
Dated 12th July 2019

LONDON UNDERGROUND LIMITED (1)

and

C.A.T.E.R-EU (2)

FRAMEWORK AGREEMENT

for the Supply of C.A.T.E.R-EU "B" Scan Resource and Equipment.

CONTRACT REFERENCE NUMBER

TfL 01170

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THIS AGREEMENT is made on 12th day of July 2019
BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED**, a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**"); and
- (2) **C.A.T.E.R-EU**, a company registered in England and Wales under number 1985789 and having its registered office at Croft Court, Croft Road, Newcastle-under-Lyme, Staffordshire, ST5 0TX (the "**Supplier**").

BACKGROUND

- A. The Company is responsible for the repair and maintenance of the infrastructure of the Underground Network.
- B. The Company wishes to enter into a Contract with the Supplier pursuant to which and subject to the Terms and Conditions of which the Company may issue an Order, or a series of Orders, for the supply of services of the types referred to in the relevant Order.
- C. The Supplier agrees to supply as and when needed the Goods and Services specified on the applicable Order on and subject to the terms and conditions set out in the Contract.
- D. This Agreement may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Agreement.

1 Definitions and Interpretation

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

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

“Additional Services” means any services which the Company requests the Supplier to provide in accordance with the terms of the Agreement and each Contract in addition to those set out in the Specification.

“Aggregated Annual Spend” means the total of all sums paid by the Company to the Supplier (exclusive of VAT) pursuant to the terms of the Contract annually calculated in accordance with Clause 9.

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

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

“BAFO” means ‘best and final offer’.

“Cessation Plan” means a plan agreed between the parties or determined by the Company in accordance with Clause 53.1 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 Agreement and each Contract.

“Company’s Representative” means the person appointed by the Company and named as such in the relevant Order.

“CompeteFor” has the meaning given to that term in Clause 54.

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

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

“Consequential Loss” means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach;

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

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

“Contract Information” means (i) each Contract and Agreement in its entirety (including from time to time agreed changes to any Contract and/or Agreement) and (ii) data extracted from the invoices submitted pursuant to Clauses 9.1 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 Reference Number” means the number shown on the front page of this Agreement.

“Contract Variation Procedure” means the procedure set out in Schedule 5.

“Data Protection Legislation” means:

- (a) any legislation from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data (as such terms are defined in section 1(1) of the Data Protection Act 1998); and
- (d) any statutory codes of practice issued by the Information Commissioner's Office of the United Kingdom in relation to such legislation.

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

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

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

“Delivery Note” has the meaning given to that term in Clause 10.4.

“Dispute” has the meaning given to that term in Clause 42.1.

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

“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.

“Excepted Liabilities” means the liability of the Supplier for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) Losses caused by fraudulent acts or acts of a criminal nature; and
- (e) Losses caused by the Supplier committing a Prohibited Act or Safety Breach.

“Excess Costs” has the meaning given to that term in Clause 21.5.

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

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

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of 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) tunnel collapse;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (k) strikes, lock outs or other industrial action being in each case industry-wide.

“Free Issue Materials” means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under each Contract.

“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 7.

“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.

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

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

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

“Interest Rate” means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 2.

“Invoice” means a request for payment bearing all information required by the Company including the Agreement and each 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 29.

“Liquidated Damages” means the sums identified and calculated in accordance with each Order;

“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 Employer).

“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 42.2.

“Notice to Proceed” has the meaning given to that term in Clause 21.6(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.

“Order” means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 4, entered into by the Company and the Supplier.

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

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

“Order Price” means the amount stated under the heading “Order Price” in the relevant Order.

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

“Payment Application” has the meaning given to that term in Clause 9.1.

“Personal Data” has the meaning given to it in the Data Protection Legislation.

“Policies” means the policies set out in Clause 32.3.

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

“Prohibited Act” means:

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

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

“Public Procurement Termination Event” means:

- (a) the Agreement or any Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (b) if the Company determines that the Agreement or any Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement Regulations.

“QUENSH” has the meaning given to it in Schedule 6.

“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 18.2.

“Rejection Notice” has the meaning given to that term in Clause 18.2.

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

"Safety Breach" means a material breach of any obligation under any Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on behalf of the Supplier) or any of its agents which has materially affected the safe operation of the 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 3 and to be provided by the Supplier in accordance with the Agreement.

"Standards" means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to supply the Goods in accordance with good industry practice. A full set of current Standards is available for the Supplier's use on-line at the LU Standards e-library or as notified to the Supplier.

"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 the numbers of Supplier Personnel involved in supplying the Goods 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 Clause 29; 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 the relevant Order.

"Term" means the period specified as such in Schedule 1 to this Agreement;

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

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

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

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

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

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

“Variation Proposal” means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

“Volume Discount Percentage” is the volume discount percentage set out in Schedule 1 to the Contract.

“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 Agreement and each Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement and each Contract include its recitals and Schedules.

- 1.5 References to (or to any specified provision of) the Agreement and each Contract or any other document shall be construed as references to the Agreement and each Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and each 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.
- 1.8 References to a person, firm or company includes any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Agreement and each Contract, the order of priority for the purpose of construction in descending order is:
- (a) the Clauses of the Agreement and each Contract;
 - (b) the Schedules to the Agreement and each Contract (equal priority but subject to Clause 1.10); and
 - (c) any other document referred to in, or incorporated by reference into, the Agreement and each Contract.
- 1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the clauses of the Agreement and each Contract and a provision of any other Schedule then the clauses of the Agreement and each Contract will take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Agreement and each Contract.

