

Dated **2021**

LONDON UNDERGROUND LIMITED (1)

and

HIREMECH LIMITED (2)

**FRAMEWORK AGREEMENT
for the Maintenance, Hire and Supply of
Forklifts, Battery Powered Pallet Trucks and
MEWPs**

CONTRACT REFERENCE NUMBER: 01540

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THIS AGREEMENT is made on
BETWEEN:

2021

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the “**Company**” which expression shall include its successors and assigns); and
- (2) **Hiremech Limited** a company registered in England and Wales under number 03639237) and having its registered office at Orbital 7 Orbital Way, Cannock, England, WS11 8XW (the “**Supplier**”).

BACKGROUND

- (A) The Supplier carries on the business of selling the Goods and providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Agreement.
- (C) This Agreement may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Agreement.

THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

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

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

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

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

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

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

"BAFO" means 'best and final offer'.

"CCSL" means the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Company from time to time;

"Cessation Plan" means a plan agreed between the parties or determined by the Company in accordance with Clause 54.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

"Commencement Date" means the date specified as such in Schedule 1.

"Company's Representative" means the person appointed by the Company and named as such in the relevant Order.

"CompeteFor" has the meaning given to that term in Clause 55.

"Contract Manager" means the appointed member of staff from the Company who oversees and manages the management of the contract.

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

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

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

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

“Contract Information” means (i) each Contract and Agreement in its entirety (including from time to time agreed changes to any Contract and/or Agreement) and (ii) data extracted from the invoices submitted pursuant to Clauses 9.1 and 9.2 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

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

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

“CPI” means the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree.

“Data Protection Legislation” means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to any 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).

“Defect” means that the Goods or any part of them do not comply with the requirements of any Contract, or are not fit for their intended purpose, or are of unsatisfactory quality whether in

consequence of faulty design, faulty materials, negligence, bad workmanship or in consequence of any other reason attributable to the Supplier or its suppliers or the employees of any of them. For the avoidance of doubt, this shall include damage which occurs during transit from the Supplier to the Company.

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

“Delivery Note” has the meaning given to that term in Clause 10.6.

“Dispute” has the meaning given to that term in Clause 43.1.

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

“EDI Policy” means a written policy provided by the Supplier setting how it will promote equality, diversity and inclusion.

“Electronic Invoicing Platform” means the Company’s invoicing platform for the submission and receipt of electronic invoices.

“Electronic Procure-to-Pay (eP2P) Vendor Handbook” means the handbook setting out the system, format, file requirements and steps for registering to use and using the Electronic Invoicing Platform as updated from time to time, a copy of which can be downloaded from the following link – <https://tfl.gov.uk/corporate/publications-and-reports/procurement-information#on-this-page-5>.

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

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

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

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

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

“Excess Costs” has the meaning given to that term in Clause 21.6.

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

“Expected Order Completion Date” means the date set out in each Order upon which the Services or any part of them are to be performed by the Supplier or such other date as may be agreed between the parties.

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

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

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

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

“Goods” means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 7.

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

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

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

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

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

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

“Key Personnel” means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 30.

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

“London Living Wage” the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website (www.livingwage.org.uk);

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

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

“Nominated Representatives” has the meaning given to that term in Clause 43.2.

“Notice to Proceed” has the meaning given to that term in Clause 21.7(b).

“Notified Sum” has the meaning given to that term in Clause 9.8.

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

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

“Order Completion Date” means the date upon which the Services or any part of them are actually performed by the Supplier as specified.

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

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

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

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

“PDF Invoice” means an invoice in PDF (portable document format) format.

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

“Policies” means the policies set out in Clause 33.3.

“Prescribed Period” has the meaning given to that term in Clause 9.9.

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

“Prohibited Act” means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement or any Contract or any other contract with the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any Contract or any other contract with the Company; or

- (b) entering into the Agreement or any Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before such Contracts were entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts,
 in relation to the Agreement or any Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

“Public Procurement Termination Event” means:

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

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

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

“Rejected Goods” has the meaning given to that term in Clause 18.2.

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

“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).

"Responsible Procurement Policy" means the policy document entitled the "GLA Group Responsible Procurement Policy" dated June 2017, and as may be amended.

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

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

"Specification" means the description of the Goods and Services set out in Schedule 3. and to be provided by the Supplier in accordance with the Agreement.

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

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

"Supplier's Representative" means the person appointed by the Supplier and named as such in the relevant Order.

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

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

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

"Transparency Commitment" means TfL's commitment (applying to TfL, the Company and the rest of the TfL Group) to publish contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments.

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

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

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

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

“Volume Discount” is the figure calculated annually in accordance with Clause 9.17.

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

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

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

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

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

2 Duration and Option to Extend

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement and subject to Clause 2.3.
- 2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract.
- 2.3 The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Supplier of its intention to extend the Term of the Agreement by a period of up to three years. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term (other than this Clause 2.3 containing the option to extend). On receipt of such notice from the Company by the Supplier, the Agreement shall be deemed extended accordingly.

3 Supplier's Primary Obligations

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

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

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

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

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

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

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

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

- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
- (b) be performed in accordance with the Order Programme;

- (c) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
 - (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification; and
 - (e) comply with the requirements of the Company set out in the Agreement and each Contract and all lawful and reasonable directions of the Company.
- 3.6 The Supplier warrants and undertakes that the Supplier has entered into and executed this Agreement and any Contract by the Supplier's duly authorised representative in accordance with all procedures required by its governing laws and contractual documents.
- 3.7 The Supplier warrants to the Company that, as at the date of this Agreement and of each 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 those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016.
- 3.8 The Supplier shall perform its obligations under each Contract in accordance with the requirements of BS EN ISO 9001 Quality management systems (or equivalent), or any other recognised standards defined within the original manufacturers specification as appropriate to the supply of Goods any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.9 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.10 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.11 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Agreement or any Contract.
- 3.12 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.

Not used

3.13 Not used

3.14 Not used

4 Not used

5 Records and Audit

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

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

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

instructions as to the method of storage, the Supplier shall retain its records in an orderly and logical fashion.

- 5.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 5.1 at any time during the period referred to in Clause 5.2.
- 5.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
 - (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
 - (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
 - (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
 - (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.
- 5.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.
- 5.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 5.1, free of charge within thirty (30) days of the Company's request for the same.
- 5.7 The Supplier shall and shall ensure that any sub-contractor or sub-supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

6 Company's Obligations

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

7 Additional Goods and Services

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

8 Variation

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

9 Price and Payment.

- 9.1 The Supplier shall submit an application for payment to the Company's Representative according to the rates and prices set out in Schedule 2 for the relevant portion of the Order Price (a "**Payment Application**") in respect of the Goods after the Order Delivery Date of such Goods. If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application for the relevant portion of the Order Price to the Company's Representative after the Order Delivery Date of each instalment.
- 9.2 The Supplier shall submit a Payment Application for the relevant portion of the Order Price in respect of the Services using the rates and prices set out in Schedule 2, to the Company's Representative following the completion of the Services to the satisfaction of the Company.

- 9.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.
- 9.4 Not used
- 9.5 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company's Representative shall notify the Supplier in writing not later than five (5) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
 - (b) the basis on which the amount was calculated,
- a "**Payment Certification**". It is immaterial for the purposes of this Clause 9.5 that the amounts referred to in Clauses 9.5(a) or 9.5(b) may be zero. Where the Company fails to comply with its obligations under this Clause 9.5 and there is an undue delay in assessing and verifying the Payment Application, the Payment Certification shall be regarded as issued for the purposes of Clause 9.8 after a reasonable time has passed.
- 9.6 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 Supplier shall submit any VAT invoice as a PDF Invoice by email to the email address in Schedule 1 and invoice via the electronic contract management system used by the parties for managing the Agreement . The Supplier shall ensure that each PDF Invoice has a unique file reference and be a separate PDF file.
- 9.7 Not Used
- 9.8 Subject to Clause 9.9 the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 9.5 (the "**Notified Sum**") on or before the Final Date for Payment.
- 9.9 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 three (3) days (the "**Prescribed Period**") prior to the Final Date for Payment of:
- (a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or

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

It is immaterial for the purposes of this Clause 9.9 that the amounts referred to in Clause 9.9(a) or Clause 9.9(b) may be zero. Where a notice is given under this Clause 9.9, the Company's obligation to pay the Notified Sum under Clause 9.8 applies only in respect of the sum specified pursuant to this Clause 9.9.

