

(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.

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

“Reactive Services” means Services set out in Schedule 3 (Specification) that are not Planned Services and which entail responding to Faults and other unplanned events.

“Rectification Time” has the meaning given to that term in Schedule 12 (Supplier Performance).

“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.

“Relief Event” has the meaning given to it in Clause 34.

“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).

“Response Time” has the meaning given to it in Schedule 12 (Supplier Performance).

“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.

“RPIX” means the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) 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 13 (Dispute Resolution Procedure).

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

“Service Charges” means the charges for the Services stated in Schedule 2 as they may be varied from time to time in accordance with the terms of this Contract.

“Service Delivery Indicator” or “SDI” means any or all as the case may be of the indicators of performance of the Services against a target set out in paragraph 3 of Schedule 12 (Supplier Performance).

“Service Payment” means the price stated in Schedule 1.

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

“Services Commencement Date” means the specified as such in Schedule 1 or such other date that is agreed in accordance with this Contract.

“Site” means the work areas detailed in Schedule 1 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 25) in order to perform the Services.

“Software” means any computer programs or software produced or supplied by the Supplier from time to time as part of or in connection with the Services and all user documentation in respect of such programs or software and any modification which is required by the Company during the subsistence of the licence referred to in Clause 41.4.

“Source Code Materials” means the source code of the Software and all technical information and documentation required to enable the Supplier to modify and operate the Software.

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

“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 subcontractor 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 48.

“Supplier Party” means

- (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.

“Tax Authority” means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect tax.

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

“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.

“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.

“Undelivered Completed Work” has the meaning given to that term in paragraph 2.1.5 of Schedule 12 (Supplier Performance).

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

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

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

"Variation Proposal" means the written proposal put by the Company or the Supplier to vary this Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 6.

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

- 1.2 The headings in 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 documents comprising this Contract, the order of priority for the purpose of construction in descending order shall be:
 - (A) the Clauses of this Contract;
 - (B) the Schedules to this Contract (equal priority, but subject to Clause 1.12); and

- (C) any other document referred to in, or incorporated by reference into, this Contract.
- 1.12 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the Clauses of this Contract and a provision of any other Schedule then the Clauses of this Contract shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of this Contract.
- 1.13 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any 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.
- 1.14 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.
- 1.15 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.
- 1.16 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).

PART 2: CONTRACT MANAGEMENT AND COMMENCEMENT

2. Duration and Option to Extend

- 2.1 This Contract and the rights and obligations of the Parties (including but not being limited to the obligations of the Supplier to provide the Services) shall take effect on the Contract 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 Service Payment at the start of the Extension Period shall be the Service Payment in the immediately preceding year in accordance with the provisions of Schedule 2.
- 2.5 On receipt of such notice 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;
 - (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
 - (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 Law.

- 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 Contract 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 Service Payment in accordance with the terms of this Contract;
- (E) at the Contract 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 Contract 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 PQQ, ITT 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 Contract Commencement Date by way of updating information;

matters set out at Clauses 3.5(A) and 3.5(B) is excluded to the extent permitted by Applicable Law.

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 Contract Commencement Date.

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- (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 Service Payment in accordance with the terms of this Contract;
- (E) at the Contract 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 Contract 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 PQQ, ITT 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 Contract Commencement Date by way of updating information;

- (G) as at the Contract 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 Consent is 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 42;
- (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 therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2016.

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, Schedule 14 (Obligations on Handover) and Schedule 17 (Mobilisation Requirements);
 - (B) in accordance with the Programme;
 - (C) in a regular and diligent manner and in accordance with Good Industry Practice and so that the Services shall be free from Defects;
 - (D) so as to conform to all Applicable Laws (including but not limited to any law and Regulations applicable to the Company or the Underground Network);
 - (E) so as to comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
 - (F) so as to comply with 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, 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, 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.
- 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 the Supplier's design. Reasons for not accepting the Supplier's design shall 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;
 - (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 Service Payment or 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 this Contract;
 - (2) complies with all Applicable Laws and Standards;
 - (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 this Contract.

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, 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 Company shall obtain any project specific consents which the Company has agreed to obtain as may be stated in the Specification.

6.3 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.

- (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 this Contract.

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- (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, 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.

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6.3 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.

- 6.4 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.
- 6.5 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.
- 6.6 The Company shall be entitled at its cost to appeal against or object to the terms of any Necessary Consent sought or obtained by the Supplier if the Company, acting reasonably, considers that such Necessary Consent, or the terms on which such consent is sought, is not required for the provision of the Services or the discharge of the Supplier's obligations pursuant to this Contract.