2 Duration and Option to Extend

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement and subject to Clause 2.1.
- 2.2 The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Supplier of its intention to extend the Term of the Agreement by a period of up to one (1) year plus an additional one (1) year period. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term (other than this Clause 2.1 containing the option to extend). On receipt of such notice from the Company by the Supplier, the Agreement shall be deemed extended accordingly.

3 Supplier's Primary Obligations

3.1 The Supplier shall supply the Goods and Services to the Company in accordance with:

- (a) the terms set out in the Agreement (including the Schedules); and
- (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,

each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a "**Contract**".

3.2 When Goods and Services are required by the Company, the Company shall give the Supplier an Order for the Goods to be delivered and Services to be supplied and each Order so given shall be final, unless varied in accordance with the Contract Variation Procedure.

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

- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description;
- (b) be of satisfactory quality and fit for the purpose for which they are intended;
- (c) comply with all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company;
- (f) have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment.

3.4 The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term in accordance with the requirements set out in the Specification.

3.5 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 performed in accordance with the Order Programme;

- (c) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
 - (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification; and
 - (e) comply with the requirements of the Company set out in the Agreement and each Contract and all lawful and reasonable directions of the Company.
- 3.6 The Supplier warrants and undertakes that the Supplier has entered into and executed this Agreement and any Contract by the Supplier's duly authorised representative in accordance with all procedures required by its governing laws and contractual documents.
- 3.7 The Supplier shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.8 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.
- 3.9 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.10 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 Agreement or any Contract.
- 3.11 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.12 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Agreement.
- 3.13 The Supplier shall train any of the nominated company employees, TfL employees and any of their contractors or agents as required by the Company in accordance with the Specification.
- 3.14 Design

- (a) The Supplier shall carry out his design in accordance with the Specification and the terms of the Agreement.
- (b) The Supplier shall submit the particulars of his design which the Specification requires to the Company's Representative for acceptance. The Supplier shall not proceed with the supply of Goods and/or Services until the Company's Representative has accepted his design. Reasons for not accepting the Supplier's design shall include (without limitation):
 - (i) it does not comply with the Specification or any other part of the Agreement;
 - (ii) it does not comply with Applicable Laws and Standards;
 - (iii) it is not integrated and coordinated with the designs of others where the Supplier is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Supplier to supply the Goods and/or Services;
 - (iv) it is not in a format which is accepted for use by the Company's Representative.
- (c) The Supplier shall not be entitled to any changes to the Order Price or Expected Order Delivery Date and/or Order Completion Date by reason of anything in this Clause 3.14.
- (d) The Supplier may submit his design for acceptance in parts if the design of each part can be assessed fully.
- (e) The Supplier in designing and specifying the Goods and/or Services which he is required to design and specify, warrants, undertakes and represents to the Company that the design:
 - (i) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Agreement and each Contract;
 - (ii) complies with all Applicable Laws and Standards;
 - (iii) is fit for the purpose defined in the Specification.
- (f) The Supplier accepts entire responsibility for the design and specification of the Goods and/or Services which he is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between his design and specification of the Goods and/or Services and the documents which are part of the Agreement.

4 Not Used

5 Records and Audit

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

- (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.

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

- 5.3 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 5.1 at any time during the period referred to in Clause 5.2.
- 5.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
 - (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
 - (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
 - (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company'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 each Contract.
- 5.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.
- 5.6 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 5.1, free of charge within thirty (30) days of the Company's request for the same.
- 5.7 The Supplier shall and shall ensure that any sub-contractor or sub-supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

6 Company's Obligations

- 6.1 The Company shall pay the Supplier the Order Price for the Goods and Services in accordance with the terms of the relevant Contract.

- 6.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.
- 6.3 The Agreement is not an exclusive arrangement and nothing in the Agreement or any Contract operates to prevent the Company from engaging any other organisation or person to supply goods and services similar to or the same as the Goods and Services.

7 Additional Goods and Services

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

8 Variation

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

9 Price and Payment

- 9.1 The Supplier shall submit an application for payment to the Company's Representative according to the rates and prices set out in Schedule 2 for the relevant portion of the Order Price in respect of the Goods after the Order Delivery Date of such Goods (a "**Payment Application**"). If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application for the relevant portion of the Order Price to the Company's Representative after the Order Delivery Date of each instalment.
- 9.2 The Supplier shall submit a Payment Application for the relevant portion of the Order Price in respect of the Services using the rates and prices set out in Schedule 2, to the Company's Representative following the completion of the Services to the satisfaction of the Company.
- 9.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.

9.4 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company's Representative shall notify the Supplier in writing not later than fourteen (14) days after the date of receiving the Payment Application of:

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

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

a "**Payment Certification**". It is immaterial for the purposes of this Clause 9.4 that the amounts referred to in Clauses 9.4(a) or 9.4(b) may be zero. Where the Company fails to comply with its obligations under this Clause 9.4 and there is an undue delay in assessing and verifying the Payment Application, the Payment Certification shall be regarded as issued for the purposes of Clause 9.7 after a reasonable time has passed.

