

# **Facilities Management Contract (Standard/Fixed Cost Version)**

between

**TRANSPORT FOR LONDON or TfL**  
as Company

and

**ABM FACILITY SERVICES UK LIMITED**  
as Supplier

For the supply of facilities management and related services across TfL

Contract Reference Number TfL-00929 – 1FM Bundle 5 – Cleaning and Associated Services

**LOT 5: CLEANING: EXECUTION VERSION**

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**THIS CONTRACT** is made on 21<sup>st</sup> JULY 2017.

BETWEEN:

- (1) **TRANSPORT FOR LONDON or TfL**, (the "Company" which expression shall include its successors, transferees and assignees), a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and
- (2) **ABM FACILITY SERVICES UK LIMITED** (the "Supplier"), a company registered in England and Wales under number 03461565 and having its registered office at George House, 75 - 83 Borough High Street, London, SE1 1NH.

(each a "Party" and together the "Parties")

### BACKGROUND

- (A) Pursuant to a notice published in the Official Journal of the European Union in August 2015, the Company invited expressions of interest from appropriately qualified organisations for services relating to the provision of the Services.
- (B) The Supplier has submitted proposals to the Company setting out how it will perform the Services as required by this Contract.
- (C) The Company has selected the Supplier as the most economically advantageous tenderer to provide the Services pursuant to this Contract.
- (D) Therefore, the Company has agreed to buy and the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.
- (E) This Contract may be utilised by the Company or any other member of the TfL Group.

**THIS DEED WITNESSES** as follows:

### PART 1: INTERPRETATION

#### 1. **Definitions and Interpretation**

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

"Abatement" has the meaning given to it in Schedule 12 (Performance Measurement).

"Additional Works" has the meaning given to it in Part 1 of Schedule 6 Part B (Additional Works).

"Affected Party" means the Party affected by a Force Majeure Event.

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006 save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded.

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“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 this Contract, any agreement or document referred to in this Contract, or for the performance of the Services.

“Asset Management System” means the Company’s asset management system used for the planning, recording and management of maintenance work and any updates to the system from time to time.

“BAFO” means ‘best and final offer’.

“Cessation Plan” means a plan agreed between the Parties or determined by the Company in accordance with Clause 76.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

“Change of Control” when applied to any person, shall be treated as occurring if any other person, or any other persons who together at the date of this Contract, Control such person subsequently ceases or together cease to Control it or if after the date of this Contract any person, or persons together, which did not have Control of that person at the date of this Contract but at any time thereafter acquire(s) Control of that person.

“Commencement Date” means the date specified as such in Schedule 1 (Detailed Terms).

“Company Party” means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Company acting in the course of his office or employment or appointment (as appropriate), but excluding the Supplier and any Supplier Parties.

“Company’s Representative” means the person appointed by the Company and named as such in Schedule 1 (Detailed Terms).

“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 this Contract.

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

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“Consequential Loss” means in relation to a breach of this 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 this contract made between the Company and the Supplier.

“Contract Information” means (i) this Contract in its entirety (including from time to time agreed changes to this Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 18.1 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 Innovation Efficiency” or “CIE” has the meaning given to it in Schedule 20 (Contract Innovation Efficiency).

“Contract Mobilisation and Transition Plan” means the plan set out in Appendix 1 (Contract Mobilisation and Transition Plan) to Schedule 18 (Mobilisation Requirements).

“Contract Price” means the price stated in Schedule 1 (Detailed Terms).

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

“Contract Variation Procedure” means the procedure set out in Schedule 6 Part A (Contract Variation Procedure).

“Contract Year” means each period of 12 consecutive calendar months starting on the Services Commencement Date.

“Contractual Documentation” means all documentation and information agreed to be delivered by the Supplier in accordance with this 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 this Contract.

“Control” means, in relation to a body corporate, the ability of a person (or any persons acting together) to ensure that the activities and business of that body corporate are conducted in accordance with the wishes of that person (or those persons), and a person (or persons) shall be deemed to have Control of a body corporate (amongst other things) if, directly or indirectly, that person possesses or is entitled to acquire (or those persons possess or are entitled to acquire): (i) the majority of the issued share capital in that body corporate; or (ii) the majority of the voting rights in that body corporate; or (iii) the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding-up; or (iv) the right to appoint a majority of the directors to the board of that body corporate, and “Controlling”, “Controlled” and “Controller” shall be construed accordingly.

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“CPI” means the Consumer Prices Index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in a no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the provisions of Schedule 14 (Dispute Resolution Procedure).

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to this Contract made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended) or Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

“Deferred Service Elements” has the meaning given to it in paragraph 1.4 (Deferred Service Elements) of Schedule 3 (Specification).

“Deferred Service Element Effective Date” has the meaning given to it in paragraph 1.4 (Deferred Service Elements) of Schedule 3 (Specification).

“Delivery Unit” means the sub-divisions of TfL Business Areas identified in Schedule 12b (Performance Measurement Matrix) under the heading of Delivery Unit.

“Disclosed Data” means information relating to the provision of the Services disclosed to the Supplier and its shareholders and advisers before the date of this Contract including the Invitation to Tender.

“Dispute” has the meaning given to that term in Clause 65.

“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 this Contract and whether in paper form or stored electronically.

“Emergency” means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.

“Energy Technology List” means the government-managed list of energy-efficient plant and machinery that forms part of the Enhanced Capital Allowance scheme;

“Enhanced Capital Allowance” means the enhanced capital allowance scheme for energy saving technologies (first published on 15 October 2015) as amended from time to time by the Department for Business, Energy & Industrial Strategy and “Enhanced Capital Allowances” shall be construed accordingly.

“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

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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.

“Equipment” means equipment (not being Free Issue Materials) supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under this Contract.

“Escalation Procedure” has the meaning given to it in Schedule 12 (Performance Measurement).

“Ethical Trading Initiative Base Code” or “ETI Base Code” means the ETI Base Code referred to in Clause 35 and set out in Appendix 1 to Schedule 16 (Responsible Procurement) of the Contract.

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

- (A) any Abatement levied in accordance with this Contract;
- (B) any costs of the Supplier of performing its obligations under this Contract, including but not being limited to the costs of re-performing the Services as required by Clause 20.3;
- (C) any compensation on termination amounts pursuant to Clause 45.2;
- (D) any taxes, whether payable under any Applicable Laws or pursuant to this Contract
- (E) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach of or failure to maintain such insurance);
- (F) Losses caused by fraudulent acts, including fraudulent misrepresentation or acts of a criminal nature;
- (G) Losses caused by the Supplier committing a Prohibited Act or Safety Breach;
- (H) loss of or damage to any property (including the TfL Network and Sites and any other property belonging to the Company or for which it is responsible);

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- (I) claims made against the Company by third parties (whether under contract, tort, breach of statutory duty or otherwise);
- (J) any Losses against which the Company is indemnified under Clause 31;
- (K) any Losses against which the Company is indemnified under Clause 37.10;
- (L) death or personal injury caused by the Supplier's negligence or that of its personnel; and
- (M) any interest due as a result of any late payments of any of the Excepted Liabilities.

"Expiry Date" means the date specified as such in Schedule 1 (Detailed Terms), as may be extended pursuant to the provisions of Clause 2.2.

"Existing Contracts" means any and all contracts, whether current, expired or terminated, pursuant to which goods or services have been supplied or provided by the Supplier (in the capacity of contractor or sub-contractor) to the Company or any member of the TfL Group.

"Final Warning Notice" has the meaning given to it in Clause 44.3.

"Financial Year" means 1st April to 31st March each year.

"Force Majeure Event" means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a Party affected by such an event or circumstances and which have an adverse effect on the Party affected by such an event or circumstances and such Party's ability to perform its obligations under this 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 this 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, civil unrest, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority; or
- (B) 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.

"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 this Contract.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time from a skilled, competent and experienced contractor seeking in good faith to comply with all its contractual obligations and all Applicable

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Laws (whether or not binding on the Company), and engaged in the same type of undertaking and under the same or similar circumstances as those envisaged by this Contract.

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

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

“Guarantor” means ABM Industries Incorporated;

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

“Intellectual Property Rights” means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), 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 1 (Detailed Terms).

“Invitation to Tender” or “ITT” means the invitation to tender issued on 29 June 2016 through the TfL e-tendering portal under OJEU ID: 2015/S 152-281420.

“Key Personnel” means Supplier Personnel identified as such in Schedule 19 (Key Personnel) and any changes to the same that are made in accordance with Clause 32.

“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.

“Mobilisation Cost” means the total amount set out in the column headed Total Cost under Part B (Mobilisation) of the Summary of the Pricing Matrix.

“Necessary Consents” means any permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are

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required for the performance of any of the Supplier's obligations under this Contract, including those required in order to comply with Applicable Laws, Standards or as a result of the rights of any third party.

"Notice to Proceed" has the meaning given to that term in Clause 48.2(B).

"Notified Sum" has the meaning given to that term in Clause 18.4.

"Occasion of Tax Non-Compliance" means:

- (A) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
  - (1) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or
  - (2) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent of similar regime; and/or
- (B) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

"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.

"Payment Application" has the meaning given to that term in Clause 18.1.

"Period" means the Company's accounting periods as notified from time to time by the Company to the Supplier, each such Period being of between 25 and 32 days and one of 13 periods during the Company's Financial Year.

"Persistent Breach" means a breach for which a Final Warning Notice has been issued, which has continued for more than ten (10) Working Days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Warning Notice is served on the Supplier.

"Pre-Qualification Questionnaire" or "PQQ" means the pre-qualification questionnaire issued on 05 August 2015 through the TfL e-tendering portal under OJEU ID: 2015/S 152-281420.

"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:
  - (1) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Company; or

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- (2) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Company; or
- (B) entering into this 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 this Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (C) committing an offence:
  - (1) under the Bribery Act 2010;
  - (2) under legislation creating offences in respect of fraudulent acts; or
  - (3) at common law in respect of fraudulent acts,in relation to this Contract or any other contract with the Company; or
- (D) defrauding or attempting to defraud the Company.

“Public Procurement Termination Event” means:

- (A) the 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 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.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 7 (Health, Safety, Quality and Environmental Requirements) as amended from time to time.

“Quarter” means respectively each or all of Periods 1 to 4, 5 to 7, 8 to 10 and 11 to 13 in each Contract Year, and “Quarterly” will be construed in line with this definition.

“QUENSH” has the meaning given to it in Schedule 7.

“Regulations” 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.

“Relevant Tax Authority” has the meaning given to it in the Cabinet Office Procurement Policy Note: Measures to Promote Tax Compliance - Action Note 06/13 dated 25 July 2013.

“Relief Event” has the meaning given to it in Clause 30.

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

“Replacement Employer” has the meaning given to it in Clause 31.

“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 this 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 TfL Network and/or Sites or the safety of the Company’s customers, staff or any other person.

“Services” means all or any part of the services stated in the Specification or any other part of this Contract to be performed by the Supplier under this Contract and any services, functions or responsibilities which may reasonably be regarded as incidental to the supply of the Services and/or anything necessary to comply with them and which may reasonably be inferred from this Contract.

“Services Commencement Date” means the date specified as such in Schedule 1 (Detailed Terms).

“Site” means the work areas detailed in Schedule 1 (Detailed Terms) and/or the Specification and such other work areas as the Company may allow the Supplier to access (subject to and in accordance with Clause 22) in order to perform the Services.

“Specification” means the description of the services to be provided by the Supplier in accordance with this Contract contained in Schedule 3 (Specification).

“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 perform the Services 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.

“Sub-Contract” means a contract between the Supplier and a Sub-Contractor.

“Sub-Contractor” means a sub-contractor to the Supplier, being the counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Services (or any part of them).

“Supplier Default” has the meaning given to it in Clause 44.

“Supplier Party” means:

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- (A) an officer, servant or agent of the Supplier or any Affiliate of the Supplier and any officer, servant or agent of such a person;
- (B) any Sub-Contractor of the Supplier, and any of their officers, servants or agents; and
- (C) any person on or at any Site at the express or implied invitation of the Supplier (other than a Company Party).

"Supplier Personnel" means all employees, agents or consultants of the Supplier and the Supplier's Sub-Contractors from time to time.

"Supplier's Representative" means the person appointed by the Supplier and named as such in Schedule 1 (Detailed Terms).

"Termination Notice" means a notice of termination issued in accordance with this Contract.

"TfL Business Area" means the subdivisions of TfL identified in Schedule 12b (Performance Measurement Matrix) under the heading of TfL Business Areas.

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

"TfL Network" means the assets owned, or used by, and/or the services provided by or on behalf of, any member of the TfL Group.

