

LONDON UNDERGROUND LIMITED

and

DELATIM LIMITED

SPARES AND SUPPORT AGREEMENT

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SPARES AND SUPPORT AGREEMENT

DATED 28TH SEPTEMBER 2018

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** (Registered Number: 1900907), a company incorporated under the laws of England and Wales whose registered office is at 55 Broadway, London SW1H 0BD (the "**Purchaser**"); and
- (2) **DELATIM LIMITED** (Registered Number: 5475170), a company incorporated in England and Wales, whose registered office is at Unit 33, The IO Centre, Armstrong Road, London, SE18 6RS (the "**Service Provider**").

WHEREAS:

- (A) The Service Provider is experienced and qualified in providing support services and supplying spare parts in relation to data transmission systems on London Underground trains, including services of similar nature and complexity to the Services.
- (B) The Purchaser wishes to appoint the Service Provider to provide support and material supply services for the CCTV System on the terms and conditions of this Agreement.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including the recitals), unless the context otherwise requires, the following words and expressions have the following meanings respectively:

"**Additional Review Meeting**" shall have the meaning given to it in Paragraph 2.2 of Schedule 3A (Contract Management);

"**Affected Party**" shall have the meaning given to it in Clause 24.2;

"**Agreement**" means this agreement which has been signed and delivered by the Parties as a Deed and includes the Schedules;

"**Agreement Duration**" means the period commencing upon the date hereof and continuing until the Expiry Date subject to:

- (a) earlier termination pursuant to Clause 13; and/or
- (b) the Purchaser extending the Agreement pursuant to Clause 2.2;

"**Applicable Laws**" means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement or any obligations performed under it, any agreement or document referred to in this Agreement or to the Parts or Spares, including, without limitation, Industry Standards (but excluding the LU Standards), and the Railways (Interoperability) Regulations 2006;

“Bi-Annual Period” shall have the meaning given to it in Part C of Schedule 4;

"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);

"Call-Off Notice" has the meaning given in Clause 4.5.1;

"CCTV Cameras" means cameras used for closed-circuit television purposes, i.e. a TV system in which signals are not publicly distributed but are monitored, primarily for surveillance and security purposes.

"CCTV System" means CCTV Cameras, VRS Storage Media, Recorder Box, and any other equipment that enables the CCTV Cameras to record and store Recorded Footage as more particularly described under the MSA.

"Change Date" means the date set out in the Contract Particulars for the Change Date;

"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 Change Date, or any change in the application or interpretation after the Change 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 Service Provider instructing it to commence the provision of works and 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;

"Confidential Information" shall have the meaning given to it in Clause 19.1;

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

"Contract Information" means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Service Provider which shall consist of the Service Provider'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 Part A of Schedule 1 (*Special Conditions*);

"controlling interest" shall have the meaning given to it in Clause 13.1.8;

"Core Services" means the Services excluding the Optional Services;

"**Corrective Action**" shall have the meaning given to it in Clause 9.6;

"**Declaration**" shall have the meaning given to it in Clause 32.1;

"**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 (as amended);

"**Default Interest**" means interest on late payment at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time;

"**Default Package**" means an electronic and hard copy set of the following:

- (a) a list of any third party providers of Spares;
- (b) the object code for the Software;
- (c) the Supplier Documentation,

((a) to (b) above up-dated by the Service Provider in accordance with the Service Provider's obligations under this Agreement and to include details of any Variations);
and
- (d) details of the estimated and, when available, the actual annual usage of each type of Part;
- (e) an updated obsolescence plan in respect of all Spares prepared in accordance with Paragraph 1.3 of Schedule 2 Part A;

"**Design Authority**" means the entity responsible for ensuring that the CCTV System and each Part and Spare continues to comply with the Specification and for maintaining Relevant Consents following approved changes to the Design;

"**Design Life**" means the design life of the CCTV System specified in the Specification;

"**Dispute**" has the meaning ascribed to it in Schedule 6 of this Agreement;

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

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

"**Escrow Agreement**" means an agreement in the form or substantially in the form set out in Schedule 12 (*Form of Escrow Agreement*);

"**Escrow Materials**" means the Software, the Source Code and any other such materials notified in writing by the Purchaser to the Service Provider that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Service Provider's obligations under this Agreement;

"**European Railway Agency**" means the European Railway Agency established pursuant to Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16

December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) and includes any successor to all or any of its functions;

"Excepted Liabilities" means:

- (a) the Service Provider's liability for death, personal injury, or fraud, fraudulent misrepresentation or corruption;
- (b) the Service Provider's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is or is required to be insured by the Service Provider in accordance with the provisions of Clause 17;
- (c) the Service Provider's liability for Environmental Damage;
- (d) the Service Provider's liability in respect of its express obligations in relation to warranty claims pursuant to the Service Provider's obligations under Clause 11;
- (e) the Service Provider's liability in respect of any IPRs pursuant to Clause 15.5;
- (f) the Service Provider's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (g) any Default Interest on any payments falling within (a) to (g) above;
- (h) the Service Provider's liability under Clause 16.6.6 and Clause 16.6.7;
- (i) any Losses recoverable under any policies of insurance that the Service Provider 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 5 (*Insurance*) and any deductibles payable under such policies
- (j) the Service Provider'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 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 13.5;
- (k) any costs or expenses which the Service Provider is obliged to or does expend during the term of the Agreement in carrying out its obligations; and
- (l) the Service Provider'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;

"Expiry Date" means the date set out in the Contract Particulars for the Expiry Date;

"Extension Limit" means the period set out for the Extension Limit in the Contract Particulars;

"Fault" means, in relation to the CCTV System or any Part or Spare that such CCTV System or Part or Spare does not comply with the requirements of this Agreement or is not Fit for Purpose, whether in consequence of faulty design, faulty materials, bad workmanship or

negligence of, or for any other reason attributable to, the Service Provider or its employees, Subcontractors or suppliers or the employees of any of them;

"Fit for Purpose" means, in relation to any CCTV System, Part or Spare or Supplier Documentation to be provided under this Agreement:

- (a) that it complies with all requirements and provisions of this Agreement and the MSA (including the Specification);
- (b) 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 LU Standard, that there is a valid derogation from that LU Standard; and
- (c) where it is a Part and/or Spare, that if such Part or Spare is incorporated into the CCTV System, such incorporation does not prevent the CCTV System from complying with (a) or (b) above;
- (d) ;

"FM Affected Party" shall have the meaning given to it in Clause 18.1.1;

"FM Notice" shall have the meaning given to it in Clause 18.3;

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

"Force Majeure Event" means any:

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

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

"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 Change Date as coming into effect on a specified future date;

- (ii) in a draft bill or statutory instrument published on or before the Change Date;
- (iii) in a draft Industry Standard published on or before the Change Date by Transport for London, the Secretary of State for Transport, RSSB, Network Rail, or the European Railway Agency;
- (c) a prudent supplier of services and support for CCTV System on London Underground trains should have reasonably known about on or before the Change Date; and/or
- (d) otherwise arises on or before the Change Date;

"Further Warranty Period" shall have the meaning given to it in Clause 11.3;

"Goods" means the CCTV System, Parts and Spares, Supplier Documentation and other items provided by the Supplier in accordance with the MSA;

"Government Authority" means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Office of Rail and Road and the Secretary of State;

"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;

"Guarantee" means, where the Contract Particulars specify a Guarantee is required, the parent company guarantee of even date herewith of the Service Provider's obligations under this Agreement provided by the Guarantor in favour of the Purchaser substantially in the form set out in Schedule 7 (*Form of Guarantee*);

"Guarantee Event" shall have the meaning given to it in Clause 13.1.4;

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

"Indemnified Parties" shall have the meaning given to it in Clause 16.1;

"Indemnified Party" shall have the meaning given to it in Clause 16.1;

"Independent Auditor" shall have the meaning given to it in Clause 13.10.4;

"Indexation Adjustment" means the adjustment for all amounts payable hereunder as calculated in accordance with Part F of Schedule 4 (*Service Payments*);

"Indexation Base Date" means the date set out in the Contract Particulars for the Indexation Base Date;

"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 Parts or Spares which are or have been issued by the Secretary of State, Network Rail, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including the European Railway Agency and shall include, without limitation, the Rule Book, notified National Technical Rules, Railway Group Standards 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;

"Insolvency Event" in relation to any person means:

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

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights in any part of the world, including any patent, 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;

"Invoice Amount" has the meaning ascribed to it in Clause 8.8.2;

"KPIs" shall have the meaning given to it in Paragraph 1.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance" shall have the meaning given to it in Paragraph 3.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance" shall have the meaning given to it in Paragraph 4.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance" shall have the meaning given to it in Paragraph 5.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 4 Non-Conformance" shall have the meaning given to it in Paragraph 6.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance Notice" shall have the meaning given to it in Paragraph 3.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance Notice" shall have the meaning given to it in Paragraph 4.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance Notice" shall have the meaning given to it in Paragraph 5.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance Plan" shall have the meaning given to it in Paragraph 3.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance Plan" shall have the meaning given to it in Paragraph 4.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance Plan" shall have the meaning given to it in Paragraph 5.4.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Rectification Period" shall have the meaning given to it in Paragraph 3.4.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Rectification Period" shall have the meaning given to it in Paragraph 4.3.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Rectification Period" shall have the meaning given to it in Paragraph 5.4.2 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

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

"Losses" means, in the context of the definition of Excepted Liabilities, any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

"LU Standards" means the various standards documents and associated codes of practice

identified in the Specification;

"**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;

"**Management Escalation Procedure**" shall have the meaning given to it in Paragraph 2.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"**Mandatory Modification**" means a Modification which is required to be made under any Applicable Laws including, without limitation, any directive of Network Rail or any other Relevant Consents Authority and which is carried out in accordance with the Variation Procedure;

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

"**Measured Period**" means a period of three (3) months in the first instance commencing on the date of Fleet Acceptance (as defined in the MSA), and at the end of the previous Measured Period thereafter;

"**Modification**" means any variation, modification or addition to the CCTV System;

"**MSA**" means the Manufacture and Supply Agreement of even date herewith between the Purchaser and the Supplier;

"**Network Rail**" means Network Rail Infrastructure Limited (Registered Number: 02904587) a company incorporated under the laws of England and Wales whose registered office is at 1 Eversholt Street, London, NW1 2DN;

"**Non-Conformance**" shall have the meaning given to it in Paragraph 2.2 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"**Non-Conformance Notices**" means the Level 1 Non-Conformance Notice(s), Level 2 Non-Conformance Notice(s) and the Level 3 Non-Conformance Notice(s);

"**Notice of Default**" shall have the meaning given to it in Clause 13.10.1;

"**Optional Services**" means the services, work and activities, details of which are set out in Part B of Schedule 2 (*Services*);

"**Part**" means any component, furnishing or equipment forming part of the CCTV System or Spares;

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

"**Payment Certificate**" shall have the meaning given to it in Clause 8.2.2;

"**Payment Period**" means the period of time specified as the Payment Period in the Contract Particulars;

"**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 11 (*Form of Performance Bond*);

"Performance Bond Event" shall have the meaning given to it in Clause 13.1.9;

"Performance Management Regime" means, where the Contract Particulars specify that the Performance Management Regime applies, the performance management regime set out in Part C of Schedule 2 (*Services*);

"Performance Report" means a report in substantially the form set out in Schedule 9 (*Form of Performance Report*);

"Persistent Breach" shall have the meaning given to it in Clause 13.4.2;

"Potential Obsolete Spares" shall have the meaning given to it in Schedule 2 (*Services*) Part A (*Core Services*);

"Proceedings" shall have the meaning given to it in Clause 42.3;

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (b) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Service Provider 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;

"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 the Regulation 72(9)

of the Public Contracts Regulations 2015; 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 and Directives 2014/24/EU of the European Parliament Council dated 26 February 2014;

"Purchaser Event of Default" shall have the meaning given to it in Clause 13.8;

"Purchaser Representative" means the person identified as the Purchaser Representative in the Contract Particulars;

"Purchaser Termination Notice" shall have the meaning given to it in Clause 13.2.2;

"Quality Plan" means the quality plan specific to this Agreement produced by the Service Provider if so requested based on the principles set out in Appendix 1 of Schedule 2 (*Services*) and agreed with the Purchaser in accordance with Paragraph 3.3.1 of Part B of Schedule 2 (*Services*);

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

- (a) technical standards with which railway assets or equipment used on or as part of railway assets must conform, and
- (b) operating procedures with which the purchaser 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;

"Recorded Footage" means video recording taken by the CCTV camera and stored on storage media within the CCTV camera and/or the VRS Storage Media.

"Recorder Box" means hardware that houses the VRS Storage Media

"Rectification Programme" shall have the meaning given to it in Clause 11.5;

"Recurrent Fault" means:

- (a) a Fault in any Spare or Part and which:
 - (i) in any consecutive twelve (12) month period occurs in or affects three (3) or more items of Spares or Parts; or
 - (ii) occurs three or more times in the same Spare or Part in any consecutive twelve (12) month period; or
 - (iii) the Purchaser reasonably believes will occur in or affect three (3) or more items of the same items of Spares or Parts in any twelve (12) month period; or
- (b) any fault, defect, or actual or potential failure (whether relating to safety, reliability or maintainability), occurring in or affecting any spares, parts or other goods provided by the Service Provider which is similar to the CCTV

System and Goods supplied pursuant to the MSA;

"**Relevant Changes**" has the meaning ascribed to it in Paragraph 1.1.2 of Part A (*Core Services*) of Schedule 2 (*Services*);

"**Relevant Consents**" means a consent, approval, authorisation, acceptance, certificate, licence (including export licence), exemption, registration, filing, permit and other matters, including any relevant derogation required to be granted by a Relevant Consents Authority, which are required or necessary for the proper performance of the Service Provider's duties and obligations under this Agreement;

"**Relevant Consents Authority**" means any or all of the Government Authority, or any other entity which has the appropriate authority for the granting of a Relevant Consent;

"**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 Service Provider 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**" shall have the meaning given to it in Clause 13.3.1;

"**Remedy Notice**" shall have the meaning given to it in Clause 13.3.1;

"**Representative**" means a representative appointed by the Service Provider, or Purchaser, as the case may be, in accordance with Clause 20.2;

"**Required Insurances**" shall have the meaning given to it in Paragraph 1.1 of Schedule 5 (*Insurance*) Part A (*Required Service Provider Insurances*);

"**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 January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

"**Retention Period**" shall have the meaning given to it in Clause 9.2.2;

"**RSSB**" means the Rail Safety and Standards Board;

"**Safety Plan**" means the safety plan specific to this Agreement produced by the Service Provider if so requested in accordance with Paragraph 3.3.2 of Part B of Schedule 2 (*Services*);

"**Secretary of State**" means the Secretary of State for Transport, or any successor to all or part of his functions in relation to the operation of the railways;

"**Security Interest**" means any mortgage, charge, assignment, pledge, lien, hypothecation, security interest, title retention or other encumbrance;

"**Service Payments**" means the payments to be made by the Purchaser to the Service Provider in respect of the provision of the Services as set out in the Service Payments Schedule;

"Service Payments Schedule" means Part C of Schedule 4 (*Service Payments*);

"Service Provider Event of Default" means any of the events set out in Clause 13.1;

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

- (a) are used for; or
 - (b) arise in connection with,
- the performance of the Services;

"Service Provider Public Procurement Termination Event" means the Service Provider has, as at the Commencement Date, 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;

"Service Provider's Representative" means the person identified as the Service Provider's Representative in the Contract Particulars;

"Service Provider's Group" means the Service Provider and any member of its Group from time to time;

"Service Provider's Records" shall have the meaning given to it in Clause 9.2.1;

"Services" means the services, work and activities to be carried out by the Service Provider described in Schedule 2 (*Services*) and shall include the Optional Services to the extent that the Purchaser notifies the Service Provider at any time pursuant to Clause 4.5 that it wishes the Service Provider to carry out any such Optional Services;

"Software" means all computer programs installed in or on a CCTV System or Part or Spare produced by the Service Provider or any Subcontractor for this Agreement or which is proprietary to the Service Provider or to a Subcontractor;

"Source Code" means the source code version of any Service Provider-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 related interpretative documentation and material;

"Spares" means all spare parts of any description including fluids, parts and assemblies, required in connection with the CCTV System supplied or to be supplied under this Agreement and includes any Spare which is a Service Provider Spare;

"Specification" has the same meaning given under the MSA;

"SSA Start Meeting" shall have the meaning given to it in Paragraph 1 of Schedule 3A (*Contract Management*);

"SSA Status Update Meeting" shall have the meaning given to it in Paragraph 2.1 of Schedule 3A (*Contract Management*);

"Sterling" means the lawful currency from time to time of the United Kingdom;

"Subcontract" means any contract awarded by, or to be awarded by, the Service Provider for any work to be performed or for the supply of Parts and Spares or materials as part of, or in

connection with, the performance of the Service Provider's obligations under this Agreement, and, unless the context herein requires, includes a subcontractor or supplier of any such person;

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

"Supplier" means the Service Provider in its capacity as a party to the MSA;

"Supplier Design Documentation" means any documentation collated by and/or maintained by the Supplier pursuant to its obligations as Design Authority under the MSA, including but not limited to information relating to the design of the Goods, modifications to the design of the Goods, change of use, and the impact of operational and technical requirements on the design of the Goods;

"Supplier Documentation" means the documentation provided by the Supplier under the MSA as more particularly described in the Specification, including but not limited to the Manuals, the Training Materials and the Training Programme;

"Supply and Support Period" means in relation to each CCTV System, the period running from the Commencement Date and ending at the time at which the Services cease in accordance with the terms of this Agreement in relation to that CCTV System;

"Supply and Support Plan" has the meaning ascribed to it in Clause 4.3;

"Taxes", "Tax" and "Taxation" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest thereon;

"Technical Specifications for Interoperability" means the Technical Specifications for Interoperability adopted pursuant to EU Directive 2001/16/EC;

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

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

"Training Materials" means the training materials more particularly described in the MSA;

"Training Programme" means the training programme more particularly described in the MSA;

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

"TUPE" means The Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Two-Car Unit" means a multiple unit in two (2) 92TS car formation on which a CCTV System has been installed pursuant to the MSA, such multiple unit being in one of the following formation variants:

- (a) A-B unit (comprising one driving motor car and one non-driving motor car);
- (b) B-C unit (comprising two non-driving motor cars); or

B-C(D) unit (comprising one de-icing non-driving motor car and one non-driving motor car);

"Variation" means any addition, omission or other change whatsoever to or in respect of this Agreement including (without limitation) the Services, the Goods, the requirements of the Performance Management Regime and/or steps, if any, necessary to implement a Mandatory Modification;

"Variation Procedure" means the procedure for amending this Agreement, as detailed in Clause 5;

"Variation Quote" has the meaning ascribed to it in Clause 5.3;

"Variation Valuation" has the meaning ascribed to it in Clause 5.5;

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in Paragraph (a), or imposed elsewhere;

"VRS Storage Media" means the removable storage media within the Recorder Box onto which video footage is recorded by the VRS. This shall be in the form of an SSD

"Warranty Period" means a period of the duration set out as the Warranty Period in the Contract Particulars, beginning on the date that (i) a Part or Spare (other than a Part or Spare whose intended life is less than twelve (12) months or whose value is less than one hundred pounds (£100)) is fitted or (ii) that workmanship is undertaken on a CCTV System or Spare, providing that the end of such period occurs following termination or expiry of this Agreement; 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 **Construction**

Save where the contrary is indicated:

- 1.2.1 headings in this Agreement are only for convenience and shall not affect its interpretation;
- 1.2.2 where appropriate, the singular includes the plural and vice versa;
- 1.2.3 a reference to a Clause or to a schedule shall be to a Clause of or, as the case may be, a schedule, to this Agreement and references to this Agreement include its recitals and schedules;
- 1.2.4 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended, supplemented, novated or varied in accordance with the terms hereof or, as the case may be, with the consent of the relevant parties (and where such consent is, by the terms of this Agreement or the relevant document, required to be obtained as a condition to such amendment

being permitted, such prior written consent);

- 1.2.5 references to a Party or person shall include their successors, transferees, legal, personal representatives and permitted assignees;
- 1.2.6 without prejudice to any provision of this Agreement providing for adjustments in the event of a Change in Law, reference to Applicable Laws or Industry Standards also includes a reference to such Applicable Laws or Industry Standards as from time to time amended, extended or re-enacted;
- 1.2.7 references to a "regulation" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Authority or Relevant Consents Authority;
- 1.2.8 references to a statute shall include any subordinate legislation made from time to time under it and shall be construed so as to refer to such statute as it is amended or modified from time to time;
- 1.2.9 the masculine shall include a reference to the feminine and neuter, the feminine shall include a reference to the masculine and neuter and neuter shall include a reference to the masculine and feminine, as appropriate;
- 1.2.10 references to assets include business, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
- 1.2.11 references to this Agreement shall include reference to the Schedules, the Annexures and any document or information contained in electronic format on any CD-ROM dated the date of this Agreement and initialled by each Party to identify that CD-ROM and the documents or information contained in it as forming part of a Schedule or Annexure.

1.3 Contract Precedence

In the case of any inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:

- 1.3.1 the Schedules to this Agreement;
- 1.3.2 the terms of this Agreement;
- 1.3.3 the Services; and
- 1.3.4 the Performance Management Regime.

2 AGREEMENT DURATION

2.1 Duration

This Agreement shall continue for the Agreement Duration and the Service Provider shall supply the Services for the duration of the Supply and Support Period in accordance with the provisions of this Agreement. Neither Party shall have any right to terminate this Agreement or any part of this Agreement except in accordance with the express terms of this Agreement.

