framework to enable effective and efficient risk management ("Risk Management Framework").
- 4.2 The Supplier shall carry out its own risk management activities in accordance with the Risk Management Plan to meet the requirements of Schedule 1B.
- 4.3 The Supplier shall provide assurance to the Purchaser that any risks associated with the Design, manufacture, testing, commissioning, delivery and product Acceptance of all items of Goods under this Agreement are fully recognised, understood and effectively controlled. The Supplier shall involve the Purchaser in;
- 4.3.1 the review and management of all risks identified under this Agreement; and
- 4.3.2 the implementation of the risk Management Plan
- 4.4 The Purchaser shall hold quarterly joint review meetings with the Supplier to review the supplier Risk Register and discuss any risks that the Supplier is responsible for managing. The Purchaser shall be entitled from time to time to instruct the Supplier to attend additional ad-hoc risk review meetings.
- 4.5 Any general information related to risk that the Supplier develops pursuant to its obligations under this Schedule 1B Part B shall be in addition to (and will not replace) the Supplier Risk Register. In the case of any conflict between such general information and the Supplier Risk Register, the contents of the Supplier Risk Register will prevail.

2. RISK MANAGEMENT OBJECTIVES

The Purchaser's Risk Management aims to ensure that:

- 2.1 any risks associated with the Design, manufacture, testing, commissioning, delivery and Product Acceptance of all items of Goods under this Agreement are identified, assessed and managed by the appropriate people in a consistent and cost-effective manner;
- 2.2 the Supplier, the Purchaser and any other relevant stakeholders (including industry partners and insurers) are provided with appropriate and reliable risk information in order to provide assurance that any risks are being effectively dealt with; and
- 2.3 the Supplier's practices are fully aligned with and demonstrably meet the Purchaser's requirements in relation to risk management.

3. RISK MANAGEMENT PLAN

- 3.1 Within four (4) weeks of the Commencement Date, the Supplier shall produce a draft risk management plan and submit the draft risk management plan (in accordance with the requirements set out in paragraph 3.2 below) to the Purchaser for the Purchaser's approval. The Purchaser shall notify the Supplier in writing within four (4) weeks of the date of submission whether it:
- 3.1.1 approves the draft risk management plan; or

- 3.1.2 requires the Supplier to make further revisions to the draft risk management plan (and the Purchaser shall provide details of such revisions in writing to the Supplier).

If the Purchaser requires the Supplier to make further revisions to the draft risk management plan in accordance with paragraph 3.1.2, the Supplier shall submit a revised draft to the Purchaser for approval no later than the date falling four (4) weeks after the Supplier's receipt of the Purchaser's required revisions.

- 3.2 The draft risk management plan shall describe how the Supplier will meet its obligations under this Schedule 1B Part B. The draft risk management plan may include details of existing corporate procedures, plans or other documents that the Supplier shall use to deal with risk, provided that such procedures, plans or documents:

- 3.2.1 comply with all Applicable Laws and all applicable LU Standards; and

- 3.2.2 comply with the terms and conditions of this Agreement.

- 3.3 Upon the Purchaser's approval for the draft risk management plan, the draft risk management plan shall become the "**Risk Management Plan**" for the purposes of this Agreement.

4. RISK MANAGEMENT REQUIREMENTS

4.1 General

The Supplier shall provide the Purchaser with a procedure or other appropriate document that describes the activities that the Supplier will undertake in order to manage all of the risks associated with performing the Supplier's obligations under this Agreement. The purchaser may, at its sole discretion, allow the Supplier to submit the Risk management Plan in fulfilment of this requirement.

4.2 Accountabilities and Responsibilities

The Supplier shall:

- 4.2.1 define clear accountability for the management of risk within the Supplier's organisation and for the maintenance of the risk management process;

- 4.2.2 ensure that risk management is carried out fully within its teams and ensure that key staff have an appropriate level of competency and training in risk management;

- 4.2.3 make available adequate competent specialist resource to ensure that risk management obligations are met.

4.3 Deliverables

In addition to any plans or documents detailed elsewhere in this Schedule 1B, the Supplier shall produce the following deliverables:

- 4.3.1 A risk management plan describing the activities required to manage risk associated with supplying each item of Goods and performing the Services under the Agreement.

- 4.3.2 A register of significant risks (the "Supplier Risk Register") to be used for discussion with the Purchaser. The Supplier Risk Register will reflect those risks inherent in this Agreement that the Supplier considers are material to the Agreement's objectives and that are necessary to provide assurance to the Purchaser that the key risks are being appropriately managed. This will form the basis of meetings with the Supplier and Purchaser to jointly review the risks.
- 4.3.3 A regular report of the key risks and risk management actions based on the Supplier Risk Register described above and presented in a format accepted by the Purchaser.
- 4.3.4 Comprehensive records to demonstrate the application of continuous risk management practices (e.g. records of meetings, approvals).
- 4.3.5 Other reports, KPIs and measures as required to ensure the effective management of risks under this Agreement.

4.4 Governance

The Supplier shall, on a quarterly basis jointly review with the Purchaser all key risks and the Supplier's performance in regards to risk management.

- 4.4.1 review the Supplier Risk Register
- 4.4.2 review all the risks that are the responsibility of the Supplier to manage
- 4.4.3 communicate to each other any emerging risks and determine the Party who is best placed to manage that risk

4.5 Quantified Risk Assessment

The Supplier shall provide assistance to the Purchaser in undertaking cost and schedule risk assessments by contributing to workshops and advising on quantitative assessment of risks as required.

4.6 Communication

The Supplier shall make the Purchaser aware of any significant changes to existing risk information including scoring, new emerging risks, status, etc.

4.7 Systems

- 4.7.1 The Purchaser shall implement Active Risk Manager ("ARM") as its Programme wide risk management system.
- 4.7.2 The Purchaser acknowledges that ARM is a costly system to implement. The Purchaser therefore does not expect the Supplier to implement ARM under this Agreement. The Supplier shall provide to the Purchaser for the Purchaser's approval details of an alternative system for maintenance and management of risks no later than four (4) weeks after the Commencement Date.

SCHEDULE 3: CONTRACT PROGRAMME

PCRID	Contractual date	Key Date
Commencement Date	03/04/2023	
Milestone 1 - SRS Acceptance Design Approval		19/05/2023
Milestone 2 - Concept Design Approval		21/07/2023
Milestone 3 - Detailed Design Approval		10/05/2024
Milestone 4 - Prototype Design Approval		04/10/2024
Supply of Design Manuals		14/02/2025
Supply of Installation Instructions		14/02/2025
Milestone 5 - Pre-Production Design Approval (Product Type Acceptance)	06/06/2025	
Unit Acceptance of delivery (Contractual Date)	14/08/2025	

SCHEDULE 4: SPARES

PART A : MAINTENANCE SPARES

Maintenance Spare	Quantity
<p><i>The Supplier will allow for all spares required to comply with its obligations in respect of warranting Quality and Quantity all as per Clause 11, with a minimum Maintenance spares threshold of [REDACTED]. The supplier is to ensure the adequacy of the spares volume equal or in excess of this base threshold in line with clause 11.3.</i></p>	[REDACTED]
Initial Maintenance Spares Price	
<u>Spares</u>	<u>Price per item (£)</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Total	[REDACTED]

PART B : ADDITIONAL SPARES



SCHEDULE 5: CONTRACT PRICE

Part 1 - PRICING PREAMBLES

1. PRICING INTRODUCTION

This Part 1 (*Pricing Preambles*) provides further details with respect to the Contract Price.

2. PRICING CONCEPT

2.1 The Contract Price is a fixed sum, for the duration of the Agreement, adjusted in accordance with the contractual Variation procedure. The VAT treatment of the Goods and Services pursuant to this Agreement shall be as set out in Clause 21 of this Agreement.