"Third Party Licence" means any third party licences, consents and permissions required to permit the Supplier to use the Asset Management System.

"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.

"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 forward by the Company or the Supplier to vary this Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 (Form of Variation Proposal/Variation Order) to Schedule 6 Part A (Contract Variation Procedure).

"Water Technology List" means the government-managed list of energy-efficient plant and machinery that forms part of the Enhanced Capital Allowance scheme.

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

## LOT 5: CLEANING: EXECUTION VERSION

- 1.2 The headings in this Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.4 Any reference to "writing" means a communication consisting of words in any legible and visible form, including words produced by any form of electrical or mechanical means and in typed, electronic or printed format as well as in manuscript, and "written" shall be construed accordingly.
- 1.5 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to this Contract and references to this Contract include its recitals and Schedules.
- 1.6 References to (or to any specified provision of) this Contract or any other document shall be construed as references to this 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 this Contract or the document in question.
- 1.7 A 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.
- 1.8 References to a person, firm or company shall include 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 Any obligation on a Party to do or not do any act, matter or thing includes an obligation to procure that it is done or not done (as the case may be).
- 1.10 Words preceding the words "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.
- 1.11 In the event that a conflict, ambiguity or inconsistency exists between the Clauses of this Contract and the Schedules or between any of the Schedules, then (save as expressly provided in this Contract) the order of precedence shall be as follows:
  - (A) the Clauses of this Contract;
  - (B) the Schedules to this Contract (equal priority, but subject to this Clause 1.11); and
  - (C) any other document referred to in, or incorporated by reference into, this Contract.
- 1.12 If there is any inconsistency between any diagram and any text, the text shall take precedence.
- 1.13 In the event of any inconsistency between the Schedules and the Parts, Annexes or Appendices thereto, the Schedules shall prevail.
- 1.14 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any

## LOT 5: CLEANING: EXECUTION VERSION

document or course of action by or on behalf of the Company, nor the failure of the same shall, unless otherwise expressly stated in this Contract, relieve the Supplier of any of its obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

- 1.15 Where this Contract contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, the Company may make such election, determination, approval, rejection, consent, nomination, appointment, decision, specification, permission or consideration in its absolute discretion without being required to give reasons, unless this Contract expressly requires otherwise.
- 1.16 Where this Contract contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, this means in advance and in writing in order for the Supplier to be able to place reliance on it.
- 1.17 This Contract was drafted with the joint participation of the Parties and no provision of this Contract will be construed adversely to a Party solely on the ground that such Party was responsible for the preparation of this Contract or that provision.
- 1.18 Where used in any part of this Contract the phrase "reasonable endeavours" shall be taken to mean an obligation to do whatever could reasonably be done in the circumstances to fulfil the obligation concerned by:
  - (A) a responsible and sufficiently funded contractor acting in accordance with Good Industry Practice (in the case of the Supplier); or
  - (B) a responsible customer receiving the Services (in the case of the Company).

## LOT 5: CLEANING: EXECUTION VERSION

### PART 2: CONTRACT MANAGEMENT AND COMMENCEMENT

#### 2. Duration and Option to Extend

- 2.1 This Contract and the rights and obligations of the Parties (excluding the obligations of the Supplier to provide the Services but including the Supplier's obligation to comply with Schedule 18 (Mobilisation Requirements) and the Contract Mobilisation and Transition Plan) shall take effect on the Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2. The obligation of the Supplier to provide the Services shall take effect on the Services Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2.
- 2.2 The Company shall at its sole option be entitled at any time prior to the date falling no later than twelve (12) months prior to the Expiry Date to serve notice on the Supplier of its decision to extend this Contract for a period of up to thirty six (36) months ("the Extension Period") either in respect of all or part of the Services.
- 2.3 The provisions of this Contract shall continue to apply mutatis mutandis to any such extension of this Contract (other than Clause 2.2 containing the option to extend and subject to any variations as may be agreed by both Parties).
- 2.4 Save as otherwise may be agreed, the Contract Price at the start of the Extension Period shall be the Contract Price in the immediately preceding year prior to the Extension Period, indexed in accordance with the provisions of Schedule 2 (Payment).
- 2.5 On receipt of notice further to Clause 2.2 from the Company by the Supplier, this Contract shall be deemed extended accordingly.

#### 3. Due Diligence

- 3.1 The Supplier acknowledges and agrees that the Company has delivered or made available the Disclosed Data and that the Supplier has:
- (A) satisfied itself of all details relating to the Specification;
  - (B) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;
  - (C) gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:
    - (1) information as to the nature, location and condition of all relevant land (including hydrological, geological, geo-technical and sub-surface conditions);
    - (2) information relating to all relevant archaeological finds, areas of archaeological, scientific or natural interest;
    - (3) information relating to local conditions and facilities and the quality of existing structures;

## LOT 5: CLEANING: EXECUTION VERSION

- (4) obtaining all surveys, information and any and all data and any supporting documentation necessary for carrying out its obligations under this Contract; and
  - (5) raising all relevant due diligence questions with the Company before the date of this Contract.
- 3.2 The Company shall not be liable for any costs arising from the Supplier's failure to perform its obligations under this Clause 3 or from any actual or perceived lack by the Supplier of information or knowledge.
- 3.3 The Supplier shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Company on grounds that any information, whether obtained from the Company or otherwise (including information made available by the Company), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.
- 3.4 The Supplier acknowledges, represents and warrants that:
  - (A) the Company has relied upon the Supplier's expertise and professionalism in the carrying out of all due diligence activities in relation to this Contract including the requesting of and verification of all Disclosed Data; and
  - (B) the Disclosed Data, together with the Supplier's own expertise and knowledge of the Company's operations, are sufficient to enable the Supplier to satisfy itself:
    - (1) as to the scope and nature of the Services to be provided; and
    - (2) that it is able to perform its obligations under this Contract.
- 3.5 The Supplier shall not be entitled to any additional payment nor be excused from any liability under this Contract and has no right to make a claim against the Company as a result of:
  - (A) the Supplier misinterpreting any matter or fact relating to the Specification or this Contract; or
  - (B) the Supplier having failed to review the Disclosed Data or any documents referred to in the Disclosed Data.
- 3.6 Subject to Clause 3.7, no warranty, representation or undertaking (whether express or implied) is given by the Company as to the relevance, accuracy, completeness, adequacy or fitness for purpose of any Disclosed Data or that such information constitutes all of the information relevant or material to the Specification and the Services. The Supplier represents and agrees that it has placed and will place no reliance on the Disclosed Data and that it has made its own enquiries to satisfy itself as to the accuracy, adequacy and completeness of the Disclosed Data supplied to it in connection with this Contract. Accordingly, the Supplier shall not be relieved from any obligation under this Contract in connection with:
  - (A) the supply and the content of any Disclosed Data; and

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- (B) any representations or statements made in respect of any Disclosed Data, and all liability on the part of the Company in connection with the matters set out at Clauses 3.5(A) and 3.5(B) is excluded to the extent permitted by Applicable Laws.

3.7 Nothing in this Clause 3 shall exclude any liability which the Company or any of its agents or employees would otherwise have to the Supplier in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Commencement Date.

### 4. **Supplier Warranties**

4.1 The Supplier warrants to the Company that:

- (A) it is properly constituted and incorporated under the laws of England and Wales and has all necessary authority, power and capacity to enter into this Contract, and that this shall remain the case until the Expiry Date;
- (B) it has entered into and executed this Contract by its duly authorised representatives in accordance with all procedures required by its governing laws and constitutional documents and all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract have been taken by the Supplier and this Contract is executed on behalf of the Supplier by a duly authorised representative of the Supplier;
- (C) 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 Contract and such Intellectual Property Rights are not infringing upon the Intellectual Property Rights or infringed by the Intellectual Property Rights of any third party;
- (D) it has examined the Specification and all other documents forming this Contract and is not aware of any ambiguity or discrepancy within this Contract or between this Contract and any other documents which it is required to comply with which might adversely affect the carrying out of the Services for the Contract Price in accordance with the terms of this Contract;
- (E) at the Commencement Date there are no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge (having made all due enquiry), threatened against or affecting the Supplier or any of its assets before any court or administrative body or arbitration tribunal that might affect the ability of the Supplier to meet and carry out its obligations under this Contract;
- (F) at the Commencement Date all information, representations and other matters of fact communicated in writing to the Company or its agents or employees in connection with the response of the Supplier to the Pre-Qualification Questionnaire and Invitation to Tender or in the course of negotiations in respect of this Contract are true, complete and accurate in all respects or were at the time they were made with any omissions or inaccuracies being notified to the Company by the Supplier prior to the Commencement Date by way of updating information;

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- (G) as at the Commencement Date, the execution, delivery and performance by the Supplier of its obligations under this Contract will comply with Applicable Laws and will not result in a default under any agreement by which the Supplier is bound or any order or decree of any court of competent jurisdiction or arbitrator which is binding on the Supplier, and which could prevent the supplier from entering into and performing its obligations under this Contract;
- (H) it has not (and none of its employees or contractors or agents or any employees of any contractors or agents has) committed any Prohibited Act in relation to this Contract prior to entering into or in entering into this Contract;
- (I) it has and will throughout the duration of this Contract have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Supplier from bribing any person with the intention of obtaining or retaining business for the Supplier or with the intention of obtaining or retaining an advantage in the conduct of business for the Supplier;
- (J) it has obtained or will obtain, at or before the time such Necessary Consents are required to be obtained, all Necessary Consents from time to time necessary to carry out its obligations under this Contract;
- (K) as at the date of this Contract there are no material facts or circumstances in relation to the financial position or operational constitution of the Supplier which have not been fully and fairly disclosed to the Company and which if disclosed might reasonably have been expected to affect the decision of the Company to enter into this Contract;
- (L) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Supplier, having made all due enquiry, threatened) for the winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of the assets or revenues of the Supplier;
- (M) it has and until the Expiry Date will continue to have the expertise to supply the Services;
- (N) it has and will continue to have in place at all times, both before and after the Expiry Date, sufficient contractual obligations with any Supplier Parties who are directly involved in the provision of the Services and who need to know the Confidential Information to ensure that such Supplier Parties are aware of and comply with the obligations of confidence in Clause 38;
- (O) it is resident for tax purposes in (and only in) the UK, and undertakes that it will, at all times ensure that its affairs are conducted in a way which ensures they are and will remain resident for tax purposes in (and only in) the UK;
- (P) as at the date of this Contract, it has notified the Company in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance; and
- (Q) as at the date of this Contract, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should

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therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2016.

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### PART 3: THE SERVICES

#### 5. Supplier's Primary Obligations

- 5.1 The Supplier shall provide the Services to the Company and perform its obligations in accordance with the terms of this Contract.
- 5.2 The Supplier shall ensure that, and warrants to the Company that, it shall perform all of its obligations under this Contract and provide the Services:
- (A) so as to satisfy the requirements of the Specification;
  - (B) Not Used;
  - (C) in a regular and diligent manner and in accordance with Good Industry Practice;
  - (D) so as to conform to all Applicable Laws (including but not limited to any law and Regulations applicable to the Company or the TfL Network);
  - (E) so as to comply with all Standards and any additional standards listed in Schedule 1 (Detailed Terms) or in the Specification;
  - (F) so as to comply with this Contract and the requirements of the Company set out in this Contract and all lawful and reasonable directions of the Company provided that those directions are not inconsistent with this Contract;
  - (G) using goods, materials, facilities, vehicles, plant and equipment that are new and of a satisfactory quality, sound and free from defects;
  - (H) in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services and the Quality and Safety Plan, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company;
  - (I) in an economic, efficient, effective and resource and energy efficient manner;
  - (J) in a manner that is safe and not injurious to health and does not create safety hazards and that does not cause a nuisance or damage to property or harm to the environment;
  - (K) so as not to detract from or damage the image and reputation of the Company;
  - (L) so as not to impede the Company in carrying out its functions or increase the cost to the Company of carrying out its functions including so as to accommodate the operations and activities of the Company; and
  - (M) using only personnel who are competent, appropriately qualified and properly trained and supervised, exercising the highest standard of diligence, care and skill and who hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards.
- 5.3 The Supplier shall (at the sole cost of the Supplier) train any of the Company's employees and any of their contractors or agents as required by the Specification.