2.2 Extension

Where an Extension Limit is specified in the Contract Particulars, the may on six (6) months' prior written notice, extend the term of this Agreement up to the Extension Limit. If the Purchaser exercises its rights under this Clause 2.2, all of the terms and conditions of this Agreement shall remain the same except as otherwise notified by the Purchaser in writing.

3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties by the Service Provider

3.1.1 The Service Provider provides the representations and warranties in Clause 3.1.2 to the Purchaser. The Service Provider acknowledges and agrees that the Purchaser is relying on the representations and warranties set out below and is entering into this Agreement on the basis of them.

3.1.2 The Service Provider represents and warrants to the Purchaser that as at the date of this Agreement:

- (a) the Service Provider is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power, capacity and legal right to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (a) the Service Provider has power, capacity and legal right to enter into and perform its obligations and exercise its rights under this Agreement and any related ancillary documents to which it is a party, and any necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
- (b) this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
- (c) entering into this Agreement and performing its obligations or exercising its rights under this Agreement will not:
 - (i) conflict with the Service Provider's Memorandum and Articles of Association;
 - (ii) conflict with or result in a breach of any existing contract to which the Service Provider is a party or in the creation of any Security Interest over the Service Provider or any of its property;
- (d) except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Service Provider's knowledge threatened against it which if decided against the Service Provider would have a material adverse effect upon the Service Provider's financial condition or business or its ability to perform its obligations under this Agreement;
- (e) the Service Provider 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 Service Provider to mislead the Purchaser; and
- (f) no Insolvency Event has occurred or is reasonably likely to occur in relation to the Service Provider.

3.2 Repetition of Warranties

The Parties agree that the Service Provider's representations and warranties set out in Clause 3.1 shall be deemed to be repeated by the Service Provider on the Commencement Date and every five (5) years thereafter.

4 THE SERVICES

4.1 Service Provision

4.1.1 The Service Provider agrees with the Purchaser that it shall, in respect of the CCTV System and each item of Goods, carry out the Services in accordance with the terms of this Agreement.

4.1.2 In addition to the warranties and undertakings contained in the other provisions of this Agreement, the Service Provider warrants and undertakes to the Purchaser that it shall:

- (a) maintain and update, for the Supply and Support Period, the Supplier Documentation in accordance with the requirements set out in Part A (*Core Services*) of Schedule 2 (*Services*);
- (b) Not Used
- (c) maintain and update, for the Supply and Support Period, the obsolescence plan in accordance with the requirements set out in Paragraph 1.3 of Part A of Schedule 2 (*Services*); and
- (d) perform, for the duration of the Supply and Support Period, the obligations of the Design Authority as further described in Paragraph 1.1 of Part A of Schedule 2 (*Services*).

4.2 Standards of Performance

4.2.1 The Service Provider agrees with the Purchaser that it shall carry out the Services in relation to the CCTV System and each item of Goods:

- (a) in accordance with:
 - (i) all Applicable Laws and all applicable LU Standards;
 - (ii) the requirements of:
 - (A) the Performance Management Regime;
 - (B) the Supply and Support Plan;
 - (C) the Quality Plan;
 - (D) Not Used ;
 - (E) the Safety Plan; and
 - (F) the Manuals.

- (b) with the degree of diligence, care and skill reasonably to be expected of a competent supplier of services and support for CCTV System on London Underground trains with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to the Services and by suitably qualified and trained personnel in a safe manner; and
- (c) in a safe manner and free (to the extent reasonably possible using the best modern design and engineering principles and practices) from any risk to the health and wellbeing of persons using, operating, maintaining, or involved in the management of the CCTV System and other items of Goods.

4.3 Supply and Support Plan

- 4.3.1 Where a Variation or Call-Off Notice specifies that a Supply and Support Plan is required, the Service Provider shall provide the Purchaser with a draft supply and support plan specific to the Variation or Call-Off Notice (as the case may be) no later than:
 - (a) in the case of a Call-Off Notice, the date the Purchaser notifies the Service Provider to commence the provision of the Optional Services; or
 - (b) in the case of a Variation, the date the Variation takes effect.
- 4.3.2 The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft supply and support plan within one (1) month of receiving the draft supply and support plan from the Service Provider and the Service Provider shall incorporate such amendments.
- 4.3.3 The Service Provider shall provide the Purchaser with the final version of the supply and support plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the Supply and Support Plan as defined for the purposes of this Agreement.

4.4 Change in scope of Core Services

- 4.4.1 The Purchaser may at any time request a change of the scope of Services by instructing a Variation and the provisions of Clause 5 shall apply.
- 4.4.2 If the Purchaser makes a request to reduce the scope of Services pursuant to Clause 4.4.1, the reduced scope of Services becomes effective on the date specified in the Variation and, where applicable, the Service Payment shall be reduced accordingly to reflect such reduction in Services.

4.5 Optional Services

- 4.5.1 If the Purchaser determines that it requires Optional Services to be undertaken by the Service Provider, then the Purchaser shall submit a request by email or telephone call to the Service Provider (the "**Call-Off Notice**"), requesting that the relevant Optional Services are carried out in accordance with Part B of Schedule 2 (*Services*) and on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*). Such Call-Off Notice shall include the nature and extent of the requirement for the Optional Services.
- 4.5.2 Following receipt of a request referred to in Clause 4.5.1 above, the Service Provider

shall as soon as reasonably practicable submit a written response by email to the Call-Off Notice which shall include the information required in Paragraph 2 of Part B of Schedule 2 (*Services*).

4.5.3 The Service Provider acknowledges that Optional Services may be required from time to time. The Service Provider shall use all reasonable endeavours to be prepared to provide such Optional Services.

4.5.4 The Purchaser may, at any time, terminate any Optional Services instructed in accordance with Clause 4.5.1.

5 VARIATIONS

5.1 Any variation to this Agreement shall be agreed by the Purchaser Representative and the Service Provider in accordance with the Variation Procedure.

5.2 If:

5.2.1 the number of CCTV System is varied by the Purchaser;

5.2.2 a Mandatory Modification is required; or

5.2.3 there is a Change in Law,

the Service Provider shall be entitled to a Variation.

5.3 Right to request a quote

5.3.1 The Purchaser Representative may, at any time prior to instructing a Variation, request the Service Provider to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Service Payment as a result of implementing the proposed variation (the "**Variation Quote**").

5.3.2 The Service Provider shall:

(a) provide the Purchaser Representative with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser Representative may agree) of a request from the Purchaser Representative; and

(b) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.

5.3.3 The Purchaser Representative may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 5.4.1, and the remaining provisions of this Clause 5.3 shall apply in respect of such Variation.

5.3.4 The Service Provider shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

5.4 Right to vary

5.4.1 The Purchaser Representative may at any time instruct the Service Provider in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 5.4.

5.4.2 Upon instruction of a Variation by the Purchaser Representative, the Service Provider shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.

5.4.3 Nothing in this Clause 5.4 shall prevent the Service Provider from making a proposal to the Purchaser Representative for a Variation but no Variation so proposed shall be carried out by the Service Provider except as directed in writing by the Purchaser Representative.

5.5 Valuation of Variations

5.5.1 As soon as possible after having received any instruction under Clause 5.4.1, the Service Provider shall notify the Purchaser Representative if, in the Service Provider's opinion, the Variation will involve an adjustment to the Service Payment (the "**Variation Valuation**").

5.5.2 Subject to Clause 5.5.3, the Variation Valuation shall, if not the subject of a Variation Quote which has been accepted by the Purchaser Representative in accordance with Clause 5.3.3, be determined by the Purchaser Representative on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*) 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. Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.

5.5.3 The Service Provider shall not be entitled to any increase in the Service Payment with respect to any Variation 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 Service Provider its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Service Provider has failed to take all reasonable steps to mitigate any actual or potential increase in the Service Payment.

5.6 Notice of Variations

When instructing any Variation, the Purchaser Representative shall, to the extent possible, give the Service Provider such reasonable notice as will enable him to make his arrangements accordingly.

5.7 Progress with Variations

5.7.1 The Service Provider shall, on receipt of an instruction from the Purchaser Representative to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Service Provider shall not, without the prior written consent of the Purchaser, be delayed pending determination of the Variation Valuation in accordance with Clause 5.5.2.

5.7.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser Representative pursuant to Clause 5.4.1.

6 SPARES

6.1 Spares: Title and Risk

6.1.1 Title to any Spare, including any replacement Spare, which is supplied or made available by the Service Provider shall, upon payment, delivery or installation, whichever is the earliest, vest in the Purchaser without further act (with full title guarantee and free from all Security Interests other than those created by or attributable to the Purchaser). For the avoidance of doubt, title to any Part which is replaced by a Spare shall remain with the Purchaser.

6.1.2 Risk of loss, theft, damage and destruction of any Spare shall rest with the Service Provider for so long as it is in the Service Provider's care, custody and control.

6.2 Provision of Spares

If, under the Contract Particulars, the Service Provider is required to supply Spares, the provisions of Paragraph 1.2 of Part A of Schedule 2 (*Services*) shall apply.

6.3 Replacement Part

Except as permitted or required by this Agreement, no Part shall be supplied by the Service Provider for installation (whether by the Service Provider or such other party as may be instructed by the Purchaser) on a CCTV System in replacement for a Part unless:

6.3.1 it is of the same or a more advanced make and model, as the replaced Part;

6.3.2 its installation will not materially diminish the value, utility, performance or condition of the CCTV System on which it is installed; and

6.3.3 it is in as good operating condition as the replaced Part (assuming that the replaced Part was in the condition and repair in which it is required to be maintained under this Agreement) and, without prejudice to the generality of the foregoing, if it is time or life limited and is not being replaced as part of a part rotation programme contemplated by the maintenance provider, has at least equal or a better number of hours and or miles available until the next scheduled maintenance check or depot visit.

7 PERFORMANCE MANAGEMENT REGIME

7.1 Obligations under the Performance Management Regime

7.1.1 The Service Provider shall make the CCTV System available to the Purchaser in accordance with the Supply and Support Plan and the requirements of the Performance Management Regime.

7.1.2 The Purchaser shall comply with its obligations under the Supply and Support Plan and Performance Management Regime.

8 PAYMENTS

8.1 Amount of Service Payments

8.1.1 The Purchaser shall pay Service Payments to the Service Provider on the dates and in the amounts described in Part C of Schedule 4 (*Service Payments*). Service Payments in respect of:

(a) Core Services; and

- (b) Optional Services,

shall be paid in accordance with Clause 8.2.

8.1.2 The Service Payments shall be subject to:

- (a) the Indexation Adjustment; and
- (b) Variations (including Mandatory Modifications) affecting Service Payments in accordance with the Variation Procedure.

8.1.3 No Service Payment shall be made unless and until:

- (a) the Guarantee is in place (where the Contract Particulars specify that a Guarantee is required); and/or
- (b) the Performance Bond is in place (where the Contract Particulars specify that a Performance Bond is required).

8.2 Payment Applications

8.2.1 At the beginning of each Payment Period the Service Provider shall submit a payment application to the Purchaser Representative at the address specified in Clause 37.2 which shall show the following amounts separately and in aggregate:

- (a) the relevant Service Payment in respect of the Core Services provided by the Service Provider in the immediately preceding Payment Period;
- (b) the relevant Service Payment in respect of the Optional Services provided by the Service Provider in the immediately preceding Payment Period (if any);
- (c) any amounts due (less any payments already made) pursuant to Clause 5.5, and in accordance with the principles set out in Paragraph 2 of Part B of Schedule 4 (*Service Payments*), in respect of any properly completed Variation in the immediately preceding Payment Period (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 in the immediately preceding Payment Period) provided that the Service Provider's application sets out details and value of any Variation payment being sought.

The Service Provider shall ensure that each payment application is dated and issued no earlier than the first day of the subsequent Payment Period to which the Services relate and/or the date on which the Variation to which it relates has been completed.

8.2.2 The Purchaser Representative shall consider the Service Provider's payment application and assess and verify the amount due (the "**Invoice Amount**") in a timely manner. The Purchaser shall certify the Invoice Amount (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Service Provider details of how the Invoice Amount due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 8.2.2 and there is an undue delay in considering and verifying the Invoice Amount, the Payment Certificate shall be regarded as issued for the purpose of Clause 8.4 after a reasonable time has passed.

8.3 VAT Invoice

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

8.3.1 is dated and issued no earlier than the date when the Payment Certificate was issued; and

8.3.2 clearly states the purchase order number.

8.4 Payment due date

Subject to Clauses 8.5 and 8.9, the Purchaser Representative shall, subject to receipt by it of an appropriate VAT invoice in accordance with Clause 8.3, pay to the Service Provider within ten (10) days of receipt by it of such VAT invoice the relevant Invoice Amount calculated in accordance with Clause 8.2.2. If the Service Provider fails to issue a VAT invoice that complies with the requirements of this Clause 8 then the Purchaser shall be under no obligation to pay the same.

8.5 Payments owed by the Service Provider

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

8.6 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 Service Provider by mistake of law or fact.

8.7 Method of Payment

All payments required to be made under this Agreement will be made for value on the due date in cleared funds to such account at a bank in the United Kingdom as the payee shall have notified to the payer by not less than three (3) Working Days' notice, free and clear of any deduction, withholding, set off or counterclaim whatsoever except to the extent deduction is required by any Applicable Laws or is in accordance with the express provisions of this Agreement. If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Payment Period, in which case payment shall be made on the immediately preceding Working Day.

8.8 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 Service Provider is not entitled to suspend services under the Agreement as a result of any sums being outstanding.

8.9 Disputed Payment Applications

The Purchaser Representative shall notify the Service Provider 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 42. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser Representative in accordance with this Clause 8.

8.10 Payments Inclusive

Save as expressly provided otherwise in this Agreement, the Service Payments payable by the Purchaser are inclusive of all costs, expenses and disbursements incurred by the Service Provider in connection with this Agreement.

8.11 Payments in Sterling

The Service Payments are denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Sterling.

8.12 Value Added Tax

8.12.1 All amounts payable by one Party to another Party under this Agreement are, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of any amount payable and the Service Provider is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Service Provider 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 Service Provider. To the extent that VAT is chargeable in respect of the Service Payments and the Purchaser is liable to account for such VAT to any Competent Authority, the Service Payments shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Service Provider pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

8.12.2 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).

8.12.3 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.

9 ACCESS AND AUDIT

- 9.1 For the purposes of exercising any of its rights under this Clause 9, the Service Provider shall grant the Purchaser access on reasonable prior notice to any of the Service Provider's premises involved in the provision of the Services and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.
- 9.2 The Service Provider shall, and shall (unless the Purchaser Representative otherwise agrees in writing) procure that its Subcontractors shall:
- 9.2.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service Provider's obligations under this Agreement and all transactions and Subcontracts entered into by the Service Provider for the purposes of performing its obligations under this Agreement (in respect of the Service Provider) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Service Provider's Records**"); and
- 9.2.2 retain all the Service Provider'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**").
- 9.3 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Service Provider's performance of and compliance with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:
- 9.3.1 audit, inspect or witness any aspects of the provision of the Services;
- 9.3.2 inspect any and all of the Service Provider's Records during the Retention Period as are reasonably necessary to investigate the Service Provider's (and any Subcontractor's) performance of its obligations under this Agreement;
- 9.3.3 audit the management systems of the Service Provider and those of any Subcontractor; and
- 9.3.4 inspect and/or audit compliance by the Service Provider and its Subcontractors with the Service Provider's obligations under this Agreement,
- and where such inspection reasonably requires the attendance or participation by the Service Provider, the Service Provider shall provide such attendance or participation by appropriately qualified individuals at its own cost.
- 9.4 To the extent necessary for the purpose of exercising any of the rights granted under Clause 9.3 the Service Provider shall provide, and shall procure that its Subcontractors shall provide all reasonable co-operation to the Purchaser, including:
- 9.4.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Service Provider's Records required for the purposes of Clause 9.3.2 free of charge and within a reasonable time of any request; and
- 9.4.2 making the Service Provider's employees available for discussion with the Purchaser.
- 9.5 No audit and/or inspection testing by the Purchaser pursuant to Clause 9.3 shall relieve the Service Provider (or 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 Service Provider.

9.6 Any actions found to be reasonably necessary having regard to the Service Provider'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 Service Provider. The Service Provider shall acknowledge formally within two (2) Working Days' receipt of any request for a Corrective Action raised by the Purchaser, together with the Service Provider's confirmation of the timescale allocated by the Purchaser for the Service Provider to close out the Corrective Action. The Service Provider 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 9.1 to 9.5.

9.7 If the Service Provider (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Service Provider 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 Service Provider may refer the dispute for determination in accordance with Clause 42.

9.8 **Plans for Remedial Action**

If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 9.2 and 9.6, the Purchaser reasonably determines that the provision of the Services does not, or is unlikely in the future to, comply with any of the requirements of Clause 4.2 the Purchaser shall notify the Service Provider of such determination. The Purchaser and the Service Provider shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Service Provider, at the Service Provider's cost, to ensure that the Services do or will conform to the requirements of Clause 4.2. If the Service Provider fails to implement such remedial action within a reasonable period following agreement of a plan pursuant to this Clause 9.8 then the Purchaser may proceed to implement, or procure the implementation, of such remedial action at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 9.8 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement.

10 SECURITY

10.1 **Performance Bond**

10.1.1 Where the Contract Particulars specify a Performance Bond is required, this Clause 10.1 shall apply.

10.1.2 On or prior to the date of this Agreement, the Service Provider 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) be substantially in the form set out in Schedule 11 (*Form of Performance Bond*);
- (c) continue in full force and effect for the Agreement Duration; and
- (d) be duly executed and delivered by a Bond Provider.

10.2 **Guarantee**

10.2.1 Where the Contract Particulars specify a Guarantee is required, this Clause 10.2 shall apply.

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

- (a) be substantially in the form set out in Schedule 7 (*Form of Guarantee*);
- (b) continue in full force and effect for the Agreement Duration; and
- (c) be duly executed and delivered by the Guarantor.

10.3 Replacement Bonds

10.3.1 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;
- (d) an Insolvency Event occurs in relation to a Bond Provider,

then the Service Provider shall provide a replacement Performance Bond issued by a Bond Provider and that otherwise complies with this Clause 10 within 10 (ten) Working Days of the Performance Bond ceasing to meet the relevant requirement(s) of this Clause 10.3.

10.3.2 In the event that the Service Provider does not provide a replacement Performance Bond in accordance with Clause 10.3.1, 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 10 (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 10 and invoice the Service Provider for the cost thereof. The Service Provider 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.

10.4 Demands

10.4.1 Where this Agreement is terminated due to the occurrence of a Service Provider Event of Default, the Purchaser shall be entitled to make a demand under the Performance Bond (where the Contract Particulars specify that a Performance Bond is required) for the Performance Bond amount specified in the Contract Particulars, which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Service

Provider for application in or towards amounts due to the Purchaser following termination for Service Provider Event of Default as provided for in this Agreement.

10.4.2 Where this Agreement terminates other than as contemplated by Clause 10.4.1 (save where it terminates due to a Purchaser Event of Default), or expires, the Purchaser shall be entitled to make a demand under the Performance Bond in respect of any amounts which the Service Provider is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser.

11 WARRANTIES

- 11.1 Subject to Clause 11.5, and without prejudice to the Purchaser's rights under the Performance Management Regime, the Service Provider shall, at its own expense, as soon as is reasonably practicable and in any event within seven (7) days of being notified of a Fault by the Purchaser, make good (and where necessary shall procure the making good of) any Fault arising from or in connection with (a) any Part or Spare which fails in service during the Warranty Period, or (b) any act or omission of the Service Provider in the performance of the Services, and complete any work to make good any such Fault within a reasonable period having regard to the circumstances.
- 11.2 The Purchaser shall notify the Service Provider in writing as soon as reasonably practicable after it becomes aware of such Fault.
- 11.3 If the Service Provider makes good such Fault on any Part or Spare during the Warranty Period, such Part or Spare will be covered by a further Warranty Period (the "**Further Warranty Period**") commencing on the date on which such Fault is made good. If a Fault arises on such Part or Spare during the Further Warranty Period, the Service Provider shall comply with its obligations to make good such Fault under this Clause 11, provided that the Further Warranty Period cannot be extended, replaced or renewed under this Clause 11.
- 11.4 If any Fault identified pursuant to Clauses 11.1 or 11.2 is not remedied within a reasonable period of being notified to the Service Provider by the Purchaser, the Purchaser may proceed on notice to make good, or procure the making good of, the Fault at the Service Provider's expense. If the Purchaser makes good a Fault, the Service Provider's obligations under Clauses 11.1 and 11.2 shall not apply to the works required to make good the Fault where the works are carried out by any person other than the Service Provider, provided that the exercise by the Purchaser of its rights under this Clause 11 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement (including pursuant to Clause 16) nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement other than to the extent specified under this Clause 11.
- 11.5 If, during the Warranty Period, the Parties identify that a Recurrent Fault has occurred or in the reasonable opinion of the Purchaser is reasonably likely to occur, each Party shall notify the other Party of such occurrence. The Service Provider warrants to the Purchaser that it shall remedy such Recurrent Fault and undertake necessary rectification on all Parts and Spares (as appropriate), and undertake such work as may be feasible in order to enable the CCTV System on which the Spares or Parts (as the case may be) are installed 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 Fault, the Service Provider shall submit to the Purchaser a programme for rectification of such Recurrent Fault and any necessary rectification required on any Part or Spare (as the case may be) (the "**Rectification Programme**") as soon as is practicable and the Parties shall negotiate and agree the Rectification Programme in good faith, within a period of twenty (20) Working Days after receipt of the Rectification Programme. Where the Purchaser and the Service

Provider agree the form of the Rectification Programme, the Service Provider shall forthwith implement such Rectification Programme in accordance with its terms.