9.5 Within six (6) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company.

9.6 The final date for payment ("**Final Date for Payment**") shall be thirty (30) days after the date on which the Company's Representative received the Payment Application except if the Suppliers fails to issue a VAT invoice in accordance with the timescale set out in Clause 9.5 (and such failure is not due to any failure by the Company to comply with its obligations in Clause 9.4)

9.7 Subject to Clause 9.8, the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 9.4 (the "**Notified Sum**") on or before the Final Date for Payment.

9.8 If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Supplier in writing not later than one (1) day (the "**Prescribed Period**") prior to the Final Date for Payment of:

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

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

It is immaterial for the purposes of this Clause 9.8 that the amounts referred to in Clause 9.8(a) or Clause 9.8(b) may be zero. Where a notice is given under this Clause 9.8, the Company's obligation to pay the Notified Sum under Clause 9.7 applies only in respect of the sum specified pursuant to this Clause 9.8.

9.9 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in supplying the Goods to the Delivery Address. The Order Price for the Goods and/or Services shall only be changed in accordance with the Contract Variation Procedure.

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

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

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

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

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

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

9.13 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

9.14 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Order 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 Order 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 9.14, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.

9.15 Not used

9.16 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or any Services performed or of 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 Agreement and any Contract or otherwise.

10 Delivery of Goods

- 10.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date and on the times stated in the Order and 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 at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 10.2 The time of delivery of the Goods shall be of the essence in respect of each Contract.
- 10.3 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 each Contract.
- 10.4 The Supplier shall provide a detailed delivery note stating the relevant Contract Reference Number, Order number (given on the relevant Order) 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 Order Delivery Date in accordance with Clause 41.
- 10.5 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 10.6 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 17.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.
- 10.7 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of

such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate.

- 10.8 Notwithstanding Clause 10.4 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) days notice of the revised Delivery Date (the "Revised Delivery Note").

11 Supplier Performance

- 11.1 On the date(s) stated by the Company's Representative for the purpose of Contract Review Meetings, the Company shall assess the Supplier's performance under the Contract in accordance with Schedule 11.

- 11.2 The Company shall have the right to:

- (a) use the escalation process stated in Schedule 11 to rectify any unsatisfactory performance by the Supplier in its performance of the Contract or any failure by the Supplier to meet the performance standards set out in Schedule 11; or
- (b) abate the Supplier for failure to meet the Service Delivery Indicators stated in Schedule 11.

12 Failure to Perform the Services

- 12.1 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.

- 12.2 Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 12.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 12.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Agreement.

- 12.3 For the purposes of Clause 12.3 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Agreement and any Contract as may be required by the Company to exercise its rights under Clause 12.3 and the

Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 12.3.

13 Access and Time for Performance of the Services

- 13.1 The Company shall give the Supplier access to the parts of the Underground Network required for the performance of the Services in accordance with the provisions of this Clause 13.
- 13.2 Subject to the provisions of Clause 12, the Company shall use reasonable endeavours to give access to such parts of the Underground Network to the Supplier on the dates and times on which it has stated that it requires such access.
- 13.3 The Supplier acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Agreement and each Contract.
- 13.4 Where the Supplier requires access to the Underground Network to carry out the Services it shall:
- (a) apply for access at the earliest available opportunity; and
 - (b) provide the Company's Representative without delay with such additional information as the Company's Representative may reasonably require in respect of the Supplier's access requests.
- 13.5 The Company shall confirm access bookings in accordance with this Clause 13. The Company does not warrant or guarantee to the Supplier that such access will be granted. If any request for access is rejected, the Company shall advise the Supplier and agree with the Supplier alternative dates for resubmission. The rejection of an access request shall not entitle the Supplier to an extension of time.
- 13.6 If the Supplier fails to apply for access in accordance with this Clause 13, the Company shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Agreement and any Contract.
- 13.7 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access. If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Company's Representative setting out all details including the part of the Underground Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Supplier is aware.
- 13.8 The Supplier shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network. The Supplier shall make good any

such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Company's Representative.

- 13.9 The Supplier shall indemnify and keep indemnified the Company in respect of any claims by third parties relating to the disruption, delay or cancellation of their access due to the actions or omissions of the Supplier.
- 13.10 Prior to returning any part of the Underground Network to the Company at the end of any period of booked access, the Supplier shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the Underground Network in a clean and workmanlike condition to the satisfaction of the Company's Representative.
- 13.11 If the Supplier fails to comply with the requirements of Clause 13.10 within such reasonable time as may be allowed by the Company's Representative, then the Company may dispose of those items as the Company sees fit and at the Supplier's cost, which cost if met by the Company shall become a debt due from the Supplier to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Supplier under this Agreement and any Contract.
- 13.12 Where the Supplier is denied booked access to any part of the Underground Network through no fault of the Supplier, the Supplier shall be entitled to an extension of time in accordance with Clause 25.2(a).
- 13.13 The Supplier shall ensure that the Services are satisfactorily completed by the Order Completion Date. The time of the performance of the Services shall be of the essence in respect of each Contract.

14 Work on Company's Sites

- 14.1 During the term of each Contract, the Supplier shall:
- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
 - (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
 - (c) notwithstanding the terms of Clause 14.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each Contract;

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

14.2 Without prejudice to Clauses 14.1(a) to (g) the parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under each Contract.

15 Free Issue Materials

15.1 In the event of the Company supplying Free Issue Materials to the Supplier under any Contract the cost of which has been included in calculating the Order Price, the Order Price shall be reduced by the amount included in the Order Price for the materials which have been replaced by such Free Issue Materials.