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### 5.4 Design

- (A) The Supplier shall carry out any design required as part of the Services in accordance with the Specification and the Contract terms.
- (B) The Supplier shall submit the particulars of any design which the Specification requires to the Company's Representative for acceptance. The Supplier shall not proceed with the performance of the Services until the Company's Representative has accepted his design. Reasons for not accepting the Supplier's design may include (without limitation):
  - (1) it does not comply with the Specification or any other part of the Contract;
  - (2) it does not comply with Applicable Laws and Standards;
  - (3) 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 perform the Services; or
  - (4) 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 Contract Price or to relief from any of its obligations under this Contract by reason of anything in this Clause 5.4.
- (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 Services which he is required to design and specify, warrants, undertakes and represents to the Company that the design:
  - (1) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Contract;
  - (2) complies with all Applicable Laws and Standards; and
  - (3) is fit for the purpose defined in the Specification.
- (F) The Supplier accepts entire responsibility for the design and specification of the Services which it is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between its design and the specification of the Services and the documents which are part of the Contract.

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### 6. Consents

6.1 Subject to Clause 6.2 the Supplier shall:

- (A) (subject to Clause 6.1(B)), in its own name, apply for, obtain, maintain and renew all Necessary Consents which may be required for the performance of the Services;
- (B) use all reasonable endeavours to assist the Company to obtain all Necessary Consents that, as a matter of law, the Supplier is not eligible to obtain;
- (C) be responsible for implementing each Necessary Consent (which it is required to obtain pursuant to Clause 6.1(A)) within the period of its validity in accordance with its terms;
- (D) supply free of charge to the Company's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
- (E) comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Supplier to carry out the Services; and
- (F) not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Company under this Contract (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Supplier with its obligations under this Clause 6.1(F), references in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

6.2 The Supplier shall immediately notify the Company if it becomes aware of any allegation of non-compliance with any Applicable Law or Necessary Consent from time to time by itself or any Sub-Contractor in relation to this Contract.

6.3 The Supplier shall promptly provide the Company with such information relating to any Necessary Consent applied for or obtained as the Company may require from time to time.

6.4 Where the period of a Necessary Consent would extend beyond the termination or expiry of this Contract, the Supplier shall, before applying for and throughout the process of obtaining such Necessary Consent, consult with the Company about the terms of such Necessary Consent and use reasonable endeavours to ensure that, to the extent the terms would apply after the termination or expiry of this Contract, they do not adversely affect any interest of the Company.

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7. **Not Used**

8. **Work on the Site**

8.1 During the term of this Contract, the Supplier shall:

- (A) ensure that all Supplier Parties working on each Site or any third parties' sites comply with the applicable Site or site's local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or applicable third party;
- (B) notwithstanding the terms of Clause 8.1(C), ensure that all Supplier Parties adhere to the terms and conditions of this Contract;
- (C) supply the Company with a list of all personnel working on each Site together with any other related information that the Company may reasonably require 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;
- (D) be responsible for bringing to, erecting and maintaining on and dismantling and removing from the Site its facilities, vehicles, plant and equipment whether of a temporary or permanent nature;
- (E) ensure that no Supplier Parties use the Company's or a third party's 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 TfL Network, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in this Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway;
- (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;
- (H) notify the Company of any circumstances or events of which the Supplier is aware which are likely in the Supplier's reasonable opinion to affect the operation of the TfL Network and/or Sites so as to impact on the services provided to the general public; and
- (I) ensure that the Services are carried out without unreasonable, unnecessary or improper disturbance to the public or, insofar as compliance with the requirements of this Contract permits, without interference with access to and use or occupation of public and private roads and properties, whether in the possession of the Company or of any other person.

8.2 The Company's Representative may require the Supplier to remove or require a Sub-Contractor to remove from any Site any person employed by the Supplier or Supplier Party who in the opinion of the Company's Representative:

## LOT 5: CLEANING: EXECUTION VERSION

- (A) misconducts himself or persists in any conduct which is prejudicial to health or safety;
- (B) is incompetent or negligent in the performance of its duties; or
- (C) has had his employment terminated in whatever capacity from any of the Sites, any part of the TfL Network or any other Company premises,

and the Supplier shall comply with the Company's Representative's requirements. Such removal shall not affect the Supplier's obligation to provide the Services in accordance with this Contract. Any such person shall not be employed again by the Supplier or Supplier Party to provide the Services without prior written permission of the Company's Representative.

- 8.3 Any person removed from the Site under Clause 8.2 shall be replaced as soon as reasonably possible by the Supplier and the Supplier shall promptly notify the Company of such replacement and in any event by no later than two (2) Working Days of the replacement.

### 9. **Co-Operation**

- 9.1 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 this Contract.

### 10. **Non-Exclusivity**

- 10.1 As regards the Company, this Contract is not exclusive and the Company may:
- (A) itself perform any services similar or analogous to any part of or all of the Services or any Additional Works; or
  - (B) contract with any third party to perform any services similar or analogous to any part of or all of the Services or any Additional Works.
- 10.2 In the event that the Company contracts with any third party to perform any services similar or analogous to any part or all of the Services, the Supplier shall provide such information and assistance and within such timescales as the Company may reasonably request in connection with such procurement.

## LOT 5: CLEANING: EXECUTION VERSION

### PART 4: LIAISON AND GOVERNANCE

#### 11. **Early Warning**

- 11.1 The Supplier shall give an early warning by notifying the Company as soon as it becomes aware of any matter which could:
- (A) increase the Contract Price;
  - (B) prevent the Supplier from performing its obligations under this Contract or cause the Supplier to be in breach of this Contract or any Sub-Contract;
  - (C) Not Used;
  - (D) adversely affect the Company;
  - (E) lead to the Supplier terminating or suspending any Sub-Contract; or
  - (F) cause a breach of any Applicable Laws or Standards.

#### 12. **Company's and Supplier's Representatives**

- 12.1 Each Party shall appoint one (1) or more representatives to act on its behalf under this Contract. Each Party shall advise the other Party, in writing, of the names and contact details of its representatives and these shall be recorded in Schedule 1 (Detailed Terms). 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.
- 12.2 Subject to Clause 75, any notice, information, instructions or communication given:
- (A) to the Supplier's Representative shall be deemed to have been given to the Supplier; and
  - (B) to the Company's Representative shall be deemed to have been given to the Company.
- 12.3 The Company shall not be responsible for any notice, communication or other purported instruction required to be given under this Contract given by a person alleging to act for and on behalf of the Company unless such person is one of the Company's Representatives. Accordingly, the Supplier shall not be entitled to rely on any such notice, communication or purported instruction and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Supplier act on or fail to act on it.

#### 13. **Records and Audit**

- 13.1 The Supplier shall, and shall procure that its Sub-Contractors shall, maintain a true and correct set of records relating to all aspects of their performance of this Contract

## LOT 5: CLEANING: EXECUTION VERSION

and all transactions related to this 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) sub-contract 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;
  - (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; and
  - (M) personnel records including all payroll information in respect of any personnel, including personnel of the Supplier, any Sub-Contractor and any agency staff of the Supplier involved in the performance of the Services.
- 13.2 The Supplier shall, and shall procure that its Sub-Contractors shall, 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 this Contract. In the absence of specific instructions as to the method of storage, the Supplier shall, and shall procure that its Sub-Contractors shall, retain its records in an orderly and logical fashion and in accordance with Good Industry Practice.
- 13.3 The Company, any party authorised by it and any party legally authorised to inspect any part of the TfL Network and/or Site shall have the right to inspect and audit any of the records required pursuant to Clause 13.1, at any time during the period referred to in Clause 13.2.
- 13.4 The Supplier shall promptly provide all reasonable co-operation and assistance (and shall procure such co-operation and assistance from any Supplier Parties) in relation to any audit or check including:

## LOT 5: CLEANING: EXECUTION VERSION

- (A) granting or procuring the grant of access to any premises or Sites used in the performance of this Contract, whether the Supplier's own premises or otherwise;
- (B) granting or procuring the grant of access to any assets and equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under this Contract, wherever situated and whether the Supplier's own equipment or otherwise (including whether leased or licensed and whether situated at the Supplier's premises or the Sites);
- (C) making any contracts and other documents and records required to be maintained under this 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;
- (E) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of this Contract; and
- (F) providing such oral or written information as required by the Company for the purposes of the audit.

### 14. **Provision of Contractual Documentation and Progress Meetings**

- 14.1 The Supplier shall provide all Contractual Documentation within the times stated in Schedule 1 (Detailed Terms) or the Specification or, if no such times are stated, by no later than ten (10) Working Days from the date on which the Company's Representative requests the same.
- 14.2 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 Contractual Documentation accordingly.
- 14.3 The Supplier shall attend Contract progress meetings, organised, chaired and minuted by the Company's Representative, at the intervals specified in Schedule 1 (Detailed Terms) or the Specification or as otherwise specified by the Company's Representative from time to time. The Supplier shall ensure that its representatives at all meetings have delegated power and authority to act on behalf of the Supplier.

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### **PART 5: CHANGE**

#### **15. Variations and Additional Works**

##### **15.1 Variations**

Unless the Parties agree otherwise in writing, any variation to this Contract shall be made under the Contract Variation Procedure. The Supplier shall not proceed to implement any variation unless there has been a Variation Order.

##### **15.2 Additional Works**

Notwithstanding the provisions of Schedule 6 Part B (Additional Works) and the definition of Additional Works as set out in Part 1 of Schedule 6 Part B, in the event that the Company elects the Supplier to deliver any additional or varied works or services (whether or not defined as Additional Works in Part 1 of Schedule 6 Part B), the Company shall have the right to determine, in its sole discretion and in all circumstances, whether the provisions of the Contract Variation Procedure set out in Schedule 6 Part A or the provisions of Schedule 6 Part B shall apply. In the event that Additional Works are deemed to be treated as a variation pursuant to Schedule 6 Part A, the provisions of Schedule 6 Part B shall not apply.

#### **16. Contract Innovation Efficiency**

The Supplier is required to identify and implement efficiency savings throughout the duration of the Contract and shall do so in accordance with the requirements set out in Schedule 20 (Contract Innovation Efficiency (CIE)).

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### PART 6: PAYMENT AND FINANCIAL

#### 17. Company's Obligations

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

#### 18. Price and Payment

- 18.1 The Supplier shall submit an application(s) for payment of the relevant portion of the Contract Price using the rates and prices set out in Schedule 2 (Payment), to the Company's Representative for the Services following the completion of the Services to the satisfaction of the Company (each a "Payment Application"). 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 check the Payment Applications. If applicable, a Payment Application may also include an amount in respect of Mobilisation Cost in accordance with Clause 18.12 (Mobilisation Cost).
- 18.2 The Company's Representative shall assess the Payment Application(s) and shall notify the Supplier in writing not later than fourteen (14) days after the date of receiving the Payment Application(s) 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 18.2 that the amounts referred to in Clause 18.2(A) or Clause 18.2(B) may be zero.
- 18.3 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. The final date for payment of such VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.
- 18.4 Subject to Clause 18.5, the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 18.2 (the "Notified Sum") on or before the final date for payment of the relevant VAT invoice.
- 18.5 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) Working Day prior to the final date for payment of the relevant VAT invoice 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

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- (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 18.5 that the amounts referred to in Clause 18.5(A) and Clause 18.5(B) may be zero. Where a notice is given under this Clause 18.5, the Company's obligation to pay the Notified Sum under Clause 18.4 applies only in respect of the sum specified pursuant to this Clause 18.5.

- 18.6 The Contract Price and Mobilisation Cost shall each be fixed and inclusive of all expenses and disbursements.
- 18.7 Each of the Contract Price and the Mobilisation Cost 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(s) and will be shown as a separate item on all Payment Applications. Each of the Contract Price for the Services and the Mobilisation Cost shall only be changed in accordance with the Contract Variation Procedure as set out in Schedule 6 Part A (Contract Variation Procedure).
- 18.8 In addition to any other rights of the Company whether at law or equity under this Contract, whether under or arising out of this Contract or any other contract between the Company and the Supplier, if:
- (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 Contract.

- 18.9 All Payment Applications shall clearly show the Contract Reference Number 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.
- 18.10 All sums payable to the Company by the Supplier under this 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.

### **18.11 Deferred Service Elements**

The Fixed Cost for a given Contract Year shall only include amounts in respect of the Services to be provided to a Deferred Service Element (as set out in Schedule 2 (Payment) Appendix 1 Matrix 4) to the extent that the Deferred Service Element Effective Date in respect of such Deferred Service Element has occurred.

### **18.12 Mobilisation Costs**

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The Supplier may make an application for payment of the Mobilisation Cost only as follows:

- (A) an amount equal to 60% of the Mobilisation Cost may be included in the first Payment Application; and
- (B) an amount equal to 40% of the Mobilisation Cost may be included in the first Payment Application submitted following the Deferred Services Element Effective Date in respect of the last Deferred Service Element to commence.