2.2 The Contract Price shall be inclusive of all costs and charges whatsoever and shall be deemed to include all costs, overheads, profit, risk allowances and the like required for the Supplier's performance of this Agreement.

3. PRICING APPROACH

3.1 The Contract Price shall be in £ and shall include all applicable taxes including any import/export taxes and all other statutory costs and the like but excluding VAT (which shall be dealt with pursuant to Clause 21 of this Agreement).

3.2 The rates and prices for all items and activities required for the Supplier's performance of this Agreement are deemed to be fully inclusive, and shall include (without limitation) the costs set out in paragraphs 3.2.1 to 3.2.5 below.

3.2.1 Preliminaries

The following preliminaries are included:

- (A) head office, branch office and Supplier's Works support - All head office, branch office and Supplier's Works costs directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff costs (and includes all associated overheads, communications and data costs, stationery costs, printing costs and postage costs not included in the percentage addition for overheads and profit);
- (B) all costs of temporary accommodation and sanitary facilities necessary for site staff and all associated costs (including heating, lighting, furniture, first aid, associated consumables and all other safety, health and welfare facilities);
- (C) site communications – all costs in connection with the provision of telephones and portable telephones including installation costs, rental and calls, costs of usage of public telephones and other communication equipment and consumables required to enable the Supplier to perform its obligations under this Agreement;

- (D) training requirements including course and examination fees, all costs of staff attending medical examinations and training courses to enable the Supplier to perform its obligations under this Agreement, and all costs of Supplier-run costs and licensing of staff; and
- (E) all costs of complying with the insurance requirements as set out in this Agreement.

3.2.2 Mobilisation

The mobilisation costs shall include (without limitation) staff costs, costs of training, recruitment, establishment of facilities, purchase of equipment, establishment of process and procedures and all other items necessary for the successful commencement of the performance of the Agreement. All costs in connection with mobilisation, set-up and the like and management thereof are deemed to be included.

3.2.3 Overheads and Profit

For the avoidance of doubt, overheads shall be deemed to include (without limitation) corporate overhead contribution, profit recovery, headquarters staff costs, Supplier offices, yards, depots and other buildings and associated plant, Supplier's equipment and vehicles, rents, rates, insurances, running, maintenance and replacement costs for the above, general and administrative head and branch office staff salaries and wages, emoluments, expenses and allowances and all other costs of employment, including costs of and allowance for motor cars, subsistence, hotels, accommodation and the like, travel and associated expenses for directors and general and administrative head and branch office staff, legal and accountancy fees and costs, any financing costs and depreciation associated with all of the above, other non-job related costs and other indirect costs incurred by the Supplier in performing its obligations under this Agreement.

3.2.4 Attendance and Reporting

The Contract Price is deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with this Agreement, including as requested by the Purchaser. The Contract Price is also deemed to include the costs of the Supplier's personnel attending any meetings.

3.2.5 Administration of Change

The Contract Price is deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with any Variation Quote, or in the costing or administering of the Variation Procedure.

Part 2 - PAYMENT

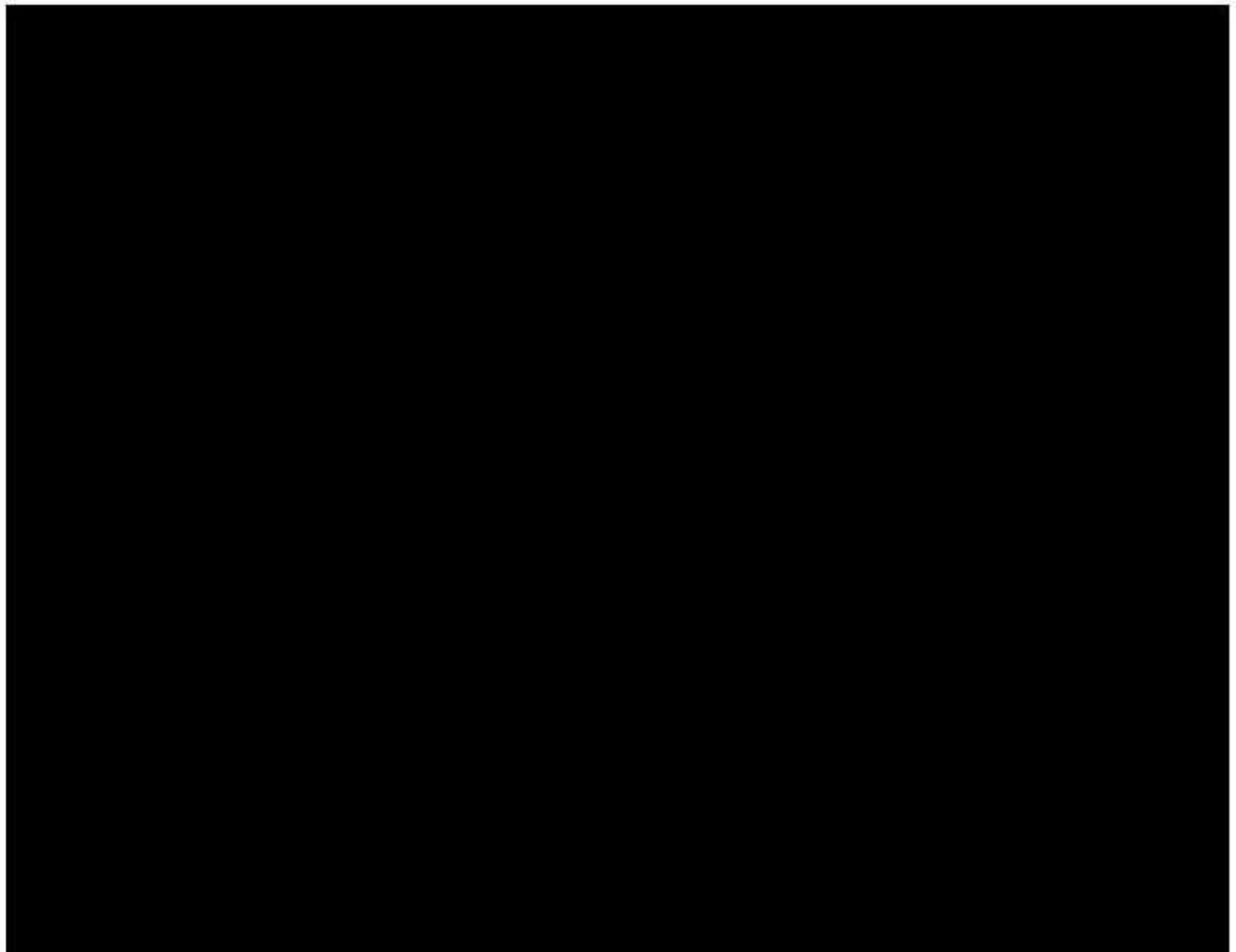
1. CONTRACT PRICE

The Supplier will be entitled to submit a payment application in respect of a Milestone Payment upon completion of all of the stated criteria, as set out in Part 4 (Payment Milestones) for each relevant Milestone.

2. VARIATIONS

- 2.1 Where a Variation varies the Contract Price, the Variation will be paid by varying the amount due at the relevant Milestone to which the Variation relates. Where the Variation relates to two or more Milestones, the value of the Variation will be divided between those Milestones, based on allocating the value of the Variation between the Milestones in proportion to the value of the Variation related to each Milestone.
- 2.2 Where a Variation varies the Contract Price and the Milestone to which the Variation relates has been paid, payment will be made by varying the amount due in respect of the subsequent Milestone.
- 2.3 Otherwise Variations will be paid once the instructed Variation has been fully completed, unless it is set out in the Variation that payment may be applied for on an interim basis.
- 2.4 Where a Variation does not relate to a Milestone, the Supplier will be entitled to apply for payment in respect of Variations at intervals of not less than a month. The Supplier may apply for payment of one or more Variations at the same time.