- 9.10 Not used
- 9.11 On and with effect from each anniversary of the Service Commencement Date, the Charges shall be adjusted upwards or downwards (as the case may be) by the amount of the change (if any) in CPI between its rate last published (as final) immediately before such anniversary and its rate published (as final) twelve months before that. With the exception of CPI index adjustment, the Contract Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Contract Price for the Goods and Services shall only be changed in accordance with the Contract Variation Procedure.
- 9.12 The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.
- 9.13 In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the Company and the Supplier:

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

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

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

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

- 9.15 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 9.16 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Order Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Order Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 9.16, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 9.17 The Company calculates the Volume Discount annually by applying the relevant Volume Discount Percentage to the Aggregated Annual Spend. The Company issues an invoice to the Supplier for the Volume Discount. The Supplier pays the Volume Discount to the Company within 30 days of receipt of the invoice.
- 9.18 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or any Services performed or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement and any Contract or otherwise.

10 Delivery of Goods

- 10.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date and on the times stated in the Order and at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 10.2 The time of delivery of the Goods shall be of the essence in respect of each Contract.
- 10.3 If the Goods are not supplied on the Expected Order Delivery Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i)

a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event, or a (iii) Permitted Delay Event.

- 10.4 The Supplier accepts that the amount of Liquidated Damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Order Delivery Date.
- 10.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract.
- 10.6 The Supplier shall provide a detailed delivery note stating the relevant Contract Reference Number, Order number (given on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Order Delivery Date in accordance with Clause 42.
- 10.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 10.8 In the event that all or any of the obligations of the Supplier under any Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 10 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.
- 10.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 17.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.

- 10.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate
- 10.11 Notwithstanding Clause 10.6 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) days notice of the revised Expected Order Delivery Date (the "Revised Delivery Note").

11 Supplier Performance

- 11.1 On the date that the Company's Representative receives the first Payment Application and every 4 weeks after that date, the Company assesses the Supplier's performance under the Agreement and each Contract in accordance with Schedule 10.
- 11.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 10; and
 - (b) use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 10.

12 Failure to Perform the Services

- 12.1 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.
- 12.2 Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 12.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 12.2 is recoverable by the Company from the Supplier

and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Agreement.

- 12.3 For the purposes of Clause 12.2 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Agreement and any Contract as may be required by the Company to exercise its rights under Clause 12.2 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 12.2.
- 12.4 The Supplier shall ensure that the Services are satisfactorily completed by the Expected Order Completion Date. The time of the performance of the Services shall be of the essence in respect of each Contract.

13 Access and Time for Performance of the Services

- 13.1 The Company shall give the Supplier access to the parts of the Underground Network required for the performance of the Services in accordance with the provisions of this Clause 13.
- 13.2 Subject to the provisions of Clause 12, the Company shall use reasonable endeavours to give access to such parts of the Underground Network to the Supplier on the dates and times on which it has stated that it requires such access.
- 13.3 The Supplier acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Agreement and each Contract.
- 13.4 Where the Supplier requires access to the Underground Network to carry out the Services it shall:
- (a) apply for access at the earliest available opportunity; and
 - (b) provide the Company's Representative without delay with such additional information as the Company's Representative may reasonably require in respect of the Supplier's access requests.
- 13.5 The Company shall confirm access bookings in accordance with this Clause 13. The Company does not warrant or guarantee to the Supplier that such access will be granted. If any request for access is rejected, the Company shall advise the Supplier and agree with the Supplier alternative dates for resubmission. The rejection of an access request shall not entitle the Supplier to an extension of time.

- 13.6 If the Supplier fails to apply for access in accordance with this Clause 13, the Company shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Agreement and any Contract.
- 13.7 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access. If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Company's Representative setting out all details including the part of the Underground Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Supplier is aware.
- 13.8 The Supplier shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network. The Supplier shall make good any such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Company's Representative.
- 13.9 The Supplier shall indemnify and keep indemnified the Company in respect of any claims by third parties relating to the disruption, delay or cancellation of their access due to the actions or omissions of the Supplier.
- 13.10 Prior to returning any part of the Underground Network to the Company at the end of any period of booked access, the Supplier shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the Underground Network in a clean and workmanlike condition to the satisfaction of the Company's Representative.
- 13.11 If the Supplier fails to comply with the requirements of Clause 13.10 within such reasonable time as may be allowed by the Company's Representative, then the Company may dispose of those items as the Company sees fit and at the Supplier's cost, which cost if met by the Company shall become a debt due from the Supplier to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Supplier under this Agreement and any Contract.
- 13.12 Where the Supplier is denied booked access to any part of the Underground Network through no fault of the Supplier, the Supplier shall be entitled to an extension of time in accordance with Clause 26.2.
- 13.13 The Supplier shall ensure that the Services are satisfactorily completed by the Order Completion Date. If the Services are not performed by the Order Completion Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Services or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Services.

The Company shall not be entitled to deduct such amount from the price payable for such Services or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event or a (iii) Permitted Delay Event.

- 13.14 The Supplier accepts that the amount of Liquidated Damages under this Agreement and any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to perform the Services by the Order Completion Date.
- 13.15 In the event that all or any of the obligations of the Supplier under this Agreement and any Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 13 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

14 Work on Company's Sites

- 14.1 During the term of each Contract, the Supplier shall:
- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
 - (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
 - (c) notwithstanding the terms of Clause 14.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each Contract;
 - (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;

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

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

15 Free Issue Materials

- 15.1 In the event of the Company supplying Free Issue Materials to the Supplier under any Contract the cost of which has been included in calculating the Order Price, the Order Price shall be reduced by the amount included in the Order Price for the materials which have been replaced by such Free Issue Materials.
- 15.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 15.3 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession or in the possession of any subcontractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

16 Failure to Supply the Goods

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

17 Risk and Ownership

- 17.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 18.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 18.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.
- 17.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

18 Inspection of the Goods

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

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

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

19 Warranty

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

accordance with the terms of the relevant Contract and the provisions of Clauses 10, 17 and 18 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 10 or, where applicable, re-delivers the Goods in accordance with this Clause 19.

- 19.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.

20 Intellectual Property Rights

20.1 Existing Contracts

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

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

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

20.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 20.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 20.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

20.4 Company's Licence to use the Supplier's Intellectual Property Rights

The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-license such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 20.3 for the purposes of:

- (a) understanding the Goods and Services;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Goods and Services;

- (c) extending, interfacing with, integrating with, connecting into and adjusting the Goods and Services;
- (d) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) executing and completing the provision of the Goods and Services; and
- (f) enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

20.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 20.2, 20.3 and 20.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

20.6 Company's Rights of Retention

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

20.7 Company's Rights to the Software

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Goods and/or as part of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 21.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Agreement and each Contract then the Supplier, at no charge to the Company,

shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

20.8 Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 20.5 above and anything in which the Intellectual Property Rights referred to in Clauses 20.2, 20.3 and 20.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods and/or Services for the carrying out of any activities in connection with the licence under Clause 20.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

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

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the Goods as may be necessary to ensure that the use and provision of the Goods continues in spite of such claim.

20.10 Ownership of the Company's Intellectual Property Rights

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

Company's Intellectual Property Rights

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

21 Termination and Suspension

- 21.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:
- (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
 - (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
 - (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded;
 - (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Agreement and each Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same
 - (e) a breach of the Supplier's obligations under Clause 32, Clause 49 or Clause 54.8; or
 - (f) the Supplier has, at the date of this Agreement or of any 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 those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016 (without prejudice to the Company's rights of termination implied into the Agreement and each Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016);
 - (g) the Supplier fails to comply in the provision of the Goods and/ or Services with legal obligations in the fields of environmental, social or labour law or,

- (h) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 10

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

- (a) to terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a “**Suspension Notice**”) to the Supplier.

21.3 Without prejudice to the Company’s right to terminate the Agreement and each Contract under Clauses 21.1 or 21.2 or at common law, the Company may terminate the Agreement or any Contract at any time following a Declaration of Ineffectiveness or a Public Procurement Termination Event in accordance with the provisions of Clause 54.1.

21.4 In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 21, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such 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; and
- (b) permit the Company to place an order for the remaining Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services by its own workmen; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

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

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

21.6 Following a termination in accordance with Clause 21.1 (but not a termination in accordance with Clause 21.2(a)) the Supplier shall be liable to the Company for

- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
- (b) where the Company exercises its rights under Clause 21.4(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Agreement and the relevant Contract by the Supplier ("**Excess Costs**"), such Excess Costs.

21.7 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 21.2(b), the Supplier shall:

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

21.8 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 21.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.

21.9 In the event that the parties are unable to agree upon the variation requested under Clause 21.8, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 43.

21.10 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

21.11 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision of the Goods and Services at the Company's absolute discretion.

22 Cooperation in Handover

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

23 Indemnity and Insurance

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

the period of twelve years after the Order Delivery Date and/or Order Completion Date or earlier termination of the Agreement and each Contract.

