

Dated 11<sup>th</sup> FEBRUARY 2016

Tube Lines Limited (1)  
and  
John Dennis Coachbuilders Ltd (2)

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**CONTRACT**  
for the Supply of 10 new Emergency  
Response Unit Vehicles

**CONTRACT REFERENCE NUMBER:**

**TFL-00148**

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**THIS CONTRACT** is made on 11<sup>th</sup> FEBRUARY. 2016

**BETWEEN:**

- (1) **Tube Lines Limited** (company number 3923425 ) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) John Dennis Coachbuilders Ltd (company number 1916000) whose registered office is at 25 Westfield Road, Guildford, Surrey, GU1 1RR (the "**Supplier**").

#### **BACKGROUND**

- (A) The Supplier carries on the business of manufacturing and selling the Goods and providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Contract.

**THIS DEED WITNESSES** that:

### **1 Definitions and Interpretation**

1.1 In the Contract the following definitions shall have the following meanings:

"**Accounting Period**" means the Company's accounting periods as notified from time to time by the Company to the Supplier each such period being of between 25 and 32 days and one of 13 periods during the Company's financial year;

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

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

"**Applicable Laws and Standards**" means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract (including for clarity the standards referred to in Schedule 1 (if any)), or the Goods and Services.

"**BAFO**" means 'best and final offer'.

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

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

**“Commencement Date”** means the date specified as such in Schedule 1.

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

**“Company’s Representative”** means the person appointed by the Company and named as such in Schedule 1.

**“Competent Authority”** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the parties in connection with the performance of the Contract.

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

**“Contract”** means this contract made between the Company and the Supplier.

**“Contract Information”** means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Schedule 8 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

**“Contract Price”** means the total price for the Goods and Services stated in Schedule 1.

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

**“Contract Variation Procedure”** means the procedure set out in Schedule 3.

**“Date for Completion of the Services”** means the date specified as such in Schedule 1 or such other date as may be agreed between the parties in accordance with the terms of the Contract.

**“Declaration of Ineffectiveness”** means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

**“Default Interest Rate”** means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.

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

**“Delivery Address”** means the address at which the Supplier shall deliver the Goods to the Company and which is set out in Schedule 1 or such other destination as may be notified by the Company to the Supplier.

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

**“Delivery Note”** has the meaning given to that term in Clause 9.6.

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

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

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

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

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

“**Environmental Law**” means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

“**Ethical Sourcing Policy**” has the meaning given to that term in Clause 25.3.

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

“**Existing Contracts**” means any and all contracts, whether current, expired or terminated, pursuant to which Goods and/or the Services have been supplied and/or provided by the Supplier (in the capacity of contractor or subcontractor) to the Company and/or any other member of the TfL Group.

“**Expected Delivery Date**” means the date set out in Schedule 1 upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

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

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

- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (h) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (i) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (j) strikes, lock outs or other industrial action being in each case industry-wide.

**“Goods”** means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 6.

**“Greater London”** has the meaning ascribed to it in the GLA Act.

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

**“Initial Period”** means the number of years from the Commencement Date stated in Schedule 1.

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

**“Intellectual Property Rights”** means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), registered designs, design rights, patent application, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by

registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

**“Invoice”** means a request for payment bearing all information required by the Company including the Contract reference number, Supplier's name, address and a brief description of the materials supplied or services provided;

**“Key Personnel”** means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 22.

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

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

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

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

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

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

**“Programme”** means the programme of work set out in Schedule 5 for the provision of the Services which has been submitted by the Supplier and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the Contract or otherwise by agreement in writing between the Supplier and the Company.

**“Prohibited Act”** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Company; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Company; or
- (b) entering into the Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before the Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts,in relation to the Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

**“Protected Characteristics”** has the meaning given to that term in Clause 41.8.

**“Quality and Safety Plan”** means the Supplier’s quality and safety plan set out in Schedule 4 as amended from time to time.

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

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

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

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

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

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

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

**“Services”** means the services stated in the Specification to be performed by the Supplier and any Additional Services.

**“Specification”** means the description of the Goods and Services set out in Schedule 2 to be supplied by the Supplier in accordance with the Contract.

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

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

**“Supplier’s Representative”** means the person appointed by the Supplier and named as such in Schedule 1.

**“Supplier’s Sub-contractors”** has the meaning given to that term in Clause 41.

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

**“TfL Group”** means Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail

Limited (company number 04212657) and reference to any “**member of the TfL Group**” refers to TfL or any such subsidiary.

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

“**Underground Network**” means the stations and depots (where situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as “London Underground”.

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

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

“**Variation Proposal**” means the written proposal put by the Company or the Supplier to vary the Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 3.

“**Warranty Period**” the period specified as such in Schedule 1.

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

- 1.2 The headings in the Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Contract and references to the Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Contract or any other document shall be construed as references to the Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the “**Company**” shall include its successors, transferees and assignees.

## **2 Duration**

- 2.1 The Contract shall commence on the Commencement Date and shall be performed by the Supplier in accordance with the terms of the Contract (save in the event of earlier termination).

## **3 Supplier's Primary Obligations**

- 3.1 The Supplier shall supply the Goods and shall perform the Services in accordance with the terms of the Contract.

- 3.2 The Supplier shall ensure and warrants to the Company that the Goods will:

- (a) conform in all respects with the Specification and the provisions of the Contract including, without limitation, specifications as to quantity, quality and description;
- (b) be of satisfactory quality and fit for the purpose for which they are intended;
- (c) comply with all Applicable Laws and Standards (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all standards referred to in Schedule 1;
- (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.

- 3.2A Not Used.

- 3.3 The Supplier shall ensure and warrants to the Company that the Services will:

- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
- (b) be in accordance with the standards or methods (if any) detailed in Schedule 1 and where standards or methods are not detailed in Schedule 1, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
- (c) be performed in accordance with the Programme;
- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable the Company or the Underground Network); and

(e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.

3.4 The Supplier shall perform its obligations under the Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and provision of the Services or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.

3.5 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.

3.6 Unless otherwise stated in the Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under the Contract.

3.7 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.

#### **4 Records and Audit**

4.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Contract and all transactions related to the Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);

- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

4.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under the Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.

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

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

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

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

- 4.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's request for the same.

## **5 Company's Obligations**

- 5.1 The Company shall pay the Supplier the Contract Price for the Goods and Services in accordance with the terms of the Contract.
- 5.2 Payment of the Contract Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the Contract properly.

## **6 Additional Goods and Services**

- 6.1 The Company may, at any time during the term of the Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, Schedule 1 and Schedule 5 shall be amended to include such Additional Goods and/or Services, the Expected Delivery Date and/or Date for Completion of the Services and the quoted price.

## **7 Variation**

- 7.1 Unless the parties agree otherwise in writing, any variation to the Contract shall be made under the Contract Variation Procedure.
- 7.2 The Supplier shall not proceed to implement any variation unless there has been a Variation Order and the Supplier has received a purchase order from the Supplier with respect to the relevant variation.

## **8 Price and Payment**

- 8.1 In consideration of and subject to the due and proper performance by the Supplier and its obligations under the Contract the Company will pay the Supplier the Contract Price in accordance with the procedures for payment contained in Schedule 8.
- 8.2 Payment will be made within 30 days of receipt by the Company of an Invoice from the Supplier which has been approved by the Company in accordance with Schedule 8.