Part 3 - CONTRACT PRICE BREAKDOWN



Total Contract Price

£3,937,269.94

Part 4 - PAYMENT MILESTONES

- The Milestone Payments for the Design to Product Type Acceptance fixed price element of the Contract Price are:

Milestone	Payment Proportion (% of Product Development Price)	Milestone Payment Amount £	Evidence supporting milestone attainment
SRS Acceptance Design Approval			Purchaser approval of SRS Acceptance Design Review in accordance with the Specification
Concept Design Approval			Purchaser approval of Concept Design Review in accordance with the Specification
Detailed Design Approval			Purchaser approval of Detailed Design Review in accordance with the Specification
Prototype Design Approval			Purchaser approval of Prototype Design Review in accordance with the Specification
Pre-Production Design Approval (Product Type Acceptance)			Purchaser approval of Pre-Production Design Review in accordance with the Specification. Purchaser issues a valid counter-signed Product Type Acceptance Certificate in accordance with the Agreement.
Total Product Development Milestones			

2. The Milestone Payments for the Unit Acceptance element of the Contract Price is:

Milestone	Price per P-CRID Unit (XX)	Milestone Payment Amount	Evidence supporting milestone attainment
Base Order Unit Acceptance		Base Order Unit Price x No of P-CRID Units accepted	The Purchaser issues a valid counter-signed Unit Acceptance Certificate in accordance with the Agreement.
Optional Order 1 Unit Acceptance		Optional Order 1 Unit Price x No of P-CRID Units accepted	The Purchaser issues a valid counter-signed Unit Acceptance Certificate in accordance with the Agreement.
Optional Order 2 Unit Acceptance		Optional Order 2 Unit Price x No of P-CRID Units accepted	The Purchaser issues a valid counter-signed Unit Acceptance Certificate in accordance with the Agreement.

NB: Optional Order 1 Unit Acceptance is additional orders that are placed prior to Product Type Acceptance, Optional Order 2 Unit Acceptance is for additional orders placed after Product Type Acceptance.

3. The Lump Sum Payments for the Maintenance Spares element of the Contract Price is:

Milestone	Price of Maintenance Spares (XX)	Milestone Payment Amount	Evidence supporting milestone attainment
Initial Maintenance Spares Delivery			The Purchaser issues a valid counter-signed Unit Acceptance Certificate in accordance with the Agreement.
Additional (Optional Order) Maintenance Spares Delivery	Additional Maintenance Spares Price – as agreed or determined pursuant to paragraph 1.2.2 of Schedule 13 (<i>Optional Orders</i>)	[Additional Maintenance Spares Price – as agreed or determined pursuant to paragraph 1.2.2 of Schedule 13 (<i>Optional Orders</i>)]	The Purchaser issues a valid counter-signed Unit Acceptance Certificate in accordance with the Agreement.

4. The fixed rate Support Charge for the Core Services element of the Continuing Services is:

Payment Dates	Annual Support Charge for Core Services	Support Charge Amount	Evidence supporting Lump Sum attainment
Quarter Dates following Unit Acceptance of Base Order			Provision of Core Services as endorsed by the Purchaser for the preceeding Quarter in line with the requirements of the agreement

Part 5 – VALUATION OF VARIATIONS

1. SCHEDULE OF RATES AND PRICES

The rates and prices that shall be used to determine the value of Variations in accordance with Clause 23.4 are set out in Part 6 of this O.

2. CONVERSION OF SUMS INTO STERLING

Where a sum forming part or all of the value of a Variation is not in Sterling, the Purchaser may in its discretion apply the following:

2.1 A dated invoice / quotation from the third party will form the basis of the valuation.

2.2 A currency conversion will be applied based on the Bank of England's Sterling foreign exchange reference rates as published at:

2.2.1 <http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp>

2.2.2 or such other address as may be used by the Bank of England or other body which takes over its function, as at the same date as that on the invoice / quotation.

SCHEDULE 6: KEY PERSONNEL

Role	Person	Directorate / Organisation	Commitment (hrs/wk)	Key Personnel (Y/N)
Project Manager SPOC Commercial			Variable as required	Y
Technical Lead SPOC Technical			Variable as required	Y
Engineer			Variable as required	Y
Engineer			Variable as required	Y
QHSE Engineer			Variable as required	Y
Technical Support			Variable as required	Y
Production Control / Procurement Lead			Variable as required	Y
Production Engineering			Variable as required	Y
Manufacturing Lead			Variable as required	Y
Test Engineer			Variable as required	Y
Validation Engineer			Variable as required	Y

SCHEDULE 7: FORM OF CERTIFICATES

PART A : FORM OF PRODUCT ACCEPTANCE CERTIFICATE

Purchaser		
Supplier		
Purchaser		
PRODUCT TYPE ACCEPTANCE CERTIFICATE		PAC No.	
<p>In accordance with the Agreement including Clause 7.7 (<i>Product Acceptance</i>) we hereby certify that the P-CRID Units have passed all Tests required by the Test Plan required to be performed prior to Product Type Acceptance and the Product Acceptance Criteria have been satisfied.</p>			
<p>SCHEDULE</p>			
Planned completion was		Day	Month Year
Signed		For the Supplier	Date
Signed		Purchaser	Date

PART B : FORM OF UNIT ACCEPTANCE CERTIFICATE

Purchaser
Supplier
Purchaser
UNIT ACCESS ACCEPTANCE CERTIFICATE	
In accordance with Clause 12.5 (<i>Unit Acceptance</i>) of the above Agreement we hereby certify that the P-CRID Units specified below have passed all Routine Production Tests required under the Test Plan and that the Unit Acceptance Criteria in relation to those P-CRID Units have been satisfied.	
SCHEDULE	
Planned completion was	Day Month Year
Signed	For the Supplier Date
Signed	Purchaser Date

SCHEDULE 8: FORM OF SUPPLIER GUARANTEE¹

NOT USED

¹ Consider whether a legal opinion is or may be required. This is required where the Guarantor providing the PCG/Bond is a foreign entity. Depending on the identity/standing of the Guarantor you may wish to consider whether it is necessary to insist on requiring the opinion as it is an added form of protection in respect of the Guarantor's obligations under the PCG/Bond. The form of opinion can be found as a standalone document and added as necessary.

SCHEDULE 9: STORAGE

PART A - Storage

If the Supplier is required to provide Storage for the Goods in accordance with the Agreement, including pursuant to Clause 12.3 (the "Storage Option"), the provisions of this Schedule 9 shall apply in respect of the Storage and the transportation of the Goods to and from such Storage.

General Storage condition requirements

The Supplier shall ensure that the facility used for Storage of the Goods shall as a minimum requirement:

- 4.1 store the Goods in a permanent weather proof building;
- 4.2 be safe, secure and be covered by the Required Insurances;
- 4.3 be located in mainland United Kingdom;
- 4.4 be large enough to meet the requirements of the Contract Programme in accordance with Clause 8 and Schedule 3 (*Contract Programme*) of the Agreement; and
- 4.5 be provided in accordance with the Contract Programme in Schedule 3 of this Agreement.

Should the Storage Option be exercised, the Supplier is required to provide a Storage Schedule detailing as a minimum the following:

In populating this schedule the Supplier is required to provide the following information (as a minimum) in relation to the Storage conditions for the Goods:

- (a) A proposed address for the storage facility;
- (b) Ownership details of the storage facility;
- (c) Security arrangements;
- (d) Access requirements;
- (e) The Supplier must ensure that access to the storage facility is restricted to the Supplier and the Purchaser only and not any third party;
- (f) Insurance arrangements in compliance with Schedule 10;
- (g) The environmental conditions of the storage facility should be within the specified operating parameters of the Goods, including temperature and humidity;
- (h) Storage instructions and any constraints e.g. stacking;
- (i) Details of any special equipment that may be required to get the Goods into or out of Storage;
- (j) Any and all maintenance required whilst in storage (if applicable)

All information will need to be submitted and approved by the Purchaser before use of any storage facility.