- 23.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 23.1.
- 23.5 Other than in respect of the Losses (i) described in Clauses 23.1(a) and 23.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.
- 23.6 Without prejudice to the obligation to indemnify the Company set out in Clause 23.1, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £10,000,000 (ten million pounds) per occurrence;
 - (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence;
 - (d) Not used
 - (e) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person, or loss or damage to any property arising out of its performance of any Contract in an amount not less than 10,000,000, for any one occurrence;
 - (f) ensure that the foregoing insurance policy or policies shall be or are affected 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 12 years after the delivery of the Goods and completion of the Services (whichever is the later);
 - (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and

- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of the Services or the provision of any of the Goods by the Supplier under any Contract satisfactory evidence in the form of a broker's letter or similar, confirming the existence of insurance in accordance with the terms of this Clause 23.6.

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

23.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 23, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

23.9 Not used.

24 Environmental Claims

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

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

24.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

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

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

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Goods and Services (for the purposes of this Clause 24.5, the “**authorisations**”);
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

25 Not used

26 Force Majeure and Permitted Delay events

Force Majeure

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

Permitted Delay Events

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

- (a) any act of prevention, omission, default or neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
- (b) any variation of the Agreement or any Contract under Clause 8; or
- (c) the suspension of this Agreement or any Contract in accordance with Clause 21 (other than where the suspension is necessary by reason of default by the Supplier).

26.4 Where any delay in achieving the Expected Order Delivery Date and/or Expected Order Completion Date arises, the Supplier shall be entitled to an extension to such Expected Order Delivery Date and/or Expected Order Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to provide the Goods and/or Services by the Expected Order Delivery Date and/or Expected Order Completion Date and provided that the Supplier:

- (a) notifies the Company of the Permitted Delay Event in accordance with Clause 26.2 and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
- (b) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
- (c) uses its reasonable endeavours to mitigate the delay to the relevant Expected Order Delivery Date and/or Expected Order Completion Date; and
- (d) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Agreement by the Supplier, its subcontractors and/or employees.

27 Safety

- 27.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 27.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):

- (a) the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in the Specification ("QUENSH") as amended from time to time; and
- (b) the Company's drug and alcohol principles as amended from time to time.

27.3 Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to the Agreement and each Contract as if the term "LU Premises" means any of the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.

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

28 Not used

28.1

29 Independent Supplier

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

30 Supplier Personnel

30.1 For the purposes of this Clause 30:

"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 expiry or termination of the Agreement (or part of it) or any Contract;

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

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

“Subsequent Relevant Employee” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods and/or Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on the expiry or termination of the Agreement (or part of it) or any Contract;

“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.

- 30.2 The Supplier will comply and procures that its sub-contractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the expiry of the Term or earlier termination of the Agreement or any Contract.
- 30.3 At any time during the last twelve (12) months of the Agreement and/or during any period of notice terminating the Agreement and/or during any 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:
- (a) the names of employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services, their salaries and other conditions of employment, ages and length of service;
 - (b) the method of organisation of the employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services and documentary evidence relating to such organisation;
 - (c) the proposals for informing and consulting with affected employees;
 - (d) details of collective agreements and union recognition agreements; and

- (e) any other employee liability information within the meaning of the Transfer Regulations,
- (f) and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.

30.4 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 30 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 30 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

30.5 The Supplier will not and will procure that its subcontractors will not in the 6 months prior to the expiry or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) or any Contract without the Company's prior written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in the provision of the Goods and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in supplying the Goods and/or Services or to the expected expiry of the Term or termination of the Agreement, or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Goods, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant sub-contractor's business and are not related to the expiry of the Term or termination of the Agreement (either because they are applied to all of the Supplier's or the relevant sub-contractor's employees, whether or not engaged in providing the Goods or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant sub-contractor which is not related or confined to the employees engaged in supplying the Goods or to the expiry of the Term or termination of the Agreement.

30.6 The Supplier shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or

consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Goods and/or Services.

30.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (c) In this Clause 30.7 "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 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 to the Replacement Supplier on the same terms set out in sub-clauses (a) and (b) above.

30.8 The provisions of this Clause 30 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 30 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Key Personnel

30.9 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the provision of the Goods and Services. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.

- 30.10 The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.
- 30.11 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the provision of the Goods and Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.
- 30.12 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 30.13 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 30.14 Not used

31 Confidentiality

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

- 31.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
 - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 31.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 31.1 and 31.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 31.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 31.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, any Contract or the Goods and Services without the prior written consent of the Company.
- 31.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Goods and Services, or any Dispute arising under or in connection with any Contract.
- 31.7 The provisions of Clauses 31.1 to 31.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

- 31.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 31 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 31.

32 London Living Wage

- 32.1 For the purposes of this Clause 32, "Sub-contractor" means a sub-contractor (of any tier) of the Supplier.
- 32.2 The Supplier acknowledges and agrees that the Mayor pursuant to section 155 of the Greater London Authority Act has directed that members of the TfL Group ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Company's estate in the circumstances set out in Clause 32.3(a).
- 32.3 Without prejudice to any other provision of this Agreement and any Contract, the Supplier shall:
- (a) ensure that its employees and procure that the employees of its Sub-contractors engaged in the provision of the Goods and Services or performance of this Agreement or any Contract:
 - (i) for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and
 - (ii) on the Company's estate including (without limitation) premises and land owned or occupied by the Company,be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;
 - (b) ensure that none of:
 - (i) its employees; nor
 - (ii) the employees of its Sub-contractors,engaged in the provision of the Goods and Services or performance of this Agreement or any Contract be paid less than the amount to which they are entitled in their respective contracts of employment;
 - (c) provide to the Company such information concerning the London Living Wage as the Company or its nominees may reasonably require from time to time, including (without limitation):

- (i) all information necessary for the Company to confirm that the Supplier is complying with its obligations under Clause 32; and
 - (ii) reasonable evidence that Clause 32 has been implemented;
- (d) disseminate on behalf of the Company to:
- (i) its employees; and
 - (ii) the employees of its Sub-contractors,
- engaged in the provision of the Goods and Services or performance of this Agreement or any Contract such perception questionnaires as the Company may reasonably require from time to time and promptly collate and return to the Company responses to such questionnaires; and
- (e) cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):
- (i) allowing the CCSL to contact and meet with the Supplier's employees and any trade unions representing the Supplier's employees;
 - (ii) procuring that the Supplier's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and any trade unions representing the Sub-contractors' employees,

in order to establish that the obligations in Clause 32.3(a) have been complied with.

32.4 For the avoidance of doubt the Supplier shall:

- (a) implement the annual increase in the rate of the London Living Wage; and
- (b) procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

32.5 The Company reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Supplier's staff and the staff of its Sub-contractors.

32.6 Without limiting the Company's rights under any other termination provision in this Agreement or any Contract, the Supplier shall remedy any breach of the provisions of this Clause 32 within four (4) weeks' notice of the same from the Company (the "**Notice Period**"). If the Supplier remains in

breach of the provisions of this Clause 32 following the Notice Period, the Company may by written notice to the Supplier immediately terminate this Agreement or any Contract.

33 Responsible Procurement

- 33.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.
- 33.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with the Responsible Procurement Policy.
- 33.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Supplier shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 33.4 Where applicable to the Supplier, the Supplier shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.
- 33.5 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 33.6 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 33.7 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 33 and the provisions of this Clause 33 are included in any subcontract (of any tier).
- 33.8 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 33.

34 Assignment and Subcontracting

- 34.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 34.2 The subcontracting of all or any part of the Goods and/or Services to a subcontractor shall not relieve the Supplier of its obligations to supply the Goods and/or Services under the Agreement and each Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 34.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 34.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 7 in favour of any person to whom the Agreement and/or any Contract is being novated.
- 34.5 For the purposes of Clauses 34.6 to 34.10:
- “**Subcontract**” means a contract between the Supplier and a Subcontractor;
- “**Subcontractor**” 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 Goods and Services (or any part of them).
- 34.6 Subject to the Company’s prior written consent pursuant to Clause 34.1, where the Supplier subcontracts any or all of the Goods and Services, the Supplier shall include in each Subcontract and procure that its Subcontractors (and any of their subcontractors of any tier) include in each of their subcontracts of any tier:
- 34.6.1 payment terms substantially similar to those set out in Clause 9, and
- 34.6.2 terms entitling the Supplier or (in respect of a subcontract below the first tier) the payer under the relevant subcontract to terminate that subcontract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law.
- 34.7 On or before the Commencement Date or Order Commencement Date (as applicable), the Supplier shall notify the Company in writing of the name, contact details and details of the legal representatives of any Subcontractor, 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

Subcontractor which the Supplier subsequently involves in the Goods and Services after the Commencement Date or Order Commencement Date (as applicable).

- 34.8 The Company reserves the right to verify whether there are any grounds for excluding any Subcontractor 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 34.8, the Company may request that the information provided by the Supplier under Clause 34.8 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 Subcontractor(s). Further, the Company:
- (a) shall require that the Supplier replace any Subcontractor 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 Subcontractor 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.
- 34.9 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 subcontractor pursuant to Clauses 34.8(a) or 34.8(b).
- 34.10 The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 34.8(a) or 34.8(b).