### **19. Adjustment to the Contract Price following Termination**

19.1 Where this Contract is terminated in part pursuant to any of Clauses 43, 44, or 47, the Contract Price will be adjusted in accordance with Schedule 2 (Payment) to reflect the extent of such termination in part.

### **20. Performance Measurement**

20.1 At the end of the Company's first Period after the Services Commencement Date (and for the duration of this Contract), every four (4) weeks after that date the Company shall assess the Supplier's performance under this Contract in accordance with Schedule 12 (Performance Measurement).

20.2 The Company shall have the right to:

- (A) levy Abatements as set out in Schedule 12 (Performance Measurement); and/or
- (B) use the Escalation Procedure set out in Schedule 12 (Performance Measurement) to rectify any unsatisfactory performance by the Supplier in its performance of this Contract or any failure by the Supplier to meet the performance standards set out in Schedule 12 (Performance Measurement).

20.3 Without limiting any other remedy, if the Services are not performed in accordance with this Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with the Contract at no extra cost to the Company within five (5) Working Days.

### **21. Interest**

21.1 If either Party fails to pay to the other any amount payable in connection with this Contract on or before the final date for payment, interest shall accrue on the overdue amount from the final date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 21 shall be immediately payable by the paying Party on demand.

21.2 Interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

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### PART 7: PROPERTY AND ASSETS

#### 22. Access

22.1 The Company shall give the Supplier access to the parts of the TfL Network and/or Sites required for the performance of the Services provided that the Supplier complies with the access requirements set out in Schedule 5 (Access) and otherwise subject to and in accordance with Schedule 5 (Access).

22.2 Where the Supplier or any Supplier Party has access to the TfL Network and/or Sites for the carrying out of any of the Services, the Supplier shall and shall ensure that any Supplier Party shall:

- (A) not cause any damage to the TfL Network and/or Sites;
- (B) not do or permit to be done on the TfL Network and/or Sites anything which is illegal or which may be or become a nuisance (whether actionable or not) or cause damage or disturbance to the Company or to any tenants or occupiers of the TfL Network and/or Sites or any owner or occupier of any neighbouring property;
- (C) not knowingly do anything that will or might constitute a breach of any Necessary Consent affecting the TfL Network and/or Sites that have been disclosed to the Supplier or which will or might vitiate in whole or in part any insurance effected by the Company in respect of the TfL Network and/or Sites from time to time of which the Supplier has notice;
- (D) observe any rules and regulations the Company acting reasonably makes in the interests of good estate management and notifies to the Supplier from time to time in writing governing the Supplier's use of the TfL Network and/or Sites and in particular:
  - (1) the lawful requirements and recommendations of the Company's local fire officer and the Company's health and safety representative in respect of the TfL Network and/or Sites or their use; and
  - (2) all regulations and Government establishment regulations, standing orders, any traffic regulations and any other regulations made by the Company; and
- (E) make good any damage that is wilfully or negligently caused by the Supplier or any Supplier Party to any equipment in or on the TfL Network and/or Sites as soon as reasonably practicable.

#### 23. Free Issue Materials and Equipment

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

23.2 Any Free Issue Materials and Equipment supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials and Equipment are properly labelled as the property of the Company

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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.

- 23.3 The Supplier shall check the Free Issue Materials and Equipment at the time of delivery to ensure that they are in good condition and in accordance with the Specification and shall certify the advice note of the supplier of the Free Issue Materials and Equipment accordingly and return the advice note as soon as reasonably possible to that supplier. The Supplier shall report any loss or damage immediately following inspection of the Free Issue Materials and Equipment to the Company, the Company's Representative, the supplier of the Free Issue Materials and Equipment and the carriers of the Free Issue Materials and Equipment. In the event that such a report is not made, the Supplier shall be responsible for any loss or damage existing at the time of receipt which would have been apparent on a visual check of quantities and condition.
- 23.4 The Supplier shall properly store all Free Issue Materials and Equipment 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 or damage to such Free Issue Materials and Equipment and other property of the Company whilst the same are in or ought to be in the Supplier's possession or in, or ought to be in, the possession of any Sub-Contractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.
- 23.5 The Contractor shall maintain the Equipment in good working order for the duration of the Contract, including replacement of the Equipment where repair is uneconomic.
- 23.6 No later than 90 days before the Expiry Date or immediately following receipt of a Termination Notice, the Supplier shall return to the Company's Representative all Free Issue Materials and Equipment provided to the Supplier in accordance with this clause 23 and paragraph 3 of Schedule 15 (Obligations on Handover).

### 24. **Other Materials, Staff and Labour**

- 24.1 Unless otherwise stated in this Contract, the Supplier shall provide all staff and labour, including management and supervision, and all materials (except Free Issue Materials), vehicles, plant and equipment (whether of a temporary or permanent nature), support services and other facilities necessary for the performance of its obligations under this Contract.
- 24.2 The Supplier shall be fully responsible for the management of obsolescence in equipment and materials until the Expiry Date in accordance with the requirements stated in the Specification.

### 25. **Inspection and Testing**

- 25.1 All goods, materials, facilities, vehicles, plant, equipment, workmanship and systems to be supplied and work to be provided under this Contract may be subject from time to time to such tests as may be provided for in the Specification or as the Company's Representative may consider necessary to ensure that the Services are carried out in accordance with this Contract.

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- 25.2 Testing and inspection may take place at the place of manufacture or fabrication or on Site or at any other place as may be specified in the Specification or approved by the Company's Representative.
- 25.3 The Supplier shall provide the Company's Representative with copies of all test results and inspection certificates which it obtains in connection with the tests and inspections referred to in this Clause 25.
- 25.4 The costs of any test ordered by the Company's Representative which are not provided for in the Specification shall be borne by the Company unless the tests show that workmanship, vehicles, plant, equipment or materials provided by the Supplier are not in accordance with this Contract. The costs of any test whether ordered by the Company's Representative or otherwise which are provided for in the Specification shall be borne by the Supplier.
- 25.5 The Supplier shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be required to carry out efficiently the tests referred to in this Clause 25.

### 26. **Title**

- 26.1 Whatever title the Supplier has to materials, plant and equipment to be incorporated into or form part of the Services shall pass to the Company upon the earlier of (i) payment for such materials, plant and equipment or (ii) when such materials, plant and equipment are brought within the Site, without prejudice to any rights of rejection the Company may have. Title to materials, plant and equipment referred to in (ii) passes back to the Supplier if it is removed from the Site with the permission of the Company's Representative. Until such time as they are brought within the Site, the Supplier shall be responsible for and insure against the loss, destruction and damage of materials, plant and equipment to be incorporated into or form part of the Services (including while in transit) for their full replacement value, whether or not the property of the Supplier or the Company.
- 26.2 The Supplier shall label the material, plant and equipment "Property of TfL" where title has passed to the Company prior to bringing such items within the Site and shall ensure that such items are identifiable as belonging to the Company. The Supplier shall not mortgage, pledge or create a security interest in the material, plant or equipment in favour of any third party.
- 26.3 The Supplier has no title to an object of value or of historical or other interest within the Site. Without prejudice to the generality of Clause 30, the Supplier shall notify the Company's Representative when such an object is found and the Company's Representative shall instruct the Supplier how to deal with it. The Supplier shall not move the object without instructions.
- 26.4 The Supplier has title to materials from excavation and demolition only as stated in the Specification.

### 27. **Asset Management System**

- 27.1 The Supplier shall use the Asset Management System to record details of work undertaken by the Supplier on the Company's assets as part of the Services and to carry out any other activities in relation to the Asset Management System as set out in the Specification.

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- 27.2 The Supplier shall ensure that all Supplier Personnel attend any training by the Company in relation to the Asset Management System and follow the methods and processes required by the Company, as may be more particularly described in the Specification or notified to the Supplier from time to time.
- 27.3 The Supplier shall perform its obligations under this Clause 27 so as not to put the Company in breach of any of its obligations under any Third Party Licence and shall comply with the terms of any Third Party Licence as if it were a party to the Third Party Licence.
- 27.4 The Supplier acknowledges that the Company shall not have any liability to the Supplier in respect of any inaccuracy, error or omission contained in, or any unavailability of, the Asset Management System, and the Supplier shall not be relieved from its obligations under this Contract as a result of the Asset Management System being unavailable or containing any inaccuracies, errors or omissions.

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### PART 8: ENVIRONMENT, HEALTH AND SAFETY

#### 28. Safety

- 28.1 The Supplier is required to comply with its obligations under Schedule 7 (Health, Safety, Quality and Environmental Requirements) of the Contract.
- 28.2 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.
- 28.3 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 this Contract in the QUENSH menu set out in Schedule 7 ("QUENSH") as amended from time to time; and
  - (B) the Company's drug and alcohol principles as amended from time to time.
- 28.4 Section 20.1.1 (Alcohol and drugs) of QUENSH (as set out in Schedule Part A Section 3 of Schedule 7) shall apply to this Contract as if the term "LU Premises" means any of the Company's property where the Services are carried out and as if references to "LU" are references to the Company.
- 28.5 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, Sub-Contractors or agents for drugs or alcohol which this Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

#### 29. Construction (Design and Management) Regulations 2015

- 29.1 To the extent that the Construction (Design and Management) Regulations 2015 (the "CDM Regulations") apply to this Contract, the Company reserves the right to appoint the Supplier to act as Principal Contractor and/or Principal Designer pursuant to Regulation 5(1) of the CDM Regulations.
- 29.2 The Supplier shall accept any such appointment made under Clause 29.1 and agrees to carry out all associated obligations imposed by the CDM Regulations. The Supplier and the Company's Representative shall provide each other with all the necessary assistance which they may reasonably require in order to fulfil their respective obligations under the CDM Regulations.
- 29.3 The Supplier warrants to the Company that it:
- (A) is competent to perform such of the duties allocated to it under Clause 29.2;
  - (B) shall allocate adequate resources to enable it to comply with its obligations under the CDM Regulations; and
  - (C) shall co-operate with other parties appointed under the CDM Regulations.

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### PART 9: RELIEF EVENTS

#### 30. Relief Events

30.1 The following are events which may cause the Supplier delay or disruption and for which the Supplier may be relieved from termination due to a Supplier Default subject to the terms of this Clause 30 ("Relief Events"):

- (A) (subject to compliance by the Supplier with the requirements of Schedule 5 (Access)) the frustration of any access booked by the Supplier in accordance with Schedule 5;
- (B) the Company's Representative giving an instruction to suspend the Services;
- (C) a breach of this Contract by the Company (except to the extent caused by or contributed to by the Supplier or any Sub-Contractor or person for whom those parties are responsible) that is not one of the other Relief Events;
- (D) flooding caused by rising water table or by weather conditions including extraordinary storm, bursting or overflow of water tanks, apparatus or pipes;
- (E) an interruption in the supply of power or other utility services for which the Supplier is not responsible, if and only to the extent that such failure or interruption is not caused by, and its effects are beyond the reasonable control of, the Supplier and it could not reasonably have avoided or provided against the effects;
- (F) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the TfL Network and/or Site;
- (G) lightning, earthquake or extraordinary storm;
- (H) fire;
- (I) tunnel collapse;
- (J) compliance with the provision of Sections 118 to 121 of the Railways Act 1993;
- (K) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (L) strikes, lock outs or other industrial action being in each case industry-wide.

30.2 The Supplier shall notify the Company's Representative of the occurrence of an event which has happened or which it expects to happen if:

- (A) it believes it to be a Relief Event that is delaying or disrupting (or is likely to delay or disrupt) the Services; and
- (B) the Company's Representative has not notified the event to the Supplier.

The event shall be notified as soon as is reasonably practicable and in any event no later than five (5) Working Days after the Supplier becomes aware or ought reasonably to have become aware of the event or the likelihood of its occurrence.

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30.3 The Supplier shall submit full and detailed particulars of any Relief Event to the Company's Representative as soon as reasonably practicable after receiving the Company's Representative's notification and in any event no longer than ten (10) Working Days after the occurrence. The particulars shall include full, detailed particulars of the cause and effect of the Relief Event and:

- (A) the extent of the delay, if any;
- (B) details of the measures adopted by the Supplier to mitigate the effects of the Relief Event;
- (C) the likely effects, if any, on access requirements; and
- (D) such further information as may reasonably be required by the Company.

The Company shall be entitled to:

- (A) seek clarification in respect of the particulars provided by the Supplier; and/or
- (B) request further particulars and related information in connection with the occurrence of the Relief Event.

Provided that there shall be no increase to the Contract Price arising as a result of a Relief Event.