PART B – Transportation of the Goods

1. Transportation of the Goods is divided into two (2) phases:
 - 1.1 transportation from the Supplier's Works into Storage; and
 - 1.2 transportation from Storage to the Delivery Location.
2. Transportation from the Supplier's Works to the Storage facility
 - 2.1 The Manufacturer shall transport the Goods from the Manufacturer's Works into Storage in compliance with the General Packing and Delivery Instructions.
 - 2.2 When packing the Goods for transportation into Storage, the Supplier shall only use its original packing materials and product specific enclosures. The Supplier shall pack the Goods (or parts thereof) into EURO size cardboard pallets with water-proof protection (as required).
 - 2.3 The Supplier shall use truck or air freight to transport Goods into Storage, depending on lead time requirements. The Purchaser shall not incur additional costs if air freight is used instead of truck freight. The Supplier shall only use well known and reputable freight companies that have been approved by the Purchaser in writing (such approval to not be unreasonably withheld or delayed).
 - 2.4 All shipments shall be insured according to their actual value.
 - 2.5 The Supplier shall provide the Purchaser with a delivery schedule as part of the Contract Programme that sets out:
 - 2.5.1 the scheduled delivery dates for delivering the Goods into Storage; and
 - 2.5.2 the quantity of Goods that will be shipped on each scheduled delivery date
 - 2.6 When a package is received at the Storage facility, the Manufacturer's nominated personnel shall:
 - 2.6.3 check the condition of the package;
 - 2.6.4 log the time of arrival into the Manufacturer's follow-up database;
 - 2.6.5 notify the Supplier and the Purchaser in writing that the shipment has been received; and
 - 2.6.6 file all shipping documents
 - 2.7 The Supplier's change management system shall be used to report any Defects that may occur during the transportation of the Goods into Storage.
3. Transportation from Storage to the Delivery Location
 - 3.1 The Supplier shall transport the Goods from Storage to the Delivery Location in compliance with the General Packing and Delivery Instructions.
 - 3.2 When packing the Goods for transportation into Storage, the Supplier shall only use its original packing materials and product specific enclosures. The Supplier shall pack the

Goods (or parts thereof) into Euro size cardboard pallets with water-proof protection (as required).

- 3.3 The Supplier shall use a lorry or a van to transport the Goods to the Delivery Location, depending on the size of the shipment. The Supplier shall agree the method of transportation with the Purchaser as soon as reasonably possible following the Commencement Date.
- 3.4 All shipments shall be insured according to their actual value.
- 3.5 The Supplier shall provide the Purchaser with a delivery schedule as part of the Contract Programme that sets out:
 - 3.5.1 the scheduled delivery dates for delivering the Goods to the Delivery Location; and
 - 3.5.2 the quantity of Goods that will be shipped on each scheduled delivery date.
- 3.6 Delivery will be on a 'Just on time' basis to minimise Storage requirements and the Purchaser shall confirm to the Supplier's office manager at least 48 hours beforehand that it requires Goods to be taken out of Storage and delivered to the Delivery Location.
- 3.7 When the Goods are delivered to the Delivery Location, the Purchaser shall procure that:
 - 3.7.3 the site manager or supervisor at the Delivery Location signs a storage delivery slip as proof of delivery; and
 - 3.7.4 a copy of the storage delivery slip is sent to the Purchaser and the Supplier as proof of delivery-
- 3.8 Following delivery, the time of arrival shall be logged in to the Supplier's follow-up database and the Supplier shall file all other necessary shipping documents.
- 3.9 The Purchaser shall ensure that a lockable storage room is available at the Delivery Location for storing the Goods until such time as the Installer installs the Goods and conducts the Site Tests in accordance with the terms of this Agreement.
- 3.10 The Supplier's change management system shall be used to report any Defects that may occur during the transportation of the Goods to the Delivery Location.

SCHEDULE 10: INSURANCE

1. The Supplier will at its sole cost maintain the following insurances with reputable insurers throughout the duration of the Agreement or such other period specified below ("**the Required Insurances**"):
 - 1.1 Employer's liability and motor liability insurance in an amount and on terms that comply with the appropriate statutory obligations in which the Supplier operates;
 - 1.2 Public liability insurance to cover all sums for which the Supplier shall be legally liable to pay in respect of personal injury, death, illness or disease to third parties or damage to third party property. Such insurance shall be in an amount not less than £10,000,000 (ten million pounds) per occurrence or series of occurrence arising out of one event;
 - 1.3 Product liability insurance to cover all sums for which the Supplier shall be legally liable to pay in respect of personal injury, death, illness or disease to third parties or damage to third party property arising as a result of a defect, fault or flaw in the goods manufactured and/or supplied. Such insurance shall be in an amount not less than £10,000,000 (ten million pounds) in the aggregate per annum.
 - 1.4 Professional Indemnity insurance or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 1.1.2 and the product liability insurance referred to in Clause 1.1.3. Such professional indemnity insurance (or financial loss extension) shall be in an amount not less than £2,000,000 (two million pounds) including costs and expenses in the aggregate per annum with no automatic reinstatements. Such insurance shall be in effect throughout the duration of the Agreement and for 12 years following expiry or termination of this Agreement.
 - 1.5 Transit insurance in an amount sufficient to cover all risks of loss or damage (including theft and vandalism) to the Goods during transit (or being stored during a journey) by road, rail, air, sea or inland waterways, until the point that these items are delivered and unloaded to the Delivery Location.
 - 1.6 Property insurance to cover all risks of loss or damage to the Goods however and wherever it arises including whilst in Storage and whilst awaiting delivery to the Purchaser. Such insurance shall be for an amount not less than the full replacement cost and shall name the Purchaser for its rights and interests in the Goods.
2. The Supplier will:
 - 2.1 ensure that the public liability and product liability insurances extend to indemnify the Purchaser as principal;
 - 2.2 where the Insurances contain a care, custody or control exclusion, procure that the relevant policy shall be endorsed so as to delete the exclusion in respect of any assets belonging to the Purchaser (or for which it is responsible) that are used by the Supplier for the purpose of providing the Goods.
 - 2.3 prior to the Commencement Date and thereafter whenever reasonably requested by the Purchaser produce evidence to the Purchaser in the form of a broker's letter or similar

that that the Insurances are in effect and all premiums due on each policy have been paid.

In the event that any of the Insurances are cancelled or not renewed, the Supplier shall immediately notify the Purchaser and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Purchaser.

Appendix A – Supplier Insurance Certificate

SCHEDULE 11: DISPUTE RESOLUTION PROCEDURE

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

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph **Error! Reference source not found.** of this Schedule 11 (*Dispute Resolution Procedure*).

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

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

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

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

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph **Error! Reference source not found.**;

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

1. The Purchaser and the Supplier shall follow the procedure set out in this Schedule 10 (Dispute Resolution Procedure) for the management and resolution of Disputes.

2. Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.

3. Within fourteen (14) days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.

4. The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.

5. If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within fourteen (14) days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7-28 and notice has been given in accordance with paragraph 29.

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

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

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

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

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

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

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

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

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

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

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

12. The Referral Notice shall:

12.1 include the facts relied upon by the referring Party in support of its claim(s);

12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);

12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;

12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and

12.5 include the addresses of all Parties to the Dispute.

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

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

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

14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

15. The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.

16. The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

17. The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within twenty-eight (28) days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 10 (Dispute Resolution Procedure)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.