- 11.6 For the avoidance of doubt, the Service Provider's obligations pursuant to this Clause 11 shall not in any way relieve or absolve the Supplier from its defect rectification obligations pursuant to Clause 17 of the MSA.

12 PURCHASER'S OBLIGATIONS

- 12.1 The Purchaser shall:

- 12.1.1 comply with its express obligations under the Performance Management Regime;
- 12.1.2 notify the Service Provider of any Faults or damage which occur or it believes may occur to any of the CCTV System whilst the CCTV System are in the care, custody and control of the Purchaser in accordance with such procedure; and
- 12.1.3 comply with its express obligations as set out in this Agreement.

13 EVENTS OF DEFAULT

13.1 Service Provider Events of Default

It shall be a Service Provider Event of Default if any of the following occurs:

- 13.1.1 the Service Provider fails to pay any sum not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
- 13.1.2 an Insolvency Event occurs in relation to the Service Provider;
- 13.1.3 the Service Provider commits a material breach of its obligations under this Agreement;
- 13.1.4 where the Contract Particulars specify that a Guarantee is to be provided:
- (a) if the Guarantee either ceases to be in full force and effect or the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable or the Guarantor fails to comply promptly with any of its obligations pursuant to the Guarantee (a "**Guarantee Event**"); or
 - (b) the Guarantor breaches the Guarantee;
- 13.1.5 the Service Provider commits a Persistent Breach as provided for in Clause 13.4;
- 13.1.6 the Service Provider fails to take out and/or maintain any of the required insurances in accordance with Clause 17;
- 13.1.7 there is a breach by the Service Provider of its obligations under Clause 36;
- 13.1.8 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Service Provider'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

Service Provider's voting share capital or the share capital of the Service Provider's holding company; or

- (b) the ability to direct the casting of more than 30% of the votes exercisable at the Service Provider's general meetings or those of the Service Provider's holding company on all, or substantially all, matters;

13.1.9 where the Contract Particulars specify that a Performance Bond is to be provided:

- (a) if the Performance Bond either ceases to be in full force and effect or the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable or the Bond Provider fails to comply promptly with any of its obligations pursuant to the Performance Bond (a "**Performance Bond Event**"); or
- (b) the Bond Provider breaches the Performance Bond; or

13.1.10 a Service Provider Public Procurement Termination Event occurs.

13.2 **Procedures in relation to Termination for a Service Provider Event of Default**

13.2.1 The Service Provider shall notify the Purchaser forthwith on the Service Provider becoming aware of the occurrence of a Service Provider Event of Default.

13.2.2 Following the occurrence of a Service Provider Event of Default (and notwithstanding that the Service Provider may not have notified it pursuant to Clause 13.2.1), the Purchaser may by notice in writing to the Service Provider, specifying the Service Provider Event of Default in question, terminate this Agreement in relation to the provision of Services ("**Purchaser Termination Notice**"), 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 an Insolvency Event, forthwith), provided that, in respect of a Service Provider Event of Default under Clauses 13.1.1 or 13.1.3 which is capable of remedy, the provisions of Clause 13.3 shall apply.

13.2.3 This Clause 13.2 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.

13.3 **Remedial Plan**

13.3.1 Where a Service Provider Event of Default that is capable of remedy arises under Clauses 13.1.1 or 13.1.3, the Purchaser shall by notice in writing to the Service Provider signed on behalf of the Purchaser (a "**Remedy Notice**") require the Service Provider 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.

13.3.2 Where the Service Provider puts forward a Remedial Plan in accordance with Clause 13.3.1, the Purchaser shall notify the Service Provider 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 Service Provider, the Purchaser shall be deemed to have accepted the Remedial Plan.

13.3.3 If the Purchaser notifies the Service Provider that it does not accept that Remedial Plan pursuant to Clause 13.3.2, the Purchaser and the Service Provider 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 Service Provider Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 13.2 (notwithstanding the proviso thereto). Where the Purchaser and the Service Provider agree the form of the Remedial Plan, the Service Provider shall forthwith implement such Remedial Plan in accordance with its terms.

13.3.4 If any breach specified in a Remedy Notice served under Clause 13.3.1 is not remedied:

- (a) within the thirty (30) Working Day period specified in Clause 13.3.1(a) if applicable); or
- (b) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Service Provider otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may:

- (i) proceed to implement, or procure the implementation, of the Remedial Plan at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 13.3.4 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement; and/or
- (ii) exercise its rights under Clause 13.2 as if the Service Provider Event of Default is not capable of remedy.

13.4 Persistent Breach

13.4.1 If the Service Provider 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 Service Provider:

- (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 13.4.

13.4.2 If, following service of such a warning notice pursuant to Clause 13.4.1, 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 13.4.1, serve another notice on the Service Provider specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 13.1.5.

13.5 Consequences of a Service Provider Event of Default

13.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 13.2.2 (and, where relevant, the Service Provider Event of Default has not been remedied pursuant to Clause 13.3) or (b) a notice of termination under Clause 13.7 (*Voluntary Termination*) or Clause 14.4 (*Prohibited Acts*), then:

- (a) the Purchaser will have the right to place the carrying out of the Services with a third party and the Service Provider will, subject to Clause 13.5.3, indemnify the Purchaser for any properly incurred reasonable costs of placing the Services with a third party to the extent they exceed the costs which the Purchaser would have paid the Service Provider for the same Services;
- (b) the Service Provider will provide the Purchaser with the Default Package;
- (c) the Service Provider shall enter into an agreement with the Purchaser for the provision of access to the Provider's engineering support, the terms of which shall be agreed between the Parties;
- (d) the Purchaser will have the right to purchase any Spares in the Service Provider's possession at the date of the Purchaser Termination Notice or notice of termination under Clause 13.7 or Clause 14.4 at the rates specified in Part E of Schedule 4;
- (e) the Purchaser will have the right to require the Service Provider to novate or to receive the assignment of any of the Service Provider's current orders with third party providers that relate to the Services;
- (f) the Service Provider shall continue to perform the Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the Services shall become effective and the Purchaser shall continue to pay the Service Provider for performance of such Services;
- (g) the Service Provider shall co-operate with the Purchaser to minimise the disruption caused to the Purchaser's business due to the termination of this Agreement in relation to the provision of the Services; or
- (h) the Service Provider will on demand pay the Purchaser:
 - (i) all reasonable costs incurred by the Purchaser as a result of any Service Provider Event of Default and the loss of the provision of the Services;
 - (ii) all reasonable costs incurred by the Purchaser in rectifying Faults arising but not rectified prior to the date of such termination which have not been reimbursed to the Purchaser under any provision of this Agreement; and

- (iii) all amounts outstanding in respect of any accrued obligations or liability under this Agreement.

13.5.2 The Purchaser shall use all reasonable endeavours to mitigate all costs claimed by it under this Clause 13.5.

13.5.3 For the avoidance of doubt, the Purchaser's rights upon the occurrence of a Service Provider Event of Default are as expressly set out in this Agreement.

13.6 Purchase of Spares on Termination or Expiry

13.6.1 Upon the termination or expiry of the obligations of the Service Provider to carry out the Services under this Agreement for any reason whatsoever, where, pursuant to Schedule 2 (*Services*), the Service Provider is required to maintain adequate stocks of Spares and other materials to enable it to perform its obligations under this Agreement then the Service Provider hereby agrees that the Purchaser shall be entitled to purchase such of the Spares and Parts as it wishes from the Service Provider on the basis of the prices and rates set out in Part E of Schedule 4 (Service Payments).

13.6.2 If, at such time, the Spares and/or Parts are not Fit for Purpose, the Parties shall negotiate in good faith to agree a commensurate reduction in the price referred to in Clause 13.6.1.

13.7 Voluntary Termination

13.7.1 The Purchaser may terminate this Agreement without cause:

- (a) prior to the Commencement Date; or
- (b) at any time from the date of the seventh (7th) anniversary of the Commencement Date by giving twelve (12) months' written notice to the Service Provider of such termination.

13.7.2 In the event that this Agreement is terminated pursuant to this Clause 13.7, the provisions of Clause 13.5 (Consequences of a Service Provider Event of Default) (excluding the indemnity set out in Clause 13.5.1(a) and Clause 13.5.1(h)(i)) shall apply.

13.8 Declaration of Ineffectiveness and Public Procurement Termination Event

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

- (a) there is a Declaration of Ineffectiveness; or
- (b) a Public Procurement Termination Event or Service Provider 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).

13.8.2 In the event that this Agreement is terminated pursuant to Clause 13.8.1, the provisions of Clause 13.10 shall apply.

13.9 Purchaser Event of Default

It shall be a Purchaser Event of Default if the Purchaser fails to make payment of any sum in

excess of three (3) Service Payments which is due and payable to the Service Provider in accordance with this Agreement and not in dispute and such amount has not been paid within thirty (30) days following a subsequent written demand by the Service Provider for payment.

13.10 Consequences of a Purchaser Event of Default, Voluntary Termination, Declaration of Ineffectiveness or Public Procurement Termination Event

13.10.1 If a Purchaser Event of Default occurs, the Service Provider may deliver to the Purchaser a notice (a "**Notice of Default**") specifying the Purchaser Event of Default which has occurred and the Service Provider may terminate this Agreement in relation to the provision of the Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of Default. If, following service of a Notice of Default, the relevant Purchaser Event of Default is remedied, then the applicable Notice of Default will be deemed to have been withdrawn and will no longer be outstanding.

13.10.2 If this Agreement is terminated in relation to the provision of the Services pursuant to Clauses 13.8 or 13.10.1, the Purchaser will pay the Service Provider:

- (a) the aggregate of all Service Payments (including the apportioned element of the period relating to the Payment Period during which the Agreement is so terminated) and other amounts payable to the Service Provider which have then fallen due under this Agreement but remain unpaid;
- (b) such sum as represents the reasonable cost of labour and materials already incurred or committed by the Service Provider as at the date of termination of this Agreement in respect of Services (including, without limitation, the cost of terminating subcontracts and redundancy of employees);
- (c) the reasonable costs incurred by the Service Provider in preparing the Default Package; and
- (d) all other direct losses, costs and claims reasonably incurred in connection with such termination if properly evidenced by the Service Provider.

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

13.10.3 Subject to payment by the Purchaser to the Service Provider of all sums due and payable under this Agreement the Service Provider will comply with the provisions of Clauses 13.5.1(a) to 13.5.1(h) above.

13.10.4 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 Service Provider 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 Service Provider as a direct result of the termination of this Agreement.

13.10.5 Where the Purchaser exercises its rights pursuant to Clause 13.10.4, it shall give written notice to the Service Provider 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 Service Provider shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

- 13.10.6 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Service Provider. 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 Service Provider as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Service Provider.
- 13.10.7 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 Service Provider, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Service Provider.
- 13.10.8 In the event the Service Provider disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 42.
- 13.10.9 With effect from the termination or expiry of the Agreement Duration, the Service Provider shall extend to the Purchaser the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Service Provider or which is implied by law in favour of the Service Provider in respect of the Services as provided by the Service Provider during the Agreement Duration, provided that in so doing the Service Provider shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Purchaser.
- 13.10.10 For the avoidance of doubt, the Service Provider's rights upon the occurrence of a Purchaser Event of Default are as expressly set out in this Agreement.

14 PROHIBITED ACTS

- 14.1 The Service Provider shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.
- 14.2 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 14 at any time during performance of this Agreement and during the three (3) years after the Expiry Date or earlier termination of this Agreement.
- 14.3 If the Service Provider, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Service Provider 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 14.3, Clause 13.5 shall apply.
- 14.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Service Provider then the Purchaser may serve a warning notice upon the Service Provider instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Service Provider 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 14.4, Clause 13.5 shall apply.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Licence of Service Provider IPR

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

- 15.1.1 the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Parts and/or Spares or any related activity, or permitting the Purchaser to use the Parts and/or Spares for the purposes of performing the Services;
- 15.1.2 modifying, refurbishing, repairing, maintaining and overhauling the Parts and/or Spares or any related activity;
- 15.1.3 complying with all Applicable Laws, LU Standards and all Relevant Consents;
- 15.1.4 using and copying the Manuals and/or Supplier Documentation in order to perform any of the above;
- 15.1.5 training personnel to carry out any of the activities described in Clauses 15.1.1, 15.1.2 and 15.1.4;
- 15.1.6 inviting tenders for any of the activities described in Clauses 15.1.1 to 15.1.5 inclusive;
- 15.1.7 in the event of termination of this Agreement other than for a Purchaser Event of Default, procuring fulfilment and performance of the Service Provider's obligations under this Agreement, including the manufacture of any Parts and/or Spares or other equipment for use in connection with the CCTV System; and
- 15.1.8 the Purchaser performing its obligations under this Agreement.

Other than in accordance with this Clause 15, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 15 shall, have the right to manufacture any Part or Spare that is the subject of Service Provider IPR.

15.2 Subcontractors

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

15.3 Documentation

The Service Provider 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 15 at no cost to the Purchaser.

15.4 Warranties

The Service Provider represents and warrants to the Purchaser that:

- 15.4.1 the Service Provider IPR and the Software constitute all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;
- 15.4.2 it has the right and power to grant the licence set out in Clause 15.1; and
- 15.4.3 use of any Service Provider IPR, Software, CCTV System, Part and/or any other item of Goods or part thereof does not infringe any Intellectual Property Rights of another person.

15.5 Indemnity

The Service Provider shall indemnify the Purchaser and any member of the TFL Group against any claim for infringement of any Intellectual Property Rights.

15.6 Remedy for Infringement

Without prejudice to the provisions of Clauses 15.5, if the use of any Service Provider IPR, Software, Part and/or Spare 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 Service Provider shall, at its expense, either:

- 15.6.1 procure for the Purchaser the right to continue to use that Service Provider IPR, Software, Part and/or Spare; or
- 15.6.2 (to the extent Clause 15.6.1 is not applicable) modify the Part and/or Spare so that it no longer infringes those rights, or replace the Part and/or Spare with a non-infringing Part and/or Spare (or part thereof) provided however that the modified or replacement Part and/or Spare (as the case may be) shall at all times comply with all the requirements of this Agreement.

15.7 Software

15.7.1 The Service Provider shall ensure in respect of all Software that is used in the provision of the Services:

- (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; and
- (b) where no particular standard is specified, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

The Service Provider shall provide copies of the documentation and information at Clause 15.7.1(a) and (b) above to the Purchaser on the request of the Purchaser.

15.7.2 The Service Provider shall in respect of Service Provider-owned Software, at all times during the period from the Commencement Date until the end of the thirty (30) year design life of the CCTV System retain the Software designed by the Service Provider.

15.8 Cessation of Software Support

If the Service Provider or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Service Provider 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 Service Provider in complying with this Clause 15.8), 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.

15.9 **Survival**

Each licence granted under this Clause 15 and/or any liability arising in connection with the same shall survive the termination of this Agreement.

15.10 **Escrow**

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

16 **LIABILITY, INDEMNITIES**

16.1 **General Indemnity**

16.1.1 Subject to Clause 16.1.3, the Service Provider shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and any member of the TfL Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:

- (a) death or personal injury to any person;
- (b) any loss of, or damage to, any property or assets (including the LUL Network, the CCTV System or any other item of Goods);
- (c) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- (d) breach of statutory duty;
- (e) any Environmental Damage;

arising from or in connection with:

- (i) the operation and/or use of the CCTV System or Spares in accordance with Manuals or as otherwise directed by the Service Provider;
- (ii) the performance or non-performance (including any negligent performance) of the obligations of the Service Provider, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;

- (iii) any acts or omissions, breach, negligence or willful misconduct by the Service Provider.

16.1.2 The remedies set out in Schedule 2 (Services) Part C (Performance Management Regime) are the sole and exclusive remedies of the Purchaser in relation to breaches of the Performance Management Regime.

16.1.3 The Service Provider shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 16.1.1 in the case of any loss referred to in Clauses 16.1.1(a) and 16.1.1(b) to the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

16.2 Notification of claims procedures and assistance in defending claims

16.2.1 The Service Provider shall, as soon as reasonably practicable, notify the Purchaser of any actual or threatened claim (of whatever nature) in respect of which the Purchaser may seek to be indemnified and held harmless by the Service Provider under the provisions of this Agreement.

16.2.2 The Purchaser shall give to the Service Provider and any of its advisers such co-operation, access and assistance as any such person may reasonably require in defending claims in respect of which the Purchaser seeks to be indemnified by the Service Provider under this Agreement.

16.3 Consequential Breach and Loss

16.3.1 Neither Party 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.

16.3.2 Otherwise in respect of the Excepted Liabilities, neither Party shall be liable to the other for any matter howsoever arising out of or in connection with this Agreement (including in Clause 16.1.1) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party (or make a claim against that Party), TfL or any member of the TfL Group in respect of Consequential Loss.

16.4 Limit on Service Provider's Liability

16.4.1 The Service Provider's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall not be limited.

16.5 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.

16.6 Service Provider Personnel

16.6.1 For the purposes of this Clause 16.6:

- (a) "**Current Service Provider**" means any person, company or other legal entity which on or before the Commencement Date was the employer of any

of the Transferring Employees, and which (for the avoidance of doubt) may include the Purchaser;

- (b) **"Replacement Employer"** means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);
- (c) **"Relevant Claims and Liabilities"** means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements), actions, claims and demands;
- (d) **"Subsequent Transfer Date"** means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;
- (e) **"Subsequent Relevant Employee"** means a person employed or engaged by the Service Provider or relevant Subcontractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);
- (f) **"Transfer Regulations"** means all or any of the following: TUPE; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and
- (g) **"Transferring Employees"** means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Service Provider under the Transfer Regulations.

16.6.2 The Service Provider complies and procures that its Subcontractors comply with any obligations which may arise out of a transfer to the Purchaser or another person under the Transfer Regulations upon the Expiry Date or earlier termination of this Agreement.

16.6.3 At any time during the last twelve (12) months of this Agreement and/or during any period of notice terminating this Agreement, the Purchaser may require the Service Provider to provide, within a specified period of being requested, to the Purchaser (or to any other person or persons nominated by the Purchaser) such information as is reasonably required by the Purchaser or such other persons relevant to the potential liabilities of the Purchaser or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Service Provider or its Subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;
- (b) the method of organisation of the employees (of the Service Provider or its Subcontractors) engaged in providing the Services and documentary evidence

relating to such organisation;

- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Purchaser upon request of any communication with any potential or intended new consultant or the Service Provider's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

16.6.4 The Service Provider will provide the Purchaser upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 16.6 may be addressed. The Service Provider will if required by the Purchaser warrant that any information provided under this Clause 16.6 is accurate, complete and not misleading, including any information supplied in relation to its Subcontractors.

16.6.5 The Service Provider will not and will procure that its Subcontractors will not in the six (6) months prior to the expiry or termination of this Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Purchaser's written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in supplying the Parts, Spares and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in providing the Parts, Spares and/or Services or relates to the expected expiry or termination of this Agreement; or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Parts, Spares and/or Services, except where such increases or changes would have arisen in the ordinary course of the Service Provider's or the relevant Subcontractor's business and are not related to the expiry or termination of this Agreement (either because they are applied to all of the Service Provider's or the relevant Subcontractor's employees, whether or not engaged in supplying the Parts, Spares and/or Services (or otherwise) or are the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in the provision of the Parts, Spares and/or Services or relates to the expiry or termination of this Agreement.

16.6.6 The Service Provider shall indemnify the Purchaser against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Service Provider, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Purchaser or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee,

or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Service Provider, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Parts, Spares and/or Services. The provisions of this Clause 16.6.6 shall survive the termination or expiry of this Agreement.

16.6.7 The Service Provider shall indemnify the Purchaser and all Replacement Employees against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Purchaser or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Service Provider or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Purchaser or a Replacement Employer incurs any liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

The provisions of this Clause 16.6.7 shall survive the termination or expiry of this Agreement.

16.6.8 In this Clause 16.6 "**Relevant Claims and Liabilities**" include those incurred by the Purchaser by reason of any contract term between the Purchaser and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Purchaser may incur to a Replacement Employer, the Service Provider shall not be required to indemnify the Purchaser or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Purchaser in providing an indemnity under this Clause.

16.6.9 The provisions of this Clause 16.6 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Purchaser for any breach by the Service Provider of any provision of this Clause 16.6 shall be in addition to and not in substitution for any remedies available to the Purchaser under any provision of the Transfer Regulations.

17 INSURANCE

The Service Provider and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 5 (*Insurance*).

18 FORCE MAJEURE EVENTS

18.1 Notice of Force Majeure Event

Neither Party shall be in breach of its obligations 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:

18.1.1 if any Party seeks to rely on this Clause 18.1.1 (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

18.1.2 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 18.2 below.

18.2 Mitigation

18.2.1 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 Service Provider, complying with the requests of the Purchaser Representative), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
- (b) 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) provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.

18.2.2 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 18.2.1 above.

18.3 Grounds for Termination due to a Force Majeure Event

The Purchaser shall be entitled to terminate this Agreement by notice in writing (an "**FM Notice**") to the Service Provider if one (1) or more Force Majeure Event persists for a continuous period of six (6) months. The provisions of Clause 18.4 shall apply in respect of such termination.