15.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.

15.3 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession or in the possession of any subcontractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

16 Failure to Supply the Goods

- 16.1 Without prejudice to any other right or remedy of the Company under this Agreement and each Contract, and its rights under Clause 21, if the Supplier fails to supply the Goods or any part to the Company's satisfaction the Company may give the Supplier at least seven (7) days' notice in writing (except in an emergency when no notice need be given) requiring the Supplier to remedy such failure. If the Supplier fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the supply of the Goods or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 12 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 16.2 For the purposes of Clause 16.1 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 16.1 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 16.1.

17 Risk and Ownership

- 17.1 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 18.2, 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 18.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.
- 17.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

18 Inspection of the Goods

- 18.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.
- 18.2 If, following the inspection referred to in Clause 18.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, conforming to the Specification and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company

may by notice in writing (the “**Rejection Notice**”) to the Supplier reject all or any part of the Goods (the “**Rejected Goods**”).

- 18.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company’s option:
- (a) replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
 - (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
 - (c) pay the Company’s Losses resulting from the Supplier’s delivery of Goods that were not in conformity with the terms of the relevant Contract.
- 18.4 The Company’s rights and remedies under this Clause 18 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 relevant Contract by the Sale of Goods Act 1979.
- 18.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 18.3(a), the Company may, without affecting its rights under Clause 18.3(c), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall promptly reimburse the Company for the costs it incurs in doing so.
- 18.6 The Goods shall conform in all respects with any sample approved by the Company and in the absence of a sample; all the Goods provided shall be within the normal limits of industrial quality.

19 Warranty

- 19.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company’s option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.
- 19.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 19, such repaired Goods or replacement Goods shall be re-delivered to the Company in

accordance with the terms of the relevant Contract and the provisions of Clauses 9, 17 and 18 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 19.

- 19.3 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.

20 Intellectual Property Rights

20.1 Existing Contracts

The Agreement 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.

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

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

20.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 20.2, 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 20.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

20.4 Not used.

20.5 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 20.2, 20.3 and 20.4 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.

20.6 *Company's Rights of Retention*

If the Supplier has not complied with its obligations under Clause 20.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under each Contract until the Supplier has complied with its obligations under Clause 20.5(a).

20.7 *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 as part of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 21.1 (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 Agreement and each 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.

20.8 *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 20.5 above and anything in which the Intellectual Property Rights referred to in Clauses 20.2, 20.3 and 20.4 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 20.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

20.9 *Supplier's Indemnity against Third Party Intellectual Property Rights Infringement*

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

other dispute resolution forum. If required by the Company the 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 as may be necessary to ensure that the use and provision of the Goods continues in spite of such claim.

20.10 *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 Agreement and each Contract shall remain vested in the Company or the person owning such rights at the time the Documentation, material or items were supplied. The 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.

Company's Intellectual Property Rights

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

21 Termination and Suspension

- 21.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:
 - (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
 - (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
 - (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded;
 - (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Agreement and each

Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or;

- (e) a breach of the Supplier's obligations under Clause 48 or
- (f) the Company becomes entitled to terminate in accordance with the escalation procedure set out in **Error! Reference source not found.**

21.2 Without prejudice to Clause 21.1, the Company shall have the right:

- (a) to terminate the Agreement 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.

21.3 In the event that the Company terminates the Agreement for any reason under this Clause 21, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement or under general law at the Company's option law, at the Company's option:

- (a) permit the Company to enter the Supplier's premises and take possession of any equipment, goods or Documentation which are the property of the Company; and
- (b) permit the Company to 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; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

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

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

- 21.5 Following a termination in accordance with Clause 21.1 (but not a termination in accordance with Clause 21.2(a)) the Supplier shall be liable to the Company for
- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
 - (b) where the Company exercises its rights under Clause 21.3(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Agreement and the relevant Contract by the Supplier ("**Excess Costs**"), such Excess Costs.
- 21.6 In the event that the Agreement is suspended in accordance with Clause 21.2(b), the Supplier shall:
- (a) issue to the Company an application for payment in respect of those Goods and Services provided to the Company in accordance with the Agreement and the relevant 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**").
- 21.7 In the event that the Agreement is suspended in accordance with Clause 21.2(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.
- 21.8 In the event that the parties are unable to agree upon the variation requested under Clause 21.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 42.
- 21.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 21.10 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.

22 Co-operation in Handover

- 22.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and in the three (3) months after the expiry of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the supply of the Goods and Services and in such a manner so as not to unduly disrupt or hinder the Company's business.
- 22.2 Without prejudice to the generality of Clause 22.1 above, the Supplier shall on or prior to the expiry of the Term transfer to the Company such Documentation relating to the Goods or full copies thereof as the Company may request.

23 Indemnity and Insurance

- 23.1 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Supplier under the Agreement and each Contract:
- (a) in respect of death or personal injury to any person;
 - (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
 - (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Supplier, its employees, agents or subcontractors; and
 - (d) arising under the Company's contracts with third parties,
- and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.
- 23.2 The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 23.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.
- 23.3 The Supplier's indemnity under Clause 23.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of the Agreement and each Contract and for

the period of six (6) years after the Order Delivery Date and/or Order Completion Date or earlier termination of the Agreement and each Contract.