- 8.3 The Contract Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Contract Price for the Goods and Services shall only be changed in accordance with the Contract Variation Procedure.
- 8.4 The Contract Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.
- 8.5 Any payments made by the Company hereunder, including final payment under this Contract, will not prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Supplier by mistake of law or of fact. The Company will be entitled to withhold from any sums due or which may become due to the Supplier from the Company (a) any amount in respect of which there exists a bona fide dispute, and (b) any amount that on the basis of the Company's bona fide estimate the Company considers due to it from the Supplier. Such estimates will be binding on the Supplier unless and until varied by agreement between the Parties or any award, order or judgement.
- 8.6 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Supply or any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Contract or otherwise.
- 8.7 All sums payable to the Company by the Supplier under the Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 8.8 The Company shall be entitled to the Supplier's standard discount for prompt payment.
- 8.9 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Contract Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Contract Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 8.9, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.

**8A Not used.**

## 9 Delivery of Goods and Time for Performance of Services

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Delivery Date at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods. The Company shall be under no obligation to accept partial delivery of an order.
- 9.2 Not used.
- 9.3 If the Goods are not supplied on the Expected Delivery Date then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of liquidated damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of liquidated damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.(iii) [REDACTED]  
[REDACTED]  
[REDACTED]
- 9.4 The Supplier accepts that the amount of liquidated damages under the Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Delivery Date.
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of the Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Delivery Date in accordance with Clause 34.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 9.8 The Company shall upon reasonable notice from the Supplier, provide access for the Supplier to the Company's premises and information records and other materials as the Supplier may reasonably require in order to provide the Services, provided that the Company shall only be

obliged to procure such access during the normal working hours applicable to the premises/location at which the Services are to be performed and provided that such access shall not cause undue commercial disruption to the Company.

- 9.9 In the event that access is required to the premises of any third party for the purpose of provision of the Services, the Company shall use its reasonable endeavours to secure such rights of access for the Supplier provided that the Supplier shall be responsible for arranging such access on a day to day basis with the third party.
- 9.10 Not used.
- 9.11 Not used.
- 9.12 Not used.
- 9.13 Not used.
- 9.14 In the event that all or any of the obligations of the Supplier under the Contract to pay liquidated damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which liquidated damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 9 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay liquidated damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

## **10 Work on Company's Sites**

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

subcontractors and ensure that such subcontractors adhere to the terms and conditions of the Contract;

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

10.2 Without prejudice to Clauses 10.1(a) to (g) the parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under the Contract.

10.3 Not used

## **11 Not Used**

## **12 Environmental Claims**

12.1 The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non performance or part performance of the Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, its employees, subcontractors or agents.

12.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.

12.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the

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

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

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

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the provision of the Goods and Services (for the purposes of this Clause 12.5, the "**authorisations**");
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

### **13 Risk and Ownership**

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

13.2 Without prejudice to Clause 13.1, the Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the earlier of any full or partial payment by the Company to the Supplier for the Goods or the Delivery Date.

### **14 Inspection of the Goods**

14.1 During the Contract the Company shall inspect the Goods in accordance with Schedule 5. Furthermore:

14.1.1 following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.

14.2 If, following the inspection referred to in Clause 14.1.1, the Goods do not comply with the terms of the Contract, including but not limited to, conforming to the Specification, the Quality and Safety Plan and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").

14.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall investigate and with agreement from the Company remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall:

(a) replace such Rejected Goods with Goods which conform in all respects with the Contract within 2 weeks, or such other period as the Company may reasonably require; and

(b) pay the Company's Losses resulting from the Supplier's delivery of Goods that were not in conformity with the terms of the Contract.

14.4 The Company's rights and remedies under this Clause 144 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.

14.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 14.3(a), the Company may, without affecting its rights under Clause 14.3(b), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall reimburse the Company for the costs it incurs in doing so.

## **15 Warranty**

15.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under the Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.

- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of the Contract and the provisions of Clauses 9, 13 and 14 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 9 or, where applicable, re-delivers the Goods in accordance with this Clause 15.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.
- 15.4 If the Supplier has not performed the Services in accordance with the terms of the Contract, without prejudice to any other rights the Company shall have under the Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.

## **16 Intellectual Property Rights**

### **16.1 Existing Contracts**

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

### **16.2 Vesting of Intellectual Property Rights created under this Contract**

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

### **16.3 Ownership of the Supplier's Intellectual Property Rights**

Without prejudice to Clause 16.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 16.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

### **16.4 Company's Licence to use the Supplier's Intellectual Property Rights**

The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 16.3 for the purposes of:-

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

#### 16.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 16.2, 16.2 and 16.4 above; and

- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

#### 16.6 Company's Rights of Retention

If the Supplier has not complied with its obligations under Clause 16.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 16.5(a).

#### 16.7 Company's Rights to the Software

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Goods and/or the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 17.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

#### 16.8 Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 16.5 above and anything in which the Intellectual Property Rights referred to in Clauses 16.2, 16.3 and 16.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods and/or Services for the carrying out of any activities in connection with the licence under Clause 16.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

#### 16.9 Supplier's Indemnity against Third Party Intellectual Property Rights Infringement

- (a) The Supplier shall indemnify and hold harmless the Company against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened

proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.

- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the Goods and/or to the method of providing the Services as may be necessary to ensure that the use and provision of the Goods and the provision of the Services continues in spite of such claim.

#### 16.10 Ownership of the Company's Intellectual Property Rights

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

### **17 Termination and Suspension**

#### 17.1 The Company may terminate the Contract immediately by notice in writing to the Supplier if:

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

administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same; or

- (e) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12.

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

- (a) to terminate the Contract at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

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

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

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

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

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

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

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

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

## **18 Indemnity and Insurance**

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

suffered or incurred by the Company and/or any third party, arising from or in connection with the performance or non-performance of the Supplier under the Contract:

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

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

- 18.3 The Supplier shall keep the Company indemnified against all claims arising as a result of the Supplier failing to comply with any relevant Applicable Laws and Standards, including but not limited to any liquidated damages claims made against the Company by an operator of a rail vehicle in circumstances where that rail vehicle is taken out of service as a result of the Supplier failing to comply with a relevant Applicable Law and Standard, provided always that the Supplier shall not be required to indemnify the Company for claims directly arising solely out of the wrongful acts or omissions of the Company, its employees or agents, and provided further that the Supplier's liability to indemnify the Company shall be reduced proportionately to the extent that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.

- 18.4 The Supplier's indemnity under Clause 18.2 and all other indemnities under the Contract shall remain in force for the duration of the Contract and for the period of twelve (12) years after the Delivery Date and/or Date for Completion of the Services or earlier termination of the Contract.
- 18.5 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clauses 18.2 to 18.3 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 18.6 Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Contract.
- 18.7 Without prejudice to the obligation to indemnify the Company set out in Clauses 18.2 and 18.3, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
  - (b) maintain at its own cost public liability insurance in respect of the Supplier's liability for death or injury to any person or loss or damage to any property in an amount not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
  - (c) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person or loss or damage to any property arising out of its performance of the Contract in an amount of not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
  - (d) maintain at its own cost professional indemnity insurance (to the extent that the Supplier carries out any design work as part of this contract) to ensure that its activities under the Contract are insured and remain insured in an amount not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
  - (e) maintain at its own cost "goods in transit" insurance in an amount not less than that set out in Schedule 1, in respect of the Supplier's liability for theft, loss or damage to property and Goods while in transit from one place to another or being stored during a journey;
  - (f) maintain at its own cost insurance which complies with the Road Traffic Act 1988 and any statutory orders made under such Act or any amendment or re-enactment thereof;
  - (g) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such

approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the delivery of the Goods and completion of the Services (whichever is the later);

- (h) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (i) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any Services or the provision of any of the Goods by the Supplier under the Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 18.7.

18.8 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 18.7.