30.4 If the Company's Representative decides that the occurrence is a Relief Event in accordance with this Contract and is delaying or disrupting (or is likely to delay or disrupt) the Services then:

- (A) without prejudice to Clause 30.5, the Supplier shall not be deemed to be in breach of this Contract as a result of its failure to perform and the Company shall not be entitled to apply the provisions of Schedule 12 (Performance Measurement) in respect of any affected Services, to the extent that the same is attributable to the Relief Event; and
- (B) the Supplier shall be entitled to an extension of time for the performance of its affected obligations.

30.5 The Company shall be under no obligation to make any payments to the Supplier of the Contract Price in respect of any Services affected by the Relief Event during the period in which the Relief Event is subsisting provided that any such non-performance by the Supplier shall be disregarded for the purposes of the Company's right to terminate this Contract pursuant to Clause 44.

30.6 The Supplier shall have no entitlements in accordance with Clause 30.4 to the extent that:

- (A) the event or any of its effects arises from any error, unlawful act or omission, negligence, default, breach of contract, breach of statutory duty and/or failure to comply with this Contract of the Supplier or any of its employees or agents or of any Sub-Contractor or supplier or any of their employees or agents;

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- (B) the Supplier has failed to take all reasonable steps to mitigate the actual or potential effect of the event or has failed to use its best endeavours to adjust the order and sequence in which it proposes to provide the Services; and/or
- (C) the Company's Representative decides that there was no such occurrence, that the occurrence was not one of the Relief Events, or that the occurrence has had no adverse effect on the provision of the Services.

30.7 In the event that information is provided after the date referred to in Clauses 30.2 and/or 30.3, then the Supplier shall not be entitled to any extension of time or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

30.8 This Clause 30 shall not give the Supplier any entitlement to an extension of the period of the Supplier's employment under this Contract or any extension to the Expiry Date.

30.9 A Relief Event may not be notified after the Expiry Date (or termination if earlier).

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### PART 10: PEOPLE

#### 31. TUPE

##### 31.1 For the purposes of this Clause 31:

“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 this 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 Sub-Contractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of this 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.

31.2 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 Date or earlier termination of this Contract.

31.3 At any time during the last twelve (12) months of this Contract and/or during any period of notice terminating this Contract, 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:

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- (A) the names of employees (of the Supplier or its Sub-Contractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;
  - (B) the method of organisation of the employees (of the Supplier or its Sub-Contractors) engaged in providing Services and documentary evidence relating to such organisation;
  - (C) the proposals for informing and consulting with affected employees;
  - (D) details of collective agreements and union recognition agreements; and
  - (E) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the 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 this Contract.
- 31.4 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 31 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 31 is accurate, complete and not misleading, including any information supplied in relation to its Sub-Contractors.
- 31.5 The Supplier will not and will procure that its Sub-Contractors will not in the 18 months prior to the Expiry Date (or, where notice of termination is given, 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 providing the Services, except to the extent that any such change is 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 providing the Services or the expected Expiry Date or termination of this Contract, or
  - (B) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in providing the Services, 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 Date or termination of this Contract (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 Services 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 providing the Services or relates to the Expiry Date or termination of this Contract.
- 31.6 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

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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 Services.

31.7 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 Sub-Contractor (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 31.7 "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 Clause 31.

31.8 The provisions of this Clause 31 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 31 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

## 32. **Personnel**

32.1 The Supplier agrees to the appointment of the Key Personnel set out at Schedule 19 (Key Personnel).

32.2 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the 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.

32.3 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 twenty (20) Working 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.

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- 32.4 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 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 five (5) Working 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 (20) Working 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 five (5) Working Days or any shorter period agreed between the Parties.
- 32.5 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.
- 32.6 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.
- 32.7 At the sole cost of the Supplier, the Supplier:
- (A) undertakes that all Supplier Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;
  - (B) shall ensure that all Supplier Personnel are in possession of valid work permits if they are non-European Community nationals; and
  - (C) shall (at its expense) provide or procure the provision of training for Supplier Personnel in respect of all aspects of its performance of the Contract and, as the Company may require, for any employees, agents and contractors of the Company in relation to the operation or use of any equipment supplied under the Contract, such training to include, as a minimum:
    - (1) the training activities specified in Schedule 22 (Training);
    - (2) training as required by QUENSH and any TfL Group standards; and
    - (3) such other training as required by TfL Group from time to time.
- 32.8 Without prejudice to the Supplier's other obligations under the Contract, where training of any or all Supplier Personnel is required for the purposes of performance of the Contract, the Supplier shall not assign any Supplier Personnel to the

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performance of the Contract unless and until such Supplier Personnel have satisfactorily completed such training.

32.9 The Company will arrange safety training for Supplier Personnel from time to time at the expense of the Supplier. To the extent that any refresher training of any kind (at any time) is required for any Supplier Personnel, this shall be at the expense of the Supplier. For the avoidance of doubt, the Company will not be responsible for the remuneration, travel, subsistence or other similar costs and expenses of any Supplier Personnel attending any training under this Clause 32.9.

### 33. London Living Wage

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

33.2 The Supplier shall, to the extent this Contract is for the provision of Services to be undertaken within Greater London or on the TfL Network:

- (A) ensure that none of its employees (whether engaged directly or as agency staff employed via an employment agency or similar) engaged in the provision of services under this 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 sub-contractor is required to comply with the provisions of this Clause 33.2 and the provisions of this Clause 33.2 are included in any sub-contract with a sub-contractor.

33.3 The Supplier shall not, and shall procure that any sub-contractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or sub-contract in accordance with the operation of this Clause 33.

33.4 In the event that the Supplier either itself or through a sub-contractor is in breach of this Clause 33, the Supplier shall:

- (A) if notification has not been made by the Company, notify the Company immediately upon becoming aware of the breach; and
- (B) rectify the breach, or procure that the breach is rectified within 7 days of becoming aware of the breach.

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33.5 In the event that the Supplier fails to rectify the breach as required by Clause 33.4(B), the Company shall have the right, in its absolute discretion:

- (A) to require the Supplier to terminate the sub-contract or agency agreement of the party in breach; or
- (B) to require the removal of any personnel from involvement with the Services who are not being paid the London Living Wage.

33.6 Increases to the London Living Wage are calculated in accordance with Schedule 2 (Payment) and following such increase, the Supplier is required to continue to comply with the provisions of Clause 33.2 at the increased rate.

33.7 The Supplier shall, so far as reasonably practicable, mitigate any increase in the amount payable to its employees as a direct result of the increase in London Living Wage. Save as set out in Clause 33.6, the Supplier shall not be entitled to make any claim in respect of any increases in the London Living Wage.

### 34. **Criminal Record Declarations and Right to Work in the UK**

34.1 For the purposes of this Clause 34:

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

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

34.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“Declaration”) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request and 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 has a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has a Relevant Conviction.

34.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any Sub-Contractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction or who the Supplier is aware has a Relevant Conviction.

34.4 The Company shall have the right in accordance with the audit rights set out in Clause 13 to audit and inspect the records of the Supplier and its Sub-Contractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 34 at any time during performance of this Contract.

34.5 If the Supplier fails to comply with the requirements under Clauses 34.2 and/or 34.3 the Company may, without prejudice to its rights under Clause 44, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from this Contract and/or Company’s Site with immediate effect and take such steps as are

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necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 34.2) within five (5) Working Days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 34.2.

- 34.6 A persistent breach of Clause 34.2 and/or Clause 34.3 by the Supplier shall entitle the Company to terminate this Contract in whole or in part with immediate effect in accordance with Clause 44, as if such persistent breach were a Supplier Default.
- 34.7 In the event the Company becomes aware that a Relevant Individual has a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from this Contract and/or the Company's Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 34.8 The Supplier shall ensure that each Relevant Individual has the right to work in the UK and shall comply with its obligations under the relevant immigration legislation including but not limited to the obligation to conduct document checks in respect of Relevant Individuals.
- 34.9 Nothing in this Clause 34 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under this Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier is not entitled to claim any extra costs or time or any relief from its obligations as a result of any actions under this Clause 34.

### **34A. Offers of Employment (Non-Solicitation)**

For the duration of the Contract and for a period of 6 months after expiry or termination of the Contract, the Supplier shall not employ or offer employment to any TfL Group employees who have been associated with the provision of the Services by the Supplier without the Company's prior written consent. Any breach of this Clause 34A shall render the Supplier liable to pay to the Company a sum equal to the basic salary payable to the employee by the Supplier during the first 6 months of new employment.

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### PART 11: RESPONSIBLE PROCUREMENT

#### 35. **Responsible Procurement**

- 35.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with Section 155 of the GLA Act, has directed the Company and its subsidiaries to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.
- 35.2 The Supplier shall and shall procure that its Sub-Contractors 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.
- 35.3 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 Sub-Contractors shall, comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 35.4 The Supplier acknowledges and agrees that it (and its Sub-Contractors) 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).
- 35.5 The Supplier shall not be entitled to any addition to the Contract 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).
- 35.6 The Supplier shall procure that any Sub-Contractor is required to comply with the provisions of this Clause 35 and the provisions of this Clause 35 are included in any sub-contract (of any tier).
- 35.7 The Supplier shall not, and shall procure that any Sub-Contractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or sub-contract in accordance with the operation of this Clause 35.
- 35.8 The Supplier shall at all times comply with the ETI Base Code set out in Appendix 1 to Schedule 16 (Responsible Procurement) of the Contract and shall at all times comply with the provisions of Schedule 17 (Strategic Labour Needs and Training).

#### 36. **CompeteFor**

- 36.1 Without prejudice to Clause 55, 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 this Contract, to supply goods, works or services to the Supplier.
- 36.2 The Supplier will use all reasonable endeavours to ensure that its Sub-Contractors use CompeteFor, on a non-exclusive basis, to make available to other parties all

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appropriate opportunities, arising in connection with this Contract, to supply goods, works and services to such Sub-Contractors.

- 36.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with this Contract, made available to other suppliers via CompeteFor, whether by the Supplier or its Sub-Contractors, as required by Clause 36.2, and will report this information on a Quarterly basis by way of email to the Company's Representative.

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### PART 12: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

#### 37. Intellectual Property Rights

##### 37.1 Existing Contracts

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

##### 37.2 Vesting of Intellectual Property Rights created under this Contract

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

##### 37.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 37.2, all Intellectual Property Rights owned by the Supplier or its Sub-Contractors or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 37.2 shall remain or be vested in the Supplier, its Sub-Contractors or other third party (as the case may be).

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

The Company shall have and the Supplier hereby grants, and procures that its Sub-Contractors or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 37.3 for the purposes of:

- (A) understanding the Services;
- (B) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
- (C) extending, interfacing with, integrating with, connecting into and adjusting the Services;
- (D) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the TfL Network and/or Sites;
- (E) executing and completing the Services; and
- (F) enabling the Company to make available the TfL Network to perform its function and duties as Infrastructure Manager and Operator of the TfL Network.

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### **37.5 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 Sub-Contractor's or other third party's possession or control (or which ought reasonably to be in the Supplier's or Sub-Contractor's 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 37.2, 37.3 and 37.4 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 (3) 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.

### **37.6 Company's Rights of Retention**

If the Supplier has not complied with its obligations under Clause 37.5(A), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 37.5(A).

### **37.7 Company's Rights to the Software**

If the Supplier or any of its Sub-Contractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in the definition of Supplier Default (including their equivalent in any jurisdiction to which the Supplier or any of its Sub-Contractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this 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.

37.8 Not used.

### **37.9 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 37.5 and anything in which the Intellectual Property Rights referred to in Clauses 37.2, 37.3 and 37.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 37.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

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### **37.10 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 Sub-Contractor or sub-contractor (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 Sub-Contractor 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 method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim and for the avoidance of doubt shall not be entitled to any relief in respect of its obligations to perform the Services as required by this Contract.

### **37.11 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 this 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.

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

The Company hereby grants the Supplier a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the Company (including for the avoidance of doubt the Corporate IPRs as such term is defined in Clause 37.13) which are required by the Supplier for the purposes of performing the Services. Such licence is granted for the duration of this Contract solely to enable the Supplier to comply with its obligations under this Contract and is conditional upon the Supplier using such Intellectual Property Rights in accordance with Applicable Laws and Standards and such other quality standards as the Company may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the Company may be used in conjunction with any other trade-marks without the prior written consent of the Company.

### **37.13 Corporate IPRs**

- (A) The Supplier shall use and shall procure that its Sub-Contractors and suppliers shall use the trade-marks, trade names and other Intellectual Property Rights as amended by the Company from time to time (the "Corporate IPRs") in compliance with any relevant Company standards from time to time in force.