35 Company's and Supplier's Representative

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

36 Costs

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

37 Severance

If a provision of the Agreement or any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Agreement or any Contract, provided that the operation of this Clause 37 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

38 Publicity

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

39 Corrupt Gifts and Payments of Commission

- 39.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 39.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 39.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 39 at any time during performance of the Agreement and each Contract and during the twelve (12) year period following completion of performance.

40 No Waiver

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

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

41 Entire Contract

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

42 Notices and Service of Process

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

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

The addresses, of the Company and the Supplier are set out in Schedule 1.

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 42.

43 Dispute Resolution

- 43.1 Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 43.
- 43.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Supplier (together the "**Nominated Representatives**") which shall be convened to discuss such

Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.

- 43.3 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 43.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts and Procurement Manager and the Supplier's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 43.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Contracts and Procurement Manager and the Supplier's Managing Director or their deputies in accordance with Clause 43.3 either party may refer the matter for resolution in accordance with the provisions of Clause 46.
- 43.5 Clauses 43.1 to 43.4 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 43.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

44 Counterparts

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

45 Partnerships and Joint Ventures

- 45.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement are joint and several. The Agreement and the liabilities of the partners under the Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Agreement.
- 45.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement are joint and several.

- 45.3 Nothing in the Agreement shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

46 Governing Law and Jurisdiction

- 46.1 This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 46.2 The Company and the Supplier submit, subject to the provisions of this Agreement and any Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

47 Contracts (Rights of Third Parties) Act 1999

- 47.1 Subject to the Replacement Employer's rights in accordance with Clause 30, no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 47.2 Notwithstanding those rights referred to in Clause 47.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

48 Bonds, Warranties and Guarantees

- 48.1 Not used:
- 48.2 Not used
- 48.3 Not used
- 48.4 Not used
- 48.5 Not used
- 48.6 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

- (a) a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Supplier shall require the subcontractor to provide an

accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and

- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 48.6.

- 48.7 If any warranty (including any accompanying parent company guarantee) required under Clause 48.6 is not delivered to the Company in accordance with Clause 48.6 one quarter of the aggregate of the Order Price relative to the Goods provided by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

49 Change of Control

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

50 Interest

- 50.1 If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 50.1 shall be immediately payable by the paying party on demand.
- 50.1 If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 50.1 shall be immediately payable by the paying party on demand.
- 50.2 Interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

51 Freedom of Information

- 51.1 For the purposes of this Clause 51:

“**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.

51.2 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.

51.3 Without prejudice to the generality of Clause 51.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

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

51.4 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.

52 Data Transparency

- 52.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 31 and Clause 51, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 52.2 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 52.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

53 Survival

- 53.1 The provisions of Clauses 5 (Records and Audit), 9.13 (Set-Off), 19 (Warranty), 20 (Intellectual Property Rights), 21 (Termination), 23 (Indemnity and Insurance), 24 (Environmental Claims) 30 (Supplier Personnel), 31 (Confidentiality), 33 (Responsible Procurement), 37 (Severance), 38 (Publicity), 39 (Corrupt Gifts and Payments of Commission, 40 (No Waiver), 41 (Entire Contract), 42 (Notices and Service of Process), 43 (Dispute Resolution), 46 (Governing Law and Jurisdiction), 47 (Contracts (Rights of Third Parties) Act 1999), 51 (Freedom of Information), 52 (Data Transparency), 53 (Survival), 54.1 and 54.5 (Transport for London Group) will survive the termination or expiry of this Agreement and any Contract and continue in full force and effect, along with any other Clauses or Schedules of this Agreement and any Contract necessary to give effect to them. In addition, any other provision of this Agreement and any Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

54 Transport for London Group

54.1 Declaration of Ineffectiveness and Public Procurement Termination Event

- (a) Without prejudice to the Company's right to terminate the Agreement and any Contract under Clause 21.1, Clause 21.2(a) or at common law, the Company may terminate the Agreement and any Contract at any time in accordance with the provisions of this Clause 54.1 in the event that:
- (i) there is a Declaration of Ineffectiveness; or
 - (ii) there is a Public Procurement Termination Event (without prejudice to the Company's rights of termination implied into the Agreement and each Contract by

Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016).

- (b) In the event that any court makes a Declaration of Ineffectiveness or a Public Procurement Termination Event, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 54.1 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 21.1 and this Clause 54.1 or the Cessation Plan, the provisions of this Clause 54.1 and the Cessation Plan 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:
 - (i) an orderly and efficient cessation of the supply of Goods and Services or (at the Company's request) a transition of the supply of Goods and Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 54.1 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 costs shall be based on any comparable costs or charges agreed as part of the Agreement and any Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and any Contract in accordance with this Clause 54.1.

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

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

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

54.3 The Company's business

The Supplier acknowledges that it:

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

54.4 Best value

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

54.5 Data Protection and Cyber Security

- (a) The Supplier shall comply with all of its obligations under the Data Protection Legislation.
- (b) The Supplier shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

54.6 Conflict of Interest

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

54.7 Equality and Diversity

54.7.1 Without limiting the generality of any other provision of the Agreement and any Contract, the Supplier:

- (a) shall not unlawfully discriminate;

- (b) shall procure that its employees and agents do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the supply of the Goods and/or 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.

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

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

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

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

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

54.7.5 Within 3 Working Days after the commencement date of the Agreement, the Supplier shall provide to the Company a copy of its EDI Policy (in the form submitted to the Company before the parties entered into the Agreement). The Supplier shall keep its EDI Policy under review for the duration of the Agreement and shall promptly provide the Company with any such revised EDI Policy.

54.8 **Work Related Road Risk**

54.8.1 For the purposes of Clauses 54.8.2 to 54.8.10 (inclusive) of this Agreement, the following expressions shall have the following meanings:

“Alternative Scheme”	has the meaning given to it in Clause 54.8.2(a);
“Approved Progressive Driver Training”	an ongoing programme of Drivers’ training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment (including on-road experience from a cyclist’s perspective), which is required to be completed at least once every 5 years;
“Car-derived Van”	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;
“Category N2 HGV”	a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
“Category N3 HGV”	a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;
“CLOCS Standard”	means the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: www.clocs.org.uk
“Collision Report”	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;

“Delivery and Servicing Vehicle”	a HGV, a Van or a Car-derived Van;
“Direct Vision Standard” or “DVS”	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: www.tfl.gov.uk
“Driver”	any employee of the Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Goods and Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating commercial vehicles including vans, HGV, coaches and powered two wheelers. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
“Gold Accreditation”	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“HGV”	a vehicle with a MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried

safely while used on the road;

“Silver Accreditation”

the minimum level of accreditation within the FORS Standard acceptable for the contract schedule, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Van”

a vehicle with a MAM not exceeding 3,500 kilograms; and

“WRRR Self-Certification Report”

has the meaning given to it in Clause 54.8.8.

Fleet Operator Recognition Scheme Accreditation

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

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

Safety Features on HGVs

54.8.3 The Supplier shall ensure that every HGV, which it uses to provide the Goods and Services, shall be fitted with safety features consistent with the FORS Silver Accreditation.

Construction Logistics and Community Safety (CLOCS)

54.8.4 Where applicable, for Contracts for works exceeding a value of £1m:

- (a) the Supplier shall comply with the CLOCS Standard

- (b) the Supplier shall ensure that the conditions at all sites and locations where:
 - (i) the Services are being delivered, or
 - (ii) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,are appropriate for each Category N3 HGV being used in the provision of the Goods and Services.

Direct Vision Standard (DVS)

54.8.5 Where applicable, for Contracts exceeding a value of £1m where the duration will exceed 12 months and a significant amount of the work will be conducted within the GLA boundaries:

- (a) The Supplier shall comply with the DVS Schedule attached to this Agreement; and
- (b) the Supplier shall ensure that:
 - (i) from and including 26 October 2019, all Category N3 HGVs used in the provision of Goods and Services achieve a minimum of a one (1) star Direct Vision Standard rating;
 - (ii) from and including 26 October 2023 all Category N3 HGVs used in the provision of the Goods and Services achieve a minimum of three (3) star Direct Vision Standard rating.

Driver Training

54.8.6 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and Services the Supplier shall ensure that each of its Drivers attends Approved Progressive Driver Training throughout the duration of the Agreement and each relevant Contract.

Collision Reporting

54.8.7 Where the Supplier operates Delivery and Servicing Vehicles to deliver the Agreement, the Supplier shall:

- (a) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five Working Days of a written request from the Company at any time.

Self Certification of Compliance

54.8.8 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and Services, within 90 days of the Commencement Date, the Supplier shall provide a written report to the Company detailing its compliance with Clauses 54.8.2, 54.8.3, 54.8.5, 54.8.6 and 54.8.7 (as applicable) of this Agreement (the "WRRR Self-Certification Report"). The Supplier shall provide updates of the WRRR Self-Certification Report to the Company on each six month anniversary of its submission of the initial WRRR Self-Certification Report.