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

18.10 Not used

## **19 Force Majeure**

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

## **20 Safety**

- 20.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 20.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the Company's category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to the Contract in the QUENSH menu set out in the Specification ("QUENSH") as amended from time to time; and
  - (b) the Company's drug and alcohol principles as amended from time to time.
- 20.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to the Contract as if the term "LU Premises" means any of the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.
- 20.4 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, subcontractors or agents for drugs or alcohol which the Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

## **21 Independent Supplier**

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

## **22 Supplier Personnel**

### Commencement of Services

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

- 22.2 If the contract of employment of any individual is found or alleged to have effect on or after the Commencement Date as if originally made with the Company by reason of the Employment Regulations, the Supplier agrees that:
- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the Commencement Date; and
  - (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Commencement Date; and
  - (c) it will do nothing to discourage the acceptance of the offer.
- 22.3 Upon that offer being made in accordance with Clauses 22.2(a) and 22.2(b) (or after fourteen (14) days, if the offer is not made as requested), the Company may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company in respect of (i) the employment of such person after the Commencement Date until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

#### Supplier Personnel

- 22.4 The Supplier will be responsible and liable for the recruitment, training, management, removal and termination of all Supplier Personnel and the acts and omissions of the Supplier Personnel in connection with or relating to the supply of the Goods or Services and will indemnify the Company on demand in respect of all Losses that may be suffered or incurred by the Company in connection with the acts or omissions of Supplier Personnel in connection with or relating to the supply of the Goods or Services and/or when dealing with any individuals employed or engaged in any capacity by the Company.
- 22.5 The Supplier will, to the extent required, secure the consent of Supplier Personnel to the disclosure of data falling within the scope of the Data Protection Act 1998.

#### Supplier Personnel Information and Supplier Personnel Indemnity

- 22.6 The Supplier:

- 22.6.1 will, on request at any time (including for the avoidance of doubt after the expiry of the Contract), provide to the Company, the Supplier Personnel Information. Such Supplier Personnel Information shall be provided to the Company as soon as reasonably practicable and in any event no later than twenty eight (28) days after such a request;
- 22.6.2 warrants and undertakes to the Company that any Supplier Personnel Information disclosed pursuant to Clause 22.6.1 above is complete and accurate; and
- 22.6.3 will indemnify and hold harmless the Company and any Replacement Supplier from and against all Losses incurred or suffered by the Company and any Replacement Supplier in connection with, or as a result of, any claim or demand:
- (i) by any Supplier Personnel which relates wholly or in part to the Supplier Personnel's employment in the period on or after the Commencement Date;
  - (ii) by any Supplier Personnel which relates to the Supplier's failure or alleged failure to employ such Supplier's Personnel on the terms and conditions which they enjoyed immediately prior to the Commencement Date;
  - (iii) by or on behalf of any Supplier Personnel which relates to a breach of any of the warranties and undertakings given by the Supplier in this Clause 22; or
  - (iv) relating to any incomplete or incorrect information relating to the Supplier Personnel which the Supplier has provided to the Company pursuant to this Clause 22 or otherwise and which the Company has relied upon.
- 22.6.4 The Company will keep any Supplier Personnel Information supplied by the Supplier in accordance with Clause 16.6.1 confidential although such information may be disclosed to a prospective Replacement Supplier in any tender exercise.

#### Staff Travel Facilities

- 22.7 In order to assist (i) in the administration and issue of staff travel facilities to Supplier Personnel and (ii) in the control and avoidance of abuse of, and fraud in relation to, staff travel facilities, the Supplier shall:
- (a) provide a list of Supplier Personnel to the Company as evidence of continuing employment of those Supplier Personnel every twelve (12) months, setting out information relevant to each such Supplier Personnel's grade and the Supplier's promotion structures;
  - (b) notify the Company:
    - (i) within seven (7) days of their last day of service of any Supplier Personnel about to

cease, or who has ceased, to be an employee of the Supplier and to provide the Company with all information reasonably required about the circumstances in which the employment ceased, or is about to cease;

- (ii) within fourteen (14) days of the effective date of any change in the grade of an Supplier Personnel or the promotion structure of the Supplier generally which, in either case, may have an impact upon the provision of staff travel facilities;
  - (iii) within seven (7) days of becoming aware of any loss or theft of, or within fourteen (14) days of any failure to return, staff travel facilities by Supplier Personnel; and
  - (iv) of any abuse of staff travel facilities by Supplier Personnel which are known to the Supplier as soon as the Supplier becomes aware of the same;
- (c) immediately take all reasonable steps to secure the return of staff travel facilities from Supplier Personnel prior to their leaving the employment of the Supplier and to return them to the Company within fourteen (14) days of securing their return from the Supplier Personnel;
- (d) take all reasonable steps to certify to the Company the nature of the documents which have been examined by the Supplier and the fact that they confirm the eligibility of the Supplier Personnel to staff travel facilities;
- (e) take all reasonable steps to secure the return of staff travel facilities which should have been returned and to assist the Company in securing their return, including providing the Company with addresses of the Supplier Personnel where known to the Supplier; and
- (f) take all reasonable steps to assist the Company in promoting compliance with the terms and conditions of issue applicable to staff travel facilities including any variations from time to time.

#### Code of Practice

22.8 The parties shall comply with the Code of Practice in relation to any Supplier Personnel.

#### Surplus Supplier Personnel

22.9 The Supplier shall deal with any surplus Supplier Personnel as follows:

- (a) where Supplier Personnel become surplus to requirements and are displaced, the Supplier shall use reasonable endeavours to identify and offer one suitable alternative job to each such Supplier Personnel elsewhere in the Supplier;

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

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

#### Key Personnel

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

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

- 22.12 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the supply of the Goods or Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.
- 22.13 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 22.14 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.

#### Cessation in the Supply of Goods or Services

- 22.15 The Company and the Supplier agree that no Cessation in the Supply of Goods or Services will constitute a relevant transfer for the purposes of the Employment Regulations.
- 22.16 If the contract of employment of any Supplier Personnel is found or alleged to have effect on or after a Cessation in the Supply of Goods or Services as if originally made with the Company or a Replacement Supplier by reason of the Employment Regulations, the Supplier agrees that:
- (a) in consultation with the Company, it shall, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in

writing to employ him or her under a new contract of employment to take effect from the relevant Cessation in the Supply of Goods or Services; and

- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Cessation in the Supply of Goods or Services; and
- (c) it will do nothing to discourage the acceptance of the offer.

22.17 Upon that offer being made in accordance with Clauses 22.16(a) and 22.16(b) (or after fourteen (14) days, if the offer is not made as requested), the Company or the Replacement Supplier may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company and the Replacement Supplier against any Losses in respect of (i) the employment of such person after the Cessation in the Supply of Goods or Services until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company or the Replacement Supplier under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

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

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

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

## **23 Confidentiality**

23.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to

the Supplier and shall use such information only for the purpose of the performance of his obligations under the Contract.

- 23.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
  - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
  - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 23.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 23.1 and 23.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 23.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 23.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, the Contract or the Goods and Services without the prior written consent of the Company.
- 23.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with the Contract or the Goods and Services, or any Dispute arising under or in connection with the Contract.
- 23.7 The provisions of Clauses 23.1 to 23.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of the Contract; or
  - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities

or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

## **24 London Living Wage**

24.1 The Supplier shall, to the extent the Contract is for the provision of Goods and Services to be undertaken within Greater London or on the Underground Network:

- (a) ensure that none of its employees engaged in the provision of Goods and Services under the Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 24 and the provisions of this Clause 24 are included in any subcontract (of any tier).

24.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 24.

## **25 Responsible Procurement**

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

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

25.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical**

**Sourcing Policy**") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Supplier shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

- 25.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 25.5 The Supplier shall not be entitled to any addition to the Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 25.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 25 and the provisions of this Clause 25 are included in any subcontract (of any tier).
- 25.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 25.

