

SCHEDULE 12: FORM OF COLLATERAL WARRANTY

THIS AGREEMENT is made the _____ day of _____ 201[●]

BETWEEN: -

- (1) **TRANSPORT FOR LONDON** or **TfL**, a statutory corporation established under the Greater London Authority Act 1999 of 55 Broadway, London SW1H 0BD (the "Company" which expression shall include its successors, transferees and assignees);
- (2) [●] a company registered in England and Wales under number: [●] and having its registered office at [●] (the "Sub-Contractor"); and
- (3) [●] a company registered in England and Wales under number: [●] and having its registered office at [●] (the "Supplier").

WHEREAS:-

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

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

1. The Sub-Contractor warrants to the Company that:
 - (A) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Services;
 - (B) reasonable skill and care has been and will continue to be exercised in connection with:
 - (1) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
 - (2) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (3) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Services (the "Sub-Contract");

- (4) the execution and completion of the Sub-Contract Services;
 - (5) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
- (C) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and
- (D) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Framework Agreement.

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

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Services:
- (A) execute and complete the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
 - (B) ensure that the Supplier shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.
3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.
4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:
- (A) understanding the Services;
 - (B) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
 - (C) extending, interfacing with, integrating with, connecting into and adjusting the Services;

- (D) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the TfL Network and/or Sites (as such capitalised terms are defined in the Main Contract);
- (E) executing and completing the Services; and
- (F) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the TfL Network and/or Sites (as such capitalised terms are defined in the Main Contract)

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

For the purposes of this Clause, the term "Documents" shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The Sub-Contractor agrees:

- (A) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and
- (B) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. The Parties hereby agree that:

- (A) this Framework Agreement shall be personal to the Sub-Contractor;
- (B) the Company may assign the benefit of this Framework Agreement to any third party;
- (C) the rights and remedies contained in this Framework Agreement are cumulative and shall not exclude any other right or remedy available to either Party in law or equity.

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

8. If any dispute of any kind whatsoever arises between the Parties in connection with this Framework Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "Related Dispute") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Framework Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other Party (the "Appointed Party") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the Parties and to him.

9.

(A) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than twenty five (25) Working Days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.

(B) If the Main Contract is terminated for any reason, within twenty five (25) Working Days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "Step-in Notice") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-Clause (C) below.

(C) With effect from the date of the service of any Step-in Notice:

(1) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;

(2) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;

(3) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts

properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

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

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

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

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

10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Framework Agreement.
12. The rights and benefits conferred upon the Company by this Framework Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.
13. Nothing contained in this Framework Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.
14. No amendment to this Framework Agreement shall be valid unless it is in writing and signed by all Parties.
15. Any person who is not a Party to this Framework Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
16. This Framework Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

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

Executed as a deed by)
affixing the Common Seal of)
Transport for London in the)
presence of [●]

Authorised Signatory

Executed as a Deed by)
[SUB-CONTRACTOR] acting)
by [●]

Authorised Signatory

And)
)
)

Authorised Signatory

Executed as a Deed by)
[SUPPLIER] acting by [●]

Authorised Signatory

And)
)

Authorised Signatory

SCHEDULE 13: PERFORMANCE MEASUREMENT

SCHEDULE 13a: PERFORMANCE MEASUREMENT MECHANISM

1. Definitions

"Abatement" means a reduction from the payment due to the Supplier under a Call-Off Contract, calculated in accordance with Schedule 13b at each payment assessment made by the Company's Representative.

"Below Requirements" has, in respect of each KPI, the meaning given to it in respect of that KPI in Schedule 13b (Performance Measurement).

"Contract Performance Scorecard" means the report to be produced by the Company at the end of each Quarter pursuant to paragraph 3 of this Schedule 13a (Performance Measurement Mechanism).

"Escalation Procedure" means the escalation procedure in respect of the Supplier's performance under Call-Off Contracts set out at paragraph 4 of this Schedule 13a (Performance Measurement Mechanism).