Obligations of the Supplier regarding subcontractors

54.8.9 The Supplier shall ensure that those of its sub-contractors who operate Category N2 HGVs, Category N3 HGVs, Vans and/or Car-derived Vans to provide the Goods and Services shall comply with the corresponding provisions of this Agreement:

- (a) Clause 54.8.2, 54.8.6, 54.8.7, 54.8.8; and
- (b) for Category N2 HGVs- Clauses 54.8.3; and
- (c) for Category N3 HGVs- Clauses 54.8.3, and, where applicable 54.8.4, 54.8.5 ;

as if those sub-contractors were a party to this Agreement.

Failure to Comply

54.8.10 Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Supplier fails to comply with any of Clauses 54.8.2, 54.8.3 (where applicable), 54.8.5 (where applicable), 54.8.6, 54.8.7, 54.8.8 and 54.8.9:

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

55 CompeteFor

55.1 Without prejudice to Clause 34 the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier.

- 55.2 The Supplier will use all reasonable endeavours to ensure that its sub-contractors (for the purposes of this clause, the “**Supplier’s Sub-contractors**”) use CompeteFor, on a non-exclusive basis, to make available to other sub-contractors all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier’s Sub-contractors.
- 55.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement and each Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier’s Sub-contractors, as required by this Clause 55, and will report this information on a quarterly basis by way of email to the Company Representative.

56 Criminal Record Declarations

- 56.1 For the purposes of this Clause 56:
- “**Relevant Individual**” means any servant, employee, officer, consultant or agent of either the Supplier or any subcontractor or supplier involved in the provision of, or intended to be involved in provision of, any aspect of the Goods and Services; and
- “**Relevant Conviction**” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.
- 56.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual providing any of the Goods and Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 56.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Goods and Services any Relevant Individual who has disclosed a Relevant Conviction.
- 56.4 The Company shall have the right in accordance with the audit rights set out in Clause 5 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 56 at any time during performance of this Agreement and each Contract.


- 56.5 If the Supplier fails to comply with the requirements under Clauses 56.2 and/or 56.3 the Company may, without prejudice to its rights under Clause 21.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Agreement and each Contract and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods and Services unless (in the case of non-compliance with Clause 56.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 56.2.
- 56.6 A persistent breach of Clause 56.2 and/or Clause 56.3 by the Supplier shall entitle the Company to terminate the Agreement and each Contract in whole or in part with immediate effect in accordance with Clause 21.1(a).
- 56.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Agreement and each Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods and Services.
- 56.8 Nothing in this Clause 56 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and each Contract and the Supplier's responsibilities in respect of the provision of the Goods and Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 56.

Schedule 1
Detailed Terms

Commencement Date	16 th August 2021
Term	5 years
Warranty Period	2 years warranty for parts used for maintenance, and 12 months warranty for equipment supplied for purchase
Initial Period	5 years
Supplier Address for service of notices (Clause 42): Telephone: Email address:	Hiremech Limited Orbital 7 Orbital Way, Cannock, England, WS11 8XW [REDACTED] [REDACTED]
Company Address for service of notices (Clause 42): Telephone: Email address:	London Underground Limited 5 Endeavour Square, London E20 1JN [REDACTED]
Contact Details for Invoice Payment (as per Clause 9.6):	[REDACTED]
Volume Discount Percentage	None
Framework Specification	See Schedule 3
Additional standards pursuant to Clause 3.3(d) and 3.5(d):	N/A
The Liquidated Damages for delay for the	

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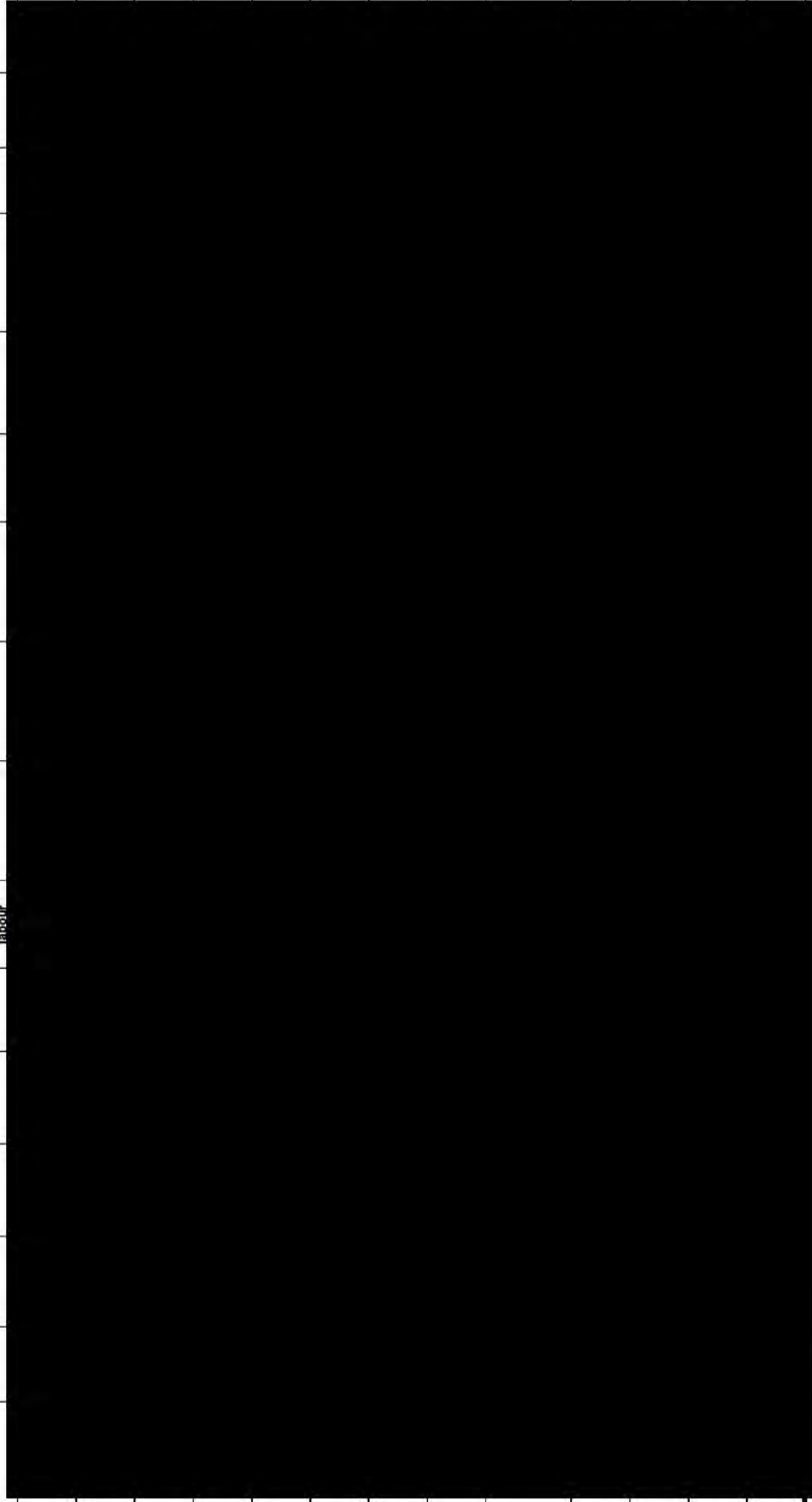
<p>purpose of Clause 10.3 payable for such Goods are:</p> <p>The period of delay over which the Liquidated Damages shall be calculated for the purpose of Clause 10.3 is every:</p>	<p>2.5% of the individual order price</p> <p>Week, from the delivery date agreed and acknowledged by the Supplier</p>
<p>The maximum amount of Liquidated Damages payable under Clause 10.3 expressed as a percentage of the price payable for such Goods is:</p>	<p>10% of the individual order price</p>
<p>The Liquidated Damages for delay for the purpose of Clause 13.13 payable for such Services are:</p> <p>The period of delay over which the Liquidated Damages shall be calculated for the purpose of Clause 13.13 is every:</p> <p>The maximum amount of Liquidated Damages payable under Clause 13.13 expressed as a percentage of the price payable for such Services is:</p>	<p>2.5% of the individual order price per week</p> <p>Week, from the delivery date agreed and acknowledged by the Supplier</p> <p>10% of the individual order price</p>
<p>Security required pursuant to Clause 48.1:</p> <p>Bond</p> <p>Parent Company Guarantee</p>	<p>Not required</p> <p>Not required</p>
<p>Application for payment dates</p>	<p>Please see Schedule 2</p>
<p>The following Supplier Personnel are Key Personnel</p>	