## **26 Assignment and Subcontracting**

- 26.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Contract or any part thereof without the prior written consent of the Company.
- 26.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under the Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 26.3 The Company may novate, assign, transfer or subcontract the Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 26.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 6 in favour of any person to whom the Contract is being novated.

## **27 Company's and Supplier's Representative**

- 27.1 Each party shall appoint one or more representatives to act on its behalf under the Contract. Each party shall advise the other party, in writing, of the names and contact details of its

representatives and these shall be recorded in Schedule 1. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

## **28 Costs**

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

## **29 Severance**

- 29.1 If a provision of the Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Contract, provided that the operation of this Clause 29 would not negate the commercial interest and purpose of the parties under the Contract.

## **30 Publicity**

The text of any press release or other communication to be published by or in the media concerning the subject matter of the Contract shall require the prior written approval of the Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

## **31 Corrupt Gifts and Payments of Commission**

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

## **31A Criminal Record Declarations**

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

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

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

31A.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“Declaration”) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

31A.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.

31A.4 The Company shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 31A at any time during performance of this Contract.

31A.5 If the Supplier fails to comply with the requirements under Clause 31A.2 and/or Clause 31A.3 the Company may, without prejudice to its rights under Clause 17.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Contract and/or Company’s site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 31A.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 31A.2.

31A.6 A persistent breach of Clause 31A.2 and/or Clause 31A.3 by the Supplier shall entitle the Company to terminate the Contract in whole or in part with immediate effect in accordance with Clause 17.1(a).

31A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.

31A.8 Nothing in this Clause 31A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 31A.

## **32 No Waiver**

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

## **33 Entire Contract**

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

## **34 Notices and Service of Process**

34.1 Any notice or other document given under, or in connection with, the Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other party's representatives in each case to the address below. The notice or other document will be effective as follows:

- (a) if the notice or other document is sent by letter, it will be effective when it is delivered;
- (b) if the notice or other document is sent by fax, it will be effective when it has been transmitted and the transmission report from the fax machine states that the entire fax has been sent successfully; and
- (c) if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered.

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

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

Attn: Gaynor Clancy

Facsimile: 020 7918 6492

Supplier: John Dennis Coachbuilders Ltd  
25 Westfield Road  
Guildford, GU1 1RR

Attn: Adrian Wonham

Facsimile: 01483 579488

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Contract may be served in accordance with this Clause 34.1.

## **35 Dispute Resolution**

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

means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

## **36 Governing Law and Jurisdiction**

36.1 The Contract and any non-contractual obligations connected with the Contract shall be governed by and interpreted in accordance with the laws of England and the Company and the Supplier submit, subject to the provisions of this Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

## **37 Contracts (Rights of Third Parties) Act 1999**

37.1 Subject to

the Replacement Supplier's rights in accordance with Clauses 22.6.3, 22.17 and 22.18 no person except any member of the TfL Group may enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

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

## **38 Bonds, Warranties and Guarantees**

38.1 Not used.

38.2 Not used.

38.3 Not used.

38.3A Not used.

38.3B Not used.

38.4 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

(a) a collateral warranty in the form set out in Schedule 10 in favour of:

(i) the Company;

- (ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Contract;
- (iii) any persons who have acquired or may acquire an interest in or over the Contract or any part of the Goods and/or Services or in relation to any infrastructure or works to which the Goods and/or Services relate;

and if requested by the Company, the Supplier shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form attached to the collateral warranty set out in Schedule 10; and

- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 38.4.

38.5 In addition to the obligation to procure warranties as set out in Clause 38.4(a), the Supplier shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Goods and Services in favour of any of the parties referred to in Clause 38.4(a)(ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request.

38.6 If any of the warranties (including any accompanying parent company guarantee) required under Clauses 38.4 and 38.5 are not delivered to the Company in accordance with the provisions of those Clauses:

- one quarter of the Contract Price relative to the Goods and Services supplied by the relevant subcontractor; and
- in the case of Contractor warranties required under Clause 38.5, one quarter of the Contract Price,

shall be retained in assessments of the amount due and shall not be payable until such warranties have been delivered.

## **39 Default Interest**

39.1 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default Interest Rate. Any interest accruing under this Clause 39.1 shall be immediately payable by the paying party on demand.

- 39.2 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

## 40 Freedom of Information

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

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

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

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

- (b) The Supplier acknowledges that the Company:

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

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

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

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

## **40A Data Transparency**

- 40A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 40A, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 40A.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 40A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

## **40B Survival**

- 40B.1 The provisions of Clauses 4 (Records and Audit), 8.5 (Set-Off), 12 (Environmental Claims), 15 (Warranty), 16 (Intellectual Property Rights), 17 (Termination), 18 (Indemnity and Insurance), 22 (Supplier Personnel), 23 (Confidentiality), 25.2 (Responsible Procurement), 29 (Severance), 30 (Publicity), 31 (Corrupt Gifts and Payments of Commission), 32 (No Waiver), 33 (Entire Contract), 34 (Notices and Service of Process), 35 (Dispute Resolution), 36 (Governing Law and Jurisdiction), 37 (Contracts (Rights of Third Parties) Act 1999), 40 (Freedom of Information), 40A (Data Transparency), 40B (Survival), 41.1 and 41.5 (Transport for London Group) will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

## **41 Transport for London Group**

### **41.1 Declaration of Ineffectiveness**

- (a) Without prejudice to the Company's right to terminate the Contract under Clause 17.1, Clause 17.2(a) or at common law, the Company may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 41.1.

- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 41.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 17.1 and this Clause 41.1 or the Cessation Plan, the provisions of this Clause 41.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
  - (i) an orderly and efficient cessation of the supply of Goods and Services or (at the Company's request) a transition of the supply of Goods and Services to the Company or such other entity as the Company may specify; and
  - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 41.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Contract in accordance with this Clause 41.1.

#### 41.2 **Crime and Disorder Act 1998**

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and

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

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

#### 41.3 **The Company's business**

The Supplier acknowledges that it:

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

#### 41.4 **Best value**

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

#### 41.5 **Data Protection**

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the supply of Goods and Services and at all times in accordance with any instructions from the Company.

- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.
- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
  - (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
  - (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Contract.

#### 41.6 **Conflict of Interest**

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

41.7 Not used.

#### 41.8 **Equality and Diversity**

41.8.1 Without limiting the generality of any other provision of the Contract, the Supplier:

- (a) shall not unlawfully discriminate;
- (b) shall procure that its employees and agents do not unlawfully discriminate; and

- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Supply,

within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

41.8.2 The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:

- (a) eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all “**Protected Characteristics**”) and marriage and civil partnership;
- (b) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a Protected Characteristic and persons who do not.

In performing the Contract the Supplier shall assist and cooperate with the Company where possible in satisfying this duty.

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

41.8.4 To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.

#### 41.9 **Work Related Road Risk**

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

<b>“Bronze Accreditation”</b>	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Car-derived Vans”</b>	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;
<b>“Collision Report”</b>	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
<b>“Delivery and Servicing Vehicle”</b>	a Lorry, a Van or a Car-derived Van;
<b>“Driver”</b>	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Goods and/or Services;
<b>“DVLA”</b>	Driver and Vehicle Licensing Agency;
<b>“FORS”</b>	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
<b>“FORS Standard”</b>	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Gold Accreditation”</b>	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>

<b>“Lorry”</b>	a vehicle with an MAM exceeding 3,500 kilograms;
<b>“MAM”</b>	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
<b>“Side Guards”</b>	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
<b>“Silver Accreditation”</b>	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Van”</b>	a vehicle with a MAM not exceeding 3,500 kilograms.