18.4 Consequence of Termination due to a Force Majeure Event

In the event of termination of this Agreement pursuant to Clause 18.3 each Party shall bear its own costs arising out of such termination and the Service Provider shall comply with its obligations under Clauses 13.5.1(a) to 13.5.1(h) inclusive, but excluding Clauses 13.5.1(h)(i) and 13.5.1(h)(iii) (where applicable) subject in each case to payment of an appropriate amount by the Purchaser to the Service Provider in respect of the rights, goods or services provided and provided that, in the case of Clauses 13.5.1(h)(i) and 13.5.1(h)(ii), the Service Provider shall not be obliged to perform obligations from which it is excused under Clause 18.

18.5 Effect on payments

If a Force Majeure Event results in the Service Provider 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

Service Provider has performed that obligation.

18.6 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 in accordance with Clause 18.3.

18.7 Continuing Obligations

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 18.3, remain in effect for the duration of a Force Majeure Event.

19 CONFIDENTIALITY

19.1 Obligations of Confidentiality

Subject to Clause 19.2 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 Service Provider or by the Service Provider to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Service Provider shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of its 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:

19.1.1 disclose Confidential Information to any person whomsoever;

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

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

19.2 Permitted Disclosure

The restrictions in Clause 19.1 shall not apply to the disclosure of Confidential Information:

19.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 25) or LU Standard to do so;

19.2.2 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;

19.2.3 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;

19.2.4 to any Competent Authority;

19.2.5 in the case of the Purchaser, to the Mayor of London and/or the Greater London Authority and/or the Secretary of State;

- 19.2.6 in the case of the Purchaser, to any member of the TfL Group;
- 19.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 19.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 19.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 19.2.10 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
- 19.2.11 to any member of the Service Provider's Group for the purposes of the performance by the Service Provider of its obligations under this Agreement.

19.3 Confidentiality Undertaking

Where disclosure is permitted under Clause 19.2, other than Clauses 19.2.1, 19.2.2, 19.2.7 or 19.2.8, 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.

19.4 Prior Notice of Disclosure

If a Party becomes required in circumstances contemplated by Clauses 19.2.1 to 19.2.11 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 Service Provider.

19.5 Standard of Care

In fulfilling its obligations under this Clause 19, 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.

19.6 Announcements

The Service Provider 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 provision of support and material supply services for the Goods.

19.7 Reputation

The Service Provider 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.

19.8 Survival

The obligations of the Parties under this Clause 19 shall survive the expiry or the termination of this Agreement for whatever reason.

20 CONTRACT MANAGEMENT

20.1 General

The Purchaser and the Service Provider agree to comply with their respective obligations as set out below.

20.2 Representatives

Each Party shall appoint (after consultation with the other Party) one or more Representatives to act on its behalf under this Agreement. Both Parties shall advise the other Party in writing prior to the date hereof of the name(s) and contact details of its Representative(s). Either Party may, on giving reasonable notice to the other Party, appoint an additional Representative or replace an existing Representative. Each Party shall be responsible for the acts, omissions, neglects and defaults of its Representative) as if such acts, omissions, neglects and defaults were the acts, omissions, neglects and defaults of that Party itself. Both Parties warrant that their Representative(s) has full authority to bind it in respect of any decision made or action taken by such Representative(s). For the avoidance of doubt "Representatives" shall include the Service Provider's Representative and the Purchaser Representative.

20.3 Communication

20.3.1 The Parties shall ensure that at all times the authorised Representative, or any other authorised representative, is available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the CCTV System and day to day operational and incident management.

20.3.2 The Parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication as may be contemplated by this Agreement at the SSA Start Meeting.

20.3.3 The Parties shall comply with their respective obligations in relation to document communication and management set out in Paragraph 3 of Schedule 3A (*Contract Management*).

20.4 Meetings, progress review and reporting

20.4.1 The Parties shall comply with their respective obligations in relation to meetings, progress review and reporting set out in Paragraphs 1 and 2 of Schedule 3A (*Contract Management*).

21 WAIVER AND VARIATION

Except as expressly stated in this Agreement no failure or delay by either Party to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it, the respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived or varied otherwise

than by an express waiver or variation in writing.

22 LANGUAGE

All documentation or information required or produced in the course of or in connection with a Party's performance of this Agreement shall be in English.

23 ENTIRE AGREEMENT

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the Parties hereto. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be a breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this Clause 23 "this Agreement" includes all documents entered into pursuant to this Agreement.

24 SEVERABILITY AND ILLEGALITY

24.1 Severance

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

24.2 Performance unlawful etc

If, at any time after the date of this Agreement, the introduction, imposition, variation or change of any Applicable Laws or LU Standards makes it unlawful or impossible without breaching that Applicable Laws or LU Standards for a Party (an "**Affected Party**") to give effect to its obligations under this Agreement, then the Affected Party shall notify the other Party of the nature of the circumstances on becoming aware of them.

24.3 Mitigation

24.3.1 Without prejudice to any other terms of this Agreement, the Parties shall discuss in good faith any reasonable methods of avoiding the effects of any such introduction, imposition, variation or change referred to in Clause 24.2, including, subject to obtaining any necessary consents, transferring its rights and obligations under the relevant document to any other person, acceptable to the other Parties (at such other Party's absolute discretion) not affected by that introduction, imposition, variation or change of any Applicable Laws or LU Standards.

24.3.2 The Service Provider and the Purchaser shall be under a duty to mitigate any damages and losses in respect of which they make a claim under an indemnity or otherwise pursuant to this Agreement.

24.4 Failure to avoid illegality

If, notwithstanding the provisions of Clause 24.3, the Affected Party is unable to avoid the matters contemplated by Clause 24.2, or the Parties hereto fail to agree on a proposal to avoid its effects, this Agreement in relation to the provision of Services may be terminated by the Affected Party and each Party will bear its own costs.

25 FREEDOM OF INFORMATION

25.1 The Service Provider acknowledges that the Purchaser:

25.1.1 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

25.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Service Provider.

25.2 Without prejudice to the generality of Clause 25.1, the Service Provider agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

25.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Service Provider each Information Request relevant to this Agreement or any member of the TfL Group that the Service Provider 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

25.2.2 in relation to Information held by the Service Provider 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.

25.3 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 Service Provider 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.

25.4 The Service Provider 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 Service Provider.

26 RESPONSIBLE PROCUREMENT

The Service Provider 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 Service Provider and/or any Subcontractor.

27 CRIME AND DISORDER

27.1 The Service Provider acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

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

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

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

and in the performance of this Agreement the Service Provider 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.

28 LONDON LIVING WAGE

28.1 The Service Provider acknowledges and agrees that the Mayor of London, pursuant to section 155 of the Greater London Authority Act 1999, 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.

28.2 Without prejudice to the generality of Clause 28.1, the Service Provider shall and shall procure that its Subcontractors (if any) shall:

28.2.1 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;

28.2.2 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

28.2.3 cooperate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

29 DATA TRANSPARENCY

29.1 The Service Provider 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 Service Provider hereby gives its consent for the Purchaser to publish the Contract Information to the general public.

29.2 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 Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 29.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

30 DATA PROTECTION

30.1 The Service Provider shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.

30.2 The Service Provider shall:

- 30.2.1 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 1998) and against accidental loss, destruction of, or damage to such Personal Data;
- 30.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Service Provider with the requirements of this Clause 30; and
- 30.2.3 co-operate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Act.

31 CONFLICT OF INTEREST

- 31.1 The Service Provider 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.
- 31.2 The Service Provider 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 (6) 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 31, Clause 13.5 shall apply.

32 CRIMINAL RECORDS DECLARATION

- 32.1 The Service Provider shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. The Service Provider shall confirm to the Purchaser in writing on an annual basis upon request that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the duration of this Agreement and the Service Provider shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 32.2 The Service Provider shall not engage or allow to act on behalf of the Service Provider or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 32.3 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 32 at any time during performance of this Agreement.
- 32.4 If the Service Provider fails to comply with the requirements under Clause 32.1 and/or 32.2, the Purchaser may, without prejudice to its rights under Clause 32.5, serve notice on the Service Provider requiring the Service Provider to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with

Clause 32.1) within seven (7) days of receipt of the notice the Service Provider confirms to the Purchaser that it has procured all of the Declarations required under Clause 32.1.

- 32.5 A persistent breach of Clause 32.1 and/or 32.2 by the Service Provider 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 32, Clause 13.5 shall apply.
- 32.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 32.7 Nothing in this Clause 32 in any way waives, limits or amends any obligation of the Service Provider to the Purchaser arising under this Agreement and the Service Provider's obligation to perform this Agreement remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause 32.
- 32.8 The Service Provider 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.

33 BEST VALUE

The Service Provider acknowledges that the Purchaser is a best value authority for the purposes of the Local Government Act 1999 and as such the Purchaser is 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 Service Provider shall assist the Purchaser to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Purchaser to achieve best value.

34 WORK RELATED ROAD RISK

Definitions

- 34.1 For the purposes of Clauses 34.2 to 34.10 (inclusive) and Schedule 13 (*Heavy Goods Direct Vision*) of this Agreement, the following expressions shall have the following meanings:

- “Approved Progressive Training”** An ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:
- i) Safe Urban Driving (SUD) training to be undertaken every five years; or
 - ii) a training course, which in the reasonable opinion of the Purchaser is an acceptable substitute to SUD; and
 - iii) one safety related FORS e-learning module to be undertaken every twelve(12) months;

"Bronze Accreditation"	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"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 Lorry"	means 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 Lorry"	means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 12,000 kilograms;
"Collision Report"	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
"Delivery and Servicing Vehicle"	a Lorry, a Van or a Car-derived Van;
"Driver"	any employee of the Service Provider (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Service Provider while delivering the Spares;
"DVLA"	Driver and Vehicle Licensing Agency;
"Direct Vision Standard" or "DVS"	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at: www.tfl.gov.uk ;
"FORS"	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
"FORS Standard"	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
"Front Underrun Protection"	Devices that are fitted at the front of Lorries and which comply with EC Directive 2000/40/EEC and the Road Vehicles (Construction and Use)

	Regulations 1986;
"Gold Accreditation"	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"Lorry"	a vehicle with an MAM exceeding 3,500 kilograms;
"MAM"	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
"Side Underrun Protection"	devices that are fitted between the front and rear axles of Lorries which comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
"Silver Accreditation"	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"to provide the Spares"	to provide the Spares in the United Kingdom;
"Van"	a vehicle with a MAM not exceeding 3,500 kilograms; and
"WRRR Self-certification Report"	shall have the meaning set out in Clause 34.8.

Fleet Operator Recognition Scheme Accreditation

34.2 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, it shall within ninety (90) days of the date of this Agreement:

34.2.1 (unless already registered) register for FORS or a scheme which, in the reasonable opinion of the Purchaser, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and

34.2.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Service Provider has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Features on Lorries

34.3 The Service Provider shall ensure that every Lorry, which it uses to provide the Spares, shall

have:

- 34.3.1 Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Service Provider can demonstrate to the reasonable satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if Side Underrun Protection is fitted; and
- 34.3.2 Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Purchaser can demonstrate to the reasonable satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted; and
- 34.3.3 have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- 34.3.4 have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry; and
- 34.3.5 have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts.

Direct Vision Standard

34.4 Where applicable:

34.4.1 The Service Provider shall comply with the Heavy Goods Vehicle Direct Vision and Schedule 13 (*Heavy Goods Direct Vision*) attached to this Agreement: and

34.4.2 The Service Provider shall ensure that:

- (a) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
- (b) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and
- (c) so far as reasonably practical, the conditions at the sites and locations within the control of the Service Provider where:
 - (i) the Services are being delivered. Or
 - (ii) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provisions of the Services. The Service Provider shall not incur any costs or make any changes to the site(s) without the prior written consent of the Purchaser.

Driver Licence Checks

- 34.5 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares the Service Provider shall ensure that:
- 34.5.1 it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- 34.5.2 each of its Drivers engaged in the provision of the Spares has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Spares and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by the Purchaser within the last twelve (12) months:
- (a) 0-5 points on the driving licence – six monthly checks;
 - (b) 6-8 points on the driving licence – quarterly checks;
 - (c) 9 or more points on the driving licence – monthly checks.

Driver Training

- 34.6 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares the Service Provider shall ensure that each of its Drivers undergo Agreement Approved Progressive Training throughout the duration of the Contract..

Collision Reporting

- 34.7 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, the Service Provider shall:
- 34.7.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- 34.7.2 within fifteen (15) days provide to the Purchaser a Collision Report. The Service Provider shall provide to the Purchaser an updated Collision Report within five (5) Working Days of a written request from the Purchaser.

Self-Certification of Compliance

- 34.8 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, within ninety (90) days of the Commencement Date, the Service Provider shall make a written report to the Purchaser detailing its compliance with Clauses 34.3, 34.5 and 34.6 of this Agreement (the "**WRRR Self-certification Report**"). The Service Provider shall provide updates of the WRRR Self-certification Report to the Purchaser on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Service Provider Regarding Subcontractors

- 34.9 The Service Provider shall ensure that those of its Subcontractors or suppliers who operate Category N2 Lorries, Category N3 Lorries, Vans and Car-derived Vans to provide the Spares shall comply with the corresponding provisions of this Agreement:

34.9.1 Clause 34.2; and

34.9.2 for Category N2 Lorries – Clause 34.3, 34.5, 34.6, 34.7 and 34.8; and

34.9.3 for Category N3 Lorries – Clauses 34.3, 34.4, 34.5, 34.6, 34.7 and 35.8 and where applicable, the appropriate provisions of Schedule 13 (Heavy Goods Vehicle Direct Vision); and

34.9.4 for Vans and Car-Derived Vans – Clauses 34.6, 24.7 and 34.8.

Failure to Comply with Freight-related Obligations

34.10 Without limiting the effect of any other clause of this Agreement relating to termination, if the Service Provider fails to comply with Clauses 34.2, 34.3, 34.5 (where applicable), 34.6, 34.7, 34.8, 34.9 and/or 34.9 and/or Schedule 13 (*Heavy Goods Direct Vision*):

34.10.1 the Service Provider has committed a material breach of this Agreement; and

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

35 COSTS

Except as otherwise agreed in this Agreement, each Party shall bear its own costs incurred in connection with the execution and implementation of this Agreement.

36 ASSIGNMENT

36.1 Assignment, Transfer and Subcontracting by the Service Provider

Subcontracting

36.1.1 The Service Provider may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:

(a) the written consent of the Purchaser Representative is obtained by the Service Provider prior to the Service Provider entering into any Subcontract; and

(b) the Service Provider shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractor.

36.1.2 In granting such consent pursuant to Clause 36.1.1, the Purchaser may require the Service Provider to procure that a 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 10 (*Form of Deed of Warranty*).

36.1.3 The Service Provider shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Service Provider or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Service Provider.

36.1.4 The Service Provider agrees that any Subcontractors who supply safety critical materials or services will be approved by the Purchaser in accordance with all

Applicable Laws and all applicable LU Standards and in accordance with the Safety Plan and the Quality Plan.

- 36.1.5 The Service Provider shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 8 (Payment).
- 36.1.6 The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser's exercise of its right under this Clause 36.1.6, the Purchaser may request that the information provided by the Manufacturer under Clause 36.1.6. is accompanied by one (1) or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:
- (a) shall require the Service Provider to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
 - (b) may require the Service Provider to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

Assignment

- 36.1.7 Without prejudice to Clauses 36.1.1 to 36.1.3, the Service Provider 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 36.1 shall be ineffective.

36.2 Assignment and Novation or Granting of Security by the Purchaser

Permitted Transfers

- 36.2.1 The Purchaser shall be entitled without the consent of the Service Provider to assign, transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person.

Implementation of Transfers

- 36.2.2 If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clauses 36.2.1, the Service Provider shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

37 NOTICES

- 37.1 Any notice or communication to be given under or in connection with this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by personal delivery, or by prepaid recorded delivery or first class prepaid post to the address or, as the case may be, and for the attention of the relevant Party set out in Clause 37.2. Any such

notice or communication shall be deemed to have been received:

37.1.1 if delivered, on delivery;

37.1.2 in the case of recorded delivery or first class post, forty eight (48) hours from the date of posting,

provided that if the date of delivery or receipt is not a Working Day such notice or communication shall be deemed to have been delivered or, as the case may be, received, on the opening of business on the next Working Day.

37.2 Notices or communications affecting this Agreement shall be addressed (where not specifically required to be addressed to the respective Parties' Representative) to:

37.2.1 in the case of the Service Provider, the address for the Service Provider set out in the Contract Particulars; and

37.2.2 in the case of the Purchaser, the address for the Purchaser set out in the Contract Particulars.

38 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 Service Provider, any amounts due or expressed to be due by the Service Provider to the Purchaser. Any payment payable by the Service Provider 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 Service Provider under this Agreement.

39 ACCRUED RIGHTS

Termination of the obligations to provide Services under this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

40 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

40.1 With the exception of the right of:

40.1.1 any member of the TFL Group; and

40.1.2 any person expressly stated to be indemnified by a Party,

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

41 COUNTERPARTS

This Agreement to which the Service Provider and Purchaser are a Party may be executed in separate counterparts, each of which, when executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. All signatures need not be contained in the same counterpart.

42 DISPUTES AND GOVERNING LAW

42.1 **Disputes**

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 6 (**Dispute Resolution Procedure**).

42.2 **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.

42.3 **Exclusive Jurisdiction**

Subject to the terms of Clause 42.1, 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.

42.4 **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.

43 SURVIVAL

43.1 **Consequence of termination or expiry**

Upon termination or expiry of this Agreement, the obligations of the Parties under this Agreement shall cease except for:

43.1.1 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

43.2 the provisions of Clauses 1, 3, 8, 9, 10, 13.5, 13.6, 13.10, 15, 16, 17, 18.4, 19, 21, 22, 23, 24, 25, 29, 36, 37, 38, 39, 40, 42, 43 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.

In witness whereof this Agreement is executed the day and date referred to above.

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED

CUL
6217



was affixed to THIS DEED

in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

[Redacted signature and name area]

EXECUTED AND DELIVERED AS A DEED

by DELATIM LIMITED

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

[Redacted signature and name area]

SCHEDULE 1: SPECIAL CONDITIONS

Part A

Contract Particulars

Clause	Item	Input
1.1	"Change Date"	The date on which the Fleet Acceptance Certificate (as such term is defined under the MSA) has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA.
1.1	"Commencement Date"	The date on which the Fleet Acceptance Certificate (as such term is defined under the MSA) has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA
1.1	"Expiry Date"	20 years from the date on which the Fleet Acceptance Certificate (as such term is defined under the MSA) has been counter-signed and dated by the Purchaser Representative (as such term is defined under the MSA) in accordance with the provisions of the MSA.
1.1	"Extension Limit"	Up to five (5) years
1.1	"Guarantee" to be provided	No
1.1	"Guarantor"	N/A
1.1	"Indexation Base Date"	2018
1.1	"Payment Period"	Bi-Annual Period
1.1	"Purchaser Representative"	██████████
1.1	"Performance Bond" to be provided	No
1.1	Performance Management Regime applies	Yes
1.1	"Service Provider Representative"	The Service Provider's Director

1.1	"Warranty Period"	██████████
4.3	Supply and Support Plan	Not used
6.2	Spares to be supplied	Yes
6.3	Special Tools to be supplied	No
37.2.1	Service Provider's address for notices	Delatim Ltd Unit 33, The IO Centre, Armstrong Road, London, SE18 6RS Attention: [●]
37.2.2	Purchaser's address for notices	London Underground Limited 55 Broadway London SW1H 0BD
Paragraph 1.2.5, Schedule 2 Part A	The amount of liquidated damages payable per day under Paragraph 1.2.5, Schedule 2 Part A is:	N/A
Paragraph 1.1(b), Part A Schedule 5	Public Liability insurance	£10 million per incident or series of incidents arising out of one event
Paragraph 1.1(b), Part A Schedule 5	Product Liability insurance	£10 million per incident or series of incidents arising out of one event
Paragraph 4, Part B Schedule 5	Professional Indemnity insurance	£2 million per incident and in the aggregate per annum

Part B

Not used

SCHEDULE 2: SERVICES

Part A

Core Services

1 Core Services

The Core Services are:

1.1 Design Authority

1.1.1 The Service Provider agrees that it will act as the Design Authority for the Design Life of the CCTV System.

1.1.2 The Service Provider shall comply with the following obligations in its role as Design Authority:

- (a) operate and maintain a system that tracks changes to the original designs of the Goods;
- (b) operate a system that can provide the "know-why" (factors which influenced the choice of the design) in relation to design information relating to the Goods;
- (c) operate a system that facilitates validation of technical changes to the current design of the Goods;
- (d) maintain a comprehensive understanding of the technical and operational requirements of the Goods;
- (e) maintain comprehensive knowledge of how the technical and operational requirements influence the design of the Goods and retain records accordingly;
- (f) retain information relating to the design to enable performance and assessment of modifications, evaluation of change of use, understanding of vehicle system and component behaviour, and support incident investigation as reasonably required by the Purchaser;
- (g) make informed judgements and validate operational safety implications relating to change of use and modifications including where the same is required by the Purchaser;
- (h) ensure that records are kept of the configuration levels of design throughout the CCTV System's life to ensure the above is carried out accurately and safely and that any modifications are compatible with the original design and any subsequent modifications;
- (i) ensure that all systems and/or documentation established or maintained pursuant to this Paragraph 1.1.2 take account of and integrate (where possible) all of the Supplier Design Documentation;
- (j) provide the Purchaser with any relevant information relating to changes in sub-suppliers, modifications to the original designs of the Goods, changes to

maintenance requirements or any other changes relevant to the continued operation of the Goods ("**Relevant Changes**") along with details of any recommended modifications to the design or Supplier Documentation as a result of the Relevant Changes for the Purchaser's consideration and approval;

- (k) following prior written approval from the Purchaser, implement any of the modifications recommended by the Service Provider pursuant to Paragraph 1.1.2(j);
- (l) provide the Purchaser with such information as the Purchaser may reasonably require in respect of the Service Provider's obligations contained in this Paragraph 1.1.2 within 28 Working Days of receipt of written notice from the Purchaser requesting such information, unless otherwise agreed between the Parties.