18. The Adjudicator may extend the period of twenty-eight (28) days referred to in paragraph 17 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.

19. The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.

20. The Adjudicator:

20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;

20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;

20.3 shall reach his decision in accordance with the law applicable to this Agreement;

20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;

20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;

20.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.

21. The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;

21.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;

21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;

21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;

21.5 inspect any part of the LUL Network, the Supplier's Works or the facilities of any relevant Subcontractor.

22. The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.

23. All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

24. The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 10 (Dispute Resolution Procedure).

25. After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

26. Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that

costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

27. All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.

28. All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.

29. If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

SCHEDULE 14: OPTIONAL ORDERS

1. ADDITIONAL P-CRID UNITS

- 1.1 The Purchaser shall be entitled, at any time between the date of this Agreement and the first anniversary of the achievement of Product Type Acceptance, by way of written notice to the Supplier to place an order for the manufacture of additional P-CRID Units that comply with the Product Type Acceptance Criteria, together with an additional quantity of Maintenance Spares as agreed between the Parties to support the initial operation and maintenance of those additional P-CRID Units (the "Additional Goods"), such order being an "Additional Units Order".
- 1.2 If the Purchaser places an Additional Units Order pursuant to paragraph 1.1, the Parties shall, subject to the following paragraphs, promptly thereafter meet to discuss and agree the details of the arrangements for manufacture and delivery of the Additional Goods, including, without limitation, the following matters:
 - 1.2.1 relevant adjustments to the Contract Programme to include the Key Date(s) for Unit Acceptance of the additional P-CRID Units; and
 - 1.2.2 the quantity of Maintenance Spares to be delivered to support the initial operation and maintenance of the additional P-CRID Units, together with the Base Order Units, for the period of time described in Clause 11.3, and the Additional Maintenance Spares Price payable in relation to those additional Maintenance Spares, based on the rates and prices set out in Part B (*Additional Spares*) of Schedule 4 (*Spares*).
- 1.3 If the Purchaser places an Additional Units Order with the Supplier pursuant to paragraph 1.1, the following matters shall apply in respect of those Additional Goods unless the Purchaser specifies otherwise in writing, in which case paragraph 1.4 shall apply:
 - 1.3.1 the Additional Goods shall be manufactured in accordance with the Design as developed and approved in accordance with this Agreement, and there shall be no additional or separate requirement of achieving Product Type Acceptance in respect of the Additional Goods;
 - 1.3.2 the Unit Price for each of the additional P-CRID Units shall be:
 - (A) if the notice comprising the Additional Units Order is delivered to the Supplier on or before the date of achievement of Product Type Acceptance, the Optional Order 1 Unit Price; or
 - (B) if the notice comprising the Additional Units Order is delivered to the Supplier after the date of achievement of Product Type Acceptance, but on or before the first anniversary of the achievement of Product Type Acceptance, the Optional Order 2 Unit Price;
 - 1.3.3 the limit on the Supplier's liability to the Indemnified Parties under this Agreement described in Clause 29.4.1 shall be increased by an amount equal to (i) twice the aggregate Optional Order Unit Prices payable in respect of the additional P-CRID Units, plus (ii) twice the Additional Maintenance Spares Price agreed pursuant to paragraph 1.2.2; and

- 1.3.4 save where the context requires otherwise, the Additional Goods shall be manufactured and delivered in accordance with the terms and conditions of this Agreement as if they formed part of the Base Order.
- 1.4 If the Purchaser delivers a written notice to the Supplier to place an order for the manufacture of Additional Goods that includes any specification that:
- 1.4.1 is contrary to any of the principles set out in paragraph 1.3 above; or
- 1.4.2 is delivered after the the first anniversary of the achievement of Product Type Acceptance,

such written notice shall be deemed to be a Variation Quote in accordance with Clause 23.1, and Clause 23 (*Variation Procedure*) shall apply in relation to that proposal.

2. CONTINUING SUPPORT EXTENSION

- 2.1 The Purchaser shall at its own discretion be entitled, at any time prior to the expiry of the Continuing Support Term, to inform the Supplier of its intention to extend the Continuing Support Term of the Agreement by a period of up to five (5) years.
- 2.2 Subject to paragraph 2.3, the applicable provisions of the Agreement, including but not limited to Schedule 20 (*Continuing Support*) shall continue to apply mutatis mutandis to any such extension of the Continuing Support Term (other than this paragraph 2 containing the option to extend). On receipt of such notice from the Purchaser by the Supplier, the Agreement shall be deemed extended accordingly.
- 2.3 If the Purchaser exercises its option to extend the Continuing Support Term in accordance with this paragraph 2, the Purchaser acknowledges and agrees that the Supplier's warranty as to the sufficiency of the Maintenance Spares required to be delivered under this Agreement, pursuant to Clause 11.3, shall not apply in respect of the extended Continuing Support Term.

SCHEDULE 15: QUENSH

1. For purposes of this Schedule 15 the 'Purchaser' shall be referred to as the 'Client' and the 'Supplier' shall be referred to as the 'Supplier'.

- 1.1 The Client has provided the 'Contract Menu'* an evaluation of the scope of works in the identified by the client column of the menu by providing a 'Y' or 'N'. The Client has provided information and assumptions the 'Other documents / Comments' column where applicable. The Client has signed and dated the 'Client menu (Invitation to Tender)' on the last page of the 'Contract Menu'.

In response to Schedule 15:

The Supplier shall evaluate the scope of works and provide a 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable.

Where a Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the supplier. The reference to these explanations shall be put in the 'Reference to Explanation' column of the menu.

The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.

The Client and Supplier shall:

Resolve and discuss the differences in the Client and Supplier menu selections prior to contract award. The agreed final version of the menu selections shall form a mandatory part of the Agreement and shall be complied with by all Suppliers and their Subcontractors.

- 1.2 The menu shall be subject to project version and document control. Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative. Any Variations to the 'Contract Menu' post Contract Award will be reviewed by the Client and may, at the Client's absolute and sole discretion be subject to the Variation Procedure.

SCHEDULE 16: FORM OF SUBCONTRACTOR WARRANTY

NOT USED






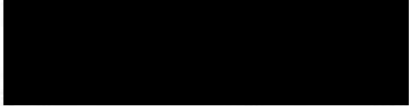
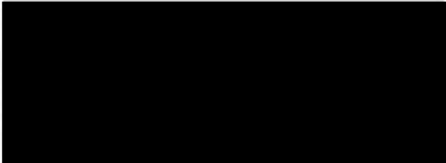

ANNEX

(Subcontract Works)

SCHEDULE 17: CONTRACT PARTICULARS

Items of Contract Particulars:

The Commencement Date is:	3 April 2023 (This could be the same date as the start date or after mobilisation)
Continuing Support Expiry Date	Three (3) years from Unit Acceptance Date of the Initial Base Order P-CRID Unit delivery
Continuing Support Extension Limit	A single extension up to a maximum of five (5) years
Base Order Units	
The Contract Price is:	£3,937,269.94
Product Development Price:	
Base Order Unit Price:	
Defect Rectification Period	
Supplier Guarantee to be provided:	Yes
Supplier Guarantor is:	
The Supplier's Works are:	
The Storage Location is:	<i>Storage Location will be agreed between the Parties acting reasonably</i>
Performance Bond to be provided:	Yes
The Purchaser is:	London Underground Limited
Under Clause 8.2.1 the programme should be in the following form:	<i>As per the instructions in Schedule 2 Contract Programme</i>
The period for the Purchaser to respond to the Supplier under Clause 7.7.2 or Clause 12.5.2 is the following number of Working Days following receipt by the Purchaser of a Product Type Acceptance Certificate or a Unit Acceptance Certificate from the Supplier in accordance with Clause 7.7.2 or Clause 12.5.2:	10 Working Days

The amount of liquidated damages payable per day under Clause 13:	
(a) Late Product Type Acceptance:	
(b) Late Unit Acceptance:	
The Purchaser's VAT registration number under Clause 21 is:	
The amount of the Performance Bond under Clause 22.2.2 is:	
The Supplier's total aggregate liability to the Indemnified Parties under clause 29.4.1 is:	
The notice details for the Purchaser / Purchaser under Clause 36.1.2 are:	Address: 5 Endeavour Square, London, E20 1JN 
The notice details for the Supplier under Clause 36.1.2 are:	Drallim Industries 
Address for Invoices	

SCHEDULE 18: RESPONSIBLE PROCUREMENT

PART A : EQUALITY AND SUPPLIER DIVERSITY

A list of equality and supplier diversity definitions can be found in Appendix 1 of this Schedule 18 Part A.