#### **Fleet Operator Recognition Scheme Accreditation**

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

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

#### **Safety Equipment on Vehicles**

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

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

#### **Driver Licence Checks**

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

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

#### **Driver Training**

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

### **Collision Reporting**

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

### **Self Certification of Compliance**

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

### **Obligations of the Supplier Regarding Subcontractors**

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

### **Failure to Comply with Work Related Road Risk Obligations**

41.9.9 Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with Clauses 41.9.2, 41.9.3, 41.9.4, 41.9.5, 41.9.6, 41.9.7 and 41.9.8:

- (a) the Supplier has committed a material breach of this Contract; and
- (b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

**42 Not used.**

**Schedule 1**  
**Detailed Terms**

- Contract Reference Number: TFL00148
- Supplier Reference: TBC
- 1 Commencement Date On receipt of purchase order
- 2 Expected Delivery Date(s): Please see Schedule 5
- 3 Date for Completion of the Services Not Applicable
- 4 Delivery Address: Unit AC-04, 130 Bollo Lane, Acton Works, Acton, London, W3 8BZ
- 5 Supplier's Representative: [REDACTED]
- 6 Company's Representative: [REDACTED]
- Quantity: 5 of 4x2 Dual Purpose ERU/BTP Breakdown crew cab and 5 of 4x2 ERU Permanent way crew cab, total of 10 vehicles
- 7 Contract Price: [REDACTED] for all vehicles, training and manuals including enhancements quoted on the tender submission. Please see Appendix 1 for a full breakdown
- 8 Payment Application dates Not Applicable
- 9 Warranty Period:

Description of Warranty	Volvo
Chassis General	36 Months
Driveline	36 Months
Cab Anti-Perforation	36 Months
JDC Body Structural Warranty	20 years
JDC Designed Parts	10 years
LED Lighting Products	5 years
Suppliers Parts	2 years

- 10 Term means the period of Not Applicable
- 11 Standards under Clause 3.2(d) and Clause 3.3(b) Not Applicable
- 12 Insurance

<b>Insurance Against</b>	<b>Party Responsible for ensuring insurance is in place</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
<p>Product Liability Insurance</p> <p>All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Contract.</p>	Supplier	£10,000,000 for each and every claim or series of claims arising out of one event (and in the aggregate per annum in respect of product liability insurance).
<p>Public Liability Insurance</p> <p>All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Contract.</p>	Supplier	£10,000,000 for each and every claim or series of claims arising out of one event (and in the aggregate per annum in respect of product liability insurance).
<p>Employer's Liability Insurance</p> <p>Liability for death of or bodily injury or illness sustained by employees of the Supplier arising out of or in the course of their employment in connection with the Contract.</p>	Supplier	Not less than £5,000,000 for each and every claim or series of claims arising out of one incident.
<p>Professional Indemnity Insurance</p> <p>Negligence omission or default in respect of the design of the Supply or other professional services for which the Supplier or its sub-contractors is responsible.</p>	Supplier	£1,000,000 for each and every claim and in the aggregate per annum.

- 14 Not used.
- 15 Initial Period is: Not Applicable
- 16 Default Interest Rate is Two percent (2%)
- 17 The liquidated damages for delay for the purpose of Clause 9.3 payable for such Goods are 1% of the value of the Contract Price

The period of delay over which the liquidated damages shall be calculated for the purpose of Clause 9.3 is every:

month

The maximum amount of liquidated damages payable under Clause 9.3 expressed as a percentage of the price payable for such Goods is:

10% of the value of the Contract Price

- 18 Chassis manufacturer under Clause 9.3 is Volvo
- 19 The following Supplier Personnel are Key Personnel  
(To be confirmed.)

**Schedule 1 Appendix 1 Price Schedule - Dual Purpose ERU/BTP Breakdown crew cab**

**Volvo Chassis Cab - JDC Body**

Please price **PER VEHICLE** in accordance with the Specification and Invitation to Tender documents:

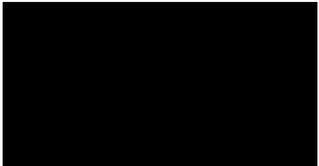
	Description	Cost £	Comment / Any assumptions made or alternative products offered	
<b>Chassis/Cab</b>	Price of Standard Chassis/ Crew model offered			
	Please provide a cost and description of any additional factory options selected to meet the Specification ( please add rows where it needed).			
	Bluetooth			
	Front NS Lower Vision Window			
	3.			
	4			
	5			
	6			
	Please provide a cost and description of any items or adjustments retro fitted to meet the specification.			
	1.			
	2.			
	3.			
	4			
	5			
6				
<b>Tacho</b>	Vehicles are out of scope. Cost or credit to replace Tachograph with a calibrated speedometer			
	<b>Sub-Total</b>			
	<b>Please provide a description and cost for any recommended additional chassis</b>		ification requirements	
	Engine Brake for iShift Gearbox			
	280Hp Engine			
	Allison Automatic Gearbox and Retarder			
	4			
	5			
<b>Body</b>	BODY Price as per the specification section "Body Details"			
<b>Paint</b>	Please provide a paint cost as per specification			
<b>Livery</b>	Cost to supply and fit livery as per specification (BTP emblem and LU roundel will be free issued)			
	<b>Sub-Total</b>			
	<b>Please provide a description and cost for any recommended additional body en</b>		on requirements	
	"JCDD" Test conducted by Qinetiq for JDC			
	"BS EN 1846" Compliance Certification by VCA Millbrook			
	Slide Out Cage Hoist Stowage		price may reduce dependi	
	Delete Tail Lift			
	TomTom Live Updates		Per Annum	
<b>General</b>	Please confirm additional charges (if any) not covered above including the following (please add rows as needed)			
	Unladen weight certificate to accompany vehicle upon delivery.			
	Vehicle to comply with TfL vulnerable road user specification. (Fresnel lens, cyclist and pedestrian warning labels, vehicle left turn audible warning).			
	Technical drawings must be made available			
	Delivery to Acton Works, 130 Bollo Lane, Acton, London			
	Initial Registration & RFL Licence			
	Operators Instruction Manual			
	Ten separate half days of training as per specification			
		<b>Total price per vehicle excluding any suggested chassis and/or body enhancements</b>		

**Schedule 1 Appendix 1 Price Schedule - ERU Permanent Way crew cab**

**Volvo Chassis Cab - JDC Body**

Please price **PER VEHICLE** in accordance with the Specification and Invitation to Tender documents:

	Description	Cost £	Comment / Any assumptions made or alternative products offered	
<b>Chassis/Cab</b>	Price of Standard Chassis/ Crew model offered			
	Please provide a cost and description of any additional factory options selected to meet the Specification ( please add rows where it needed).			
	Bluetooth			
	Front NS Lower Vision Window			
	3.			
	4			
	5			
	6			
	Please provide a cost and description of any items or adjustments retro fitted to meet the specification.			
	1.			
	2.			
	3.			
	4			
	5			
	6			
<b>Tacho</b>	Vehicles are out of scope. Cost or credit to replace Tachograph with a calibrated speedometer			
	<b>Sub-Total</b>			
	<p><b>Please provide a description and cost for any recommended additional chassis c</b></p> <p>Engine Brake for iShift Gearbox</p> <p>280Hp Engine</p> <p>Allison Automatic Gearbox and Retarder</p> <p>4</p> <p>5</p>		<p><b>ation requirements</b></p>	
<b>Body</b>	BODY Price as per the specification section "Body Details"			
<b>Paint</b>	Please provide a paint cost as per specification			
<b>Livery</b>	Cost to supply and fit livery as per specification (LU roundel will be free issued)			
	<b>Sub-Total</b>			
	<p><b>Please provide a description and cost for any recommended additional body enh</b></p> <p>"JCDD" Test conducted by Qinetiq for JDC</p> <p>"BS EN 1846" Compliance Certification by VCA Millbrook</p> <p>Re-fit existing Ladder Stowage Beam Gantry Assembly</p> <p>Slide Out Cage Hoist Stowage</p> <p>Delete Tail Lift</p> <p>TomTom Live Updates</p>		<p><b>quirements</b></p> <p>price may reduce dependi</p> <p>Per Annum</p>	
<b>General</b>	Please confirm additional charges (if any) not covered above including the following (please add rows as needed)			
	Unladen weight certificate to accompany vehicle upon delivery.			
	Vehicle to comply with TfL vulnerable road user specification. (Fresnel lens, cyclist and pedestrian warning labels, vehicle left turn audible warning).			
	Technical drawings must be made available			
	Delivery to Acton Works, 130 Bollo Lane, Acton, London			
	Initial Registration & RFL Licence			
	Operators Instruction Manual			
	Ten separate half days of training as per specification			
		<b>Total price per vehicle excluding any suggested chassis and/or body enhancements</b>		