- 23.4 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 Clause 23.1.
- 23.5 Other than in respect of the Losses (i) described in Clauses 23.1(a) and 23.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.
- 23.6 Without prejudice to the obligation to indemnify the Company set out in Clause 23.1, 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 an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;
 - (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence;
 - (d) maintain at its own cost an adequate level of "goods in transit" insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 per occurrence, 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;
 - (e) 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 any Contract in an amount not less than £2,000,000, for any one occurrence;
 - (f) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than six (6) years after the delivery of the Goods and completion of the Services (whichever is the later);

- (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of the Services or the provision of any of the Goods by the Supplier under any 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 23.6.

23.7 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 23.6.

23.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 23, 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.

23.9 Not used.

24 Environmental Claims

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

24.2 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.

24.3 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.

24.4 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.

24.5 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 Goods and Services (for the purposes of this Clause 24.5, 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.]*

25 Force Majeure and Permitted Delay events

25.1 Force Majeure

- (a) Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the Agreement or any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the relevant 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 relevant Contract, the Company shall have the right to terminate the relevant Contract immediately upon giving written notice of such termination to the Supplier.

25.2 Permitted Delay Events

- (a) If delay is caused or either Party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Delivery Date, within seven (7) days after the cause of any delay has arisen.
- (b) For the purposes of this Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":

- i. any act of prevention, omission, default or neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
 - ii. any variation of the Agreement or any Contract under Clause 8; or
 - iii. the suspension of this Agreement or any Contract in accordance with Clause 21 (other than where the suspension is necessary by reason of default by the Supplier).
- (c) Where any delay in achieving the Expected Order Delivery Date and/or Order Completion Date arises, the Supplier shall be entitled to an extension to such Expected Order Delivery Date and/or Order Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to provide the Goods by the Expected Order Delivery Date and/or Order Completion Date and provided that the Supplier:
- i. notifies the Company of the Permitted Delay Event in accordance with Clause (a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
 - ii. provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
 - iii. uses its reasonable endeavours to mitigate the delay to the relevant Delivery Date; and
 - iv. shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Contract by the Supplier, its subcontractors and/or employees.

26 Safety

- 26.1 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 etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 26.2 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 Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in the Specification ("**QUENSH**") as amended from time to time; and
 - (b) the Company's drug and alcohol principles as amended from time to time.

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

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

27 Not Used

28 Independent Supplier

28.1 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 each Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

29 Supplier Personnel

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29.1 For the purposes of this Clause 29:

“**Current Service Provider**” means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company;

“**Replacement Employer**” means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);

“**Relevant Claims and Liabilities**” means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;

“**Subsequent Transfer Date**” means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;

“**Subsequent Relevant Employee**” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods and/or

Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);

“Transfer Regulations” means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and

“Transferring Employees” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Supplier under the Transfer Regulations.

29.2 The Supplier complies and procures that his sub-contractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the expiry of the Term or earlier termination of the Agreement.

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

- (a) the names of employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services, their salaries and other conditions of employment, ages and length of service;
- (b) the method of organisation of the employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services and documentary evidence relating to such organisation;
- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations,
- (f) and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier’s employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.

- 29.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 29 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 29 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.
- 29.5 The Supplier will not and will procure that its subcontractors will not in the 10 months prior to the expiry of the Term or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's written consent:
- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in the provision of the Goods and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in supplying the Goods and/or Services or relates to the expected expiry of the Term or termination of the Agreement, or
 - (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Goods, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant sub-contractor's business and are not related to the expiry of the Term or termination of the Agreement (either because they are applied to all of the Supplier's or the relevant sub-contractor's employees, whether or not engaged in providing the Goods or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant sub-contractor which is not related or confined to the employees engaged in supplying the Goods or relates to the expiry of the Term or termination of the Agreement.
- 29.6 The Supplier shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Goods and/or Services.
- 29.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (c) In this Clause 29.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

29.8 The provisions of this Clause 29 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Supplier of any provision of this Clause 29 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Key Personnel

- 29.9 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the provision 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.
- 29.10 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.
- 29.11 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 provision of the Goods and 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.

- 29.12 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.
- 29.13 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.

30 Confidentiality

- 30.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of his obligations under each Contract.
- 30.2 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.

- 30.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 30.1 and 30.2 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.
- 30.4 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.
- 30.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, any Contract or the Goods and Services without the prior written consent of the Company.
- 30.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Goods and Services, or any Dispute arising under or in connection with any Contract.
- 30.7 The provisions of Clauses 30.1 to 30.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 30.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 30 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 30.

31 London Living Wage

- 31.1 The Supplier shall, to the extent each Contract is for the provision of Goods and Services to be undertaken within Greater London or on the Underground Network:
- (a) ensure that none of its employees engaged in the provision of Goods and Services under the relevant 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 31 and the provisions of this Clause 31 are included in any subcontract (of any tier).

31.2 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 31.

32 Responsible Procurement

32.1 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 (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

32.2 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.

32.3 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.

32.4 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).

- 32.5 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 32.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 32 and the provisions of this Clause 32 are included in any subcontract (of any tier).
- 32.7 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 32.

33 Assignment and Subcontracting

- 33.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 33.2 The subcontracting of all or any part of the Goods and/or Services to a subcontractor shall not relieve the Supplier of its obligations to supply the Goods and/or Services under the Agreement and each Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 33.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any 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.
- 33.4 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 7 in favour of any person to whom the Agreement and/or any Contract is being novated.