1. EQUALITY & DIVERSITY

1.1 Strategic Equality & Diversity Plan

1.1.1 For the purposes of the Agreement the expression "**Agreed Strategic Equality & Diversity Plan**" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to this Schedule 18 Part A at Appendix 2.

1.1.2 For the duration of the Agreement, the Supplier shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its Subcontractors:

(A) adopts and implements; and

(B) in respect of indirect Subcontractors uses reasonable endeavours

1.1.3 to procure that those indirect Subcontractors adopt and implement, a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as that agreed with the Purchaser and set out in the Agreed Strategic Equality & Diversity Plan.

1.1.4 Where any Subcontractor has, pursuant to paragraph 1.1.1 of this Schedule 18 Part A or otherwise, adopted a Strategic Equality & Diversity Plan, the Supplier shall procure that each Subcontractor:

(A) provides; and

(B) in respect of indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.2 Diversity Training

1.2.1 For the duration of the Agreement, the Supplier shall comply with the Agreed Diversity Training Plan in relation to all of its employees engaged in the performance of the Agreement. For the purposes of the Agreement the expression "**Agreed Diversity Training Plan**" means the diversity training plan set out as agreed and attached to this Schedule 18 at Appendix 3. The Supplier shall procure that each of its Subcontractors:

• adopts and implements; and

• in respect of indirect Subcontractors uses reasonable endeavours,

to procure that those indirect Subcontractors adopt and implement, a diversity training plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the requirement of paragraph 1.2.3 of this Schedule 18 Part A.

- 1.2.2 Where a Subcontractor has, pursuant to paragraph 1.2.1 of this Schedule 18 Part A or otherwise, adopted a diversity training plan, the Supplier shall procure that each of its Subcontractors:

- (A) provides; and
- (B) in respect of indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide,

a copy of its diversity training plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

- 1.2.3 The Supplier ensures that all of its employees engaged in the performance of the Agreement receive equality and diversity training annually and that new employees receive an equality and diversity induction within three (3) months of starting. Equality and diversity training will consist of an awareness workshop, toolbox talk or refresher course delivered with an emphasis on equality and diversity.

1.3 Supplier Diversity

- 1.3.1 For the duration of the Agreement the Supplier shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of the Agreement the expression "**Agreed Supplier Diversity Plan**" means the supplier diversity plan set out as agreed and attached to this Schedule 18 Part A at Appendix 4. The Supplier shall procure that each of its Subcontractors:

- (A) adopts and implements; and
- (B) in respect of indirect Subcontractors uses reasonable endeavours

to procure that those indirect Subcontractors adopt and implement, a supplier diversity plan in relation to the performance of the Agreement which is at least as extensive as the Agreed Supplier Diversity Plan.

- 1.3.2 Where a Subcontractor has, pursuant to paragraph 1.3.1 of this Schedule 18 Part A or otherwise, adopted a supplier diversity plan, the Supplier shall procure that each of its Subcontractors:

- (A) provides; and
- (B) in respect of Indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide,

a copy of its supplier diversity plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.4 Not Used

1.5 Monitoring and Reporting

1.5.1 Subject to paragraph 1.5.3 of this Schedule 18 Part A, the Supplier shall use reasonable endeavours to provide the Purchaser on the date of this Agreement and subsequently every 12 months from the date or such other frequency as the Purchaser may reasonably request of this Agreement with the following information:

- (A) An annual report on performance and compliance with the equality and diversity provisions as set out in paragraphs 1.1 to 1.3 of this Schedule 18 Part A. The annual report should set out:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;
 - (iv) disabled;
- (B) the performance of the Supplier over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and/or the action plan submitted for the previous 12 months in accordance with the fourth bullet point below;
- (C) the proportion of its employees engaged in the performance of the Agreement and, to the extent reasonably possible, the employees of its Subcontractors or Indirect Subcontractors engaged pursuant to the terms of the relevant Subcontracts in the performance of the Agreement who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;
 - (iv) disabled;
- (D) a statement broken down by activity and material type of how they have used and how much has been spent with:
 - (i) Small and Medium Enterprises;
 - (ii) Black, Asian and Minority Ethnic businesses;
 - (iii) Suppliers from other under-represented or protected groups;
 - (iv) Suppliers demonstrating a diverse workforce composition;
 - (v) under each Call-Off Agreement;
- (E) The Supplier's Annual Equality and Diversity Action Plan containing actions which:
 - (i) support the equality and diversity requirement within this equality and diversity compliance schedule;
 - (ii) have realistic target dates assigned and be challenging but achievable;
 - (iii) have been presented to and agreed by the Purchaser before the Agreement Service Commencement Date or during the month preceding the next Anniversary.

- 1.5.2 Progress and approval (where due) of actions will be monitored via four (4) weekly (or as otherwise agreed) progress meetings with the Purchaser. The Supplier shall provide a written update prior to the progress meetings and should request additional meetings (if necessary) with the Purchaser to discuss progress or seek sign-off for completed actions.
- 1.5.3 The Supplier shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Purchaser pursuant to paragraph 1.5.1 of this Schedule 18 Part A.
- 1.5.4 The Supplier's equality and diversity manager shall attend the equality and diversity managers meeting with the Purchaser and, if appropriate, others, on a quarterly basis to discuss:
- (A) Equality and diversity legislation, Mayor of London strategies and Purchaser policies;
 - (B) Performance & benchmarking;
 - (C) Innovations & efficiencies;
 - (D) Training.

Meetings will be hosted at venues agreed by the attendees. The meetings will be chaired by the Purchaser.

1.6 Equality and Diversity Infractions

- 1.6.1 If the Supplier or any of its Subcontractors commits an Equality & Diversity Infraction, the Purchaser shall be entitled (but not obliged) to act as follows:
- (A) if an Equality & Diversity Infraction is committed by the Supplier then the Purchaser may serve written notice upon the Supplier identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Supplier shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
 - (B) if the Equality & Diversity Infraction is committed by a Subcontractor of the Supplier, the Purchaser may serve written notice upon the Supplier identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Supplier shall procure that the Subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Supplier of such notice (or such longer period as may be specified in the notice). If the Supplier fails to procure the remedy of the Equality & Diversity Infraction, the Purchaser may serve a further written notice upon the Supplier and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Supplier shall terminate, at its own cost, the relevant Subcontract with its Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 1.1 to 1.5 of this Schedule 18 Part A.

1.6.2 It shall be a fundamental term and condition of the Agreement that the Supplier complies with its obligations under paragraphs 1.6.1(A) and (B) of this Schedule 18 Part A. Where, following receipt of a notice given pursuant to paragraph 1.6.1(A) or (B), the Supplier fails to remedy an Equality & Diversity Infraction to the satisfaction of the Purchaser or in the case of paragraph 1.6.1(B) fails to terminate the Subcontract with a defaulting Subcontractor and procure performance by another person on the terms specified in paragraph 1.6.1(B), the Supplier will be in breach of the Agreement and the Purchaser shall be entitled (but not obliged) to terminate the Agreement in accordance with Clause 25 of the Agreement.