**Schedule 2  
Specification**

## ***Vehicle Specification***

***Ref. No.: Dual Purpose ERU/BTP Breakdown crew cab***

***Date: 27 May 2015***

<b>Vehicle Type</b>	<b>4 x 2 Crew-cab Breakdown Emergency Rescue Tender</b>
<b>Max GVW</b>	<b>16000kg</b>
<b>Min Payload capacity</b>	<b>6000 kg</b>
<b>Wheelbase</b>	<b>4160mm approx.</b>
<b>Max Height</b>	<b>4.0 metres</b>
<b>Max Length</b>	<b>8.0 metres</b>
<b>Engine Details</b>	Minimum 230hp Euro 6 Diesel
<b>Transmission</b>	Automatic with option to select manual
<b>Tyre Equipment</b>	Michelin Front - XZE2 Rear - XDE2
<b>Suspension</b>	Front – Air or Steel Rear - Air with electronic level adjustment
<b>Chassis/Cab</b>	165ah Batteries and 100 Amp alternator All lights to be LED Electric windows Button or key fob operated central locking on all doors Drivers air bag Air suspension drivers seat Seat belt audible warning Locking compartment for stowage of mobile phones Heated windscreen Air conditioning Night heater Air horn Visual & Audio unit incorporating blues/ambers/clears suitable for British Transport Police use Satellite Navigation system incorporated into dashboard, suitable for HGV's with GPS

updates at a minimum of 6 monthly intervals.

Charging points and holders for customer issue vehicle tracking, Ipad, Airwaves, and Connect radios x4

Bluetooth

Locking fuel and adblue cap

Battery Guard protection system to prevent vehicle batteries from being completely drained whilst retaining power to start the engine.

Run lock ignition system

Two flashing amber & blue grille lights.

Dual functionality flashing amber/blue/white LED lights to be fitted all the way around the top of the vehicle and body giving 360 degree visibility, controlled through an illuminated cab switch and clearly visible from any point at a reasonable distance from the vehicle. Switching to facilitate 999 and at scene.

Vehicle height permanently displayed in cab in letters 40mm high

Wheel nut markers fitted to all wheels

Spare door/ignition key and central locking fob

Short mirror arms

## **Crew Cab**

### **Requirements**

Unitary dual cab pressed steel structure with 4 doors constructed to meet current safety standards (ECE29 & EC1846), to carry 6 crew members including driver.

Seat assemblies to incorporate inertia reel belts and tested to M1 standard.

Storage area under rear seats

Rear seats to be divided 2+2

Crew cab to have sound insulation

Crew doors with electric window and central locking.

All side windows to have mirrored reflective tint.

Door apertures, access handles to be yellow and steps to be of a size and positioned to provide easy access for crew and constructed to within standard EN1846.

Area for charging of 4 x connect radios,

USB charging points x 4 for mobile phone chargers

Charging point for infra-red camera

2 Map lights

Coat hooks

Cargo net storage on side or rear wall of cab

Chiller box

Eye wash bottles

First aid kit

## **Tacho**

Vehicles are out of scope. Tachograph to be replaced with a calibrated speedometer.

## **Data Recorder**

Supply and fit RSG Fleetmotus tracking & Jupiter black box Incident Data Recorder to BTP specifications

## **Body Details**

The body needs to be fitted with a bespoke and robust storage/racking system capable

of storing all equipment used in the repair and maintenance of the LU infrastructure (see appendix A). Due to continuous changes and improvements in the equipment required there needs to be some flexibility in storage methods. Ideally changes to the storage will be carried out on site by ERU staff without the need for specialist equipment or training. Body to be constructed within scope of the Construction and Use regulations to accommodate 6000kgs of specialist equipment easily and quickly accessed from outside of the body.

Central locking for body to be operated from inside the vehicle cab with drivers cab warning light if a shutter is left open.

All lights to be LED

Equipment lockers to be illuminated with LED lighting and operated from an illuminated on/off switch in the cab.

LED scene lights to illuminate ground for a minimum of 1m along whole length of both sides and rear of vehicle body.

Amber/blue LED lights incorporated into body top pelmet

*(lights are to operate independent of the vehicle lighting system. All additional switches to be clearly labelled and match manufacturer's original equipment).*

Brigade BBS TEK white noise reversing alarm fitted in a protected weatherproof location and fitted with night time cut out.

Brigade 360 camera with 31 day recording capability

Whelen Smart Arrow Messenger (Control Head MGC02) fitted to rear of body

Auto eject powerline plug for charging camera, torches and radios when parked at base.

Kit bag stowage area for 6 crew.

Pull out shelf with vice

Lockable stowage area for Flag Bag containing detonators.

Attention must be paid to Health & Safety issues associated with manual handling. Special attention should be paid to the manual handling of the heavy equipment being carried in this vehicle with particular reference to the trapping of fingers and minimising the amount of bending, lifting, stretching and twisting.

## **Spray Suppression**

In accordance with Construction & Use Regulations Amendment 1984, equipment conforming to BSS BS AU200

## **Paint**

Cab: White with Blue Skirt.

Body: White with Blue Skirt.

Shutters to be left in aluminium.

### Paint System

P565-625 Primecoat (etch Primer)

P565-1027 EHS High Build Surfacer (if Required)  
P498-Line EHS Turbo Plus Topcoat to LU specification.

### **Livery Details**

Innovative method of fitting interchangeable livery of LU roundel /BTP emblem on cab doors; Emergency/Police lettering on cab front panel and Battenberg to solid yellow strip to be fitted to both sides of the vehicle cab.

150mm Diamond grade reflective yellow and blue strip around the circumference of the vehicle body pelmet and chevrons on rear.

Conspicuity markings to ECE reg 48

Tyre pressures in PSI, wheel nut torque settings displayed on wheel arches in 10mm lettering.

Unladen weight to be shown in 50mm letters on nearside of body.

### **Additional Requirements**

Special attention to be given to allow easy access for manual handling of heavy equipment up to 100kg

Individual electrically operated shutters – Optional price

### **Maintenance & Training**

Operators Instruction Manual and driver handbooks to be provided

Ten separate half days of training must be given to instruct teams how to operate the whole truck including, but not limited to:

- the vehicle instrument panel
- changing headlight bulbs, indicator bulbs, marker lights and rear light bulbs
- tilt the cab
- checking and topping up fluid / oil and water levels.
- checking, adjusting and tightening body fixtures and fittings
- lubricating shutters etc
- any other periodic maintenance required that would be reasonable to expect to be carried out by the driver.