"Key Performance Indicator" or "KPI" means any or all, as the case may be, of the topics set out in paragraph 2 of Schedule 13b "Key Performance Indicator (KPI)" in Schedule 13b (Performance Measurement) which are applicable to all and any Call-Off Contracts.

"Level 1 Non-Conformance" means the Supplier's performance in respect of any KPI being assessed by the Company as:

- (a) "Below Requirements" on two or more occasions in any twelve (12) month rolling period; or
- (b) "Unsatisfactory" on any occasion.

"Level 1 Non-Conformance Report" has the meaning given to it in paragraph 4.5(A) of this Schedule 13a (Performance Measurement Mechanism).

"Level 1 Rectification Period" has the meaning given to it in paragraph 4.5(A)(c) of this Schedule 13a (Performance Measurement Mechanism).

"Level 1 Required Action" has the meaning given to it in paragraph 4.5.2(b) of this Schedule 13a (Performance Measurement Mechanism).

"Level 2 Non-Conformance Report" has the meaning given to it in paragraph 4.5.2(a) of this Schedule 13a (Performance Measurement Mechanism).

"Level 2 Rectification Period" has the meaning given to it in paragraph 4.6(B) of this Schedule 13a (Performance Measurement Mechanism).

"Level 2 Required Action" has the meaning given to it in paragraph 4.6(B) of this Schedule 13a (Performance Measurement Mechanism).

"Non-Conformances" has the meaning given to it in paragraph 4.2 (Escalation Procedure) of this Schedule 13a (Performance Measurement Mechanism), which

shall include Level 1 Non-Conformances, Level 2 Non-Conformances and Level 3 Non-Conformances as applicable.

"Same Type" has the meaning given to it in paragraph 4.6(A) (f) of this Schedule 13a (Performance Measurement Mechanism).

"Unacceptable" has, in respect of each KPI, the meaning given to it in respect of that KPI in Schedule 13b (Performance Measurement).

"Unsatisfactory" has, in respect of each KPI, the meaning given to it in respect of that KPI in Schedule 13b (Performance Measurement).

2. Overview

2.1 This Schedule 13 (Performance Measurement) comprises the performance measurement mechanism ("PMM") applicable to all Call-Off Contracts, in order to incentivise the Supplier to deliver the Services in accordance with the requirements of all such Call-Off Contracts and, without prejudice to the Company's other rights and remedies under or in connection with each Call-Off Contract and/or the Framework Agreement (as applicable), to provide the Company with a remedy where the Supplier fails to do so.

2.2 The PMM set out in this Schedule 13 (Performance Measurement) shall come into effect on the date that the Company issues its first Call-Off Contract under the Framework Agreement and shall be applicable to all Call-Off Contracts and the whole of the Services to be provided under each of those Call-Off Contracts.

2.3 The PMM comprises and incorporates:

- (A) A range of Key Performance Indicators set out in Schedule 13b (Performance Measurement);
- (B) Schedule 13b (Performance Measurement) which sets out the details as to how the KPIs are to be measured, the frequency and methodology of monitoring performance and the performance level required; and
- (C) Schedule 13b (Performance Measurement) which also sets out the method of calculation of the Abatement (if any) in respect of the Supplier's failure to provide the Services in accordance with any Call-Off Contract.

2.4 In respect of each KPI, a failure by the Supplier to meet the required level of performance set out in Schedule 13b (Performance Measurement) shall entitle the Company to:

- (A) enact the Escalation Procedure subject to and in accordance with paragraph 4; and/ or
- (B) if applicable to the relevant KPI and Call-Off Contract as set out in that Call-Off Contract, recover Abatements from the Supplier in the circumstances set out in Schedule 13b (Performance Measurement); and/or
- (C) appoint an alternative supplier to carry out the relevant Services which are the subject of the Non-Conformance and recover its costs in accordance with paragraph 5 of Schedule 13a (Performance Measurement Mechanism).