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June 2020

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Document Title



Hire Scenario

Truck Type Required	Power Type	Number of Wheels	Cab Enclosure Type (plastic, rigid cab, or open with roll bar)	Mast Height	Lift Height	Weight Capacity (Tonnes)	Lowered Height	Fork Length	Fork Width	Wheels & Tyres	Short-Term Hire Rate (1 week)	All Additional Charges for 1 week hire (delivery costs, etc.)	3 week Hire Cost	All Additional Charges for 3 week hire (delivery costs, etc.)	Supplier Proposed Vehicle Make	Supplier Proposed Vehicle Model
High Voltage Power Cable Stores (HVPCS)	GAS	4	ENCLOSED	not specified	5500	7	2700	1800	120	SOLID PUNCTURE PROOF						
4 WHEEL COUNTER BALANCE																



Maintenance Rates

Electric Trucks

Site	Make	Model	Serial Number	Cost of Servicing per visit (\$ monthly)	Battery Replacement Cost	Replacement Fork Cost	Tyre Replacement Cost	Puncture Repair Cost
Ealing Common Depot	Linde	20L-1	H2X386Z01063					
Ealing Common Depot	Linde	E30-03-600	H2X336A01038					
Ealing Common Depot	Linde	R10C-03	G1X115W02251					
Hammersmith Depot	Yale	ERC10RCL	5021A00100P					
Lillie Bridge Depot	Caterpillar	F50DSA	9MC428					
Lillie Bridge Depot	Toyota	7FBEST13	E11370					
Lillie Bridge Depot	Toyota	7FBMF35	E13959					
Lillie Bridge Depot	Bendi	13312-6055	TL8742					
Lillie Bridge Depot	Bendi	13312-6055	TL8743					
Lillie Bridge Depot	Caterpillar	GP25N	ET17DL 51667					
Lillie Bridge Depot (MIS Stores)	Jungheinrich	EFG220	FN331246					
Lillie Bridge Depot (TDU)	Jungheinrich	EFG425K	FN397084					

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Materials & Facilities, Ruislip	Caterpillar	NR25NH2X	RTB35A 10059
Neasden Depot	Toyota	FBM30	E20083
Neasden Depot	Linde	R14	G1X115M01403
Neasden Depot	Caterpillar	NR16N	8NIN60058
Neasden Depot	Toyota	8FBMKT30	E10227
Neasden Depot	Caterpillar	EC30NY	A4EC341138
Northern Line Track Stores	Manitou	M30-4	796428
Northumberland Park Depot	Toyota	7FBMF40	E10114
Northumberland Park Depot	Toyota	6FBRE16	E31857
Northumberland Park Depot	Toyota	7FBMF40	E12005
Northumberland Park Depot	Toyota	7FBEST13	11442
REW	Toyota	7FBEST13	E10727
REW	Jungheinrich	EFGDF16-600	89914962

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Ruislip Depot	Toyota	7FB25	E16744
Ruislip Depot	BT Cargo	CBE20F	CE258834
Ruislip Depot	Toyota	5 FBE 18	E26270
Ruislip Depot	Jungheinrich	ETV110	91039678
Test House Acton	Toyota	FBESF15	E12029
Track & Signals Acton	Flexi	Euro 1000	95047
Track & Signals Acton	Caterpillar	EP35K	9B50076
Track & Signals Ruislip	Caterpillar	DP20	5BN10303
Track & Signals Ruislip	Jungheinrich	EFX413	FN420814/91868
Upminster Depot	Yale	ERC40AKE	L2800041
Upminster Depot	Linde	20L-1	H2X386Z00985
Waterloo & City Depot	Caterpillar	EP20NT	ETB1370809

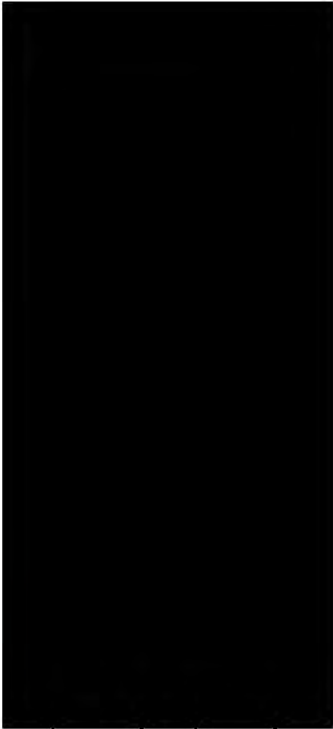




Non-Electric Trucks

Site	Make	Model	Serial Number	Cost of Servicing per visit (6 monthly)	Battery Replacement Cost	Replacement Fork Cost	Tyre Replacement Cost	Puncture Repair Cost
Acton AC07 Stores	Caterpillar	GC40K	AT8 702218					
Greenwich Power Station	Lansing Henley		8702H0301761					
Greenwich Power Station	Conveyancer		416 30039					
Hainault Depot	Toyota	42-7FGF20	E13377					
Materials & Facilities Ruislip	Linde	H30D	H2X393W00614					
Materials & Facilities Ruislip	JCB	TLT35D 4X4	2253010					
Track & Signals Acton	Flexi	Flexi Narrow Aisle Generation 4	84819					
Track & Signals Ruislip	Flexi	Narrow Aisle Generation 4	115505					
Track & Signals	Jungheinrich	DFG425	348433					

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Ruislip Depot	Toyota	BT LWE200	6079085	Pallet
Stonebridge Park Depot	Caterpillar	NPP16N2	RTB02A00590	Power Pallet
Track & Signal Bollo Lane	Caterpillar	NSP12N2	RTB10A10299	Power Pallet

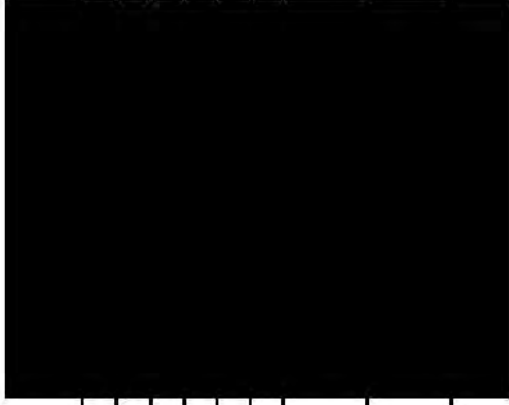
MEWPS

Site	Make	Model	Serial Number	Type of Vehicle	Cost of Servicing per visit (6 monthly)	Battery Replacement Cost
Hainault Depot	Genie	S1392	80243	MEWP		
Hainault Depot	Wilmat	PDCB1000	20898-2	MEWP		
Northumberland Park Depot	Genie	S1392	GS3006A-8244	MEWP		
Northumberland Park Depot	Genie	30/20N	Z30N0811435	MEWP		
Ruislip Depot	Genie	GR15	GR07-10283	MEWP		
Ruislip Depot	Genie	GS1932	GS3008C-433	MEWP		
Ruislip Depot	Genie	GS1932	GS3006A-80229	MEWP		
Ruislip Depot	Nifty	HR12	126292	MEWP		
Upminster Depot	Nifty	HR12	HR12/10233	MEWP		
Upminster Depot	Genie	GS2646	GS40682349	MEWP		
Ealing Common Depot	Nifty	HR12	124155	MEWP		
Ealing Common Depot	Genie	GS2646	82347	MEWP		
Neasden Depot	Genie	GR20	GR08-11766	MEWP		
Neasden Depot	Genie	GS2632	84948	MEWP		
Neasden Depot	Genie	GR20	GR11-17451	MEWP		
Stonebridge Park Depot	Genie	GS1392	GS3005A-76894	MEWP		
Hammersmith Depot	Genie	GS2632	84289	MEWP		
Hammersmith Depot	Genie	GR15	GRP49395	MEWP		

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Waterloo & City Depot	Upright	MX19	51306	MEWP	
Greenwich Power Station	Nifty	TD120	411709	Boom Lift / MEWP	
Greenwich Power Station	Upright	UL40	19223	MEWP	
Uniform Stores, 15 Penton Street	Liftmate	TXL500L	1203011	MEWP	
Neasden Depot	JLG/E3	00AJP	not available	MEWP	
Stratford Market Depot	Genie	Z.45/25DC	HL7008	MEWP	
Cockfosters Depot				Boom Lift / MEWP	
	JLG	E300AJP	0300065813		
Northfields Depot	JLG	E300AJP	0300065754	Boom Lift / MEWP	