1.1.3 The Parties agree that any failure to comply with this Paragraph 1.1 will constitute a material breach for the purposes of Clause 13.1.3.

1.2 Supply of Spares

1.2.1 The Purchaser may request Spares, from time to time, by giving the Service Provider a notice setting out reasonable details of its requirements.

1.2.2 The Service Provider shall use all reasonable endeavours to make Spares available to the Purchaser by delivering them to the relevant London Underground location as notified by the Purchaser in writing to the Service Provider:

- (a) within the lead times specified for such Spares in Part E of Schedule 4 (*Service Payments*);
- (b) where no lead time is specified in Part E of Schedule 4 (*Service Payments*) within 48 hours of receipt of the Purchaser's request; or
- (c) as otherwise agreed by the Parties by way of a Variation, which may include an agreement to deliver Spares earlier than the stated lead times.

1.2.3 Where the Service Provider supplies a Spare to the Purchaser, the Service Provider shall invoice the Purchaser for that Spare on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

1.2.4 Not Used.

1.2.5 Not Used.

1.2.6 The Parties agree that any failure to comply with this Paragraph 1.2 will constitute a material breach for the purposes of Clause 13.1.3.

1.3 Obsolescence Management

1.3.1 The Service Provider shall provide and update every six (6) months an obsolescence plan in respect of the Replacement System, which will include:

- (a) a register of Spares at risk of obsolescence;

- (b) research and recommended measures by which the Purchaser can mitigate operational or maintenance risks arising from obsolescence at the lowest practical cost to the Purchaser. Implementation of such recommendations shall be subject to the prior written approval of the Purchaser.
- 1.3.2 The Service Provider shall ensure that it regularly communicates with its suppliers and/or Subcontractors via telephone, email or otherwise to ensure that it is notified as soon as possible of any Spares that are at risk of obsolescence.
- 1.3.3 The Service Provider shall ensure that, where it intends to or becomes aware that any of its suppliers and/or Subcontractors intends to:
 - (a) dispose of any item of Spares due to such Spare becoming obsolete or being replaced by a comparable spare; and/or
 - (b) stop the production or sale of any item of Spares,(together, the "**Potential Obsolete Spares**") the Service Provider shall:
 - (i) notify the Purchaser Representative as soon as possible prior to any such disposal or cessation of production and sale of the Potential Obsolete Spares; and
 - (ii) propose to the Purchaser Representative a range of suitable alternative spares and/or parts.
- 1.3.4 The Purchaser may in such circumstances as described in Paragraph 1.3.3 above require the Service Provider to:
 - (a) supply one of the suitable alternative spares proposed by the Service Provider pursuant to Paragraph 1.3.3(ii), and the Purchaser shall bear any increased costs of such alternative spare provided that the Service Provider has complied with its obligations contained in this Paragraph 1.3 to the Purchaser's satisfaction; and/or
 - (b) supply one (1) or more of the Potential Obsolete Spares for the Purchaser; and/or
 - (c) sell any remaining Spares or Potential Obsolete Spares to the Purchaser Representative at the rates set out in Schedule 4 (*Service Payments*).
- 1.3.5 The Parties agree that any failure to comply with this Paragraph 1.3 will constitute a material breach for the purposes of Clause 13.1.3.

1.4 **Continuous Improvement**

- 1.4.1 The Service Provider shall provide and update every six (6) months a continuous improvement plan in respect of the CCTV System and all other items of Goods, which will include:
 - (a) a register of Spares and recommended improvements and innovations to such Spares;
 - (b) research and recommended measures, including modification procedures, by which the Purchaser can improve operational performance, environmental

performance and maintenance optimisation or improvements which will reduce the whole life cost of the CCTV System and other items of Goods at the lowest practical cost to the Purchaser;

- (c) monitoring industry practices to identify processes and material changes which may improve the performance of the CCTV System; and
- (d) development of improvement proposals informed by the reliability trends of the CCTV System.

For the purposes of this Schedule 2 Part A, the recommendations described in this Paragraph 1.4.1 shall be referred to as the "**Continuous Improvement Recommendations**".

- 1.4.2 Following receipt of the continuous improvement plan, the Purchaser shall determine at its sole discretion whether to implement any Continuous Improvement Recommendations. The Purchaser shall confirm its decision in writing to the Service Provider on a date as notified by the Purchaser to the Service Provider. If the Purchaser does not confirm its decision in writing by the date which is three (3) months after receipt of the continuous improvement plan, the Service Provider shall implement the Continuous Improvement Recommendations.
- 1.4.3 The Parties agree that any failure to comply with this Paragraph 1.4 will constitute a material breach for the purposes of Clause 13.1.3.

Part B

Optional Services

1 Optional Services

1.1 The Purchaser shall be entitled to instruct the Service Provider to undertake the Optional Services which includes without limitation:

1.1.1 Spares Supply:

- (a) procure and supply Spares required by the Purchaser to carry out all servicing, maintenance and overhaul required by the CCTV System;
- (b) such assistance as the Purchaser may reasonably require, from time to time, to assist it in understanding and predicting its scheduled maintenance requirements;
- (c) provision of a dedicated materials management organisation while the Spares are at the relevant London Underground delivery location as notified by the Purchaser to the Service Provider;
- (d) monitor and record the usage of Spares and make such information available to the Purchaser as reasonably directed by them from time to time;
- (e) assume responsibility for the effective handling, management, control, storage and stewardship of Spares at all times when they are not in the custody or control of the Purchaser or incorporated into the CCTV System;
- (f) carry out, or procure the carrying out of, any servicing, maintenance, overhaul, repair or refurbishment required by the Spares in accordance with the Manuals to ensure that such Spares remain at all times Fit for Purpose. The Service Provider shall, and shall procure that each Subcontractor shall, while the Critical Spares are in its possession (including when they are on its premises) protect the same from theft, injury, breakage or damage by exposure to the weather and take every reasonable precaution against theft, accident, injury or breakage or damage from any cause.

1.1.2 investigate all service casualties for the CCTV System;

1.1.3 produce KPI reports to monitor the performance of the CCTV System;

1.1.4 undertake technical investigations on failures of the CCTV System;

1.1.5 operate the change control process;

1.1.6 assist in the assessment of defects;

1.1.7 provide technical guidance via a dedicated phone line to the Purchaser's operational and maintenance staff on an as required basis;

1.1.8 produce technical reports on Fault investigation;

1.1.9 assist with the provision of technical support at incidents on and off London Underground premises;

- 1.1.10 perform audits on technical issues;
- 1.1.11 provide proactive condition monitoring and trend tracking to produce preventative recall opportunities;
- 1.1.12 develop a condition monitoring process for the CCTV System;
- 1.1.13 implement the condition monitoring process referred to in Paragraph 1.1.13 of this Part B of Schedule 2 (*Services*) throughout the period of service of the CCTV System on the LUL Network;
- 1.1.14 provide daily failure analysis data for use in the production review at the start of shift. The Service Provider shall also attend the production review (which takes place at the start of a shift);
- 1.1.15 carry out monitoring of the CCTV System using records, diagnostic data or condition monitoring systems in order to identify potential improvements in failure rates and reliability as required;
- 1.1.16 provide open and transparent whole life cost analysis throughout the Agreement term arising from planned and unscheduled maintenance materials utilisation, so as to identify possible year-on-year cost reductions;
- 1.1.17 provide on-site technical assistance regarding fault identification and fault finding;
- 1.1.18 provide off site technical resource to carry out technical investigation;
- 1.1.19 provide technical information and advisory support relating to off-site systems and Software;
- 1.1.20 update the Manuals within twenty (20) Working Days of any Modifications to the CCTV System, Changes in Law or other necessary changes;
- 1.1.21 deliver to the Purchaser technical data recorded as a result of task-delivered quality analysis or asset inspection or dynamic condition recording; and
- 1.1.22 work collaboratively with third parties, other suppliers and the operator in the delivery of any Optional Services pursuant to this Part B of Schedule 2 (*Services*),
together with any other technical support services and/or spares supply that the Purchaser may reasonably require in relation to the Goods and Services.

- 1.2 Whenever there is a requirement for Optional Services the Service Provider shall liaise with the Purchaser in order to establish a solution which, so far as practicable, best meets the Purchaser's requirements.

2 Additional training for on-going maintenance

- 2.1 The Optional Services shall include the additional training services set out in this Paragraph 2 (the "**Training Services**"). The Purchaser shall be entitled to instruct the Service Provider to provide, or procure the provision of, the Training Services, which shall include without limitation:
 - 2.1.1 providing, or procuring the provision of, training to the breadth and depth required to enable the Purchaser's trainers to acquire all relevant knowledge and skills to carry

out training of the Purchaser's employees, agents, consultants and contractors to:

- (a) enable operation and maintenance of the CCTV System as well as equipment used to carry out tests for the CCTV System;
 - (b) conduct fault finding; and
 - (c) remove, replace and subsequently test all components of the CCTV System.
- 2.1.2 providing any required information to enable the Purchaser to train its train drivers and other operational staff as required;
- 2.1.3 providing the Training Materials, Training Programme and training plan;
- 2.1.4 training any other person nominated by the Purchaser;
- 2.1.5 providing competence assessments for the planned preventative maintenance, corrective maintenance, fault and failure diagnosis and rectification maintenance of the CCTV System;
- 2.1.6 analysing any technical enhancements to the CCTV System and/or any other changes, such as those arising from the rectification of defects, in consultation with the Purchaser, to determine whether further training is required;
- 2.1.7 conducting training needs analysis in accordance with the requirements of the Specification;
- 2.1.8 modifying the training approach, materials and resources as required, in consultation with the Purchaser, taking account of training pass/fail rates and in-service operations and maintenance experience;
- 2.1.9 providing all tools and equipment associated with the CCTV System for which training is being provided;
- 2.1.10 providing training on the set-up, use and maintenance of all:
 - (a) tools used to support training; and
 - (b) e-learning and equipment, including diagnostic equipment and off-train equipment testing and analysis tools.
- 2.2 The Training Services shall cover the operation and maintenance of the CCTV System under normal, abnormal, degraded and emergency conditions and shall address all normal modes of operation, the symptoms of failure modes, corrective actions to be taken, safety precautions, the level of intervention that is permissible by the Purchaser and the events that would necessitate the Service Provider's involvement. Such training shall include, but shall not be limited to:
- 2.2.1 Providing the location, purpose and function of all systems and components relevant for the following activities associated with the CCTV System:
 - (a) the operation and maintenance (including all instructions and processes for installation, operation and maintenance, fault diagnosis, rectification and testing) of the CCTV System;

- (b) system interfaces and associated failure modes and effects;
 - (c) not used;
 - (d) the CCTV System design, performance limits and capability (to ensure that the Purchaser has the capability to undertake specialist engineers' investigations); and
 - (e) such other content that the Service Provider shall propose and the Purchaser shall agree.
- 2.3 If the Service Provider is instructed by the Purchaser to provide training services in accordance with this Paragraph 2, the Service Provider shall be responsible for the provision of an adequate number of appropriately skilled trainers to complete all aspects of the analysis, design, development, delivery and evaluation of training (including, when required by the Purchaser, competency assessments) to meet the provision of the Training Programme.
- 2.4 Any training or materials provided by the Service Provider pursuant to this Paragraph 2 shall be sufficient to ensure that:
- 2.4.1 those personnel nominated by the Purchaser to attend training shall acquire all relevant knowledge and skill in relation to the operation of the CCTV System, including facets relating to the function, malfunction (including the range and ramification of potential failure conditions), operation and use of the CCTV System that are relevant to the appropriate employees, agents, consultants and contractors of the Purchaser.
 - 2.4.2 those personnel nominated by the Purchaser to attend training acquire knowledge and skill in relation to the maintenance of the CCTV System, including all maintenance activities over the life of the CCTV System that are relevant to the appropriate staff members. Such activities shall include (without limitation) inspection maintenance, casualty maintenance, diagnostic and monitoring activities, fault diagnosis and fault rectification;
 - 2.4.3 those personnel nominated by the Purchaser to attend training acquire knowledge and skills such that they are able to train the appropriate employees, agents, consultants and contractors of the Purchaser as per the requirements of Paragraphs 2.4.1 and 2.4.2.
- 2.5 Training shall be delivered by the Service Provider at such venue as may be nominated by the Purchaser.
- 2.6 For on-going maintenance and operation of the CCTV System, the Service Provider shall provide training on a "train-the-trainer" approach. The Purchaser shall procure that the maximum number of attendees shall be four (4) persons per "train-the-trainer" course.
- 2.7 Any training provided by the Service Provider as part of the Training Services shall be subject to the final approval of the Purchaser, once the Purchaser confirms it is satisfied with:
- 2.7.1 the finalised Training Materials; and
 - 2.7.2 delivery of the training concerned (to the Purchaser's nominees), including the delivery of training evaluation and delivery of the competence assessments set out in Paragraph 2.18 of this Schedule 2 Part B.

Training Materials and other documentation

- 2.8 Prior to each training course, the Service Provider shall submit to the Purchaser draft training materials for approval. The draft training materials shall be of sufficient quality and quantity as is reasonably necessary or desirable to permit the Purchaser's nominated trainers to further train the Purchaser's employees or those of any nominee and shall include (without limitation):
- 2.8.1 operator and maintainer documentation, including manuals and training manuals,
 - 2.8.2 the outputs of the training needs analysis;
 - 2.8.3 Training Plans;
 - 2.8.4 presentation materials;
 - 2.8.5 detailed trainer notes;
 - 2.8.6 trainee materials, including handbooks, fault guides, hand-outs and other such materials;
 - 2.8.7 tools and equipment; and
 - 2.8.8 formative and summative assessments including, for the summative assessments, a matrix that cross-references each learning objective with all related assessment questions.
- 2.9 The Purchaser shall review the draft training materials in conjunction with the Service Provider and instruct the Service Provider to amend and re-submit the draft training materials as reasonably required. Following approval of the draft training materials, they shall become the "**Training Materials**" for the purposes of this Paragraph 2. The Service Provider shall maintain and update the Training Materials as and when necessary.
- 2.10 If, as a result of in-service operations and/or maintenance experience, amendments are required to the Training Materials, the Service Provider shall complete any necessary analysis and submit updated Training Materials to the Purchaser for the Purchaser's approval. The Service Provider shall provide all necessary support to the Purchaser and/or the Purchaser's nominees to ensure that the Purchaser's nominees acquire all required knowledge and skills that are required as a result of any amendments to the Training Materials.
- 2.11 Any training courses provided by the Service Provider in accordance with this Paragraph 2 shall be accompanied by a full suite of documentation approved by the Purchaser, including but not limited to:
- 2.11.1 operator and maintainer manuals (including detailed instructions for the operation and maintenance of the CCTV System, including training tools and equipment);
 - 2.11.2 documentation necessary to provide specialist engineers with all necessary information to enable them to carry out incident investigations on the CCTV System being supplied;
 - 2.11.3 an emergency breakdown manual;
 - 2.11.4 Training Materials including Training Plans, detailed trainers' notes, presentation materials (e.g. slides, models etc.), formative and summative assessments and trainee

material (including, for example, handbooks);

- 2.11.5 all required technical information, including documentation such as illustrations, schematics, display screen captures, training manuals and design information relating to the design parameters, installation, operation and maintenance of the CCTV System in order to facilitate the development of technology based training (such as simulation or computer based training).

The Purchaser shall be entitled, without further charge, to duplicate as many copies of the documentation listed in this Paragraph 2.11 as it requires.

Training Programme

- 2.12 The Training Services shall include provision of a draft training programme that complies with all of the requirements set out in Paragraphs 2.13 to 2.15. Once the Purchaser approves the draft training programme, it shall become the "**Training Programme**" for the purposes of this Paragraph 2.
- 2.13 The Training Programme shall set out the training that the Service Provider will provide to enable the Purchaser to train its employees, agents, sub-contractors or consultants (or any employees, agents, sub-contractors or consultants of the Purchaser's nominees) to operate and maintain (as applicable) the CCTV System in accordance with the requirements of the Specification.
- 2.14 The Service Provider shall ensure that the Training Programme details all training timescales associated with the:
- 2.14.1 production of all Training Materials;
 - 2.14.2 delivery of all training courses and associated assessments to be provided by the Service Provider; and
 - 2.14.3 delivery of all deliverables set out in Paragraph 2 of this Schedule 2 Part B.
- 2.15 The Service Provider shall ensure that the Training Programme shall, at a minimum, make programme provision in relation to training as follows:
- 2.15.1 Training Programme preparation and submission to the Purchaser for review, along with any updating and resubmission to the Purchaser (if required)
 - 2.15.2 Purchaser approval and regular review of the Training Programme;
 - 2.15.3 For each training course:
 - (a) completion and assurance of training needs analysis;
 - (b) production of a training plan, including (but not limited to) preparation of the training plan (incorporating Service Provider validation/assurance), submission to the Purchaser, Purchaser review, any updates or resubmission to the Purchaser (if required) and Purchaser approval;
 - (c) production of technical support documentation, including but not limited to the preparation of operation and maintenance manuals (incorporating Service Provider validation/assurance), submission to the Purchaser for approval, Purchaser review, any updates or resubmission to the Purchaser (if required)

and Purchaser approval;

- (d) production of Training Materials, including preparation of the Training Materials (incorporating Service Provider validation/assurance), submission of Training Materials to the Purchaser, Purchaser review, any updates or resubmission to the Purchaser (if required) and Purchaser approval;
- (e) provision of all training tools and equipment required for the training course concerned; and
- (f) delivery, evaluation and certification of the relevant training (and licensing if required) and any required competence development and assessment activities.

2.16 The Service Provider shall review the Training Programme regularly in conjunction with the Purchaser and shall maintain and update the Training Programme as and when necessary or as requested by the Purchaser. Following any updates to the Training Programme, the Service Provider shall re-submit the Training Programme to the Purchaser for approval as required.

2.17 The Service Provider shall also submit to the Purchaser for the Purchaser's approval details of the training accreditation/validation process to accompany the Training Programme and Training Materials provided.

Training plan

2.18 The Training Services shall include the provision of a training plan, which shall, without limitation:

2.18.1 identify time(s), location(s) and attendee numbers for training courses, along with any prerequisites or dependencies for attendance;

2.18.2 identify each training course where recommended attendance is linked to the prior completion of another training course, and limit the number of such dependences as far as reasonably practicable;

2.18.3 provide joining instructions specifying exact details regarding time(s), location, directions, pre-course information and other requirements for each course delegate.

Competence assessments

2.19 Unless agreed otherwise with the Purchaser, the Service Provider shall provide as part of the Training Services formative and summative immediate outcome level assessments. The Service Provider shall provide competence assessments in relation to each of the following activities:

2.19.1 planned preventative maintenance of the CCTV System;

2.19.2 corrective maintenance of the CCTV System; and

2.19.3 fault and failure diagnosis and rectification maintenance of the CCTV System.

2.20 The Service Provider shall provide to the Purchaser's nominees all required support in relation to the achievement of competence, including task coaching, task shadowing and supervised practice.

3 Information Provided by the Service Provider

3.1 Where the Purchaser requests the Service Provider to carry out Optional Services in accordance with Paragraph 1 or Paragraph 2 of this Part B of Schedule 2 (*Services*) the Service Provider shall, as soon as reasonably practicable, advise the Purchaser of all relevant reasonable information relating to the carrying out of the proposed Optional Services including a proposal addressing, without limitation:

3.1.1 the nature and extent of the requirement for the Optional Services;

3.1.2 the Service Provider's outline proposals for how it will carry out and satisfy the Optional Services required, including:

- (a) the key activities that the Service Provider will undertake;
- (b) any deliverable that the Service Provider will provide including any relevant reports, analysis and amendments to Documentation;
- (c) a timetable for completion of the relevant Optional Services including key milestones and dates for provision of any key activities or deliverables;
- (d) any information or other support required by the Service Provider from the Purchaser or its Subcontractors in order to complete the relevant Optional Services;
- (e) the individuals (including brief details of their roles, experience and competency for the proposed activity) that the Service Provider will utilise in order to provide the Optional Services;
- (f) the price of the Optional Services calculated by reference to the prices and rates agreed for the individual Service Provider roles as described in Part E of Schedule 4 (*Service Payments*);
- (g) how the Service Provider will manage the provision of the Optional Services which shall include (as a minimum) periodic updates (to be daily or weekly as required by the Purchaser) setting out:
 - (i) progress of the Service Provider against any agreed deliverables and milestones; and
 - (ii) costs incurred to date against the price proposed in accordance with Paragraph (f) and future costs to be incurred in order to complete the relevant Optional Services; and
- (h) any Parts to be replaced or refurbished;
- (i) any effects on the Spares following the carrying out of the Optional Services;
- (j) any other information required by the Purchaser or that the Service Provider deems relevant to the Optional Services.

3.2 If the Purchaser requests any further information or variation to the Service Provider's proposal the Service Provider shall use reasonable endeavours to accommodate such request as soon as reasonably practicable.