- 2.5 The Company shall be entitled to:
- (A) enact suspension of participation in future Mini-Competitions subject to and in accordance with paragraph 6; and/or
 - (B) terminate the Framework Agreement and/or any Call-Off Contract in accordance with paragraph 7 of Schedule 13a (Performance Measurement Mechanism).
- 2.6 At the end of each Quarter, the sum of all Abatements due under a Call-Off Contract in respect of such Quarter calculated pursuant to Schedule 13b (Performance Measurement) and the Call-Off Contract shall at the Company's option either:
- (A) be deducted from any payment due to the Supplier whether under the relevant Call-Off Contract, another Call-Off Contract or otherwise; or
 - (B) be the subject of a demand for payment from the Company, which shall be payable by the Supplier as a debt due within 14 days.

3. Reporting

- 3.1 The Supplier will provide the reports required pursuant to Schedule 17 (Contract Management) in relation to its performance, including measurements against each of the KPIs.
- 3.2 A Contract Performance Scorecard will be produced by the Company in relation to all Call-Off Contracts for each Contract Year. The Contract Performance Scorecard will be updated by the Company and submitted to the Supplier's Representative at the end of each Quarter incorporating an analysis of the performance of each of the KPI's during the Quarter.
- 3.3 An example of the Contract Performance Scorecard is included in Appendix 1 to this Schedule 13a (Performance Measurement Mechanism).

4. Escalation Procedure

- 4.1 In the event that in relation to a Call-Off Contract:
- (A) the Supplier's performance against one or more of the KPIs is assessed in the Quarterly Contract Performance Scorecards as a Non-Conformance; and/or
 - (B) the Supplier is in breach of any of its obligations under the Call-Off Contract,
- the Escalation Procedure may be invoked by the Company and the Company shall be entitled to do so in its absolute discretion.
- 4.2 The purpose of the Escalation Procedure is to provide a structured framework within which the Parties can address poor performance of the Services against timescales and deliverable targets. For the purposes of the Escalation Procedure, incidents of poor performance will be termed "Non-Conformances".
- 4.3 The Escalation Procedure operates with three levels, as set out in paragraphs 4.4 to 4.8 of this Schedule 13a (Performance Measurement Mechanism), with the lowest level of Non-Conformance being a Level 1 Non Conformance. Where Non-Conformances are escalated, they shall receive an appropriate level of management

intervention from the Company and the Supplier which shall include, if applicable, the level of management intervention specified in this Schedule. In the event a Non-Conformance is escalated to become a Level 2 Non-Conformance, the Parties shall have a final review and opportunity for remedial actions to resolve the relevant issues before the Non-Conformance becomes a Level 3 Non-Conformance, which will be deemed a material breach and which shall entitle the Company to terminate the Call-Off Contract in whole or in part in accordance with Clause 50 (Termination on Supplier Default).

4.4 A Non Conformance must start the Escalation Procedure as a Level 1 Non Conformance except in the event of any KPI being assessed as either:

- (A) "Below requirements" on two or more occasions in any Quarter; or
- (B) "Unsatisfactory" on two or more occasions in any 12 month rolling period; or
- (C) "Unacceptable" on one or more occasion in any Quarter,

in which event the Non-Conformance may be escalated to a Level 2 Non-Conformance (but not straight to a Level 3 Non-Conformance), to be determined by the Company at its absolute discretion.

Table 1 – Summary of Escalation Procedure (for illustrative purposes only)

TRIGGER	LEVEL	ACTION	BY	RESULT
Any one or more KPIs being assessed as "Below requirements" on two or more occasions in any twelve (12) month rolling period, or "Unsatisfactory" in any single Quarter; or any breach of the Supplier's obligations under the Call-Off Contract	Level 1	Rectification/ improvement plan with precise end date required. On-going review dates specified.	Supplier	Satisfactory - resolved Unsatisfactory - Level 2