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- (B) The Supplier shall not use and shall procure that its Sub-Contractors and suppliers shall not use the Corporate IPRs in combination with any other trade-marks, trade names and other Intellectual Property Rights without the Company's prior written consent.
- (C) On written request from the Company, the Supplier shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company reasonably determines that any use of the Corporate IPRs falls below the quality standards notified to the Supplier in accordance with Clause 37.12, the Company shall give the Supplier written notice of that fact and the Supplier shall correct the use so as to comply with such quality standards taking into account the Company's instructions.

### 38. **Confidentiality**

- 38.1 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 to use such information only for the purpose of the performance of his obligations under this Contract.
- 38.2 At 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.
- 38.3 The Supplier shall ensure that all Supplier Parties perform the obligations in Clauses 38.1 and 38.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by any Supplier Parties in this regard.
- 38.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a Supplier Party 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 Supplier Party for such breach of confidence.
- 38.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, this Contract or the Services without the prior written consent of the Company.
- 38.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with this Contract or the Services, or any Dispute arising under or in connection with this Contract.

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38.7 The provisions of Clauses 38.1 to 38.6 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 this 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.

38.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 38 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 38.

### 39. **Freedom of Information**

39.1 For the purposes of this Clause 39:

“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.

39.2 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.

39.3 Without prejudice to the generality of Clause 39.2 the Supplier shall and shall procure that its Sub-Contractors (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 this Contract, the 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

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period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

39.4 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.

### 40. **Data Transparency**

40.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 38 and Clause 39, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

40.2 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 40.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

### 41. **Privacy and Data Protection**

41.1 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 Services and at all times in accordance with any instructions from the Company.

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### PART 13: COMPANY STEP IN, TERMINATION AND SUSPENSION

#### 42. Company Step-in

- 42.1 Without limiting any other remedy, if the Supplier fails to comply with its obligations to perform the Services as required by this Contract, 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 42 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.
- 42.2 Without prejudice to the provisions of Clause 42.1 if the Company reasonably believes that it needs to take action in connection with the Services:
- (A) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
  - (B) to discharge a statutory duty,
- then the following provisions shall apply.
- 42.3 The Company shall provide notice to the Supplier in writing of the following:
- (A) the action it wishes to take;
  - (B) the reason for such action;
  - (C) the date it wishes to commence such action;
  - (D) the time period which it believes will be necessary for such action; and
  - (E) to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period such action is being taken.
- 42.4 Following service of the notice required in Clause 42.3, the Company or a third party appointed by the Company for the purpose shall take such action as is notified under these provisions and any consequential additional action as the Company reasonably believes is necessary (the "Required Action").
- 42.5 For so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Services, the Supplier shall be relieved from its obligations to provide such part of the Services and the Company shall not be liable to pay the Contract Price for such part of the Services.
- 42.6 For the purposes of this Clause 42 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 this Clause 42 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 this Clause 42.

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### **43. Voluntary Termination by the Company**

43.1 The Company may terminate this Contract or any part or parts of the Services for convenience at any time on or before the Expiry Date by serving a Termination Notice on the Supplier stating:

- (A) that the Company is terminating this Contract in whole or in part under this Clause 43; and
- (B) that this Contract will terminate in whole or in part on the date specified in the notice, which must be a minimum of three (3) months after the date of receipt of the notice.

43.2 This Contract will terminate in whole or in part as the case may be on the date specified in the Termination Notice referred to in Clause 43.1.

### **44. Termination on Supplier Default**

44.1 For the purposes of Clause 44, a Supplier Default is any of the following events:

- (A) the Supplier committing a material breach of this 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) a Persistent Breach occurring;
- (C) 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;
- (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 this 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 any similar or analogous procedure or step is taken in any jurisdiction;
- (E) a persistent breach of the Supplier's obligations set out in either or both of Clause 34.2 and 34.3;
- (F) a breach of the Supplier's obligations under Clauses 55 or 56;
- (G) any parent company guarantee or bond required pursuant to Clause 54 becoming invalid and/or the Supplier being in breach of Clause 54.3;
- (H) a breach by the Supplier of its obligations to take out and maintain any of the insurances required pursuant to Clause 51;

## LOT 5: CLEANING: EXECUTION VERSION

- (I) the occurrence of a conflict of interests such that the circumstances set out in Clause 76.5(B) occur;
  - (J) the Company becomes entitled to terminate in accordance with the Escalation Procedure set out in paragraph 4 of Schedule 12 (Performance Measurement Mechanism);
  - (K) a persistent breach of the Supplier's obligations under Schedule 20 (Contract Innovation Efficiency); or
  - (L) the Supplier has, at the date of this Contract, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2016.
- 44.2 If a breach, that is not a Supplier Default, has continued for more than ten (10) Working Days or occurred more than three (3) times in any six (6) month period then the Company may serve a notice on the Supplier:
- (A) specifying that it is a formal warning notice;
  - (B) giving reasonable details of the breach; and
  - (C) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.
- 44.3 If, following service of a warning notice the breach specified in a warning notice given further to Clause 44.2 has continued beyond twenty (20) Working Days or recurred in three (3) or more months within the six (6) month period after the date of service, then the Company may serve another notice (a "Final Warning Notice") on the Supplier:
- (A) specifying that it is a Final Warning Notice;
  - (B) stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and
  - (C) stating that if the breach continues for more than ten (10) Working Days or recurs in three (3) or more months within the six (6) month period after the date of service of the Final Warning Notice, such breach shall constitute a Persistent Breach and this Contract may be terminated further to Clause 44.5.
- 44.4 A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.
- 44.5 If a Supplier Default has occurred and the Company wishes to terminate this Contract in whole or in part, the Company must serve a Termination Notice on the Supplier.
- 44.6 The Termination Notice must specify the type of Supplier Default which has occurred entitling the Company to terminate and whether the Company is terminating this Contract in whole or in part and if in part, the extent of the termination, and the date on which the termination shall become effective.

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44.7 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then, without prejudice to the Company's rights pursuant to this Clause 44, the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

### 45. Compensation on Termination

45.1 Following a termination (in whole or in part) in accordance with Clause 43, the Supplier shall be entitled to be paid:

- (A) the total value of the Services provided at the date of termination of this Contract or the relevant part of it (as applicable), such value to be ascertained in accordance with this Contract as if this Contract had not been terminated, together with any amounts due to the Supplier under this Contract not included in such total value; and
- (B) the reasonable properly incurred cost of removal of the Supplier's property from the Sites in respect of which this Contract has been terminated;

less any amounts previously paid to the Supplier under this Contract.

45.2 Following a termination (in whole or in part) in accordance with Clause 44:

- (A) the Supplier shall indemnify the Company and keep the Company fully and effectively indemnified against all expense, loss, damage and liabilities suffered or incurred by the Company associated with or arising from the termination including any additional expense incurred by the Company in continuing to provide the Services in respect of which this Contract has been terminated, from the date of termination to the Expiry Date (as may have been extended only where notice has been served pursuant to Clause 2.2) including for the avoidance of doubt the cost of finding an alternative contractor or contractors and any additional amounts charged by them for providing the Services; and
- (B) the Supplier shall be entitled to be paid for Services provided and which have not been paid for at the date of termination, to the extent that the provision of such Services has been terminated, less the cost to the Company of having the Services that have not been carried out completed (whether the Company has those Services delivered or not).

45.3 In the event that the Company terminates this Contract for any reason under Clause 44, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under this Contract or under general 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;
- (B) permit the Company to place an order for the remaining Services with any other person or persons or complete the provision of such Services by its own workmen;

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- (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 Sub-Contractors have possession; and
- (D) sell to the Company, at the purchase price any materials or goods properly ordered for the Services in respect of which this Contract has been terminated (and which have not at the date of termination become the property of the Company) and on such payment in full by the Company such materials or goods shall become the property of the Company.

In each such case, the Company shall be entitled to retain the benefit of any part of the Services already provided by the Supplier in accordance with this Contract.

- 45.4 Any amounts which the Company is liable to pay pursuant to this Clause 45 shall, in default of agreement, be determined pursuant to the provisions of Schedule 14 (Dispute Resolution Procedure).

### 46. **Accrued Rights and Survival**

- 46.1 In the event that this Contract is terminated, the liability of the Company to pay the Supplier in respect of the performance of the Services shall be limited to payment to the Supplier for those Services provided in accordance with this Contract up until the date of such termination.
- 46.2 Save as otherwise expressly set out in this Contract or as already taken into account in the calculation of any payment of compensation on termination pursuant to this Contract, termination of this Contract for whatever reason shall not affect the accrued rights of the Parties arising in any way out of this Contract as at the date of termination and in particular but without limitation the right to recover damages against the other Party.
- 46.3 The provisions of Clauses 13, 18.8, 31, 35, 37, 38, 39, 40, 41, 43, 46, 50, 52, 58, 59, 60, 61, 63, 75, 65, 69, 70 and 76.1 will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

### 47. **Force Majeure**

- 47.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Company shall not be entitled to terminate this Contract for a Supplier Default if such Supplier Default arises from a Force Majeure Event (but without prejudice to Clauses 47.5 or 47.6).
- 47.2 The Company shall be under no obligation to make any payments to the Supplier of the Contract Price in respect of any Services affected by the Force Majeure Event.
- 47.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force

## LOT 5: CLEANING: EXECUTION VERSION

Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

- 47.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 47.5 If no such terms are agreed on or before the date falling eighty (80) Working Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Working Days, then, subject to Clause 47.6, either Party may terminate this Contract in respect of the affected Services by giving twenty (20) Working Days' written notice to the other Party.
- 47.6 If this Contract is terminated, in whole or in part, under Clause 47.5 no compensation shall be payable by either Party in relation to such termination.
- 47.7 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Supplier shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 47.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

### 48. **Suspension**

- 48.1 Without prejudice to Clause 43, the Company shall have the right at any time to require the Supplier to suspend the provision of the Services (or any part thereof) by giving notice in writing to the Supplier.
- 48.2 In the event that this Contract is suspended in accordance with Clause 48.1, the Supplier shall:
- (A) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with this Contract up until the date of such suspension; and
  - (B) not carry out any further work in connection with the provision of the Services which are the subject of the suspension until such time as the Company issues a notice lifting the suspension (a "Notice to Proceed").
- 48.3 In the event that this Contract is suspended in accordance with Clause 48.1, and such suspension continues for a period of twenty (20) Working 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 ten (10) Working Days from such request of the Supplier, the Supplier shall be entitled to approach the

## **LOT 5: CLEANING: EXECUTION VERSION**

Company with a request for a variation, in accordance with the Contract Variation Procedure.

48.4 In the event that the Parties are unable to agree upon the variation requested under Clause 48.3, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 65.

### **49. Co-operation in Handover**

The Parties shall comply with their respective obligations as set out in Schedule 15 (Obligations on Handover).

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### PART 14: INDEMNITIES, LIABILITIES AND INSURANCE

#### 50. Indemnity

50.1 The Supplier shall be liable for, and shall at all times, indemnify the Company, including any of its employees, servants, agents, sub-contractors, directors and officers and members of the TfL Group, and shall keep them indemnified on an after-tax basis against all Losses suffered or incurred by the Company, any of its employees, servants, agents, sub-contractors, directors and officers or any relevant member of the TfL Group:

- (A) in respect of death or personal injury to any person;
- (B) in respect of loss of or damage to any property (including the TfL Network and Sites and any other property belonging to the Company or for which it is responsible); and
- (C) in respect of claims against the Company made by third parties (whether under contract, tort, breach of statutory duty or otherwise),

arising from or in connection with the performance or non-performance of the Supplier under this Contract, 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 or any Supplier Party.

50.2 The Supplier shall not be liable under the indemnity in Clause 50.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

50.3 The Supplier's indemnity under Clause 50.1 and all other indemnities under this Contract shall remain in force for the duration of this Contract and for the period of twelve (12) years after the Expiry Date or earlier termination of this Contract.

50.4 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 50.1 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.

50.5 Other than in respect of (i) the Losses described in Clause 50.1(C) 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 this Contract. Each Party respectively undertakes not to sue the other Party or any member of the TfL Group in respect of Consequential Loss for which liability is excluded in this Clause 50.5.

50.6 The Supplier shall have no claim against the Company in respect of delay or disruption of the Services, except as expressly provided for in this Contract.