- 3.3 Where the Purchaser requests the Service Provider to carry out Optional Services in accordance with Paragraph 1 of this Part B of Schedule 2 (*Services*), the Purchaser may request the Service Provider to provide the Purchaser with:
- 3.3.1 a draft quality plan specific to this Agreement based on the principles set out in Appendix 1 of this Part B of Schedule 2 (*Services*). The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft quality plan within one (1) month of receiving the draft quality plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the quality plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the Quality Plan as defined for the purposes of this Agreement; and/or
- 3.3.2 a draft safety plan specific to this Agreement based on the Service Provider's safety management system and safety manuals and in Appendix 2 of this Part B of Schedule 2 (*Services*). The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft safety plan within one month of receiving the draft safety plan from the Service Provider and the Service Provider shall incorporate such amendments, the Service Provider shall provide the Purchaser with the final version of the safety plan in hard copy and electronic copy form within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the Safety Plan as defined for the purposes of this Agreement.

4 Prompt Performance

Where the Purchaser approves a proposal for carrying out Optional Services the Purchaser shall so notify the Service Provider by email and as soon as reasonably practicable following receipt of such notification the Service Provider shall carry out and complete that Optional Service in accordance with the approved proposal (including in respect of the timing agreed in the relevant approved proposal for such Optional Services).

5 Payment

Payment for any Optional Services shall be in accordance with the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

6 Suspension of Optional Services

If the Purchaser notifies the Service Provider that it should suspend the provision of any Optional Services then the Service Provider shall stop performing the relevant Optional Services as notified by the Purchaser and payment of any costs incurred by the Service Provider and agreed in accordance with this Part B of Schedule 2 (*Services*) shall be addressed in accordance with the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

Appendix 1: Quality Plan Principles

1.1 The Service Provider shall ensure that each Quality Plan:

1.1.1 is produced in accordance with ISO10005 and consistent with the Service Provider's ISO9001 accreditation; and

1.1.2 complies with the Purchaser's QUENSH requirements.

Appendix 2: Safety Plan Principles

1. The Service Provider shall ensure that each Safety Plan complies with the following:
 - 1.1 all relevant European and/or UK health, safety and environmental guidelines;
 - 1.2 the Service Provider's own health, safety and environment management systems;
 - 1.3 the Purchaser's Health, Safety and Environment Strategy 2014 - 2017;
 - 1.4 the Purchaser's Health, Safety and Environment Policy (February 2014);
 - 1.5 the Purchaser's alcohol and drugs and workplace violence policies;
 - 1.6 the Purchaser's accident and incident reporting procedure; and
 - 1.7 the Service Provider's obligations in connection with Work Related Road Risk, as further described in Clause 35 of this Agreement.

2. The Service Provider shall ensure that each Safety Plan includes (without limitation):
 - 2.1 a statement of how roles and responsibilities for delivering health, safety and environment requirements will be discharged by the Service Provider's personnel;
 - 2.2 a description of the arrangements for how the health, safety and environmental competency of the Service Provider's personnel will be assessed, reviewed and updated during the term of this Agreement;
 - 2.3 the Service Provider's health, safety and environmental incident reporting procedures and how any such incidents will be reported to the Purchaser;
 - 2.4 method statements and risk assessments that demonstrate a safe system of work;
 - 2.5 a schedule of activities required to meet the delivery of the Safety Plan;
 - 2.6 verification activities, including but not limited to the following health, safety and environment management system requirements:
 - (a) site monitoring activities; and
 - (b) performance reporting;
 - 2.7 details of how the Service Provider will consult with the Purchaser on health and safety matters relating to maintenance; and
 - 2.8 processes for monitoring and ensuring that the Service Provider's Subcontractors comply with each Safety Plan.

Part C

Performance Management Regime

1 Key Performance Indicators

1.1 At the end of each month following the Commencement Date and at each SSA Status Update Meeting, the Service Provider shall assess and report to the Purchaser in writing the Service Provider’s actual performance against the KPIs set out in Paragraph 1.3 to 1.5 of this Part C (the "**KPIs**"). The Purchaser shall determine in its absolute discretion whether the Service Provider has met the KPIs. In the event that the Purchaser determines that the Service Provider has failed to meet any of the KPIs the Management Escalation Procedure shall apply.

1.2 The Parties may agree additional KPIs in writing prior to each SSA Status Update Meeting.

1.3 The KPIs are as follows:

Service	KPI measures	Target	Non-Conformance
Design Authority: Schedule 2 Part A Paragraphs 1.1.2(a) to (h) inclusive	Provision of a report every six (6) months on delivery of the Design Authority Obligations.	100% compliance	Level 1
Obsolescence Management: Schedule 2 Part A Paragraph 1.3.1	Provision of an updated obsolescence plan every six (6) months.	100% compliance	Level 1
Continuous Improvement Schedule 2 Part A 1.4.1	Provision of an updated continuous improvement plan every six (6) months.	100% compliance	Level 1

1.4 The performance KPIs are as follows:

Service	KPI measures	Target	Non-Conformance
Design Authority: Schedule 2 Part A Paragraphs 1.1.2(j)	Implementation of modifications within agreed timescales (reporting as required).	100% compliance	Level 1
Design Authority: Schedule 2 Part A Paragraph	Provision of information within 28 Working Days (reported monthly)	100% compliance	Level 1

1.1.2(k)			
Supply of Spares Schedule 2 Part A Paragraph 1.2.2	Accuracy of orders (reported monthly) On-time delivery (reported monthly)	100% compliance	Level 1
Provision of Optional Services Schedule 2 Part B	On-time delivery (reported monthly – as required)	95% compliance	Level 1

1.6 The quality and safety KPIs are as follows:

Service	KPI measures	Target	Non-Conformance
Quality Plan (Schedule 2 Appendix 1)	Provision of 6 Monthly update of Quality Plan	100% compliance	Level 1
Safety Plan (Schedule 2 Appendix 2)	Provision of 6 Monthly update of Safety Plan	100% compliance	Level 1
Performance Management	Non-Conformance Notices Issued	0 Notices Issued 100% compliance	

2 Management Escalation Procedure

- 2.1 If the Service Provider fails to meet any of the KPIs, the Purchaser may at its sole discretion invoke the management escalation procedure set out in Paragraphs 3 to 6 below of this Schedule 2 Part C (the "**Management Escalation Procedure**").
- 2.2 For the purposes of the Management Escalation Procedure, any failure to meet any KPI will be a "**Non-Conformance**".
- 2.3 If the Service Provider becomes aware that it will not achieve or is reasonably likely not to achieve one (1) or more of the KPIs, the Service Provider shall inform the Purchaser as soon as possible in accordance with Paragraph 1.3 of Schedule 3A (*Contract Management*).
- 2.4 Excluding the delivery of Spares in accordance with Paragraph 1.2.2 of Schedule 2 Part A, the Service Provider shall use all reasonable endeavours to resolve any failure to meet a KPI within ten (10) Working Days of the Service Provider becoming aware that it will not achieve or is reasonably likely not to achieve a KPI before a Non-Conformance is raised in accordance with this Schedule 2 Part C.
- 2.5 Failure to meet the delivery times for Spares specified in accordance with Paragraph 1.2 of Schedule 2 Part A within a given Measured Period will attract the following abatements against the full order value for all Spares ordered and delivered in such Measured Period.

On Time Delivery Performance	Abatement Attracted on Full Value of the orders of Spares
>= 99.00%	0%
97.00% - 98.99%	1%
95.00% - 96.99%	2%
90.00% - 94.99%	3%
80.00% - 89.99%	4%
<80.00%	5%

3 Level 1 Non-Conformance

- 3.1 For the purposes of this Schedule 2 Part C, a failure to meet any KPI identified as Level 1 in the tables set out in Paragraph 1.3 to 1.5 of this Schedule 2 Part C that has not been resolved in accordance with Paragraph 2.4 of this Schedule 2 Part C shall be referred to as a "**Level 1 Non-Conformance**".
- 3.2 The Purchaser's operations department (including the General Manager Asset and Maintenance) shall be responsible for responding to and dealing with any Level 1 Non-Conformances.
- 3.3 If one or more Level 1 Non-Conformance(s) occur the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 1 Non-Conformance (the "**Level 1 Non-Conformance Notice**").
- 3.4 The Service Provider shall within ten (10) Working Days of service of the Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan, containing:
 - 3.4.1 confirmation of the date and details of the Level 1 Non-Conformance;
 - 3.4.2 proposed steps to be taken by the Service Provider to rectify the Level 1 Non-Conformance;
 - 3.4.3 proposed steps to be taken by the Service Provider to ensure there is no repetition of the Level 1 Non-Conformance; and
 - 3.4.4 proposed timeframes for completion of the steps set out pursuant to Paragraphs 3.4.2 and 3.4.3 above (the "**Level 1 Rectification Period**");
 (the "**Level 1 Non-Conformance Plan**").
- 3.5 The Purchaser and the Service Provider shall review the draft Level 1 Non-Conformance plan and agree the final content of the Level 1 Non-Conformance Plan.
- 3.6 In the event the Purchaser and the Service Provider do not agree the final content of the Level 1 Non-Conformance Plan, the Purchaser will determine the final content of the Level 1 Non-Conformance Plan in its sole discretion.
- 3.7 The Service Provider shall deliver all obligations contained in the Level 1 Non-Conformance

Plan within the Level 1 Rectification Period.

- 3.8 If the Service Provider completes all obligations set out in the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall notify the Service Provider and the Level 1 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 1 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 1 Rectification Period, the Purchaser shall escalate the Level 1 Non-Conformance to a Level 2 Non-Conformance.
- 3.9 If three (3) or more Level 1 Non-Conformances occur within one (1) six (6) month period the Purchaser shall escalate the Level 1 Non-Conformance to a Level 2 Non-Conformance.
- 3.10 The Purchaser shall record all Level 1 Non-Conformances and monitor and feedback on remedying any such Level 1 Non-Conformances at SSA Status Update Meetings all Level 1 Non-Conformance trends.
- 3.11 The Purchaser shall review all Level 1 Non-Conformances weekly until such Level 1 Non-Conformances are classed as closed in accordance with Paragraph 3.8 of this Schedule 2 Part C.

4 Level 2 Non-Conformance:

4.1 Where:

- 4.1.1 there is a failure to meet any KPI that is identified as Level 2 in the tables set out in Paragraph 1.3 to 1.5 inclusive of this Schedule 2 Part C; or
- 4.1.2 the Purchaser determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or
- 4.1.3 the Service Provider fails to notify the Purchaser of the occurrence of a Level 1 Non-Conformance prior to the Purchaser notifying the Service Provider of the same Level 1 Non-Conformance (provided that the Purchaser shall be entitled, having regard to the gravity of the Non-Conformance, to treat this as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or
- 4.1.4 the Service Provider fails to provide the Purchaser with a draft Level 1 Non-Conformance Plan within ten (10) Working Days of service by the Purchaser notice of such Non-Conformance; or
- 4.1.5 the Service Provider fails to undertake and/or rectify a Level 1 Non-Conformance in accordance with the requisite Level 1 Non-Conformance Plan and within the Level 1 Rectification Period to the satisfaction of the Purchaser; or
- 4.1.6 a further Non-Conformance occurs of the same KPI within two (2) months of the end of the Level 1 Rectification Period; or
- 4.1.7 a further Non-Conformance occurs during the Level 1 Rectification Period of the same type as the Level 1 Non-Conformance and the Service Provider has knowingly and intentionally permitted the occurrence of such further Non-Conformance; or
- 4.1.8 three (3) or more Level 1 Non-Conformances occur within one (1) six (6) month period,

the Service Provider shall have committed a "**Level 2 Non-Conformance**" for the purposes of

this Schedule 2 Part C.

- 4.2 Level 2 Non-Conformances shall be escalated to the Purchaser's Director of Operations.
- 4.3 Where one or more Level 2 Non-Conformances occur, the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 2 Non-Conformance (the "**Level 2 Non-Conformance Notice**"). The Service Provider shall within five (5) Working Days of service of the Level 2 Non-Conformance Notice by the Purchaser prepare and submit to the Purchaser a draft plan containing:
 - 4.3.1 confirmation of the date and details of the Level 2 Non-Conformance(s);
 - 4.3.2 proposed steps to be taken by the Service Provider to rectify the Level 2 Non-Conformance;
 - 4.3.3 proposed steps to be taken by the Service Provider to ensure there is no repetition of the Level 2 Non-Conformance(s); and
 - 4.3.4 proposed timeframes for completion of the steps set out pursuant to Paragraphs 4.3.2 and 4.3.3 above (the "**Level 2 Rectification Period**"),

(the "**Level 2 Non-Conformance Plan**").
- 4.4 The Purchaser and the Service Provider shall review the draft Level 2 Non-Conformance Plan and agree the final content of the Level 2 Non-Conformance Plan.
- 4.5 In the event the Purchaser and the Service Provider do not agree the final content of the Level 2 Non-Conformance Plan, the Purchaser will determine the final content of the Level 2 Non-Conformance Plan in its sole discretion.
- 4.6 If the Service Provider completes all obligations set out in the Level 2 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 2 Rectification Period, the Purchaser shall notify the Service Provider and the Level 2 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 2 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 2 Rectification Period, the Purchaser shall escalate the Level 2 Non-Conformance to a Level 3 Non-Conformance.
- 4.7 The Purchaser shall record all Level 2 Non-Conformances and monitor and feedback on remedying any such Level 2 Non-Conformances at SSA Status Update Meetings Level 2 Non-Conformance trends.
- 4.8 The Purchaser shall review all Level 2 Non-Conformances weekly until such Level 2 Non-Conformances are classed as closed in accordance with Paragraph 4.6 of this Schedule 2 Part C.
- 5** Level 3 Non-conformance
 - 5.1 where:
 - 5.1.1 there is a failure to meet any KPI that is identified as Level 3 in the tables set out in Paragraph 1.3 to 1.5 inclusive of this Schedule 2 Part C; or
 - 5.1.2 the Purchaser determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or

- 5.1.3 the Service Provider fails to submit to the Purchaser a draft Level 2 Non-Conformance Plan within five (5) Working Days of service by the Purchaser of a Non-Conformance Notice; or
- 5.1.4 the Service Provider fails to undertake and rectify a Level 2 Non-Conformance in accordance with the requisite Level 2 Non-Conformance Plan and within the Level 2 Rectification Period to the satisfaction of the Purchaser; or
- 5.1.5 a further Non-Conformance occurs within two (2) months of the end of the Level 2 Rectification Period which is the same Non-Conformance as the Level 2 Non-Conformance; or
- 5.1.6 a further Non-Conformance occurs during a Level 2 Rectification Period which is the same Non-Conformance as the Level 2 Non-Conformance and the Service Provider has wilfully permitted the occurrence of such further Non-Conformance,

the Service Provider shall have committed a "**Level 3 Non-Conformance**" for the purposes of this Schedule 2 Part C.

- 5.2 Level 3 Non-Conformances shall be escalated to the Managing Director level of the Purchaser.
- 5.3 Where a Level 3 Non-Conformance occurs the Purchaser may at its sole discretion submit a notice to the Service Provider setting out the details of the Level 3 Non-Conformance (the "**Level 3 Non-Conformance Notice**").
- 5.4 The Level 3 Non-Conformance Notice shall set out:
 - 5.4.1 the deadline by which the Service Provider must serve on the Purchaser a draft plan setting out the steps that the Service Provider has taken, or will take, to ensure that no further Non-Conformances of this type shall arise ("**Level 3 Non-Conformance Plan**"); and
 - 5.4.2 the period (being no greater than one (1) month from the time of occurrence of the Level 3 Non-Conformance) for the Service Provider to put in place steps to ensure that no further Non-Conformances of the same type occur (the "**Level 3 Rectification Period**").
- 5.5 The Purchaser and the Service Provider shall review the draft Level 3 Non-Conformance plan and agree the final content of the Level 3 Non-Conformance Plan.
- 5.6 In the event the Purchaser and the Service Provider do not agree the final content of the Level 3 Non-Conformance Plan, the Purchaser will determine the final content of the Level 3 Non-Conformance Plan in its sole discretion.
- 5.7 If the Service Provider completes all obligations set out in the Level 3 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 3 Rectification Period, the Purchaser shall notify the Service Provider and the Level 3 Non-Conformance shall be classed as closed. In the event that the Service Provider does not complete the Level 3 Non-Conformance Plan to the satisfaction of the Purchaser and within the Level 3 Rectification Period, the Purchaser shall escalate the Level 3 Non-Conformance to a Level 4 Non-Conformance.
- 5.8 The Purchaser shall record all Level 3 Non-Conformances and monitor and feedback on remedying any such Level 3 Non-Conformances at SSA Status Update Meetings Level 3 Non-Conformance trends.

- 5.9 The Purchaser shall review all Level 3 Non-Conformances weekly until such Level 3 Non-Conformances are classed as closed in accordance with Paragraph ~~4.6~~ of this Schedule 2 Part C. 5-7 
- 5.10 Failure to meet the KPIs will attract the following abatements against the relevant areas of Non-Conformance.

Area	Abatement attracted
Design Authority	5% Bi-Annual invoice value
Obsolescence Management	5% Bi-Annual invoice value
Continuous Improvement	5% Bi-Annual invoice value
Optional Services	5% Bi-Annual invoice value
Quality Plan	5% Bi-Annual invoice value
Safety Plan	5% Bi-Annual invoice value
Performance Plan	5% Bi-Annual invoice value

6 Level 4 Non-conformance

- 6.1 Where:
- 6.1.1 the Service Provider fails to submit to the Purchaser a draft Level 3 Non-Conformance Plan by the deadline notified under the relevant Non-Conformance Notice; or
 - 6.1.2 the Service Provider fails to undertake and rectify a Level 3 Non-Conformance in accordance with the requisite Level 3 Non-Conformance Plan and to the satisfaction of the Purchaser; or
 - 6.1.3 a further Non-Conformance occurs within two (2) months of the end of the Level 3 Rectification Period and which is the same Non-Conformance as the Level 3 Non-Conformance; or
 - 6.1.4 a further Non-Conformance occurs during the Level 3 Rectification Period that is of the same type as the Level 3 Non-Conformance and the Service Provider has knowingly and intentionally permitted the occurrence of such further Non-Conformance,

the Service Provider shall have committed a "Level 4 Non-Conformance" for the purposes of

this Schedule 2 Part C.

- 6.2 Where a Level 4 Non-Conformance occurs, the Purchaser shall be entitled to terminate this Agreement by serving a Purchaser Termination Notice in accordance with Clause 13.2.2 of this Agreement.

Part D

Equipment and Facilities

[Not used]

(Clause 5)

Note: *If there is a Variation or Call Off Notice, the Parties envisage that there may need to be amendments to this Schedule to allow for equipment or facilities to be provided by the Purchaser. If so, this Schedule will provide for:*

- (a) details of the equipment or facilities;*
- (b) the location of the equipment or facilities; and*
- (c) the period in which the equipment or facilities are available.*

SCHEDULE 3: SUPPLY AND SUPPORT PLAN SPECIFICATIONS

(Clause 4.3)

Not used

Note: *If a Variation or Call Off notice requires a Supply and Support Plan, details of what that Supply and Support Plan will cover will be included in this Schedule.*

SCHEDULE 3A: CONTRACT MANAGEMENT

1 SSA Start Meeting

Within 15 Working Days of the Commencement Date, the Purchaser will convene a meeting with the Service Provider for the Parties to establish and define or communicate as appropriate how all obligations under this Agreement will be delivered (the "**SSA Start Meeting**"). The SSA Start Meeting shall include, but is not limited to, the following topics:

- 1.1 defining the format for conducting communications;
- 1.2 the structure of future meetings and attendees of those meetings;
- 1.3 planning and contract management; and
- 1.4 all deliverables under this Agreement.

2 Progress Review & Reporting

2.1 The Parties shall meet on a monthly basis at a location and in a manner to be agreed between the Parties to provide an update on the progress of the performance of the Services and any other obligations under this Agreement and any progress on remedying any non-conformances (the "**SSA Status Update Meeting**"). The agenda for each SSA Status Update Meeting will include a review of the Service Provider's performance of the Core Services and the Optional Services as required. At the SSA Status Update Meeting the Purchaser shall provide the Service Provider with a copy of the Performance Report relating to the period (to be agreed by the Parties) immediately preceding that SSA Status Update Meeting. The Purchaser shall take minutes at each SSA Status Update Meeting which shall be approved by the Service Provider Representative at the next SSA Status Update meeting, circulated to appropriate stakeholders and archived for reference.

2.2 The Purchaser may request the Service Provider to take part in additional review meetings with the Purchaser throughout the duration of this Agreement, in person, by phone call, video conference or other means ("**Additional Review Meeting**"). The agenda of any Additional Review Meeting will include:

- 2.2.1 review of the delivery of the Services;
- 2.2.2 review of numbered summary table of Non-Conformance Notices (to be supplied by the Purchaser);
- 2.2.3 review of all obligations due to be fulfilled by the Service Provider within the next six (6) months of the Agreement.

2.3 Unless otherwise determined by the Purchaser, where possible, the Purchaser shall take a record of each Additional Review Meeting within a communication tracker. The Purchaser shall circulate this record along with an action tracker to appropriate stakeholders and archive these records for reference.

2.4 In addition to the requirements detailed with Schedule 2 (Services), every month from the Commencement Date and no later than five (5) Working Days prior to each SSA Status Update Meeting, the Service Provider shall provide the Purchaser with a progress report containing details of the Service Provider's progress in delivering the Services, including:

- 2.4.1 a brief narrative describing activity since the previous progress report including

photos if required;

- 2.4.2 an updated, numbered summary of Service Provider's supply chain risk including material supply issues;
- 2.4.3 an updated, numbered summary of compliance with FORS (as defined in Clause 34.1) and Clause 34 (Work Related Road Risk).
- 2.4.4 an updated, numbered summary table of Non-Conformance Notices issued by the Purchaser detailing planned and implemented resolutions;
- 2.4.5 an updated, numbered summary table of contract variations;
- 2.4.6 an updated, numbered summary table of any Risks that have emerged to the Service Provider;
- 2.4.7 an updated, numbered summary of Service Provider's Spares delivery, listing all orders, with order date and delivery date;
- 2.4.8 an updated, numbered summary table containing details of any Disputes between the Service Provider and any third parties in connection with this Agreement.