TRIGGER	LEVEL	ACTION	BY	RESULT
Any one or more KPs being assessed as "Below requirements" on two or more occasions in any Quarter or "Unsatisfactory" on two or more occasions in any 12 month rolling period or "Unacceptable" in any single Quarter, Level 1 Non-Conformance re-occurrence	Level 2	Final review. Final opportunity for remedial action. Precise end date required.	Supplier	Satisfactory - resolved Unsatisfactory - Level 3
Level 2 Non-Conformance re-occurrence	Level 3	Termination of Call-Off Contract at Company's discretion pursuant to Clause 50 (Termination on Supplier Default).	Company	

4.5 Level 1 Non-Conformance

- (A) The Supplier shall notify the Company of the occurrence of a Level 1 Non-Conformance, as soon as reasonably practicable after becoming aware of the occurrence. Notwithstanding the Supplier's obligation to inform the Company of Non-Conformances, the Company shall also be entitled to notify the Supplier of a Level 1 Non-Conformance. The Level 1 Non-Conformance will be recorded by the Company and a notice will be issued to the Supplier in the form attached as Appendix 2 to this Schedule 13a (Performance Measurement Mechanism). The Supplier shall, within 10 Working Days of service of the notice by the Company, prepare and submit to the Company a report (the "Level 1 Non-Conformance Report"). Such report shall set out:
 - (B) confirmation of the date and details of the Level 1 Non-Conformance;
 - (1) the steps to be taken by the Supplier to ensure there is no re-occurrence of such Level 1 Non-Conformance (the "Level 1 Required Action"); and

- (2) the time within which such Level 1 Required Action is to be completed by the Supplier (which shall be a reasonable period) (the "Level 1 Rectification Period").
- (C) The Supplier and the Company shall use all reasonable endeavours to agree the Level 1 Rectification Period (provided that in the event that the Supplier and the Company fail to agree the Level 1 Rectification Period within a reasonable time (in the Company's opinion, acting reasonably), the Company shall be entitled to set the Level 1 Rectification Period) and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out by the Supplier (to the Company's reasonable satisfaction) within the agreed Level 1 Rectification Period, the Level 1 Non-Conformance will be classed as resolved.
- (D) All Level 1 Non-Conformances shall be reviewed by the parties at the Quarterly Review Meetings to be held in accordance with Schedule 17 (Contract Management) whether or not such non-conformance is resolved prior to such meeting.

4.6 **Level 2 Non-Conformance**

- (A) Paragraph (B) shall apply where:
 - (1) the circumstances set out in Paragraph 4.4 arise; or
 - (2) the Company determines that the Level 1 Non-Conformance should be treated as a Level 2 Non-Conformance (to be determined at the Company's absolute discretion); or
 - (3) the Supplier fails to make available to the Company a Level 1 Non-Conformance Report within 10 Working Days of service by the Company of the notice referred to in paragraph 4.5(A); or
 - (4) the Supplier fails to undertake the Level 1 Required Action within the Level 1 Rectification Period; or
 - (5) having undertaken the Level 1 Required Action, the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period; or
 - (6) a further Non-Conformance occurs but within 2 months of the end of the Level 1 Rectification Period and such Non-Conformance is in relation to the same KPI as the Level 1 Non-Conformance ("Same Type"); or
 - (7) a further Non-Conformance occurs during the Level 1 Rectification Period that is of the Same Type as the Level 1 Non-Conformance.
- (B) Where one or more of the circumstances described in paragraph (A) applies, this shall be a Level 2 Non-Conformance and the Company shall inform the Supplier of the same by written notice, specifying the steps which the Supplier is required to take to ensure that no further Non-Conformance of the Same Type shall arise (the "Level 2 Required Action") and the period for the Supplier to put in place steps to ensure that no further Non-Conformances of the Same Type occur (the "Level 2 Rectification Period").

- (C) Where paragraph (A)(c) applies and the Supplier has failed to make available to the Company a Level 1 Non-Conformance Report, the notice referred to in paragraph (B) shall also set out the deadline by which the Supplier is required to serve on the Company a report (the "Level 2 Non-Conformance Report") setting out the Level 2 Required Action and the Level 2 Rectification Period.
- (D) All Level 2 Non-Conformances will be escalated to the Supplier's Managing Director and senior management of the Company and shall be reviewed (whether resolved or not) every Quarter at the Quarterly at the Quarterly Review Meetings, as held in accordance with Schedule 17 (Contract Management).