1.6.3 For the purposes of this paragraph 1.6, "Equality & Diversity Infraction" means any breach by the Supplier of its obligations specified in paragraphs 1.1 to 1.5 of this Schedule 18 Part A and/or any failure by a Subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 1.1 to 1.3 of this Schedule 18 Part A.

1.7 Equality and Diversity Audit

1.7.1 The Purchaser or its nominee may from time to time undertake any audit or check of any and all information regarding the Supplier's compliance with paragraphs 1.1 to 1.5 of this Schedule 18 Part A. The Purchaser's rights pursuant to this paragraph 1.7.1 shall include any and all documents and records of the Supplier and its Subcontractors and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 18 Part A, indirect Subcontractors and shall include the Minimum Records.

1.7.2 The Supplier shall, maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the Agreement (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 18 Part A. The Supplier shall procure that each of its Subcontractors and, where applicable subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 18 Part A, indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the Agreement (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 18 Part A. The Supplier shall procure that each Subcontract between it and its Subcontractors and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 18 Part A, each Subcontract between its Subcontractors and any Indirect Subcontractors of the Supplier shall contain rights of audit in favour of and enforceable by the Purchaser substantially equivalent to those granted by the Supplier pursuant to paragraph 1.7.1 of this Schedule 18 Part A.

1.7.3 The Purchaser shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Supplier and each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Agreement and/or relevant Subcontract (as the case may be).

1.7.4 The Supplier shall promptly provide, and procure that its Subcontractors and, where applicable subject to the provisions of paragraphs 1.1 to 1.3 of this

Schedule 18 Part A, indirect Subcontractors 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 the Supplier's performance of the Agreement or in the relevant Subcontractor or indirect Subcontractor's performance of its Subcontract, whether the Supplier's own premises or otherwise;
- (B) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's or the relevant Subcontractor or indirect Subcontractor's obligations specified in paragraphs 1.1 to 1.5 of this Schedule 18 Part A, wherever situated and whether the Supplier's own equipment or otherwise; and
- (C) complying with the Purchaser's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Agreement or the relevant Subcontractor or indirect Subcontractor's performance of its Subcontract.

1.7.5 For the purposes of this paragraph 1.7, the expression "**Minimum Records**" means all information relating to the Supplier's performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 18 Part A and the adoption and implementation of a Strategic Equality and Diversity Plan, an Agreed Training Plan and an Agreed Supplier Diversity Plan by each Subcontractor and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 18 Part A, indirect Subcontractor of the Supplier.

Appendix 1

Equality and Supplier Diversity Definitions

General Equality and Supplier Diversity Definitions

(1) Access

The methods by which people with a range of needs find out about and apply for employment opportunities and find out about and use services and information.

(2) Black Asian and Minority Ethnic Groups

This is an inclusive term that refers to all ethnic groups who have a common experience of discrimination on the basis of their skin colour or ethnic origin.

(3) Young adults – generally defined as ages 16 – 24, whether in education or employment.

Children and young people can be further subdivided into:

- Young children – those that use the transport network escorted by parents or carers.
- School children – those, usually at secondary school, that use the transport network independently or with members of their peer group.

(4) Consultation

Any suitable means by which advice is given or views are exchanged. Consultation involves consultees in meaningful, genuine dialogue when proposals are still in the formative stage.

(5) Disability

The Disability Discrimination Act 1995 defines disability as 'a physical or mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities'.

(6) Discrimination

The law recognises two main types of discrimination, direct and indirect:

- Direct discrimination

Occurs when someone is treated less favourably than others on the basis of their race, colour, age, religion, nationality (including citizenship), marital status, sex, sexual orientation, disability, ethnic or national origin, religion or belief.

- Indirect discrimination

Occurs when a provision, criterion or practice is applied which applies equally to everyone, but can be shown to put people at a much greater disadvantage than others by reason of their race, sex, disability etc where such treatment cannot be objectively justified.

(7) Diversity

The differences in the values, attitudes, cultural perspective, beliefs, ethnic background, sexuality, skills, knowledge and life experiences of each individual in any group of people. Diversity is essentially the acknowledgement and respect of differences within and between groups of people and or organisations. The primary differences that are recognised legislatively are age, disability, ethnicity, faith, gender and sexual orientation. However, TfL accepts that our society is diverse in numerous other ways including employment and general social condition.

(8) Equalities

A term used to refer to all work addressing issues of discrimination and disadvantage, particularly as it relates to age, disability, faith, gender, race or sexual orientation.

(9) Equality

The vision or aim of creating a society (or aspects of society) where power and quality of life is shared equally and both individuals and groups are able to live their lives free from discrimination and oppression. The definition of equality that has been adopted by the Greater London Authority/TfL is that "an equal society protects and promotes equal, real freedom and the opportunity to live in the way people value and would choose, so that everyone can flourish. An equal society recognises people's different needs, situations and goals, and removes the barriers that limit what people can do and be." This is further explained as: "It is about what we can do to create a fairer society and recognises that equality is an issue for us all. We don't all start from the same place and to create a fairer society we need to recognise different needs. This focuses on promoting equality for those groups who enjoy legal protection against discrimination, but also for other groups who may face discrimination and disadvantage – for example, due to class or income - whose needs have often been ignored." This is the definition adopted by the Greater London Authority/TfL in 'Equal Life Chances for All' and is designed to ensure that all Londoners are able to access opportunities in all spheres without impediments.

(10) Equality and Supplier Diversity

Equality and Supplier Diversity is the terminology that will be used in TfL to relate to what has previously been defined as the 'supplier diversity' agenda. It is all embracing and reflects TfL's approach to this aspect of responsible procurement and the delivery of the Mayor's equal life chances for all agenda. This term will be used to replace "supplier diversity" in all aspects of procurement other than when it is being used to refer to specific supply chain areas activities and the supplier diversity plan. For TfL the principles of equality and diversity underpin all that we do and all that our Suppliers do on our behalf. It is about recognising differences but at the same time recognising that equality and diversity are issues for us all.

(11) Equality Impact Assessments ("EqIA")

An EqIA is a means to ensure that what TfL does as a service provider and a Purchaser meets the needs of all customers and staff. It is an exercise to test thinking and assumptions and to build in best practice at the design stage of a project. EqIAs are a statutory requirement for public sector organisations. EqIAs are used to ensure that the organisation does not discriminate and that equality is promoted whenever possible. This requires project managers to assess projects at the earliest possible stage of development to determine what if any impact the project is likely to have on the different equality and diversity target groups in London. For any project where the impact is likely to be either positive or negative it is likely that equality and diversity will be a core requirement.

(12) Ethnicity

An individual's identification with a group sharing any or all of the following: nationality, lifestyles, religion, customs and language.

(13) Equal Opportunities

The development of practices that promote the possibility of fair and equal chances for all to develop their full potential in all aspects of life and the removal of barriers of discrimination and oppression experienced by certain groups.

(14) Exemplary Employer

An employer that is at the leading edge of good practice, that people want to work for, and that offers favourable terms and conditions to its employees.

(15) Gender

The social differences between women and men that have been learned are changeable over time and have wide variations both within and between cultures. The term is often used to differentiate from 'sex' a term referring to biological differences.

(16) Gay

This term is preferable when referring to gay men or women. The word 'homosexual' (implying a condition or illness) is usually viewed as an offensive term by gay people. The word 'gay' is normally attributed to men. However at times it can be used as an all-encompassing term for gay men, lesbians and bisexual people.