Miscellaneous

Site	Make	Model	Serial Number	Type of Vehicle	Cost of Servicing per visit (6 monthly)	Battery Replacement Cost
Track & Signals Ruislip	Nilfisk	RS501	70502990	Cleaner		
Materials & Facilities, Ruislip	Takeuchi	TB2150	514600460	Digger		
Northumberland Park Depot	Wilmat	20898-1	PDCR1R-20898-1	Pedestrian Stacker		
Ruislip Depot	LogiTrans	SGL 1600v)	RP01261750G9	Pedestrian Stacker		
Stonebridge Park Depot	Wilmat	PDCB750	200068	Pedestrian Stacker		
Uniform Stores, 15 Penton Street	BT	Pedestrian Stacker	LAM230	Pedestrian Stacker		
Welded Rail	BobCat	BobCat	509616822	Rough Terrain		
Track and Signals Ruislip	Bravo	S-Lift	N091036	Scissor Lift		
Lillie Bridge Depot	VKP/Q1/Commander	50.040267	SB50QA456	Sideloader		
Lillie Bridge Depot	Logi Trans	LF1001	082E04057833	Stacker		
Lillie Bridge Depot	Logi Trans	LF1002	082e04057832	Stacker		
Lillie Bridge Depot	Stacker Table	Stacker Table	0910046	Stacker		
Lillie Bridge Depot	Genie	Table/Stacker Table	0910045	Stacker		
Lillie Bridge Depot	Green/	Stacker Table	16405	Stacker		
Lillie Bridge Depot	BT/BTL	SF1200/8	133807-1984	Stacker		
Track and Signals Ruislip	Karcher	B250R	10092	Sweeper		

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Lillie Bridge Depot	Robur	TR30	14C013	Tow tractor
Northumberland Park Depot	Bradshaw	FB2	184345	Tow truck
Ruislip Depot	Bradshaw	FB2 (4W)	177091	Tow truck
Ruislip Depot	Bradshaw	FB2 (4W)	198572	Tow truck
Ealing Common Depot	Bradshaw	SC1-59	110074	Tow truck
Neasden Depot	Bradshaw	PC30	3030456	Tow truck
Neasden Depot	Bradshaw	PC30	3030457	Tow truck
Neasden Depot	Bradshaw	PC30	3030455	Tow truck
Neasden Depot	Bradshaw	PCF6	F030469	Tow truck
Stonebridge Park Depot	Bradshaw	PCF6	F030471	Tow truck
REW	BEV/EP4 Flat Bed		Q7820	Tow truck
Track & Signals Acton	Brit Truck	HPT	8893	Hand Pallet Truck
Track & Signals Acton	Brit Truck	HPT	108823	Hand Pallet Truck
Cockfosters Depot	Bradshaw	PCF6	F030468	Tow Truck
Upminster Depot	Caterpillar	NSP12N2	RTB10A10137	Pedestrian Stacker

Schedule 3

Framework Specification

Forklift Trucks and Sundry Battery-Operated Equipment at TFL Sites Technical Specification

- **Planned Preventative Maintenance (Service)**
- **Corrective Maintenance (Service)**
- **Equipment for Hire (Service)**
- **Supply of Equipment for Purchase (Goods)**

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1 Introduction

This specification outlines the requirements for planned preventative maintenance (PPM), corrective maintenance, hire and supply of forklift trucks (FLT's) battery operated equipment and Mobile Elevated Working Platforms (MEWPs) at various TFL sites.

Forklift trucks are essential for transporting heavy materials across TFL depots including but not limited to train parts such as bogies, axles, wheelsets, cables, cable drums and museum exhibit items. Forklifts are also used daily for unloading deliveries into TFL sites. Battery pallet trucks move lighter loads around TFL sites. MEWPS are required for safe working at height. Equipment supplied and maintained under this contract must be able to perform the aforementioned tasks, in order to be considered fit for purpose.

This is a technical specification inclusive of all works, unless specifically indicated otherwise, required to meet the operating requirements and performance levels, for the maintenance & fault rectification of the equipment identified in the "Maintenance Matrix" of this specification document.

All equipment included within this specification shall nominally be operationally available 24 hours per day, 365 days per year.

2 Applicable Regulations and Standards

Contractors, their employees and any sub-Contractor(s) used shall ensure that they comply with all relevant legislation including any subsequent amendments, including (but not limited to) the following:

2.1 Transport for London (TfL) Standards and Guidance:

S1043	Obsolescence Management
S1069	Low Voltage Electrical Installations
S1191	Rolling stock Specific Depot Plant and Equipment
S1193	Electromagnetic Compatibility with LU Signalling System Assets
S1222	Electromagnetic Compatibility
S1552	Contract QUENSH Conditions
S1556	Incident reporting and investigating
G0043	Obsolescence Management

2.2 Regulations or Latest Revision of the Regulation

HASAW	Health and Safety at Work etc. Act 1974
LOLER	Lifting Operations and Lifting Equipment Regulations 1998
PUWER	Provision and Use of Work Equipment Regulations 1998

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	Electromagnetic Compatibility Regulations 2006
	Electricity at Work Regulations 1989
	Supply of Machinery (Safety) (Amendment) Regulations 1994
	Environmental Protection Act 1990
PPE	Personal Protective Equipment at Work Regulations 1992
	The Control of Noise at Work Regulations 2005
	The Control of Asbestos Regulations 2006
	Control of Vibration at Work Regulations 2005
	Management of Health and Safety at Work Regulations 1999
	Manual Handling Operations Regulations 1992
	Workplace (Health, Safety and Welfare) Regulations 1992
COSHH	Control of Substances Hazardous to Health 2002

2.3 British and European Standards

BS 7121	Code of practice for safe use of cranes
BS 7671	Requirements for Electrical Installations, IET Wiring Regulations 18th Edition & Amendments
BS EN 1493	Vehicle lifts
BS EN 60204	Safety of machinery. Electrical equipment of machines

3 General Information

3.1 Contact Details & Site Addresses:

Site Manager's / site addresses to be confirmed on award of contract.

3.2 Asset Manager Contact Details:

Contact details and name of asset manager to be confirmed on award of contract.

3.3 Times of Working:

On site work is to be carried out at TFL sites all within the boundaries of the M25. Nearly all sites are open 24/7; the contractor will be notified at award of contract of any sites with specific opening times.

4 Asset Details

Refer to Maintenance Matrix. Assets purchased under this contract will be governed by this specification and be added to the Maintenance Matrix when the Contract is live. The technical specifications of the equipment which will be hired or supplied under this contract, are identified in "Equipment to Purchase or Continue Hiring".

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4.1 Equipment Performance

All plant as a minimum will meet the safety and performance criteria set out in the applicable operations and maintenance manual for that piece of equipment.

4.2 Obsolescence:

The Contractor shall bring to the attention of the asset manager any components that have or are in the near future going to become obsolete on equipment the contractor maintains on behalf of TFL.

4.3 Intellectual Property Rights

To be owned by TFL.

All vehicle access codes to be provided to the asset manager.

4.4 Warranty

The Contractor shall provide a one-year warranty for all parts used when carrying out PPM and corrective maintenance tasks.

Parts used will as a minimum be manufacturers approved parts.

Planned Preventative Maintenance & Fault Rectification

3.4 Leading Particulars

The contract shall run for 5 years encompassing planned preventative maintenance and fault rectification.

PPM is to be undertaken at six-monthly intervals for all assets.

Statutory Examinations will be undertaken by a 3rd party employed and managed by TFL.

3.5 Planned Preventative Maintenance

The Contractor shall provide a Maintenance Plan and it should detail the approach and procedure for Planned Preventative Maintenance.

This Maintenance Plan should include method statement (s) for maintaining the equipment outlined in the "Maintenance Matrix" throughout the life of the contract.

All equipment is to be maintained to manufacturers requirements as a minimum, taking into account machine condition and hours run.

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Parts which are required to be changed are to be genuine manufacturer's replacements, or of equivalent quality, which will need to be proven.

Lubricants are to be as per manufacturers recommendations and agreed with The Company's Representative, submitting Product Data Sheets and COSHH sheets if required.

Waste lubricants, oils, parts, filters etc. generated at all times by The Contractor are to be removed from site and disposed of by The Contractor, who shall ensure they adhere to all relevant legislation regarding removal and disposal of such waste.

The Contractor shall inspect and test the equipment and carry out any remedial work considered necessary to ensure that the equipment performs to manufacturers details listed in the O&M Manual and conforms to the design specification relevant to each particular item of the equipment.

The Contractor shall maintain the equipment to ensure that the equipment operates to the agreed level of performance within the limits/parameters set out in the O&M Manual.

The Contractor shall list all remedial actions taken on site from PPM visits and quantify any new components fitted/changed including filters etc.

3.6 Materials

The Contractor is responsible for providing all tools and specialist equipment to meet the scope of works. All materials, replacement parts, components, tools, specialist equipment and temporary plant are to be supplied by The Contractor.

All materials, components and equipment shall meet or exceed "The Company and National/International Standards" (BSI, CICC, IET etc.) relevant to the task and be supplied under the requirements of BS EN ISO 9001 Quality management systems (or equivalent), or any other recognised standards defined within the original manufacturers specification.

The Contractor shall ensure all components and materials are suitably identified and maintain adequate records to satisfy an audit trail.

All materials and spare parts fitted to the equipment as replacements must be new and be suitable for that equipment.

The Contractor shall comply with TFL's Code of Practice for Fire Safety of Materials used in the Underground and to TFL's Hazardous Substances Database.