34 Company's and Supplier's Representative

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

35 Costs

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

36 Severance

If a provision of the Agreement or any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Agreement or any Contract, provided that the operation of this Clause 36 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

37 Publicity

The text of any press release or other communication to be published by or in the media concerning the subject matter of the Agreement and any 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.

38 Corrupt Gifts and Payments of Commission

- 38.1 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.
- 38.2 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.
- 38.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 38 at any time during performance of the Agreement and each Contract and during the twelve (12) year period following completion of performance.

39 No Waiver

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

39.2 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods and/or Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement or otherwise.

40 Entire Contract

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 Agreement or any 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 Agreement or any Contract.

41 Notices and Service of Process

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

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

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 41.

42 Dispute Resolution

42.1 Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 42.

42.2 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.

- 42.3 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 42.2 (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 Senior Commercial 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.
- 42.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Head of Commercial and the Supplier's Managing Director or their deputies in accordance with Clause 42.3 either party may refer the matter for resolution in accordance with the provisions of Clause 43.
- 42.5 Clauses 42.1 to 42.4 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 42.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

43 Counterparts

Agreement may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same document.

44 Partnerships and Joint Ventures

- 44.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement are joint and several. The Agreement and the liabilities of the partners under the Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Agreement.
- 44.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement are joint and several.
- 44.3 Nothing in the Agreement shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

45 Governing Law and Jurisdiction

- 45.1 This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 45.2 The Company and the Supplier submit, subject to the provisions of this Agreement and any 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.

46 Contracts (Rights of Third Parties) Act 1999

- 46.1 Subject to the Replacement Employer's rights in accordance with Clause 29, no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 46.2 Notwithstanding those rights referred to in Clause 46.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

47 Not Used

48 Change of Control

The Supplier shall not without the prior written consent of the Company implement any change of ownership of the Supplier where such change relates to fifty per cent (50%) or more of the issued share capital of the Supplier.

49 Not Used

50 Freedom of Information

- 50.1 For the purposes of this Clause 50:

"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.

50.2 The Supplier acknowledges that the Company:

- (a) 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
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

50.3 Without prejudice to the generality of Clause 50.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

- (a) transfer to the Company’s Representative (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to the Agreement or any 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
- (b) 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.

50.4 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.

51 Data Transparency

51.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 30 and Clause 50, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

51.2 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 51.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

52 Survival

52.1 The provisions of Clauses 5 (Records and Audit), 19 (Warranty), 20 (Intellectual Property Rights), 21 (Termination), 23 (Indemnity and Insurance), 29 (Supplier Personnel), 30 (Confidentiality), 32 (Responsible Procurement), 36 (Severance), 37 (Publicity), 38 (Corrupt Gifts and Payments of Commission), 39 (No Waiver), 40 (Entire Contract), 41 (Notices and Service of Process), 42 (Dispute Resolution), 45 (Governing Law and Jurisdiction), 46 (Contracts (Rights of Third Parties) Act 1999), 50 (Freedom of Information), 51 (Data Transparency), 52 (Survival), 53.1 and 53.5 (Transport for London Group) will survive the termination or expiry of this Agreement and any Contract and continue in full force and effect, along with any other Clauses or Schedules of this Agreement and any Contract necessary to give effect to them. In addition, any other provision of this Agreement and any 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.

53 Transport for London Group

53.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and any Contract under Clause 21.1, Clause 21.2(a) or at common law, the Company may terminate the Agreement and any Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 53.1.
- (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 53.1 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 21.1 and this Clause 53.1 or the Cessation Plan, the provisions of this Clause 53.1 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 53.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and any Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and any Contract in accordance with this Clause 53.1.

53.2 **Crime and Disorder Act 1998**

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

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

and in the performance of the Agreement and each 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.

53.3 **The Company's business**

The Supplier acknowledges that it:

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

53.4 **Best value**

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

53.5 **Data Protection**

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the supply of Goods and Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.

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

53.6 **Conflict of Interest**

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

53.7 **Equality and Diversity**

- (a) Without limiting the generality of any other provision of the Agreement and any 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.

- (b) 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 Agreement and each Contract the Supplier shall assist and cooperate with the Company where possible in satisfying this duty.

- (c) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and each 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.
- (d) 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.

53.8 Work Related Road Risk

- (a) For the purposes of Clauses (b) to (i) (inclusive) of this Agreement, the following expressions shall have the following meanings:

“Bronze Accreditation” the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Car-derived Vans” a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Collision Report” a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Goods and Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Silver Accreditation”	the intermediate level of accreditation within the FORS Standard, the requirements of which are more

particularly described at:

www.fors-online.org.uk

“Van” a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

- (b) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and 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

- (c) The Supplier shall ensure that every Lorry, which it uses to provide the Goods and 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

- (d) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and 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 Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods and 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

- (e) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and 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 Agreement and each Contract.

Collision Reporting

- (f) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and 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

- (g) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses (c), (d) and (e) of this Agreement (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

- (h) The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles to provide the Goods and Services shall:
 - (a) comply with Clause (b); and
 - (b) where its subcontractors operates the following vehicles to provide the Goods and Services shall comply with the corresponding provisions of this Agreement:
 - (i) For Lorries – Clauses (c), (d), (e) and (f); and
 - (ii) For Vans – Clauses (d), (e), and (f),

as if those subcontractors were a party to this Agreement.