3 Document Communication & Management

- 3.1 In order to enable efficient and traceable communication, the Purchaser will provide the Service Provider with draft templates for communication between the Parties ("**Communication Template**"). The Purchaser will also provide a draft template for one Party to communicate to the other Party any potential issues that may affect the delivery of any obligations under this Agreement ("**Early Warning Template**"). The Parties will review and agree the draft Communication Template and the draft Early Warning Template at the SSA Start Meeting, and the agreed templates with which the Parties shall correspondence shall be known as the "**Agreed Templates**" for the purposes of this Schedule 3A. Before issuing any Agreed Template, the relevant Party shall ensure that the Agreed Template is given a unique communication reference number and date. Agreed Templates and Non-Conformance Notices shall be treated by the Parties as everyday correspondence and may be used to manage the change control process set out in Clause 5 (Variations). Each Party shall send Agreed Templates and Non-Conformance Notices to the other Party by email at the email address nominated by the Purchaser from time to time unless otherwise requested by the other Party.
- 3.2 The Purchaser shall provide the Service Provider with access to the Purchaser's preferred method of sharing and exchanging other related documents for the duration of this Agreement. Such method of information sharing may include online internet based methods, such as SharePoint.

SCHEDULE 4: SERVICE PAYMENTS

Part A – Pricing Preambles

1 PRICING INTRODUCTION

1.1 This Part A provides further details with respect to the Service Payments.

2 PRICING CONCEPT

2.1 The Service Payments are sums listed under Part C of Schedule 4 (Service Payments), for the duration of the Agreement, adjusted as the case may be in accordance with the contractual Variation Procedure. The VAT treatment of supplies pursuant to this Agreement shall be as set out in Clause 8 of this Agreement.

2.2 Each Service Payment 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 Service Provider's performance of this Agreement.

3 PRICING APPROACH

3.1 The Service Payments shall be in Sterling 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 8 of this Agreement).

3.2 Notwithstanding paragraph 2.2 above, the rates and prices for all items and activities required for the Service Provider'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

- (a) head office, branch office and Service Provider's Works Support – all head office, branch office costs of the Service Provider performing the Services that are 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, postage costs, not included in the percentage addition for overheads and profit);
- (b) all costs of 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 for the Service Provider to perform its obligations under this Agreement.
- (d) training requirements - course and examination fees, all costs of staff attending medical examinations and training courses to enable the Service Provider to perform its obligations under this Agreement and all costs of Service Provider run courses and licensing of staff; and
- (e) insurance – 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, Service Provider offices, yards, depots and other buildings and associated plant, Service Provider'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 associated with the Agreement.

3.2.4 Attendance and Reporting

The Service Payments are deemed to be fully inclusive of the costs of the Service Provider's recording and provision of information in accordance with this Agreement including as requested by the Purchaser Representative. The Service Payments are also deemed to include the costs of the Service Provider's personnel attending any meetings.

3.2.5 Administration of Change

The Service Payments are deemed to be fully inclusive of the costs of the Service Provider's recording and provision of information in accordance with any Variation Quote, the costing or administration of the Variation Procedure.

Part B – Payment

1 Service Payments

- 1.1 The Service Provider will be entitled to submit a payment application in respect of a Service Payment in accordance with the Payments Schedule set out in Part C of this Schedule 4 (*Service Payments*).

2 Variations

- 2.1 Where a Variation varies the Service Payments, the Variation will be paid by varying the amount due at the relevant Payment Period to which the Variation relates. Where the Variation relates to two or more Service Payments, the value of the Variation will be divided between those Service Payments, based on allocating the value of the Variation between the Service Payments in proportion to the value of the Variation related to each Payment Period.
- 2.2 Where a Variation varies the Service Payments and the Service Payment to which the Variation relates has been paid, payment will be made by varying the amount due in respect of the subsequent Service Payment.
- 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 Service Payment, the Service Provider will be entitled to apply for payment in respect of Variations at intervals of not less than one (1) period. The Service Provider may apply for payment of one or more Variations at the same time.

Part C – Service Payments Schedule

Service	Labour Bi-Annual Cost (£)
Design Authority Cost	■
Obsolescence Management Cost	■
Continuous Improvement Cost	■

"**Bi-Annual Period**" means, in each year of this Agreement, each of the following:

01 January - 30 June

01 July - 31 December

Part D – Valuation of Variations

1 Schedule Of Rates And Prices

1.1 The rates and prices that shall be used to determine the value of Variations in accordance with Clause 5.5.2 are set out in Part E of this Schedule 4 (*Service Payments*).

2 Conversion of Sums into Sterling

2.1 Where a sum forming part or all of the value of a Variation is not in Sterling, the following will apply:

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

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

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

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.

Part E – Schedule of Rates and Prices

1 Labour rates

Staff Grade	Rate	Currency
Project Management	■	GBP
Project Engineering	■	GBP
Designer	■	GBP
Project Administration	■	GBP
Quantity Surveyor	■	GBP
Commercial Manager	■	GBP
Commissioning Engineer	■	GBP
Communications Engineer	■	GBP

All labour rates will be subject to the Indexation Adjustment set out in Part F of this Schedule 4 (Service Payments).

2. Spares

The Spares list will be the same as included in the MSA and will include the following information:

- Description of the item
- OEM name
- OEM part number
- Drawing or part number
- Consumable (C) or Repairable (R)
- Quantity
- Mounted on/Location
- Cost of item
- Recommended spares holding (strategic stock and maintenance stock)
- Lead time

All Spares prices will be subject to the Indexation Adjustment set out in Part F of this Schedule 4 (Service Payments).

Spares Item	Rate	Currency
Mobile Digital Recorder including SSD	██████	GBP
360 camera ████████████████████	██████	GBP
1T Solid State removable Hard Drive with drive caddy	██████	GBP
Camera Micro SD card 64Gb	██████	GBP

Part F – Indexation Adjustment

1 Overview

1.1 The Service Payments, labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) and prices for Spares (as set out in Part E of this Schedule 4 (*Service Payments*)) in this Agreement shall be subject to:

1.1.1 yearly indexation in accordance with Paragraph 2 below; and

1.1.2 rebasing every 5 years in accordance with Paragraph 3 below,

(the "**Indexation Adjustment**").

2 Indexation

2.1 For the purposes of this Schedule 4 Part F, the following words and expressions shall have the following meanings:

"**Contract Year**" means a year commencing at 0000 hours on 1 April and ending at 2359 hours on the following 31 March or, in respect of the first Contract Year, the period from the Effective Date until 2359 hours on the following 31 March and, in respect of the last Contract Year, the period ending or on the expiry or termination of the Agreement and beginning at 0000 hours on the immediately preceding 1 April;

"**Indexation Base Date**" means the indexation base date set out in Schedule 1 (*Special Conditions*) Part A (*Contract Particulars*).

2.2 The Service Payments (in respect of both the Core Services and the Optional Services), the labour rates (as set out in Part E of this Schedule 4 (*Service Payments*)) and the prices for Spares (as set out in Part E of this Schedule 4 (*Service Payments*)) shall be adjusted annually on 1 April in accordance with the following formula:

$$I = \left(\frac{RPIX_y}{RPIX_x} \right)$$

2.3 For the purposes of the formula in Paragraph 2.2 above:

I means the indexation factor applied in any calculation performed pursuant to paragraph 1 of this Schedule 4 Part F;

RPIX_y means the value of RPIX for February published in March immediately prior to the start of the current Contract Year;

RPIX_x means the value of RPIX for the Indexation Base Date.

3 Changes to the Index

If the index referred to in Paragraph 2.3 of this Part F of Schedule 4 (*Service Payments*) ceases to be published, then such other appropriate index that may be published in place thereof shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree.

3.1 Base date of Index

If any of the indices specified in Paragraph 2.3 of this Part F of Schedule 4 (*Service Payments*) is superseded by an index with a base date which is later than the base date of the index specified in Paragraph 2.3 of Part F of this Schedule 4 (*Service Payments*), the superseding index shall be used with an appropriate adjustment to the relevant Indexation Base Date and base price to neutralise the effect of the change at the date the substitution is made.

3.2 Provisional Indices

Where an index is published as "provisional" and is subsequently amended:

- 3.2.1 the calculation of any applicable adjustment may be undertaken using the published provisional index and invoices may be rendered accordingly;
- 3.2.2 any published amendment to the provisional index shall result in recalculation of any applicable adjustment; and
- 3.2.3 such recalculation shall be retrospective for the relevant period, and the Party disadvantaged by the amendment to the provisional index shall be entitled to recover the difference in the value of any invoice calculated on the basis of an amended provisional index.

4 Rebasing

4.1 On the fifth (5th) anniversary of the Indexation Base Date, and every five (5) years thereafter on the anniversary of the Indexation Base Date, the Parties shall procure that a rebasing exercise commences in accordance with the principles in Paragraphs 4.2 to 4.3 below in order to determine any amendments to the Service Payments, labour rates and/or prices for Spares.

4.2 The rebasing principles shall be:

4.2.1 the Service Provider or the Purchaser shall be entitled to propose:

- (a) labour rates for grades of staff that are not included in Part E of this Schedule 4 (*Service Payments*);
- (b) prices for Spares that are not included in Part E of this Schedule 4 (*Service Payments*);
- (c) a change (positive or negative) to the Service Payments, labour rates and/or prices for Spares where the yearly indexation adjustment in Paragraph 2 above does not accurately and sufficiently reflect the costs of the Service Provider in providing the relevant Service(s); and
- (d) a different formula for yearly indexation that would more accurately reflect the inflationary impacts on the Service Provider going forwards.

4.2.2 the Service Provider shall not be entitled to propose:

- (a) any changes to its profit margin;
- (b) any changes to the Service Payments, labour rates and/or prices for Spares where such change directly or indirectly subsidises the cost or price of

another Spare or Service; and/or

(c) any changes +/- 10% of the prices currently in the Agreement.

4.2.3 all Service Provider proposals for rebasing shall be supported by all information reasonably required by the Purchaser, which may include:

(a) evidence of the actual costs of the Service Provider in providing the Services and/or Spares;

(b) evidence of the prices and/or costs of the same or similar Services and/or Spares in the market;

(c) evidence of the prices and/or costs that the Service Provider is charged by its Sub-Contractors or any other suppliers;

(d) the overheads and margin of the Service Provider in providing the Services and/or Spares;

(e) information relating to employees employed in the delivery of the Services and their terms and conditions of employment.

4.2.4 the Purchaser shall be entitled to test in the market the prices and/or costs of the provision of the same or similar Services and/or Spares by issuing a tender or otherwise to other providers of Services or Spares prior to agreeing any rebasing pursuant to this paragraph.

4.3 The Parties shall review all information provided pursuant to Paragraph 4.2 above and use reasonable endeavours to agree any amendments to the Service Payments, labour rates and/or prices for Spares. If the Parties fail to agree any such amendments within [30] Working Days of all information being made available, either Party may refer the matter to the Dispute Resolution Procedure. Pending resolution of any dispute, no amendments shall be made to the Service Payments, labour rates and/or prices for Spares.

SCHEDULE 5: INSURANCE

1. The Service Provider 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 Service Provider operates;
 - 1.2 Public liability insurance to cover all sums for which the Service Provider 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 Service Provider 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) per occurrence or series of occurrence arising out of one event;
 - 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 Paragraph 1.2 of this Schedule 5 and the product liability insurance referred to in Paragraph 1.3 of this Schedule 5. Such professional indemnity insurance (or financial loss extension) shall be in an amount not less than £2,000,000 (two million pounds) per incident and the aggregate per annum with two 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 (as defined in the MSA) or such other location specified pursuant to the terms of the MSA or this Agreement.
 - 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 as additional insured for its rights and interests in the Goods.
2. The Service Provider will:
 - 2.1 ensure that the public liability and product liability insurances extend to indemnify the Purchaser as principal;
 - 2.2 where the Required 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 Service Provider 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 Required Insurances are in effect and all premiums due on each policy have been paid.

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

SCHEDULE 6: DISPUTE RESOLUTION PROCEDURE

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

"**Adjudicator**" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule.

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

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

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

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

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

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

1. The Purchaser and the Service Provider shall follow the procedure set out in this Schedule 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 7-29 and notice has been given in accordance with paragraph 29.
6. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the

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

7. Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7-29 by giving a Notice of Adjudication to the other parties to the Dispute.
8. Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.
 - 8.1 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.
 - 8.2 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.
- 12.6 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 Service Provider under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Service Provider 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,
- 14.4 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) 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 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 Service Provider'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.
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 7: FORM OF GUARANTEE

NOT USED

SCHEDULE 8: NOT USED

SCHEDULE 9: FORM OF PERFORMANCE REPORT

The form of Performance Report shall be agreed by the Parties prior to the first SSA Status Update Meeting.

SCHEDULE 10: FORM OF DEED OF WARRANTY

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** whose registered office is 55 Broadway, London SW1H 0BD (the "Purchaser" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● "the "**Subcontractor**"; and
- (3) **DELATIM LIMITED** whose registered office is Unit 33, The IO Centre, Armstrong Road, London, SE18 6RS (the "**Service Provider**").

WHEREAS:

- (A) The Service Provider has entered into a contract dated ● (the "**Contract**") with the Purchaser for the provisions of services and spares supply (the "**Services**").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the Service Provider for the carrying out of certain parts (the "**Subcontract Services**") of the Services more particularly defined in Annex ● hereto.

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Completion" means [];
 - (b) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (c) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the Subcontract Services (whether in existence or to be made);
 - (d) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the Purchaser may reasonably request;
 - (e) "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements or otherwise;
 - (f) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the Service Provider any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the

Subcontract or any other contract with the Purchaser or the Service Provider or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the Purchaser or the Service Provider;

- (ii) entering into the Subcontract or any other contract with the Purchaser or the Service Provider in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser or the Service Provider;
- (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the Purchaser or the Service Provider; or
- (iv) defrauding or attempting to defraud the Purchaser or the Service Provider;
- (g) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the Subcontract Services, the safe operation of the LUL Network and/or the safety of the Purchaser's employees, or the public or any other persons;
- (h) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

2. The Subcontractor warrants and undertakes to the Purchaser that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out services of a similar scope, size and complexity to the Subcontract Services; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the Purchaser that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with all Applicable Laws and LU Standards, general good building and engineering practice and the requirements of the Specification.

4. The Subcontractor further warrants and undertakes to the Purchaser that:

- (a) the Subcontract Services will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
- (b) the Subcontract Services and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
- (c) the Subcontract Services are integrated with the designs of the Purchaser, the Service

Provider and others as specified in the Subcontract;

- (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the Subcontract Services insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the Subcontract Services will on Completion comply with all Applicable Laws and all relevant LU Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the Subcontract Services will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Purchaser that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the Subcontract Services, he has professional indemnity insurance with a limit of indemnity of not less than £[] in respect of each and every claim which may be made against the Subcontractor in relation to the Subcontract Services. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Fleet Acceptance (as defined in the MSA) provided such insurance remains available at commercially reasonable rates and shall notify the Purchaser forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Purchaser, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the Purchaser or the Service Provider, the Subcontractor grants to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
- (a) understanding the Services;
 - (b) the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Parts and/or Spares or any related activity;
 - (c) complying with all Applicable Laws, LU Standards and all Relevant Consents;
 - (d) using and copying the Manuals and/or Supplier Documentation in order to perform any of the above;
 - (e) training personnel to carry out any of the activities described in Paragraphs 7(a), 7(b) and 7(c) above;
 - (f) inviting tenders for any of the activities described in Paragraph 7(a) to 7(e) inclusive above;

- (g) extending, interfacing with, integrating with, and adjusting the services and/or the services of third parties;
- (h) in the event of termination of both the Contract (other than for a Purchaser Event of Default) and the Subcontract, procuring fulfilment and performance of the Subcontractor's obligations under the Subcontract, including the manufacture of any Parts and/or Spares or other equipment for use in connection with the CCTV System;
- (i) enabling the Purchaser to carry out the operation, maintenance, repair, renewal and enhancement of the LUL Network;
- (j) enabling the Purchaser to perform his function and duties as Infrastructure Manager (as defined in the Railways and Other Guided Transport Systems (Safety Regulations 2006) and Operator of the LUL Network; and
- (k) the Purchaser performing its obligations under the Contract,

provided always that the Subcontractor shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose.

8. The Subcontractor agrees:

- (a) on request at any time to give the Purchaser or any persons authorised by the Purchaser access to the material referred to in Clause 7 and at the Purchaser's expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the Purchaser with a set of all such material on Completion of the Subcontract Services.

9. If called upon to do so by the Purchaser, the Subcontractor shall provide the Purchaser with such information relating to the Subcontract Services as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the Services provided that neither the provision of such information nor any inspection of the Services by the Purchaser nor the approval by the Purchaser of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the Subcontract Services.

10. The Subcontractor warrants and undertakes to the Purchaser that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the Services with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the Purchaser that the Subcontract contains open-book audit rights in favour of the Purchaser and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The Purchaser and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or records of the Subcontractor including, without limitation, the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, system and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the Purchaser may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the twelve (12) years

thereafter.

11. The Subcontractor shall provide such assistance to the Purchaser as it may reasonably require in connection with the Subcontract Services.
12. In the event that the Contract or the employment of the Service Provider thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Service Provider (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the Purchaser treat the Purchaser as Purchaser under the Subcontract to the exclusion of the Service Provider whereupon all rights and obligations of the Service Provider under the Subcontract shall thereafter be exercisable and performed by the Purchaser; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the Purchaser.
13. The Subcontractor warrants and undertakes to the Purchaser that he will promptly inform the Purchaser of any default by the Service Provider under the Subcontract and that he will not, without first giving the Purchaser at least twenty one (21) days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the Service Provider or to suspend performance of his obligations under the Subcontract.
14. The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the Purchaser shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the Purchaser or its appointee to the exclusion of the Service Provider in respect of the carrying out and completion of the Subcontract Services upon the terms of the Subcontract.
15. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the Purchaser pursuant thereto stating that the Purchaser or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the Purchaser, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the Purchaser or its appointee under the Subcontract in lieu of its liability to the Service Provider. If any notice given by the Purchaser under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the Purchaser's appointee, the Purchaser shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the Purchaser's appointee. For the avoidance of doubt neither the Purchaser nor his appointee shall be liable for any work carried out prior to the date of the Purchaser's notice.
16. The Service Provider has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
17. This Deed may be assigned by the Purchaser to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment

shall be permitted without the consent of the Subcontractor.

18. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
19. The liability of the Subcontractor under this Deed shall cease twelve (12) years following Completion of the whole of the Services.
20. The Subcontractor hereby covenants that if required by the Purchaser it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the Subcontract Services. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the Purchaser.
21. Without limitation to Clause 2 above, the Subcontractor hereby warrants to the Purchaser that:
 - (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the Purchaser, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the Subcontract Services relate;
 - (b) it shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the Subcontract Services, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) it shall not, without the prior written consent of the Purchaser, disclose any information obtained by it concerning the Purchaser or the TfL Group to any other person.
22. The Purchaser may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Purchaser.
23. Clause 20.1 does not apply to the disclosure of:
 - (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions.
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any Applicable Laws, LU Standards or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
24. The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the Purchaser for any act or omission of any Connected Person in breach of such obligations.
25. The Subcontractor shall notify the Purchaser promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the Purchaser all assistance

the Purchaser may reasonably require in connection with any proceedings the Purchaser may bring or other steps the Purchaser may take against that Connected Person or any other person for such breach of confidence.

26. The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the Purchaser may be entitled to as a matter of law) the Purchaser shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
27. At the Purchaser's request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the Purchaser or destroy as the Purchaser may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Purchaser in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
28. The Subcontractor shall owe no greater obligations to the Purchaser than he owes to the Service Provider under the Subcontract.
29. The Subcontractor shall be entitled in any action or proceedings by the Purchaser to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the Service Provider thereunder.
30. The rights and benefits conferred upon the Purchaser by this Deed are in addition to any other rights and remedies the Purchaser may have against the Subcontractor including without limitation any remedies in negligence.
31. The Service Provider agrees that he will not take any steps which would prevent or hinder the Purchaser from exercising his rights under this Deed and confirms that the rights of the Purchaser in Clauses 12 and 13 override any obligations of the Subcontractor to the Service Provider under the Subcontract.
32. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
33. Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 10 (*Form of Deed of Warranty*) of the Contract which shall be deemed to be included in this Deed as if it were recited herein in full (with the necessary changes).
34. The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
35. The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
36. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED

was affixed to **THIS DEED**

in the presence of:

Signature of Authorised Signatory _____

Print name of Authorised Signatory _____

THE COMMON SEAL of
[THE SUBCONTRACTOR]

was affixed to **THIS DEED**

in the presence of:

Signature of Director _____

Print name of Director _____

Signature of Director/Secretary _____

Print name of Director/Secretary _____

EXECUTED AND DELIVERED AS

A DEED by

DELATIM LIMITED

acting by:

Signature of Director _____

Print name of Director _____

Signature of Director/Secretary _____

Print name of Director/Secretary _____

ANNEX
(Subcontract Services)

SCHEDULE 11: FORM OF PERFORMANCE BOND

NOT USED

SCHEDULE 12: FORM OF ESCROW AGREEMENT



**Single Licensee
Escrow Agreement¹**

Date: []

Owner: **DELATIM LIMITED**

Agreement Number: []

Notice: The parties to this Agreement are obliged to inform NCC Group of any changes to the Escrow Materials or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Escrow Materials)

¹ This agreement has been negotiated with the NCC Group. Any proposed amendments should be agreed with the Legal team prior to being sent to either the Owner or NCC Group.