4.7 **Level 3 Non-Conformance**

- (A) Paragraph (B) shall apply where:
 - (1) the Supplier fails to make available to the Company by the deadline notified under paragraph 4.6(C) a Level 2 Non-Conformance Report; or
 - (2) the Supplier fails to undertake the Level 2 Required Action within the Level 2 Rectification Period; or
 - (3) having undertaken the Level 2 Required Action, the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period; or
 - (4) a further Non-Conformance occurs within 2 months of the end of the Level 2 Rectification Period which is of the Same Type as the Level 2 Non-Conformance; or
 - (5) a further Non-Conformance occurs during the Level 2 Rectification Period that is of the Same Type as the Level 2 Non-Conformance.
- (B) Where one or more of the circumstances described in paragraph (A) applies, this shall be a Level 3 Non-Conformance and shall be deemed a material breach which entitles the Company to terminate the Framework Agreement and/or any or all Call-Off Contract(s) in whole or in part in accordance with Clause 50 (Termination on Supplier Default)

5. **Appointment of substitute supplier**

In the event of a Level 1, Level 2 or Level 3 Non-Conformance, the Company shall be entitled to appoint another supplier (which may be another Framework Supplier) to perform the relevant Services and/or rectify the relevant Non-Conformance in respect of the relevant Call-Off Contract and recover from the Supplier any costs reasonably incurred by the Company in obtaining such substitute services from such other supplier(s). Such costs shall at the Company's option either:

- (A) be deducted from any payment due to the Supplier whether under the relevant Call-Off Contract, another Call-Off Contract or otherwise; or
- (B) be the subject of a demand for payment from the Company which, shall be payable by the Supplier as a debt due within 14 days.

6. Suspension from Mini-Competitions

- 6.1 If the Supplier achieves a score of "Unacceptable" in respect of any one or more KPIs on two or more occasions in any twelve (12) month rolling period the Company shall by written notice to the Supplier suspend the Supplier's right to participate in any Mini-Competitions in relation to which the relevant Call-Off Contract has not yet been awarded until the later of:
- (A) the date six months from the date of such notice; and
 - (B) such time as the Supplier has rectified the relevant Non-Conformance in accordance Level1 Rectification Period and Level 1 Required Action and/or the Level 2 Rectification Period and Level 2 Required Action agreed with the Company in accordance with the Escalation Procedure to the satisfaction of the Company.
- 6.2 The Company's Representative will inform the Supplier in writing of suspension from participation in future Mini-Competitions under the Framework Agreement pursuant to this paragraph 6.
- 6.3 The Company's Representative will inform the Supplier in writing when the Supplier is permitted to re-commence participation in future Mini-Competitions under the Framework Agreement in accordance with Paragraph 6.1 above.

7. Termination of the Framework Agreement

- 7.1 The Company shall be entitled to terminate the Framework Agreement if the Supplier has been suspended from participation in Mini-Competitions in accordance with Paragraph 6 (above) on two or more occasions.

SCHEDULE 13a: Appendix 1 – Contract Performance Scorecard

Supplier:	
Contract Year:	
Quarter:	
Date of Report:	

Key Performance Indicator (KPI)	Quarter 1	Quarter 2	Quarter 3	Quarter 4
1 Compliant delivery				
2 Correction of Defects				
3 Financial Reporting				
4 Health & Safety Reporting				
5 Environmental Reporting				
6 Lost Time Injuries				