#### 50.7 **Control of indemnity claims**

- (A) Subject to Clause 50.7(B), if a claim is made against a Party ("the Indemnified Party"), or the Indemnified Party becomes aware that a claim is likely to be made, by a third party which may give rise to a claim under an indemnity given by a Party ("the Indemnifying Party");

## LOT 5: CLEANING: EXECUTION VERSION

- (1) the Indemnified Party shall promptly notify the Indemnifying Party of the claim, giving full particulars of the claim, and consult with the Indemnifying Party in relation to the proposed actions to be taken prior to settlement or compromise of the claim;
  - (2) each Party shall provide the other Party with such assistance and information as it reasonably requests in relation to the claim;
  - (3) the Indemnified Party shall not admit liability in respect of or settle the matter without first obtaining the Indemnifying Party's written consent; and
  - (4) subject to applicable security and confidentiality restrictions, the Indemnified Party shall provide the Indemnifying Party with reasonable access to its premises and personnel and all relevant assets, documents and records for the purpose of investigating the matter.
- (B) The Company may elect at any time to have sole control of the defence of proceedings relating to any claim for which the Supplier has given an indemnity and all negotiations for its settlement (in which case the provisions in Clause 50.7(D) shall apply to the Company as if it were the Indemnifying Party and the Supplier were the Indemnified Party).
- (C) If the Company elects to have sole control of the defence of proceedings pursuant to Clause 50.7(B) after the Supplier has already commenced the defence of such proceedings, the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the Company, and shall provide to the Company all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.
- (D) The Indemnifying Party shall:
- (1) assume and conduct the defence of any proceedings relating to the claim diligently using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute in which case the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim;
  - (2) consult with the Indemnified Party and keep the Indemnified Party informed of all material matters, including formulation of any defence and counter-claims and filing of evidence from employees of the Indemnified Party;
  - (3) not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed) and do nothing which could prejudice the defence of any such claim; and
  - (4) obtain the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed, before any settlement is made in respect of the claim.

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### 51. Insurance

51.1 Without prejudice to the obligation to indemnify the Company set out in Clause 50.1, 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 at a level of not less than £5,000,000 (five million pounds) per occurrence;
- (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 £10,000,000 (ten million pounds) per occurrence;
- (C) maintain at its own cost an adequate level of product liability insurance of not less than £10,000,000 (ten million pounds) per occurrence;
- (D) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;
- (E) ensure that any Sub-Contractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil; and
- (F) produce within five (5) Working Days of any reasonable request by the Company and in any event before the commencement of any of the Services under this 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 51.

51.2 The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 51.1.

51.3 If the Supplier fails to maintain the insurance policies as provided in this Clause 51, 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.

### 52. Environmental Claims

52.1 The Supplier shall indemnify the Company against Losses and costs of Remediation 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 this 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, Sub-Contractors or agents.

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- 52.2 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.
- 52.3 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.
- 52.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall 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.
- 52.5 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 Services (for the purposes of this Clause 52.5, 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.

### 53. **Sole Remedy**

53.1 Without prejudice to any entitlement of the Supplier:

- (A) to specific performance of any obligation under this Contract; or
- (B) to injunctive relief;

the Supplier's sole remedy in relation to matters for which an express right or remedy is stated in this Contract shall be that right or remedy and the Supplier shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

53.2 The Supplier shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Company's breach of its obligations hereunder.

## **LOT 5: CLEANING: EXECUTION VERSION**

### **54. Bonds, Warranties and Guarantees**

- 54.1 Where stated in Schedule 1 (Detailed Terms), the Supplier shall at its own expense provide within five (5) Working Days of the Company's request the following:
- (A) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 9 (Form of Parent Company Guarantee and Performance Bond) in favour of the Company; and/or (as applicable)
  - (B) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 9 in favour of the Company.
- 54.2 The Supplier shall ensure that any bond required under Clause 54.1:
- (A) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1 (Detailed Terms); and
  - (B) is renewed every twelve (12) months until the Expiry Date (or date of termination if earlier).
- 54.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 54.1 and 54.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within five (5) Working Days.
- 54.4 If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 54.1 completed and signed by a qualified lawyer from the country in which the Guarantor and/or parent company is resident in form and substance satisfactory to the Company.
- 54.5 The Company shall not be obliged to make any payment to the Supplier under the Contract unless and until the parent company guarantee and/or performance bond (as the case may be) and legal opinion (if applicable) have been provided in a form satisfactory to the Company.
- 54.6 If required by the Company, the Supplier shall procure that the terms of any Sub-Contract require the Sub-Contractor, within five (5) Working Days of a written request by the Company to the Sub-Contractor, to enter into:
- (A) a collateral warranty in the form set out in Schedule 11 (Form of Collateral Warranty) in favour of the Company and if requested by the Company, the Supplier shall require the Sub-Contractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the Sub-Contractor is resident in form and substance satisfactory to the Company; and
  - (B) a parent company guarantee in the form provided by the Company from the ultimate holding company of the Sub-Contractor in respect of any of the Sub-

## LOT 5: CLEANING: EXECUTION VERSION

Contractor's obligations under any collateral warranty required under this Clause 54.554.6.

- 54.7 If any warranty (including any accompanying parent company guarantee) required under Clause 54.6 is not delivered to the Company in accordance with Clause 54.6 one quarter of the Contract Price relative to the Services supplied by the relevant Sub-Contractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.
- 54.8 The Supplier shall be regarded as being in material breach of the Contract which is incapable of remedy in the event that any parent company guarantee and/or performance bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 54.9 Where the Supplier has provided the Company with a performance bond and thereafter any variation is made to the Services or Contract under Clause 15, the Company may in its discretion require the Supplier to provide at its expense a replacement performance bond for a greater sum where such variation either alone or when aggregated with any other variations has resulted in a material increase to the value of the Contract to the Company.

## LOT 5: CLEANING: EXECUTION VERSION

### PART 15: GENERAL CONDITIONS

#### 55. Assignment and Sub-contracting

- 55.1 The Supplier shall not assign, novate or sub-contract any of its rights or obligations under this Contract or any part thereof without the prior written consent of the Company.
- 55.2 The sub-contracting of all or any part of the Services to a Sub-Contractor shall not relieve the Supplier of its obligations to perform the Services under this Contract.
- 55.3 Subject to the provisions of this Contract, the Supplier shall be responsible as against the Company for the acts and omissions of the Supplier Parties as if they were the acts and omissions of the Supplier. The Supplier shall, as between itself and the Company, be responsible for the selection of and pricing by any Supplier Party.
- 55.4 The Company may novate, assign, transfer or sub-contract this 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.
- 55.5 Within five (5) Working 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 8 (Deed of Novation) in favour of any person to whom this Contract is being novated.
- 55.6 Subject to the Company's prior written consent pursuant to Clause 55.1, where the Supplier subcontracts any or all of the Services, the Supplier shall include in each Sub-Contract (and procure that its Sub-Contractors include in each of their sub-contracts) payment terms substantially similar to those set out in Clause 18.
- 55.7 On or before the Commencement Date the Supplier shall notify the Company in writing of the name, contact details and details of the legal representatives of any Sub-Contractor, to the extent that such information has not already been provided by the Supplier to the Company. The Supplier shall also immediately provide to the Company in writing the name, contact details and details of the legal representatives of each new Sub-Contractor which the Supplier subsequently involves in the Services after the Commencement Date.
- 55.8 The Company reserves the right to verify whether there are any grounds for excluding any Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Company's exercise of its right under this Clause 55.8, the Company may request that the information provided by the Supplier under Clause 55.8 shall be accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Sub-Contractor(s). Further, the Company:
- (A) shall require that the Supplier replace any Sub-Contractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
  - (B) may require that the Supplier replace any Sub-Contractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

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55.9 The Supplier shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a Sub-Contractor pursuant to Clause 55.8(A) or (B).

55.10 The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clause 55.8(A) or (B).

### **56. Change of Control**

The Supplier shall not without the prior written consent of the Company implement any Change of Control of the Supplier.

### **57. Costs**

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

### **58. Severance**

58.1 Each provision of this Contract (including each provision in each of the schedules) is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by Applicable Law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Contract. The remaining provisions of this Contract shall continue in full force and effect and their validity, legality and enforceability shall not therefore be affected or impaired.

58.2 If a provision of this Contract is held to any extent to be invalid, the Parties shall as soon as reasonably practicable commence negotiations in good faith to remedy that invalidity.

### **59. Publicity**

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

### **60. Corrupt Gifts and Payments of Commission**

60.1 The Supplier undertakes that it shall not and shall procure that its Sub-Contractors 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.

60.2 The Supplier undertakes that it shall not, and shall use reasonable endeavours to procure that its Sub-Contractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.

60.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 60 at any time during performance of this Contract and during the twelve (12) year period following completion of performance

## LOT 5: CLEANING: EXECUTION VERSION

60.4 Without prejudice to Clause 60.1, the Supplier shall ensure that it and any other Sub-Contractors shall:

- (A) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (B) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct were carried out in the UK;
- (C) comply with the Company's policy on fraud, theft, bribery, corruption, irregularity and waste referred to as "TfL's Fraud and Bribery Policy" as the Company may update it from time to time ("Relevant Policy");
- (D) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and Clause 60.4(A), and will enforce them where appropriate;
- (E) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier or any Sub-Contractor in connection with the performance of this Contract of which the Supplier is, or ought reasonably to be, aware;
- (F) immediately notify the Company in writing if a foreign public official becomes an officer or employee of the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract; and
- (G) on 31 March annually, certify to the Company in writing signed by an officer of the Supplier compliance with this Clause 60 by the Supplier and all Sub-Contractors. The Supplier shall provide such supporting evidence of compliance as the Company may reasonably request.

### 61. **No Waiver**

61.1 No failure or delay on the part of either Party to exercise any right or remedy under this 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 this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

61.2 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of this Contract or otherwise.

### 62. **Mitigation**

Both Parties shall take all reasonable steps and in the case of the Supplier act in accordance with Good Industry Practice to minimise and mitigate any loss and/or compensation for which it may make a claim against or which it may otherwise be entitled to recover from the other Party, including in the case of the Supplier by procuring (where applicable) that all

## **LOT 5: CLEANING: EXECUTION VERSION**

Supplier Parties take all reasonable steps to mitigate and minimise such loss and/or compensation.

### **63. Entire Contract**

This 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 this 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 this Contract.

### **64. Other Contracts with the Company**

Except as otherwise agreed in writing by the Parties, if the Supplier or any Supplier Party has entered or enters into any other contract with the Company relating in any way to the subject matter of this Contract, no breach by the Company of such other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Company, its servants or agents or other contractors relating to or connected with any other such contract shall, regardless of any negligence on its part or their part:

- (A) give the Supplier any right under this Contract to a Relief Event or an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Company;
- (B) affect, modify, reduce or extinguish either the obligations of the Supplier or the rights or remedies of the Company under this Contract; or
- (C) be taken to amend, add to, delete, or waive any term or condition of this Contract.

### **65. Dispute Resolution**

If any question, dispute, difference or claim (a "Dispute") should arise under or in connection with this Contract, either Party may refer it for resolution pursuant to Schedule 14 (Dispute Resolution Procedure).

### **66. Counterparts**

This Contract 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.

### **67. Partnerships and Joint Ventures**

67.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under this Contract are joint and several. This Contract and the liabilities of the partners under this Contract 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 this Contract.

67.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under this Contract are joint and several.

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67.3 Nothing in this Contract shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in this Contract, neither Party is deemed to be the agent of the other, and neither Party holds itself out as the agent of the other.

### **68. Independent Supplier**

The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier's employees or Sub-Contractors or their employees hold themselves out as, an agent of the Company.

### **69. Governing Law and Jurisdiction**

69.1 This 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.

69.2 The Company and the Supplier submit, subject to the provisions of this Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

### **70. Contracts (Rights of Third Parties) Act 1999**

70.1 Subject to the Replacement Employer's rights under Clause 31, no person except any member of the TfL Group may enforce this 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.

70.2 Notwithstanding those rights referred to in Clause 70.1, the Company and the Supplier may agree to vary or rescind this Contract without the consent of any third party.

### **71. Further Assurance**

71.1 Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Contract.

### **72. Duty of the Supplier to notify Occasion of Tax Non-Compliance**

72.1 The Supplier shall send written notification of any Occasion of Tax Non-Compliance to the Company within five (5) Working Days from the date it became aware that it has committed an Occasion of Tax Non-Compliance during the performance of this Contract. The notification shall include steps being taken, if applicable, to remedy the Occasion of Tax Non-Compliance.

72.2 For the avoidance of doubt, the obligation in Clause 72.1 also applies to an Occasion of Tax Non-Compliance in non-UK jurisdictions. If the Occasion of Tax Non-Compliance occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the Occasion of Tax Non-Compliance and any relevant tax laws and administrative provisions so the Company can understand the nature and seriousness of the Occasion of Tax Non-Compliance.