Training preferably to take place with the delivery of the vehicle to site (Acton W3), with an option for this to be undertaken at any of the three other operating bases. (Stratford E15, Camden NW1, Battersea SW11).

## General

Unladen weight certificate to accompany vehicle upon delivery.

Vehicle to comply with TfL vulnerable road user specification. (Please see Appendix C for a list of TfL Vehicle Safety Equipment).

Technical drawings must be made available.

Quotation must include testing of one vehicle of each type to Emergency Services Standards at Milbrook Testing Ground.

No alteration to this specification is to be made unless agreed in writing.

**It is the responsibility of the supplier of this motor vehicle to ensure that it conforms to the Construction & Use Regulations and associated Amendments in force at the time of delivery to Tube Lines Limited.**

**New vehicles will not be accepted unless they conform to the specification and are accompanied by all necessary documentation.**

# ***Vehicle Specification***

***Ref. No. ERU Pway crew cab 2014***

***Date 27 May 2015***

<b>Vehicle Type</b>	<b>4 x 2 Crew-cab Permanent Way Emergency Rescue Tender</b>
<b>Max GVW</b>	<b>16000kg</b>
<b>Min Payload capacity</b>	<b>6000 kg</b>
<b>Wheelbase</b>	<b>4160mm approx.</b>
<b>Max Height</b>	<b>4.0 metres</b>
<b>Max Length</b>	<b>8.5 metres</b>
<b>Engine Details</b>	Minimum 230hp Euro 6 Diesel
<b>Transmission</b>	Automatic with option to select manual
<b>Tyre Equipment</b>	Michelin Front - XZE2 Rear - XDE2
<b>Suspension</b>	Front – Air or Steel Rear - Air with electronic level adjustment
<b>Chassis/Cab</b>	165ah Batteries and 100 Amp alternator All lights to be LED Electric windows Button or key fob operated central locking on all doors Drivers air bag Air suspension drivers seat Seat belt audible warning Locking compartment for stowage of mobile phones Heated windscreen Air conditioning Night heater Air horn Satellite Navigation system incorporated into dashboard, suitable for HGV's with GPS updates at a minimum of 6 monthly intervals. Charging points and holders for customer issue vehicle tracking, Ipad x1, Airwaves x1, and Connect radios x4

Bluetooth

Locking fuel and adblue cap

Battery Guard protection system to prevent vehicle batteries from being completely drained whilst retaining power to start the engine.

Run lock ignition system

Two flashing amber/blue grille lights,

Dual functionality flashing amber/blue/white LED lights to be fitted all the way around the top of the vehicle and body giving 360 degree visibility, controlled through an illuminated cab switch and clearly visible from any point at a reasonable distance from the vehicle.

Vehicle height permanently displayed in cab in letters 40mm high

Wheel nut markers fitted to all wheels

Spare door/ignition key and central locking fob

Short mirror arms

**Crew  
Requirements**

**Cab** Unitary dual cab pressed steel structure with 4 doors constructed to meet current safety standards (ECE29 & EC1846), to carry 6 crew members including driver.

Seat assemblies to incorporate inertia reel belts and tested to M1 standard.

Storage area under rear seats

Rear seats to be divided 2+2

Crew cab to have sound insulation

Crew doors with electric window and central locking

All side windows to have mirrored reflective tint

Door apertures, access handles to be yellow and steps to be of a size and positioned to provide easy access for crew and constructed to within standard EN1846.

Area for charging of 4 x connect radios,

USB charging points x4 for mobile phone chargers

Charging point for infra-red camera

2 Map lights

Coat hooks

Cargo net storage on side or rear wall of cab

Chiller box

Eye wash bottles

First aid kit

**Tacho**

Vehicles are out of scope. No tachograph required.

**Data Recorder**

Supply and fit RSG Fleetmotus tracking & Jupiter black box Incident Data Recorder to BTP specifications

**Body Details**

The body needs to be fitted with a bespoke and robust storage/racking system capable of storing all equipment used in the repair and maintenance of the LU infrastructure (see appendix B). Due to continuous changes and improvements in the equipment

required there needs to be some flexibility in storage methods. Ideally changes to the storage will be carried out on site by ERU staff without the need for specialist equipment or training.

Body to be constructed within scope of the Construction and Use regulations to accommodate 6000kgs of specialist equipment easily and quickly accessed from outside of the body.

Central locking for body to be operated from inside the vehicle cab with drivers cab warning light if a shutter is left open.

All lights to be LED

Equipment lockers to be illuminated with LED lighting and operated from an illuminated on/off switch in the cab.

LED scene lights to illuminate ground for a minimum of 1m along whole length of both sides and rear of vehicle body.

Amber/blue LED lights incorporated into body top pelmet

*(lights are to operate independent of the vehicle lighting system and all additional switches to match manufacturer's original equipment).*

Brigade BBS TEK white noise reversing alarm fitted in a protected weatherproof location and fitted with night time cut out.

Brigade 360 camera with 31 day recording capability

Whelen Smart Arrow Messenger (Control Head MGC02) fitted to rear of body

Auto eject powerline plug for charging camera, 4 x torches and 4x radios when parked at base.

Kit bag stowage area for 6 crew.

Pull out shelf with vice

Lockable stowage area for Flag Bag containing detonators.

Ladder stowage area

Attention must be paid to Health & Safety issues associated with manual handling. Special attention should be paid to the manual handling of the heavy equipment being carried in this vehicle with particular reference to the trapping of fingers and minimising the amount of bending, lifting, stretching and twisting.

## **Spray Suppression**

In accordance with Construction & Use Regulations Amendment 1984, equipment conforming to BSS BS AU200

## **Paint**

Cab: White with Blue Skirt.

Body: White 2 Pack Paint to London Underground Specification.

Shutters to be left in aluminium.

Paint System

P565-625 Primecoat (etch Primer)  
P565-1027 EHS High Build Surfacer (if Required)  
P498-Line EHS Turbo Plus Topcoat to LU specification.

**Livery Details**

Free issue LU roundel logo to be fitted to body sides, rear panel and doors.  
150mm diamond grade reflective yellow and blue strip around the circumference of the vehicle  
Solid yellow strip to be fitted to both sides of the vehicle cab.  
EMERGENCY in 250mm lettering on cab front panel.  
Red/Yellow chevrons on rear panels.  
Conspicuity markings to ECE reg 48  
Tyre pressures in PSI, wheel nut torque settings displayed on wheel arches in 10mm lettering.  
Unladen weight to be shown in 50mm letters on nearside of body.

**Additional Requirements**

Special attention to be given to allow easy access for manual handling of heavy equipment up to 100kg  
  
Individual electrically operated shutters – Optional price

**Maintenance & Training**

Operators Instruction Manual and driver handbooks to be provided  
Ten separate half days of training must be given to instruct teams how to operate the whole truck including, but not limited to:

- the vehicle instrument panel
- changing headlight bulbs, indicator bulbs, marker lights and rear light bulbs
- tilt the cab
- checking and topping up fluid / oil and water levels.
- checking, adjusting and tightening body fixtures and fittings
- lubricating shutters etc
- any other periodic maintenance required that would be reasonable to expect to be carried out by the driver.

Training preferably to take place with the delivery of the vehicle to site (Acton W3), with an option for this to be undertaken at any of the three other operating bases. (Stratford E15, Camden NW1, Battersea SW11).

**Delivery Address**

130 Bollo Lane, Acton Works, Acton, London W3 8BZ

**Emergency Fault Call Management** Chassis

A 24/7 emergency call-out service is required for the chassis within the London M25 area for a minimum of 5 years.

Body

A next working day emergency response service is required for the body within the London M25 area for a minimum 5 years.