Key: Meets Requirements
 Below Requirements
 Unsatisfactory

Schedule 13a - Appendix 2 - Level 1 Non-Conformance Notice

Level 1 Non-Conformance Notice	
Notice Number	[Insert Level 1 number number]
Performance Indicator	[Insert PI reference number]
Severity of performance shortfall	[Below requirements/Unsatisfactory]
Date of commencement of performance shortfall	[Insert date]
Number of Periods of performance shortfall at the date of issue of this notice	[Insert number of Periods]
Description of the Company's Representative's understanding of the cause of the performance shortfall	
Date for submission by the Supplier of the Level 1 Non-Conformance Report	[Insert date 10 working days from the date of issue of notice]
Issued by	<p>Signed: _____</p> <p>The Company's Representative</p> <p>Date: _____</p>

SCHEDULE 13b: PERFORMANCE MEASUREMENT

1. Overview

- 1.1 This Schedule 13b (Performance Measurement) sets out the details as to how the KPI's in respect of a Call-Off Contract are measured and the performance levels required for each KPI.

2. Key Performance Indicators

- 2.1 The Supplier will report on a Quarterly basis to the Company, in accordance with Schedule 17 (Contract Management), performance against the following KPI's and keep a full audit trail of the evidence to support the information and figures reported.

- (A) KPI 1 – Delivery of Call-Off Contracts on time
- (B) KPI 2 – Compliant Completion of Call-Off Contracts- Quality
- (C) KPI 3 – Management Information Reporting
- (D) KPI 4 – Lost Time Injuries
- (E) KPI 5 – Timely and compliant submission of responses to Mini-Competitions

- 2.2 Details of how these KPI's are measured are set out in the following Tables 1 to 5.

KPI 1		
Key Performance Indicator	Delivery of Call-Off Contracts on time (applicable only to Call-Off Contract with a Contract Price in excess of £5000)	
Measure	Date agreed by the Company as the date of Completion in the Valid Completion Certificate for each Call-Off Contract is no later than the Call-Off Completion Date for that Call-Off Contract	
Event Definition	The Valid Completion Certificate will state the date Completion was achieved by the Supplier. The Company will assess whether the date Completion was achieved is no later than the Call-Off Completion Date (CCD)	
Monitoring Methods	<p>For all applicable Call-Off Contracts the Company will assess the Supplier's Completion of each Call-Off Contract Quarterly</p> <p>Percentage success rate =</p> $\frac{\text{Number of Call-Off Contracts where the Call-Off Completion Date falls in the relevant Quarter Completed on or before the CCD}}{\text{Total number of Call-Off Contracts with a CCD in the relevant Quarter}} \times 100$	
Performance Levels		Abatement?
Meets Requirements	Percentage success rate is equal to or greater than 90%	None
Below Requirements	Percentage success rate is between 80% and 89.99%	An amount equivalent to 1% of the aggregate Contract Price in respect of all Call-Off Contracts with a CCD in the relevant Quarter which were not Completed by the respective CCD
Unsatisfactory	Percentage success rate is between 60% and 79.99%	An amount equivalent to 2% of the aggregate Contract Price in respect of all Call-Off Contracts with a CCD in the relevant Quarter which were not Completed by the respective CCD