Failure to Comply with Work Related Road Risk Obligations

- (i) Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Supplier fails to comply with any of Clauses (b), (c), (d), (e), (f), (g) and/or (h):
 - (a) the Supplier has committed a material breach of this Agreement and any 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).

54 CompeteFor

- 54.1 Without prejudice to Clause 33 the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) (“**CompeteFor**”) to make available to other suppliers all appropriate opportunities,

arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier.

54.2 The Supplier will use all reasonable endeavours to ensure that its sub-contractors (for the purposes of this clause, the “**Supplier’s Sub-contractors**”) use CompeteFor, on a non-exclusive basis, to make available to other sub-contractors all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier’s Sub-contractors.

54.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement and each Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier’s Sub-contractors, as required by this Clause 54, and will report this information on a quarterly basis by way of email to the Company Representative.

55 Criminal Record Declarations

55.1 For the purposes of this Clause 55:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of either the Supplier or any subcontractor or supplier involved in the provision of , or intended to provision of, any aspect of the Goods and Services; and

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

55.2 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 providing any of the Goods and 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.

55.3 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 Goods and Services any Relevant Individual who has disclosed a Relevant Conviction.

55.4 The Company shall have the right in accordance with the audit rights set out in Clause 5 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 55 at any time during performance of this Agreement and each Contract.

- 55.5 If the Supplier fails to comply with the requirements under Clauses 55.2 and/or 55.3 the Company may, without prejudice to its rights under Clause 21.1, 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 Agreement and each 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 provision of the Goods and Services unless (in the case of non-compliance with Clause 55.2) 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 55.2.
- 55.6 A persistent breach of Clause 55.2 and/or Clause 55.3 by the Supplier shall entitle the Company to terminate the Agreement and each Contract in whole or in part with immediate effect in accordance with Clause 21.1(a).
- 55.7 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 Agreement and each 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 provision of the Goods and Services.
- 55.8 Nothing in this Clause 55 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and each Contract and the Supplier's responsibilities in respect of the provision of the Goods and 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 55.

**Schedule 1
Detailed Terms**

Commencement Date	12 th July 2019
Expected Delivery Date(s)	In accordance with individual Purchase Orders issued against the Terms & Conditions of this agreement.
Completion Date	8th December 2024 with the option to extend for a further one (1) year plus an additional one (1) year period (3+1+1). 11 th July 2022
Delivery Address	As per individual order
Warranty Period	Not Used for equipment currently owned by TFL at the signatory date of this contract. Warranty for equipment purchased under this contract, will be for the duration of the contract.
Framework Specification	See Schedule 3
Supplier's Representative: Address for service of notices: Telephone: Email:	Terence Clarke; Managing Director
LU Nominee BCV and SSL Representative: Address for service of notices: Telephone: Email:	Stuart Cooper; Ultrasonic Manager
Quantity	As per individual orders.
Framework Price	Please refer to Schedule 2.
Specification	Please refer to Schedule 3.
Programme	Please refer to Schedule 8.
The following Supplier Personnel are Key Personnel	Terence Clarke; Managing Director

Schedule 2

Prices

Framework Pricing

Please note: Please note that the prices are fixed for the initial duration of the contract and only subject to RPIX increase if the option to extend is exercised..

The rate of inflation will be determined on 10th January each year. The first price increase will take place on ~~9th December 2022~~ (subject to the option to extend being exercised). The contractor will confirm the price increase in writing and submit the updated pricing schedules to the Contract Manager. This must be agreed by the Contract manager before price increase is implemented.

Table 1 Operator without Equipment	Price per shift £
1 Operator A/B Scan 8-hour shift	
1 B/Scan operator for towed assuming 20km Per Shift	
1 Operator A/B Scan with ancillary tickets in addition to BTA and track trolley to include protection master and/or PWT	
Table 2 Operator with Equipment	Price per shift £
1 B/Scan Operator with SRT	
1 B/Scan Operator with Lightweight SRT	
1 Man Operating DRT	
1 B/Scan Operator with towed B/Scan equipment to include cameras minus towing trolley	
Table 3 Hire of Equipment Only	Price per shift £
SRT shift rate per day	
Lightweight SRT shift rate per day	
DRT (manual) shift rate per day	
Towed DRT B/Scan only	
Towed DRT with cameras and B/Scan	
Table 4 RIPWAVE/ANALYSIS	Price per shift £
2 man Ripwave/Analysis spot charge	
2 man Ripwave/Analysis Contract for six months	
2 man Ripwave/Analysis Contract for twelve months	
2 man Ripwave/Analysis Contract for duration of running i.e. three years	
Table 5 Purchase of Equipment	Price per unit £
Single Rail Tester (Handwave)	*see pricing table 2*
Lightweight SRT (Handwave Lite)	*see pricing table 2*
Dual Rail Tester (Manual)	*see pricing table 2*

Towed DRT B/Scan only	*see pricing table 2*
Towed DRT with cameras and B/Scan (with Vidwave licence)	*see pricing table 2*
Table 6 Technical Support	Price per unit £
Remote desktop assistance	
On-site Technical assistance	
On-site IT assistance	
On-site mentoring support	
Table 7 Training	Price per candidate £
*Ascan Level 1 (U1, U5, U8, U15, U16) initial course – 5 days	
*Bscan Level - 5 days	
Bscan LRT familiarisation	
*Ripwave analysis training – 5 days	
Ascan on-site assessment	
Bscan on-site assessment	
On-site refresher training	
*inial courses require a minimum of 4 candidates, or a day rate of £485 per candidate/per day will be charged	