**General**

Unladen weight certificate to accompany vehicle upon delivery.

Vehicle to comply with TfL vulnerable road user specification. (Please see Appendix C for a list of TfL Vehicle Safety Equipment).

Technical drawings must be made available.

Quotation must include testing of one vehicle of each type to Emergency Services Standards at Millbrook Testing Ground.

No alteration to this specification is to be made unless agreed in writing.

**It is the responsibility of the supplier of this motor vehicle to ensure that it conforms to the Construction & Use Regulations and associated Amendments in force at the time of delivery to Tube Lines Limited.**

**New vehicles will not be accepted unless they conform to the specification and are accompanied by all necessary documentation.**

### Schedule 3

#### Contract Variation Procedure

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

- 8 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Contract, including, but not limited to the Specification.
  
- 9 Strict adherence to the procedure described in this Schedule 3 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 3 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

**Appendix 1**  
**Form of Variation Proposal/Variation Order**

<b>To:</b>	<b>From:</b>
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**Contract Reference:** TfL00148  
**Variation Number:**  
**Variation Title:**

<b>PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)</b>	
<b>Description of change:</b>	
<b>Reason for changes and impact (if any) on Contract:</b>	
<b>Variation Proposal Authorised by:</b>	<b>Proposal Date:</b>

<b>PART B (TO BE COMPLETED BY THE SUPPLIER)</b>	
<b>Price Breakdown</b>  Note: If a further breakdown is needed please append details as a separate sheet.	
<b>Expected Delivery Date:</b>	
<b>Supplier's Representative:</b>	
<b>Print Name:</b> .....	<b>Signature:</b> ..... <b>Date:</b> .....

Completed document to be returned to the Company's Representative

<b>PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)</b>	
<b>Comment on Parts A and B:</b>	
<b>Variation Authorisation</b>	
<b>Company's Representative:</b>	
<b>Print Name:</b> .....	<b>Signature:</b> ..... <b>Date:</b> .....

**Schedule 4**  
**Quality and Safety Plan**

To be submitted by the Supplier within 1 month of contract signature.

## **Schedule 5 Programme**

The detailed delivery programme is included as Schedule 5 Appendix 1.

The Successful supplier will be subject to regular visits by the Company representatives to review the progress of the vehicle build (Note – such visits could potentially apply in respect of subcontractor(s) facilities). These are not likely to be more frequent than one per week, but could vary depending upon the production schedules and timings of specific elements of the build. The inspections/discussions will include, but not be limited to, overall build quality; chassis variations to accommodate the body; application of the storage of items of equipment and the accessibility of items of equipment. In addition the Company would expect the Supplier to seek clarification on any aspect of the build from the Company.







**Schedule 7**  
**Not Used.**

## **Schedule 8**

### **Payment Procedure**

1. The Company will pay the Supplier the Contract Price in the following manner:
  - 1.1 The Supplier will be entitled to submit an Invoice for the portion of the Contract Price due (less any payments already made) with respect to any properly completed delivery of Goods and/or Services to:

Accounts Payable  
PO Box 45276  
14 Pier Walk  
London  
SE10 1AJ
  - 1.2 The Invoice(s) submitted by the Supplier must always quote a relevant Company transaction number. The invoice(s) must be clear, concise, accurate and adequately descriptive in order to avoid delays in processing and subsequent payment. VAT must be shown separately. Any loss or additional costs incurred by the Supplier in the correction or re-submission of an Invoice will be at the Supplier's expense.
  - 1.3 If the Invoice is approved by the Company then the final date for payment of that Invoice will be thirty days after receipt by the Company of the Supplier's Invoice.
  - 1.4 If the Invoice is not approved by the Company then the Company shall inform the Supplier within ten Working Days of receipt of the Invoice why the Invoice has not been approved.
  - 1.5 Payments shall be made by Bank Transfer (Bank Automated Clearance System – BACS) or such other method that the Company may choose from time to time.
  - 1.6 For abatements related to the Supplier's performance (as detailed in Clause 8A and Schedule 12), the Supplier shall pay the Company in the following manner:

The Company will issue an invoice to the Supplier and payment will be made within 30 days of receipt of the invoice.
2. The Company's payment terms and transfer of ownership of the Goods are as detailed below:

Payment	Milestone	Transfer of ownership
1	45% of Vehicle total price on completion of the chassis/cab	Transfer of ownership of chassis/cab to TLL at this stage
2	45% of Vehicle total price on completion of full unit with manuals and following satisfactory inspection, delivery and hand over to Customer	Transfer of ownership of whole vehicle to TLL at this stage
3	10% on completion of training and, 30 days after delivery subject to correction of snagging items	N/A

**Schedule 9 Not used.**

**Schedule 10**  
**Form of Collateral Warranty**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201[ ]

**BETWEEN : -**

- (1) **Tube Lines Limited** registered in England and Wales under number: 3923425 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**");
- (2) [ \_\_\_\_\_ ] a company registered in England and Wales under number: [.....]and having its registered office at [.....] (the "**Sub-Contractor**"); and
- (3) [ \_\_\_\_\_ ] a company registered in England and Wales under number: [.....]and having its registered office at [.....] (the "**Supplier**").

**WHEREAS :-**

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

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

1. The Sub-Contractor warrants to the Company that:
  - (a) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Services;

- (b) reasonable skill and care has been and will continue to be exercised in connection with:
- (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
  - (ii) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
  - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Services (the “**Sub-Contract**”);
  - (iv) the execution and completion of the Sub-Contract Services;
  - (v) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
- (c) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and
- (d) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

For the purposes of construing the warranties in this Clause 1 references to the Sub-Contract Services shall include any part of the Sub-Contract Services. Each warranty shall be construed as a separate warranty and shall not be limited by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Services:

- (a) execute, complete and maintain the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
  - (b) ensure that the Supplier shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.
3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.
4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:
- (a) understanding the Services;
  - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
  - (c) extending, interfacing with, integrating with, connecting into and adjusting the Services;
  - (d) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the Underground Network (as such capitalised terms are defined in the Main Contract);
  - (e) executing and completing the Services; and
  - (f) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the Underground Network (as such capitalised terms are defined in the Main Contract)

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

For the purposes of this Clause, the term “**Documents**” shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and

any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The Sub-Contractor agrees:

(a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and

(b) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. The parties hereby agree that:

(a) this Agreement shall be personal to the Sub-Contractor;

(b) the Company may assign the benefit of this Agreement to any third party;

(c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.

7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Services, he has professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Services provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.

8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may

at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.

9. (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "**Step-in Notice**") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.
- (c) With effect from the date of the service of any Step-in Notice:
  - (i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
  - (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;
  - (iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall

promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

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

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

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

(d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.

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

11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.

12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.

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

15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Executed as deed by the parties and delivered on the date of this Agreement.

Executed as a deed by affixing the Common Seal of )

London Underground Limited )

in the presence of:- )

.....

[Authorised Signatory]

Executed as a Deed by [SUB-CONTRACTOR] )

acting by ) .....

) Authorised Signatory

and ) .....

) Authorised Signatory

Executed as a Deed by [SUPPLIER] )

acting by ) .....

) Authorised Signatory

and ) .....

) Authorised Signatory

**Schedule 11**

**Not Used**

**Schedule 12 Not used.**

**EXECUTION PAGE:**

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

Executed as a deed by affixing The Common seal of )

**Tube Lines Limited** )

was affixed to this deed )

in the presence of: )

Authorised Signatory

Signature:

Name: .....



Executed as a Deed by John Dennis  
Coachbuilders Ltd )  
acting by )

Authorise

Signature

Name: ...

and )

Authorised Signatory

Signature:

Name: ...