<p>An amount equivalent to 3% of the aggregate Contract Price in respect of all Call-Off Contracts with a CCD in the relevant Quarter which were not Completed by the respective CCD</p>	<p>Percentage success rate is less than 60%</p>	<p>Unacceptable</p>
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<p>KPI 2</p>	<p>Compliant Completion of Call-Offs Contracts – Quality (applicable only to Call-Off Contracts with a Contract Price of £5000 or more)</p>	<p>Key Performance Indicator</p>
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	<p>In relation to Call-Off Contracts with a Contract Price of £5000 or more and with a CCD in the relevant Quarter, the Services under such Call-Off Contracts have been Completed in accordance with the relevant Call-Off Contract (including but not limited to the Specification) and the Supplier has received Valid Completion Certificates from the Company to certify the same.</p>	<p>Measure</p>
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	<p>Following Supplier's submission of a Completion Certificate in respect of a Call-Off Contract, the Company shall carry out checks of the Services provided by the Supplier across Call-Off Contracts including, but not limited to, quality of workmanship, compliance with Specification and the Call-Off Contract, housekeeping, health and safety issues, documentation, communications etc including in order to assess whether to issue a Valid Completion Certificate. The Company shall score the Services provided pursuant to each audited Call-Off Contract according to the scale below:</p> <p>Level 1 – Poor Non compliant materials used / poor workmanship / evidence of inaccuracies or omissions (Completion Certificate not counter-signed by the Company (i.e no Valid Completion Certificate issued))</p> <p>Level 2 – Moderate practice Below satisfactory output / some minor inaccuracies or minor omissions (Completion</p>	<p>Event Definition</p>
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	<p>Certificate not counter-signed by the Company (i.e no Valid Completion Certificate issued))</p> <p>Level 3 – Acceptable</p> <p>Meet standards and workmanship requirements (Completion Certificate counter-signed by the Company (i.e Valid Completion Certificate issued)).</p>	
Monitoring Methods	<p>For applicable Call-Off Contracts the Company will, Quarterly, assess the Supplier's performance and/or delivery of each Call-Off Contract</p> <p>Percentage success rate =</p> <p><u>Number of Call-Off Contracts in respect of which the Supplier has submitted a Completion Certificate in the relevant Quarter with a score of 3</u></p> <p>Total number of Call-Off Contracts in respect of which the Supplier has submitted a Completion Certificate within the measured Quarter</p>	
Performance Levels		Abatements?
Meets Requirements	Percentage success rate is equal to or greater than 95%	None
Below Requirements	Percentage success rate is between 80% and 94.99%	An amount equivalent to 1% of the aggregate Contract Price of the Call-Off Contracts in respect of which the Supplier has submitted a Completion Certificate in the relevant Quarter but in respect of which the Supplier has not achieved a score of 3
Unsatisfactory	Percentage success rate is between 50% and 79.99%	An amount equivalent to 2% of the aggregate Contract Price of the Call-Off Contracts in respect of which the Supplier has submitted a Completion Certificate in the relevant Quarter but in respect of which the Supplier has not achieved a score of 3
Unacceptable	Percentage success rate is less than 50%	An amount equivalent to 3% of the aggregate

	Contract Price of the Call-Off Contracts in respect of which the Supplier has submitted a Completion Certificate in the relevant Quarter but in respect of which the Supplier has not achieved a score of 3
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KPI 3		
Key Performance Indicator	Management Information Reporting	
Measure	Timeliness and accuracy of reporting	
Event Definition	Submission by Supplier of all reports (on time in full) as prescribed in Schedule 17 (Contract Management)	
Monitoring Methods	<p>The Company will assess the Supplier's performance in respect of its reporting obligations under Schedule 17 (Contract Management) Quarterly</p> <p>Percentage success rate =</p> <p><u>Number of reports delivered complete, accurate in all material respects and on time</u></p> <p>Total number of reports due (due within the measured Quarter)</p>	
Performance Levels		Abatement?
Meets Requirements	Percentage success rate is equal to or greater than 95%	None
Below Requirements	Percentage success rate is between 80% and 94.99%	None
Unsatisfactory	Percentage success rate is between 50% and 79.99%	None
Unacceptable	Percentage success rate is less than 50%	None

KPI 4		
Key Performance Indicator	Lost Time Injuries	
Measure	Number of lost time injuries to Supplier Personnel engaged or due to be engaged in performing the Services under a Call-Off Contract	
Event Definition	<p>Lost time injuries or "LTIs" in respect of Supplier Personnel engaged or due to be engaged in the delivery of the Services</p> <p>Lost time injury or LTI means an injury or illness arising from a work related activity resulting in any loss of productivity in respect of a Call-Off Contract</p>	
Monitoring Methods	The number of LTIs, per Quarter, in respect of Supplier Personnel engaged or due to be engaged in the delivery of the Services.	
Performance Levels		Abatement?
Meets Requirements	0 LTIs	None
Below Requirements	n/a	None
Unsatisfactory	1 LTI	None
Unacceptable	More than 1 LTI	None