Escrow Agreement Dated:

Between:

- (1) **DELATIM LIMITED** whose registered office is at Unit 33, The IO Centre, Armstrong Road, London, SE18 6RS (Company Registration Number: 5475170) ("**Owner**");
- (2) **LONDON UNDERGROUND LIMITED**, (Registered Number: 1900907) a company incorporated under the laws of England and Wales whose registered office is at 55 Broadway, London SW1H 0BD ("**Licensee**"); and
- (3) **NCC GROUP ESCROW LIMITED** a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, England (crn: 3081952) ("**NCC Group**").

Background:

- (A) The Licensee has been granted a right to use the Software which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the Software is the confidential information and intellectual property of the Owner or a third party.
- (C) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1 Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

"**Agreement**" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"**Confidential Information**" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"**Escrow Materials**" means the Software and Source Code and any other such materials notified in writing by the Purchaser to the Service Provider that are required by the Purchaser to perform or procure the performance of the Service Provider's obligations under the Support and Spares Supply Agreement.

"**Full Verification**" means the tests and processes forming NCC Group's Full Verification service and/or such other tests and processes as may be agreed between the parties for the

verification of the Escrow Materials.

"Independent Expert" means a suitably qualified and independent solicitor or barrister.

"Integrity Testing" means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Escrow Materials.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"Licence" means the licence granted to the Licensee to use the Software.

"Licence Agreement" means the agreement listed in schedule 3 under which the Licensee was granted the Licence.

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Software exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

"Release Events" has the meaning given to it in clause 6.1 of this Agreement.

"Software" means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement.

"Source Code" means the computer programming code of the Software in human readable form and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Owner or the Licensee.

1.2 This Agreement shall be interpreted in accordance with the following:

1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;

1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement; and

1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Owner's Duties and Warranties

2.1 The Owner shall:

- 2.1.1 deliver a copy of the Escrow Materials each time there is a change to such item of Escrow Materials;
- 2.1.2 ensure that each item of the Escrow Materials deposited with the NCC Group comprises the latest version of such item of information or documentation used by the Licensee and, where such item comprises the Source Code, ensure that each copy of the Source Code comprises the Source Code of the latest version of the Software used by the Licensee;
- 2.1.3 deliver to NCC Group a replacement copy of the relevant Escrow Materials within 30 days after the anniversary of the last delivery of the relevant Escrow Materials to ensure that the integrity of the Escrow Materials media is maintained;
- 2.1.4 deliver a replacement copy of the Escrow Materials to NCC Group within fourteen (14) days of a notice given to it by NCC Group under the provisions of clause 4.1.3;
- 2.1.5 deliver with each deposit of the Escrow Materials the following information:
 - 2.1.5.1 details of the deposit including, where applicable, the full name of the relevant Escrow Material (i.e. the original name as set out under schedule 1 together with any new names given to the Escrow Materials by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.5.2 password/encryption details required to access the Escrow Materials;
 - 2.1.5.3 any other information or documentation required to be disclosed under any Licence Agreement or to facilitate the use of any of the Escrow Materials.
- 2.1.6 deliver with each deposit of the Source Code the following technical information (where applicable):
 - 2.1.6.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - 2.1.6.2 software design information (e.g. module names and functionality); and
 - 2.1.6.3 name and contact details of employees with knowledge of how to maintain and support the Source Code; and
 - 2.1.6.4 if required by the Licensee, deposit a backup copy of the object code of any third party software package and any other information or documentation required to access, install, build or compile or otherwise use the Source Code.
- 2.2 The Owner warrants to both NCC Group and the Licensee at the time of each deposit of the Escrow Materials with NCC Group that:
 - 2.2.1 other than any third party object code referred to in clause 2.1.8, any Third Party Material or any Escrow Materials owned by the Licensee by virtue of the provisions of the Licence Agreement, it owns the Intellectual Property Rights in the Escrow Materials;
 - 2.2.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party

Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by NCC Group;

- 2.2.3 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);
- 2.2.4 the Source Code deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.8) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software; and
- 2.2.5 in respect of any third party object code that the Owner, at its option, or, at the request of the Licensee, deposits with NCC Group in conjunction with the Source Code pursuant to clause 2.1.8, it has the full right and authority to do so.

3 Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Group of any change to the Escrow Materials that necessitates a replacement deposit of the Escrow Materials.
- 3.2 In the event that the Escrow Materials are released under clause 6, the Licensee shall, subject to the terms of the Licence Agreement:
 - 3.2.1 keep the Escrow Materials confidential at all times and ensure that any other person to whom the Escrow Materials is disclosed pursuant to clause 3.2.3 does the same;
 - 3.2.2 use the Escrow Materials only for the Release Purposes;
 - 3.2.3 not disclose the Escrow Materials to any person save as permitted under the terms of any relevant Licence Agreement or as otherwise required for the Release Purposes;
 - 3.2.4 hold all media containing the Escrow Materials in a safe and secure environment when not in use; and
 - 3.2.5 forthwith destroy the Escrow Materials should the Licensee cease to be entitled to use the Escrow Materials under the terms of the Licence Agreement.
- 3.3 In the event that the Escrow Materials are released under clause 6, it shall be the responsibility of the Licensee to obtain the necessary licences to utilise the object code of any third party material deposited by the Owner pursuant to clause 2.1.8.

4 NCC Group's Duties

- 4.1 NCC Group shall:
 - 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Escrow Materials in a safe and secure environment;
 - 4.1.2 inform the Owner and the Licensee of the receipt of any deposit of the Escrow Materials by sending to both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10; and

- 4.1.3 notify the Owner and the Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Escrow Materials held by it has been lost, damaged or destroyed so that a replacement may be obtained.
- 4.2 In the event of failure by the Owner to deposit any Escrow Materials with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensee of the Owner's failure to deposit any Escrow Materials.
- 4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8.
- 4.4 NCC Group has the right to make such copies of the Escrow Materials as may be necessary solely for the purposes of this Agreement.

5 Payment

- 5.1 The Parties shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. NCC Group's fees as published are exclusive of the value added tax.
- 5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the Parties.
- 5.3 All invoices are payable within thirty (30) days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of two per cent (2%) per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6 Release Events

- 6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Escrow Materials to a duly authorised officer of the Licensee if any of the following events ("Release Event(s)") occur:
- 6.1.1 if the Owner is a company:
- 6.1.1.1 an order is made for the winding up of the Owner, the Owner passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Owner is appointed; or
 - 6.1.1.2 an order is made for the appointment of an administrator of the Owner or an administrator of the Owner is appointed; or
 - 6.1.1.3 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.1.4 the Owner has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
 - 6.1.1.5 the Owner is dissolved; or

- 6.1.2 if the Owner is an individual:
 - 6.1.2.1 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.2.2 the Owner is declared bankrupt; or
 - 6.1.2.3 the Owner dies; or
 - 6.1.3 if the Owner is a partnership:
 - 6.1.3.1 any of the partners in the Owner are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - 6.1.3.2 the Owner is wound up or dissolved; or
 - 6.1.3.3 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.3.4 a partnership administration order is made in respect of the Owner; or
 - 6.1.4 any similar or analogous proceedings or event to those in clauses 6.1.1. to 6.1.3 above occurs in respect of the Owner within any jurisdiction outside England; or
 - 6.1.5 the Owner ceases to carry on its business or the part of its business which relates to the Escrow Materials; or
 - 6.1.6 the Owner assigns its rights to the Intellectual Property Rights in the Escrow Materials to a third party ("Assignee") and the Assignee fails, within sixty (60) days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Licensee by failing to enter into either:
 - 6.1.6.1 a novation agreement with the Licensee and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee; or
 - 6.1.6.2 a new escrow agreement with the Licensee for the Escrow Materials which offers the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee, provided that if the Assignee offers to enter into a novation or new escrow agreement within sixty (60) days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within thirty (30) days of such offer being notified to the Licensee, there shall be no Release Event under this clause; or
 - 6.1.7 the Owner or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations under the relevant Licence Agreement or any maintenance agreement entered into in connection with the Escrow Materials and has failed to remedy such default as required by the terms of the Licence Agreement or such maintenance agreement.
- 6.2 The Licensee must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration ("**Declaration**") made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Licence Agreement and any maintenance agreement, if relevant, for the Escrow Materials was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the

Declaration as NCC Group shall reasonably require.

- 6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:
- 6.3.1 NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
- 6.3.2 unless within fourteen (14) days after the date of despatch of the Declaration by NCC Group, NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,
- NCC Group will release the Escrow Materials to the Licensee for its use for the Release Purposes.
- 6.4 Upon receipt of the counter-notice from the Owner under clause 6.3.2, NCC Group shall send a copy of the counter-notice and any supporting evidence to the Licensee by courier or other form of guaranteed delivery.
- 6.5 Upon receipt by the Licensee of the counter-notice from NCC Group or, in any event, within ninety (90) days of despatch of the counter-notice by NCC Group, the Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within ninety (90) days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived their right to release of the Escrow Materials for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1.1 to 6.1.5, a subsequent assignment of the Intellectual Property Rights in the Escrow Materials shall not prejudice the Licensee's right to release of the Escrow Materials and its use for the Release Purposes.

7 Disputes

- 7.1 NCC Group shall notify the Owner of the Licensee's request for dispute resolution. Unless the Owner or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Owner or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within seven (7) days of registering their objection. If they fail to appoint an Independent Expert within this seven (7) day period, NCC Group shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within five (5) working days of the appointment of the Independent Expert, the Owner and the Licensee shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within fourteen (14) days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Owner, Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal

proceedings except in the case of manifest error.

7.4 If the Independent Expert's decision is in favour of the Licensee, NCC Group is hereby authorised to release and deliver the Escrow Materials to the Licensee within five (5) working days of the decision being notified by the Independent Expert to the parties.

7.5 The Parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8 Confidentiality

8.1 The Escrow Materials shall remain at all times the confidential and intellectual property of its owner.

8.2 Subject to the terms of the Licence Agreement, in the event that NCC Group releases the Escrow Materials to the Licensee, the Licensee shall be permitted to use the Escrow Materials only for the Release Purposes.

8.3 NCC Group agrees to keep all Confidential Information relating to the Escrow Materials that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9 Intellectual Property Rights

9.1 The release of the Escrow Materials to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Escrow Materials.

9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Group. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10 Integrity Testing and Full Verification

10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Escrow Materials received by NCC Group under this Agreement.

10.2 As soon as practicable after the Escrow Materials has been deposited with NCC Group, NCC Group shall apply its Integrity Testing processes to the Material.

10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification. Subject to clause 10.4, NCC Group's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Group in carrying out the Full Verification processes shall be payable by the requesting party.

10.4 If the Escrow Materials fail to satisfy NCC Group's Full Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.

- 10.5 Should the Escrow Materials deposited fail to satisfy NCC Group's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within fourteen (14) days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Escrow Materials as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Owner fails to make such deposit of the new, corrected or revised Escrow Materials, NCC Group will issue a report to the Licensee detailing the problem with the Escrow Materials as revealed by the relevant tests.

11 NCC Group's Liability

- 11.1 Nothing in this clause 11 excludes or limits the liability of NCC Group for:-

11.1.1 fraud or fraudulent misrepresentation;

11.1.2 death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence; or

11.1.3 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Without prejudice to clauses 11.1.1 to 11.1.3 (inclusive), the following provisions set out the entire financial liability of NCC Group (including any liability for the acts or omissions of its employees, agents and subcontractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

- 11.2 NCC Group shall not be liable for any loss or damage caused to the other Parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited to £2,500,000 (two million five hundred thousand pounds).

- 11.3 Subject to clause 11.1 NCC Group shall not be liable to the other Parties for any:

11.3.1 indirect, consequential and/or special loss or damage;

11.3.2 loss of profit (direct or indirect);

11.3.3 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

11.3.4 loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);

11.3.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect); and/or

11.3.6 loss or damage arising out of any failure by the Owner to keep full and up to date

back-ups and security copies of any Escrow Materials delivered under this Agreement,

arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

11.4 NCC Group shall not be liable in any way to the Owner or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.

11.5 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner or the Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

12 Indemnity

12.1 Save for any claim falling within the provisions of clause 11.1.1, the Owner and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Owner and the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.

12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Escrow Materials as contemplated under this Agreement.

13 Term and Termination

13.1 This Agreement shall continue until terminated in accordance with this clause 13.

13.2 If the Owner or the Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within thirty (30) days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within thirty (30) days. If the Licensee has not paid its invoice by the expiry of the thirty (30) day notice period, this Agreement will automatically immediately terminate. If the Owner has not paid its invoice by the expiry of the thirty (30) day notice period, NCC Group will give the Licensee a period of fifteen (15) days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the fifteen (15) day optional payment period given to the Licensee, this Agreement will automatically immediately terminate. Any amounts owed by the Owner but paid by the Licensee will be recoverable by the Licensee direct from the Owner as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.

- 13.3 Upon termination under the provisions of clause 13.2, for thirty (30) days from the date of termination NCC Group will make the Escrow Materials available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such thirty (30) day period NCC Group will destroy the Escrow Materials.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving thirty (30) days written notice to the Owner and the Licensee. In that event, the Owner and the Licensee shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within fourteen (14) days of delivery of such notice, the Owner or the Licensee shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Owner and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Escrow Materials to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Escrow Materials to the Owner.
- 13.5 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group. Upon such termination, NCC Group will return the Escrow Materials to the Owner.
- 13.6 If NCC Group discovers that a Release Event has occurred and the Licensee has failed to exercise its right to claim for release of the Escrow Materials under clause 6.2, NCC Group shall have the right to terminate this Agreement upon thirty (30) days written notice to the Owner and the Licensee. The Licensee shall have the option of applying for release in accordance with clause 6 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement shall automatically terminate and, unless otherwise instructed by the Owner or the Assignee prior to expiry of the notice period, NCC Group shall destroy the Escrow Materials.
- 13.7 If the Intellectual Property Rights in the Escrow Materials have been assigned to a third party and the proviso in clause 6.1.6 applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall destroy the Escrow Materials.
- 13.8 If the Licence has expired or has been lawfully terminated, then the Licensee shall give notice to NCC Group within fourteen (14) days thereof to terminate this Agreement, failing which, the Owner shall be entitled to give written notice to NCC Group to terminate this Agreement. Upon receipt of such a notice from the Owner, NCC Group shall notify the Licensee of the Owner's notice to terminate. Unless within fourteen (14) days of NCC Group giving such notice to the Licensee, NCC Group receives a counter-notice signed by a duly authorised officer of the Licensee disputing the termination of the Licence Agreement, then the Licensee shall be deemed to have consented to such termination and this Agreement shall immediately automatically terminate. Any disputes arising under this clause shall be dealt with in accordance with the dispute resolution procedure in clause 7. Upon termination under this clause, NCC Group shall return the Escrow Materials to the Owner.
- 13.9 Subject to clause 13.8, the Owner may only terminate this Agreement with the written consent of the Licensee.
- 13.10 This Agreement shall automatically immediately terminate upon release of the Escrow Materials to the Licensee in accordance with clause 6.

- 13.11 If the Agreement is superseded and replaced by a new agreement in respect of the Escrow Materials, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Escrow Materials to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Escrow Materials.
- 13.12 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.12 to 13.14 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.13 On and after termination of this Agreement, the Owner and/or the Licensee (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 13.14 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14 General

- 14.1 A Party shall notify the other parties to this Agreement, within thirty (30) days of its occurrence, of any of the following:
- 14.1.1 a change of its name, registered office, contact address or other contact details; and
- 14.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within fourteen (14) days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Escrow Materials, the Owner shall notify:
- 14.2.1 NCC Group and the Licensee of such assignment and the identity of the Assignee; and
- 14.2.2 the Assignee of the provisions of clause 6.1.6.
- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Escrow Materials and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:
- (i) if delivered by hand or courier, at the time of delivery;

- (ii) if sent by first class recorded delivery (airmail if overseas), two (2) business days after posting (six (6) days if sent by airmail);
 - (iii) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.
- 14.6 The Owner and the Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.
- 14.7 NCC Group shall be entitled to transfer or assign this Agreement upon written notice to both the Owner and the Licensee.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The Parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A Party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six (6) months, any of the other parties shall be entitled to terminate this Agreement by giving one (1) month's notice in writing.
- 14.12 No waiver by any Party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original

and all of which together shall constitute one and the same agreement.

Signed for and on behalf of **DELATIM LIMITED**

Name: _____

Position: _____ (Authorised Signatory)

Signed for and on behalf of **LONDON UNDERGROUND LIMITED**

Name: _____

Position: _____ (Authorised Signatory)

Signed for and on behalf of **NCC GROUP ESCROW LIMITED**

Name: _____

Position: _____ (Authorised Signatory)

Schedule 1**NOT USED****Schedule 2****NCC Group's Fees**

	DESCRIPTION	OWNER	LICENSEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
2	Scheduled Update Fee (2 nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
3	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
4	Release Fee (plus NCC Group's reasonable expenses)	100%	Nil

Additional fees will be payable to NCC Group by the Licensee (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of one (1) cubic foot;
- Any novation or replacement of this Agreement at the request of the Owner or the Licensee;
- Integrity Testing Fee for deposits consisting of more than five (5) media items.

Schedule 3**Licence Agreement**

[Insert full details of the agreement related to the Escrow Materials.]

SCHEDULE 13: HEAVY GOODS VEHICLE DIRECT VISION

1. INTRODUCTION

In this Schedule, the following terms, in addition to those terms set out in Clause 34, shall have the corresponding meanings:

“Agreed HGV DVS Plan” means the Initial HGV DVS Plan as updated and approved in accordance with the terms of this Schedule;

“Business Day” means any day excluding Saturday, Sundays or public or bank holidays in England;

“Initial HGV DVS Plan” means the initial HGV Plan that the Service Provider shall submit to the Purchaser under this terms of this Agreement which sets out and proposes how the Service Provider shall ensure that:

- (a) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
- (b) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and
- (c) so far as reasonably practicable, the conditions at all sites and locations within the control of the Service Provider where:
 - (i) the Services are being delivered, or
 - (ii) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provision of the Services. The Service Provider shall not incur any costs or make any changes to the site(s) without the prior written consent of the Purchaser;

2. HGV DVS Plan

- 2.1 The Service Provider shall submit to the Purchaser or the Purchaser Representative the Initial HGV DVS Plan within 12 weeks of the Commencement Date. Within fifteen (15) Business Days of the Commencement Date the Purchaser shall either;

- 2.1.1 confirm that the Initial HGV DVS Plan is approved, in which case such plan shall become the Agreed HGV DVS Plan; or
 - 2.1.2 provide the Service Provider with any comments on and/or amendments to the Initial HGV DVS Plan.
- 2.2 Within thirty (30) Business Days (for the purpose of paragraph 2.1.2) or 15 Business Days (for the purpose of paragraph 2.3.2) of receipt of any comments and/or amendments from the Purchaser in accordance with paragraph 2.1.2 or paragraph 2.3.2(as applicable), the Service Provider shall:
- 2.2.1 develop the Initial HGV DVS Plan to reflect such comments and/or amendments; and
 - 2.2.2 submit an updated Initial HGV DVS Plan to the Purchaser for approval.
- 2.3 Within fifteen (15) Business Days of receipt of the updated Initial HGV DVS Plan, the Purchaser shall confirm that either the updated Initial HGV DVS Plan:
- 2.3.1 is approved, in which case it shall become the Agreed HGV DVS Plan; or
 - 2.3.2 not approved and provide its further comments and/or amendments to the Service Provider and the Service Provider shall revise and re-submit the updated Initial HGV DVS Plan for approval in accordance with paragraph 2.2.
- The process set out in this paragraph 2.3 shall be repeated until the updated Initial HGV DVS Plan is approved by the Purchaser.
- 2.4 Where the Purchaser, acting reasonably, has not approved the updated Initial HGV DVS Plan, the Service Provider may refer that decision to the dispute resolution process set out in the Agreement.
- 2.5 Without limiting any other provision of this Agreement, the Service Provider shall, at no additional cost to the Purchaser, and as part of the Services:
- 2.5.1 implement, observe and comply with the Agreed HGV DVS Plan; and
 - 2.5.2 review and amend the Agreed HGV DVS Plan (as necessary) on each 12 month anniversary of the Commencement Date or earlier if requested by the Purchaser, to reflect:
 - (A) any changes to the nature of the Services; and
 - (B) any comments and/or amendments made or proposed by the Purchaser.

3. **HGV DVS CO-ORDINATOR**

- 3.1 The Service Provider shall nominate an employee/member of the Service Provider's Key Personnel with the necessary experience, competency and authority to:
- 3.1.1 be responsible for implementation and compliance with the Agreed HGV DVS Plan; and
 - 3.1.2 act as the Service Provider's authorised representative on all matters concerning the Agreed HGV DVS Plan ("**HGV DVS Co-ordinator**").

4. **SELF CERTIFICATION AND REPORTING**

On each 12 month anniversary of the Commencement Date, the Service Provider shall submit a report to the Purchaser which sets out the Service Provider's progress in respect of implementation of the Agreed HGV DVS Plan and confirms (with supporting evidence) that the Service Provider has complied with the Agreed HGV DVS Plan.