7. **Programme**

7.1 **Approving the Programme**

- (A) The initial Programme is set out at Schedule 4.
- (B) The Supplier shall show on each update to the Programme (which shall subsequently become the Programme):
- (1) the starting date, access dates, key dates and Expiry Date;
 - (2) the order and timing of operations which the Supplier plans to do in order to provide the Services;
 - (3) the order and timing of the work of the Company and others as last agreed with them by the Supplier or, if not so agreed, as stated in the Specification;
 - (4) the dates when the Supplier plans to meet each condition stated for any key dates and to complete other work needed to allow the Supplier and others to do their work;
 - (5) provisions for float, time risk allowances and environmental and health and safety requirements;
 - (6) the dates when, in order to provide the Services in accordance with its programme, the Supplier needs:
 - (a) access to a part of the Site if later than its access date;
 - (b) acceptances;
 - (c) plant and materials and other things to be provided by the Company; and

- (d) information from others;
 - (7) for each operation, a statement of how the Supplier plans to do the work identifying the principal equipment and other resources which it intends to use;
 - (8) for each operation, a cost-loaded programme showing the forecast resources required for that operation;
 - (9) its access requirements in accordance with the Specification;
 - (10) prioritisation of those areas, as early as practically possible, where access may prove difficult to obtain, for example, depots, sidings and confined spaces; and
 - (11) other information which the Specification requires the Supplier to show on a programme submitted for acceptance.
- (C) Within two (2) weeks of the Supplier submitting a programme for acceptance, the Company's Representative shall either accept the programme or notify the Supplier of his reasons for not accepting it. A non-exhaustive list of reasons for not accepting a programme is that:
- (1) the Supplier's plans which it shows are not practicable;
 - (2) it does not show the information which this Contract requires;
 - (3) it does not represent the Supplier's plans (in the reasonable opinion of the Company) realistically; or
 - (4) it does not comply with the Specification.

7.2 Revising the Programme

- (A) The Supplier shall demonstrate in detail on each revised Programme:
- (1) the actual progress achieved on each operation and its effect upon the timing of the remaining work;
 - (2) the effects of implemented Relief Events;
 - (3) the effects of decisions reached and approved by the Company's Representative;
 - (4) how the Supplier plans to deal with any delays and to correct notified defects; and
 - (5) any other changes which the Supplier proposes to make to the Programme.
- (B) The Supplier shall submit a revised programme to the Company's Representative for acceptance:

- (1) within five (5) Working Days after the date on which the Company's Representative has instructed him to do so; and
- (2) when the Supplier chooses to.

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'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, plant, tools and equipment whether of a temporary or permanent nature at the end of each shift unless prior authority for storage or for another arrangement has been obtained in writing from the Company;
- (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 railway, 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 Underground Network and/or Sites (as the case may be) so as to impact on the services provided to the general public; and

- (l) 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, use of 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:

- (A) misconducts himself or persists in any conduct which is prejudicial to health or safety;
- (B) is incompetent or negligent in the performance of his duties; or
- (C) has had his employment terminated in whatever capacity from any of the Sites, any part of the Underground 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
- (B) contract with any third party to perform any services similar or analogous to any part of or all of the Services.

10.2 In the event that the Company contracts with any third party to perform any services similar or analogous to any part of 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.

11. Defects

11.1 Rectification of Defects

- (A) The Supplier shall, at its own cost, rectify (which, for the purposes of this Clause 11, means repair, replace, modify or (as appropriate) amend) each Defect which arises during the Defect Liability Period for the Services or element thereof and where necessary shall execute or procure the execution by another of all rectification works.
- (B) Where the Company identifies a Defect in the Services or element thereof, the Company shall notify the Supplier of such Defect within a reasonable time of its discovery. The Supplier shall, after consultation with the Company, determine how the Defect is to be rectified.
- (C) The Supplier shall commence the rectification of any Defect as set out in Clauses 11.1(A)11.2(A) and (B) without delay and complete the rectification within a reasonable period having regard to the circumstances.
- (D) The Supplier shall carry out any work required under this Clause 11 at such time and in such manner as will minimise any disruption to the operation of the Underground Network and shall comply with the reasonable requirements of the Company in relation to access for, and the timing and method of execution of any such works.
- (E) Acceptance of works by the Company shall be without prejudice to the Supplier's liability for defective works, which shall expire twelve (12) years following the date of acceptance of the relevant works.

11.2 Rectification by the Company

- (A) Where the Supplier is obliged to rectify a Defect in accordance with this Clause 11 but has not, for any reason, responded and commenced either fault finding or rectification work in relation to that Defect within ten (10) Working Days of being notified of such Defect by the Company, the Company may rectify that Defect using its own or third party personnel or resources.
- (B) All costs and expenses properly and reasonably incurred by the Company in undertaking any work pursuant to Clause 11.2(A) together with VAT chargeable thereon shall be recoverable by the Company within ten (10) Working Days of demand from the Company as a debt due and owing from the Supplier.