## **LOT 5: CLEANING: EXECUTION VERSION**

- 72.3 Promptly upon a request by the Company, the Supplier shall supply to the Company a certificate signed by two (2) of its directors or senior officers on its behalf certifying that no Occasion of Tax Non-Compliance is continuing, or if an Occasion of Tax Non-Compliance is continuing, specifying the Occasion of Tax Non-Compliance and the steps, if applicable, taken to remedy it. This should include any mitigating factors that the Supplier considers relevant.
- 72.4 In exercising its rights or remedies under this Clause 72 or Clause 44, the Company shall:
- (A) act in a reasonable and proportionate manner taking into account, among other things:
    - (1) the gravity and duration of the Occasion of Tax Non-Compliance and any sanctions imposed by a court or tribunal; and
    - (2) any remedial action taken by the Supplier to prevent reoccurrence of the Occasion of Tax Compliance;
  - (B) seriously consider, where appropriate, action other than termination of this Contract to deal with the failure of the Supplier to comply with this Clause 72.

### **73. Capacity**

Save as otherwise expressly provided, the obligations of the Company under this Contract are obligations of the Company in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Company in any other capacity, nor shall the exercise by the Company of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Company to the Supplier.

### **74. Amendments**

Any amendments to this Contract, other than those made in accordance with Clause 15, shall be effective only if made by agreement in writing between the Company's Representative and the Supplier's Representative, or those persons duly appointed by either Party to act on behalf of the Company's Representative and the Supplier's Representative in accordance with Clause 12.

### **75. Notices and Service of Process**

- 75.1 Subject to Clause 75.2, any notice or other document given under, or in connection with, this Contract must be in English and in writing and sent by letter, electronic mail or fax or delivered by hand to the other Party's representatives in each case to the address identified 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 electronic mail, it shall be deemed to be given five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses are used, and the onus shall be on the sender to prove the time that the electronic

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mail was dispatched and the address it was sent to. The place of delivery of electronic mail will be deemed to be the postal address of the recipient set out in Schedule 1 (Detailed Terms);

- (C) 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
- (D) if the notice or other document is delivered by hand to the other Party's representative, it will be effective immediately upon delivery.

The address, electronic mail address and fax numbers of the Company and the Supplier are set out in Schedule 1 (Detailed Terms).

If a Party's details change, it must notify the other Party promptly in writing of any such changes.

- 75.2 The Parties agree that proceedings arising out of or in connection with this Contract may not be served by electronic mail or fax provided that the Company may from time to time give notices to the Supplier that such proceedings may be served by electronic mail or fax. If the Company gives such a notice then with effect from such notice such proceedings may be served by electronic mail or fax in accordance with Clause 75.1. The Company may from time to time rescind such a notice by further notice and, with effect from the date of such notice of rescission, proceedings arising out of or in connection with this Contract may not be served by electronic mail or fax.

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### PART 16: TRANSPORT FOR LONDON GROUP REQUIREMENTS

#### 76. Transport for London Group

##### 76.1 Declaration of Ineffectiveness and Public Procurement Termination Event

- (A) Without prejudice to the Company's right to terminate this Contract under Clause 43.1, 44, or at common law, the Company may terminate this Contract at any time in accordance with the provisions of this Clause 76.1 in the event that:
- (1) there is a Declaration of Ineffectiveness; or
  - (2) there is a Public Procurement Termination Event (without prejudice to the Company's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or by Regulation 89(3) of the Utilities Contracts Regulations 2016).
- (B) In the event that any court makes a Declaration of Ineffectiveness or there is a Public Procurement Termination Event, the Company shall notify the Supplier. The Parties agree that the provisions of this Clause 76.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness or a Public Procurement Termination Event. Where there is any conflict or discrepancy between the provisions of Clause 43.1 and this Clause 76.1 or the Cessation Plan, the provisions of this Clause 76.1 and the Cessation Plan shall prevail.
- (C) The Declaration of Ineffectiveness or the Public Procurement Termination Event 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 or Public Procurement Termination Event.
- (D) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness or the Public Procurement Termination Event, 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:
- (1) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
  - (2) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 76.1 and to give effect to the terms of the Declaration of Ineffectiveness or the Public Procurement Termination Event.
- (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

## **LOT 5: CLEANING: EXECUTION VERSION**

costs shall be based on any comparable costs or charges agreed as part of this 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 this Contract in accordance with this Clause 76.1.

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### **76.2 Crime and Disorder Act 1998**

The Supplier acknowledges that the Company 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 its 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:
  - (1) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
  - (2) the misuse of drugs, alcohol and other substances; and
  - (3) re-offending,

and in the performance of this 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 Sub-Contractors assist and co-operate, with the Company and relevant members of the TfL Group to enable the Company to satisfy its duty.

### **76.3 The Company's business**

The Supplier acknowledges that it:

- (A) has sufficient information about the Company and the 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 Services in accordance with this Contract;
- (D) is aware of the purposes for which the Services are required; and
- (E) shall neither be entitled to any additional payment nor excused from any obligation or liability under this Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services.

### **76.4 Best value**

The Supplier acknowledges that the Company 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 its duty where possible, and in doing so, shall carry out any review of Services reasonably requested by the

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Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to this Contract in order for the Company to achieve best value.

### 76.5 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 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 this 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 Services under this 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 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 this Contract.

### 76.6 Equality and Diversity

- (A) Without limiting the generality of any other provision of this Contract, the Supplier:
  - (1) shall not unlawfully discriminate;
  - (2) shall procure that its employees and agents do not unlawfully discriminate; and
  - (3) shall use reasonable endeavours to procure that its Sub-Contractors do not unlawfully discriminate when providing the Services,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:
  - (1) 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;
  - (2) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
  - (3) foster good relations between persons who share a Protected Characteristic and persons who do not.

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In performing this 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 Sub-Contractors who are engaged in the performance of this 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) The Company's Harassment, Bullying and Discrimination Policy as up-dated from time to time (copies of which are available on request from the Company) requires the Company's own staff and those of its Sub-Contractors to comply fully with the Harassment, Bullying and Discrimination Policy to eradicate harassment in the workplace. The Supplier shall:
  - (1) ensure that its staff, and those of its Sub-Contractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Harassment, Bullying and Discrimination Policy;
  - (2) fully investigate allegations of workplace harassment in accordance with the Harassment, Bullying and Discrimination Policy; and
  - (3) ensure that appropriate, effective action is taken where harassment is found to have occurred.
- (E) In addition to this Clause 76.6, the Supplier shall comply with its obligations under Schedule 16 (Responsible Procurement) in respect of equality and diversity.

### 76.7 Work Related Road Risk

- (A) For the purposes of Clauses 76.7(B) to 76.7(I) (inclusive) of this Contract, the following expressions shall have the following meanings:

"Bronze Accreditation" means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk)

"Car-derived Vans" means 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" means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;

"Delivery and Servicing Vehicle" means a Lorry, a Van or a Car-derived Van;

"Driver" means any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;

"DVLA" means Driver and Vehicle Licensing Agency;

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“FORS” means 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” means 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](http://www.fors-online.org.uk);

“Gold Accreditation” means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk);

“Lorry” means a vehicle with an MAM exceeding 3,500 kilograms;

“MAM” means 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” means 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” means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: [www.fors-online.org.uk](http://www.fors-online.org.uk); and

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

### (B) **Fleet Operator Recognition Scheme Accreditation**

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within sixty five (65) Working Days of the Commencement Date:

- (1) (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
- (2) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

### (C) **Safety Equipment on Vehicles**

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

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- (1) 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;
- (2) 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;
- (3) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (4) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

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### **(D) Driver Licence Checks**

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that:

- (1) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (2) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the 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 twelve (12) months:
  - (a) 0 – 3 points on the driving licence – annual checks;
  - (b) 4 – 8 points on the driving licence – six (6) monthly checks;
  - (c) 9 – 11 points on the driving licence – quarterly checks; or
  - (d) 12 or more points on the driving licence – monthly checks.

### **(E) Driver Training**

Where the Supplier operates Delivery and Servicing Vehicles to provide the 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 this Contract.

### **(F) Collision Reporting**

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, the Supplier shall:

- (1) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (2) within ten (10) Working 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 (5) Working Days of a written request from the Company.

### **(G) Self-Certification of Compliance**

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within sixty five (65) Working Days of the Commencement Date, the

## LOT 5: CLEANING: EXECUTION VERSION

Supplier shall make a written report to the Company detailing its compliance with Clauses 76.7(C) 76.7(D) and 76.7(E) of this Contract (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

### (H) **Obligations of the Supplier Regarding Sub-Contractors**

The Supplier shall ensure that those of its Sub-Contractors who operate Delivery and Servicing Vehicles to provide the Services shall:

- (1) comply with Clause 76.7(B); and
- (2) where its Sub-Contractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Contract:
  - (a) For Lorries – Clauses 76.7(C), 76.7(D), 76.7(E), and 76.7(F); and
  - (b) For Vans – Clauses 76.7(D), 76.7(E), and 76.7(F),
  - (c) as if those Sub-Contractors were a party to this Contract.

### (I) **Failure to Comply with Work Related Road Risk Obligations**

Without limiting the effect of any other Clause of this Contract relating to termination, if the Supplier fails to comply with any of Clauses 76.7(B), 76.7(C), 76.7(D), 76.7(E), and 76.7(F), 76.7(G) and/or 76.7(H):

- (1) the Supplier has committed a material breach of this Contract; and
- (2) 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).

## 77. **Enhanced Capital Allowances**

77.1 For the purposes of this Clause 77, "Eligible Components" shall mean any products that are listed or capable of being listed on the Energy Technology List and/or the Water Technology List.

### 77.2 Registration of Eligible Components

- (A) The Supplier shall use Eligible Components in providing the Services and shall comply with the following obligations:
- (1) if the Supplier has the choice between an Eligible Component and another product, the Supplier shall use the Eligible Component; and
  - (2) if the Supplier develops a product that is capable of being an Eligible Component, the Supplier shall ensure that this product is designed in a way that allows it to become an Eligible Component.

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- (B) The Supplier's obligations contained in Clause 77.2(A) above shall not apply to a particular product if the Supplier provides to the Company evidence that is satisfactory to the Company that it is not reasonably practicable to comply with the obligations contained in Clause 77.2(A) above in relation to that particular product.
- (C) The Supplier shall register all Eligible Components on the Energy Technology List and/or the Water Technology List (as the case may be) and shall provide to the Company evidence of such registration that is acceptable to the Company within ten (10) days of registration.

### 77.3 Claim for Enhanced Capital Allowances

- (A) To enable the Company to support its claim to HM Revenue and Customs in relation to Enhanced Capital Allowances, the Supplier shall provide the following information to the Company as necessary:
  - (1) details of all Eligible Components, including:
    - (a) the number of Eligible Components;
    - (b) unique model reference numbers; and
    - (c) Supplier details and evidence of conformance with minimum performance;
  - (2) the cost per each Eligible Component;
  - (3) any applicable professional fees directly associated with the provision of each Eligible Component;
  - (4) the installation and delivery costs of each Eligible Component and associated preliminaries directly associated with the provision of each Eligible Component; and
  - (5) details of the asset on which each Eligible Component purchased will be installed.
- (B) For the purposes of Clauses 77.3(A)(1) to 77.3(A)(5) inclusive, the Supplier shall provide to the Company an invoice or payment certificate along with supporting evidence that demonstrates to the satisfaction of the Company that the costs incurred as referred to in Clauses 77.3(A)(1) to 77.3(A)(5) inclusive are sufficiently linked to each Eligible Component (where applicable).
- (C) For the purposes of section 5 of the Capital Allowances Act 2001, the Supplier shall provide the Company with the delivery date for each Eligible Component.
- (D) The Supplier agrees to co-operate with the Company and its professional advisers in relation to the submission and agreement of such claim to HM Revenue and Customs.

77.4 The Supplier undertakes and confirms to the Company that neither it nor any Affiliate, Sub-Contractor, supplier or provider of finance to the Supplier or any of those

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persons has claimed and that it will not claim and shall procure that no such other person shall claim any Enhanced Capital Allowances or analogous tax allowances in respect of the Services.

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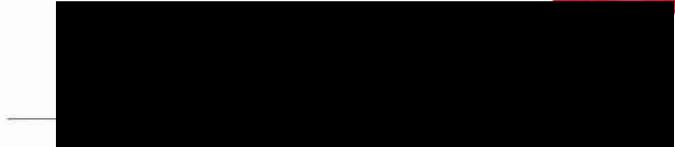
**SIGNATURES**

IN WITNESS of which this document has been executed as a deed by the Parties and delivered as a deed on the date first written above.

Executed as a **deed** by affixing the )  
common seal of **Transport for** )  
**London** )  
in the presence of



Authorised Signatory



**LOT 5: CLEANING: EXECUTION VERSION**

**Executed as a deed by ABM )  
Facility Services UK Limited )  
acting by**

**and )  
)  
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