(17) Inclusion

A belief in every person's inherent right to participate fully in society. The goal of inclusion is for all people to lead productive lives as full, participating members of their communities.

(18) Mainstreaming

The integration of equalities into policy, development, implementation evaluation and review. Each part of the organisation accepts its own responsibility for promoting equality of opportunity and challenging discrimination.

(19) Medical Model of Disability

The medical model looks at disability as being caused by medical symptoms. It is the impairments that prevent the person from fully participating in society, and the disabled person should adapt to fit into a non-disabled world. If this is not possible, then the needs should be met outside of mainstream society. It focuses on the disability rather than the needs of the person.

(20) Sexual Orientation

A person's emotional, physical and/or sexual attraction, and the expression of that attraction. It is believed that (or) frequent studies have found sexual orientation is possibly something you are born with, and refers to both gay and heterosexual (or 'straight') people.

(21) Social Inclusion

The position from where someone can access and benefit from the full range of opportunities available to members of society. It aims to remove barriers for people or for groups that

experience a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, poor health and family breakdown.

(22) Social Model of Disability

Disability is a social phenomenon. While many individuals have physical or sensory impairments, learning difficulties or are living with mental health, it is the way that society responds to these which creates disability and the impairment. The social model believes the 'cure' to the problem of disability lies in the restructuring of society, an achievable goal that benefits everyone.

(23) Transgendered

An acceptable term for referring to a person with a recognised medical condition known as gender dysphoria, where an individual has the desire to live and be accepted as a member of the opposite sex. Another commonly used term is 'transsexual'. The terms 'trans man' (female to male) and 'trans women' (male to female) are also acceptable.

(24) Diverse Suppliers Definitions

For the purposes of TfL's procurement equality and supplier diversity programme, "**Diverse Suppliers**" comprise the following four subsets:

- Small and Medium Enterprises (SMEs);
- Black, Asian and Minority Ethnic (BAME) business;
- Suppliers from other under-represented or protected groups;
- Suppliers demonstrating a diverse workforce composition.

The more detailed explanations of the four above subsets are given in the sections below.

Small And Medium Enterprises (SMES)

A Small Enterprise is a business which has both the following:

- 0-49 Full Time Equivalent employees;
AND EITHER
- Turnover per annum of no more than [REDACTED] in the last financial year;
OR
- Balance sheet total of no more than [REDACTED]

Medium Enterprise

A Medium Enterprise is a business which has both the following:

- [REDACTED] Full Time Equivalent employees;
AND EITHER

- Turnover per annum of no more than [REDACTED] in the last financial year;

OR

- Balance sheet total of no more than [REDACTED]

Large Enterprise

A Large Enterprise is a business which has both the following:

- [REDACTED] and over Full Time Equivalent employees;

AND EITHER

- Turnover per annum over [REDACTED] in the last financial year;

OR

- Balance sheet total of over [REDACTED]

Black, Asian And Minority Ethnic (BAME) Owned Businesses

A Black Asian and Minority Ethnic business (BAME) is a business which is [REDACTED] or more owned by members of one or more minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The monitoring ethnic classification groups used by the Purchaser for monitoring purposes are:

- White British
- Irish
- Any other White background
- Mixed White and Black Caribbean
- White and Black African
- White and Asian
- Any other Mixed background
- Asian or Asian British Indian
- Pakistani
- Bangladeshi
- Any other Asian background
- Black or Black British Caribbean
- African

- Any other Black background
- Chinese or other Ethnic Group Chinese
- Any other Ethnic Group

In respect of Bidders who are based in countries other than the UK, local definitions of ethnic classification groups will be acceptable in respect of the BAME definition.

Suppliers From Other Under-Represented Groups Or Protected Groups

A supplier from an under-represented group is one which is [REDACTED] or more owned by members of one or more of the following groups (where not covered by previous definitions):

- Women (gender)
- Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;
- Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and
- Older people (aged 60 or over), young people (aged 24 or under) (age)

A supplier from a protected group is one which is [REDACTED] or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

Suppliers Demonstrating A Diverse Workforce Composition

This relates to Full Time Equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in paragraphs 1.3 and 1.4 of Schedule 18 Part A.

PART B : ETHICAL SOURCING

1. The Purchaser is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Supplier shall comply with and shall procure that its Subcontractors (as applicable) comply with those principles of the ethical trading initiative base code (the "**ETI Base Code**") as are detailed in Appendix A to this Schedule 18 Part B, or an equivalent code of conduct (the "**Ethical Sourcing Principles**") in relation to the provision of the Goods and/or Services under this Agreement.
2. As soon as practicable following the Commencement Date the Supplier shall be registered with an ethical supplier database, such as the supplier ethical data exchange ("**SEDEX**"). The Supplier agrees that for the duration of this Agreement, it shall permit and enable the Purchaser to have access to the information relating to the Supplier that subsists in such ethical supplier database.
3. During the course of this Agreement, if the Purchaser has reasonable cause to believe that the Supplier is not complying with any of the Ethical Sourcing Principles, then the Purchaser shall notify the Supplier and the Parties shall agree an action plan in writing with appropriate timeframes for compliance by the Supplier (the "**Action Plan**") by no later than 60 Working Days from the date of the Purchaser notifying the Supplier that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Supplier.
4. Following the agreement of the Action Plan, the Purchaser reserves the right to conduct, or require to be conducted, one or more audits, (either itself or via a third-party auditor approved by the Purchaser) in relation to compliance by the Supplier with the Action Plan.
5. For the avoidance of doubt, the right of audit contained in paragraph 4 of this Schedule 18 Part B shall include without limitation the right of the Purchaser (or a approved auditor by the Purchaser) acting reasonably to undertake physical inspections of relevant sites/factories, to conduct interviews with relevant personnel and to inspect relevant documents. The Supplier shall co-operate and shall procure that its Subcontractors (as applicable) co-operate with the Purchaser in relation to all aspects of any audit.

Appendix A: The ETI Base Code

1.1 EMPLOYMENT IS FREELY CHOSEN

- 1.1.1 There is no forced, bonded or involuntary prison labour.
- 1.1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

1.2 FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING ARE RESPECTED.

- 1.2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- 1.2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.
- 1.2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- 1.2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

1.3 WORKING CONDITIONS ARE SAFE AND HYGIENIC

- 1.3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 1.3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- 1.3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- 1.3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- 1.3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

1.4 CHILD LABOUR SHALL NOT BE USED

- 1.4.1 There shall be no new recruitment of child labour.
- 1.4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.

1.4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

1.4.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

1.5 LIVING WAGES ARE PAID

1.5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

1.5.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.

1.5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

1.6 WORKING HOURS ARE NOT EXCESSIVE

1.6.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.

1.6.2 In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven (7) day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

1.7 NO DISCRIMINATION IS PRACTISED

1.7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

1.8 REGULAR EMPLOYMENT IS PROVIDED

1.8.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

1.8.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

1.9 NO HARSH OR INHUMANE TREATMENT IS ALLOWED

- 1.9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

Note on the Provisions of this Code

The provisions of this code constitute minimum and not maximum standards, and this code should not be used to prevent companies from exceeding these standards. Companies applying this code are expected to comply with national and other applicable law and, where the provisions of law and this base code address the same subject, to apply that provision which affords the greater protection.

Appendix B: Definitions

Child

Any person less than 15 years of age unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply. If however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention No. 11, the lower will apply.

Young person

Any worker over the age of a child as defined above and under the age of 18.

Child labour

Any work by a child or young person younger than the age(s) specified in the above definitions, which does not comply with the provisions of the relevant ILO standards, and any work that is likely to be hazardous or to interfere with the child's or young person's education, or to be harmful to the child's or young person's health or physical, mental, spiritual, moral or social development.

PART C: Not Used.