Pricing Table 2 Purchase of Spares

ULTRAWave LITE Items

Item	Description	Price
13010807.03	HANDWave, Single Rail Tester, Series II without Notebook Computer, ExW, Inclusive of Factory Elect Excl Zone Mods	
13091102	HANDWave, Dual Rail Conversion Kit	
12112000	HANDWave Failsafe Brake Option	
13082509	Handle Assembly	
13050102	Holder, LED (Small Tube)	
13050103	Holder, LED (Large Tube)	
13060300	HANDWave Transport Trolley	
14042801	Transport Trolley Vehicle Mounting Kit	
13111402	Kit, HANDWave DRT, Electrical Lateral and Cant Control	
13111901	MEC4 PC Mount (Type 1) Option: Config TFL-01	
14050101	Hitch, DRT, for MEC4 Tow Vehicle	
13111900	System, Couplant, 25L, DRT, Towed, MEC4	
14052602	Kit, Control, Float, MEC4	
13102500	Towed DRT Electric HANDWave Brake Option, Config: TFL-01	
14061500	Battery Carrier	
09090500	Software License, Rail Height Measurement (RHM)	
09090501	Software License, UW-L, Operator Access Control (OAC)	
09090502	Software License, UW-L, Automatic Rail Change (ARC)	
09090301	Software License, UW-L, GPS Option	
05030100	RIPWave PRO Software License (For RFD module, UW)	
05030101	RIPWave LITE Software License	

VIDWave LITE Items

Item	Description	Price
16032900.01	System, VIDWave - LITE, DRT, Vertical/Gauge, RAILView 2 camera. (Excluding HW Carrier and ToughBook)	
12083001.01	ToughBook Notebook CF-31 With GPS	CATER-EU Supply
CEU#2	Freight, Delivery, Customs, Insurance, Pre-Inspection	CATER-EU Supply
09090301	Software License, UW-L, GPS Option	
05030100.10	RIPWave PRO (Assumes purchased under ULTRAWave List above, Needs the following 2 items to be used with VIDWave)	
05030201.00	Software, RIPWave, Modules, Image Data	
05030306.00	Software, RIPWave, Readers, VIDWave	

ULTRAWave LITE Spares

Item	Description	Price
04110903.01	Seal,, Wheel probe	
08021408.01	5 Hole seal	
08021410.01	9 Hole seal	
09031703.01	Wheel probe Fluid, 20L	
11011103.01	Transducer, 20mm x 12mm, 2.25MHz	
11011104.01	Transducer, 12.5mm x 50mm, 2.25MHz (Single)	
11061001.01	Transducer, 12.5mm x 50mm, 2.25MHz (Triple)	
12021303.02	Cable, Odometer, SII	
12042903.01	Cable, HANDWave SII Right DRT Adaptor	
12051704.01	Wheel, Wide	
12112505.01	Washer	
12120206.01	Unit, Hi-Lex	
13021001.01	Pin, Battery	
13060809.01	Wheel, Tracking Assy	
13111800.01	Actuator, Cant	
13111801.01	Actuator, Lateral	
13121201.01	Pendant, Towed, Lateral and Cant	
13121604.01	Cable, Junction Box to Battery Carrier Power	
15072701.01	Cable, Towed DRT, Left Actuator, 2m	
15072702.01	Cable, Towed DRT, Right Actuator, 2m	
14102602.01	Magnet Cover, SS	
Batt12-10	Battery, 12V Li-ion	
Brg68062dblss	Bearing,ball, Stainless steel	
BrgKR22PPX	Track, Roller 22mm	
BrgKR32PPX	Track, Roller 32mm	
CableUSB2-5-Ext	Cable, USB, Active, 5m	
CableUSB-UB1	Cable, USB, 1m	
CableUSB-UB4	Cable, USB, 4m	
CapValveTyre	Cap	
CirclipExt30	Circlip, External	
FootRubber02	Foot, Rubber	
Guidelinw	Guide, Linear	
MagMNeSQN50M	Magnet	
PinBL02	Pin, Ball	
PinBL04	Pin, Ball	
PinBL06	Pin, Ball	
ValveTyreAir	Valve, Air	
WhlTyre435	Tyre, wheel, probe,polyurethane,tyre 435	

VIDWave LITE Spares

Item	Description	Price
13081402.01	Cable, VIDWave LITE Camera External Power and Trigger - Short	
13082101.01	Cable, VIDWave LITE Camera External Power and Trigger - Long	
14072202.01	Cable, Encoder Extension, VIDWave Lite SII	
14080103.01	Cable, VIDWaveLITE LED Battery Control	
14082801.01	Cable, VIDWaveLITE Module LED Battery Control, DRT Extension	
14081301.01	LED	
Batt12-10	Battery, 12V Li-ion	
Cable1440478	Cable, LAN, Camera to Module , 1m	
Cable1440481	Cable, LAN, Camera to Module, 2m	
Cable1440601	Cable, LAN, Module to PC, 1m	
Cable1440627	Cable, LAN, Module to PC, 5m	
CameraDS002	Camera	
LensCF12u5	Lens	

Pricing Table 3 Annual Calibration

Item	Description	Price
Calibration	Annual Calibration including Return of Equipment to TfL Depot	