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3.7 Modifications to Equipment

Any proposed alterations/modifications to the manufacturer's equipment need to be agreed in writing with the contracts manager before any work is undertaken.

Such modifications are to be carried out to The Company standards and with materials and spares approved by The Company.

The Contractor shall be responsible for amending all drawings and other relevant documentation and submitting them to the Contracts Manager for approval before modifications are carried out. The Contractor shall also be required to furnish The Company with modified drawings following modification and in accordance with the timescales set out in 4.2.3

Accessories

3.8 Maintenance Reporting

Service reports will be electronically forwarded to the asset manager within 5 working days of the service visit.

The report will highlight work carried out, function tests, items inspected and any faults found on the equipment.

Any repairs or faults not resolved on the day of the visit need to be brought to the attention of the asset manager within 24 hours.

- **Testing**

Testing of the equipment shall be carried out by The Contractor to confirm that the specific performance levels are achieved.

A 3rd party will be employed by TFL to carry out statutory examinations

Corrective Maintenance

- **Corrective Maintenance**

The contractor shall address their approach and procedure with regard to Corrective Maintenance (Unplanned Maintenance) as part of the Maintenance Plan.

Corrective Maintenance means work carried out in response to a failure of any equipment and includes the response by The Contractor and rectification of reported breakdown and equipment failures or other problems.

To assist quick responsive corrective maintenance, The Contractor shall provide a manned telephone and fault reporting point (24hrs, 7 days a week)

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to which Company staff can report failures, with a maximum 24 hours' time to site response time.

All temporary repairs shall as a minimum be to a standard acceptable to the original manufacturer's specification or a higher standard where applicable.

In all cases The Contractor shall supply The Company's Representative with an update on progress within forty-eight (48) hours and as a minimum weekly thereafter until the fault has been rectified.

- **Fault Notification**

Faults are generated via the London underground Control Centre (LUCC). This is manned 24 hours a day, 7 days a week. The Company's representative, on identifying a fault, shall contact the LUCC, who will communicate details to The Contractor's office by email or telephone.

Upon receipt of the LUCC communication The Contractor shall carry out the work in accordance with this contract or as per Manufacturer's recommendation.

The LUCC's communication will detail the fault, location and fault number. Each fault will have a unique reference number. This number shall be quoted on all relevant correspondence.



The LUCC will be contactable 24 hours per day – 365 days per year.

The following information will be provided, as a minimum, for each fault:

- Contract Number
- Site location
- The Company's fault number
- Reported fault (including fault type)

- **Fault Close-Out**

On rectification of a fault, The Company's LUCC shall be informed by submitting The Company's original emailed Fault Report suitably annotated with details of the rectification via email, phone or portal. LUCC must be notified within 72 hours of a faults rectification in order to ensure our records are accurate and up-to-date.

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The following information is required:

- Time and date of fault receipt
- Time and date of arrival on site
- Details of action taken to rectify the fault
- If appropriate, any hindrance to fault rectification due to The Company's operational requirements
- Fitter/technician's name
- Date and time of departure from site
- An indication of the fault and the likely cause
- Time and date when fault rectification is communicated to the Fault Report Centre
- Signature of The Company's representative and
- Signature of Contractor's Personnel (including identification number)

Where it is not possible to return the equipment to service at the time of the visit, a return visit will only be paid for by The Company where the breakdown is a result of third-party interference or other circumstances totally outside of The Contractor's control.

In the event of a fault beyond the scope of the service and maintenance schedule, The Contractor's engineer shall make safe the equipment and provide a report to The Company's Asset Performance Control Centre the Duty Depot Manager /Operations Maintenance Manager and The Company's Depot Plant & Equipment Project Manager immediately.

4 Safety, Training and Method Statements

4.1 Safety

The Contractor shall at all times ensure they adhere to all relevant Health & Safety Legislation.

The Contractor must conform to all aspects of the TFL Contract QUENSH Conditions Revision 18.

Safety incidents will be measured via KPI references S1 and S2. Any injuries as per RIDDOR will be recorded by a Company Representative. The Supplier and any involved Company Operatives must report any incidents of injury or non-compliance with safety protocol immediately to the Contract Manager. The Supplier must provide a detailed incident report for any incidents involving the Supplier which results in serious injuries within 24 hours of the injury being reported to the Supplier's Representative. For non-serious injuries the report must be provided within three working days. The report must address the below:

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- Full details of the incident: (timeline, personnel involved, details of injury etc.)

After due investigation of an incident by both parties, a meeting arranged by the Contract Manager will take place to discuss the below.

- Lessons learned from the incident
- Procedural Changes to prevent reoccurrence in future
- Identification of where correct safety practices was not followed
- Analysis of process which caused the accident

The above points will be agreed in writing by the Supplier's Representative, the Contract Manager and Senior Commercial Manager.

Two serious injuries as recorded under KPI S1 within a six-month period may result in contract termination.

4.2 Contractor Staff Training

Training is to be arranged and kept up to date by The Contractor for their employees to enable them to fulfil their contractual obligations. All Contractors' employees need to be fully aware of the dangers of working within depots, including working adjacent to pitted roads, electrified tracks and overhead conductor rails.

The Contractor shall ensure that all Contractors Personnel working on the Equipment are qualified and trained to undertake work and comply with the licensing procedure as set out in the latest issue of The Company's procedure:

They shall all hold, as a minimum, the following:

- Non-Trackside Sentinel Card (with the London Underground Industry Common Induction)
- A LUL Passport to Depot (LUL Only)
- Relevant Depot Tour (LUL Only)
- Safe Isolation Level 3 (LUL Only)
- Individual Working Alone (LUL Only)

Contractor's staff undertaking electrical isolations of shall hold a valid LUL Safe Isolations Level Three Certificate.

The Contractor shall ensure that all Contractor's Personnel working on the Equipment are qualified and trained to undertake such work and comply with

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the licensing procedure as set out in the latest issue of The Company's procedure PERMIT TO WORK CERTIFICATES as amended from time to time.

Employee training records shall be made available to The Company's Representative as soon as these are updated or renewed.

- Greenwich Power Station requires a valid Police National Computer (PNC) report / certificate to be submitted to [REDACTED] Incidents of Supplier Personnel [REDACTED] KPI S2. Any incidents will result in a Red KPI score as detailed in Schedule 10.

Training courses are required to be booked by The Contractor through The Company's SkillsTraining@tubelines.com email address. The Contractor is responsible for the full costs of this training and associated costs.

Employee training records shall be made available to The Company's Representative as soon as these are updated or renewed.

4.3 Method Statements and Risk Assessments

A Method Statement and Risk Assessment, including any COSHH Assessments where necessary, for all work to be carried out, will be required prior to commencement of work, and must be made available and presented on site when work is being carried out.

Any material or substance of a hazardous nature being offered to The Company as a result of this contract must be highlighted before contract is placed. Copies of any assessments carried out and Product Data Sheets must accompany contract documentation.

Waste consignment notes must be made available to The Company's Representative, at agreed intervals, in line with the current legislation.

Maintenance Job Sheets to also include time and date, asset numbers, work order numbers, locations and Contractors identity.

5 Equipment Safety

This is assumed to have been covered in the QUENSH document submitted but to reiterate a few items.

5.1 Machine Guarding

Guards shall be maintained for all unprotected moving parts to current PUWER Regs. 1998 (Provision and Use of Work Equipment Regulations 1998).

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5.2 Safety Switches

All safety switches shall operate correctly at the levels originally designed by the manufacturer unless written consent to the contrary has been provided by the Contract Manager.

5.3 Working at Heights

The Contractor's attention is drawn to Paragraph 47 of QUENSH. The Contractor shall provide a site-specific risk assessment to determine the level of protection required for all work carried out above the ground level of the site, which must be approved by The Company's Safety Team prior to any work being carried out.

5.4 Third Party Damage

For all incidents of third-party damage, The Contractor shall prove to the Contract Manager's satisfaction that the damage is directly attributable to an identified third party, and in such cases The Contractor shall make good the damage on the authorisation of the Contract Manager.

6 Contract Management

6.1 Documentation and Records

All documents and records requested by the Company from the Contractor and its subcontractors are required within 7 working days, unless otherwise stated in writing by the Contract Manager.

6.2 Contract Meetings

Contract review meetings (CRM) will be held a minimum of once a calendar year, with dates to be agreed by the Contract Manager, at least 4 weeks in advance. Meetings outside of the CRM shall be held as and when required by both parties, either in person or via conference call.

7 Supply

This section of the specification describes the scope of works that will be included in the supply element of the contract:

- Supply of Forklift Trucks, Pallet Trucks, MEWPs and miscellaneous plant equipment
- 2-years warranty for such equipment
- PPM and Corrective Maintenance for these pieces of equipment. Incorporated into the maintenance regime described in this specification in place for vehicles which TfL already owns

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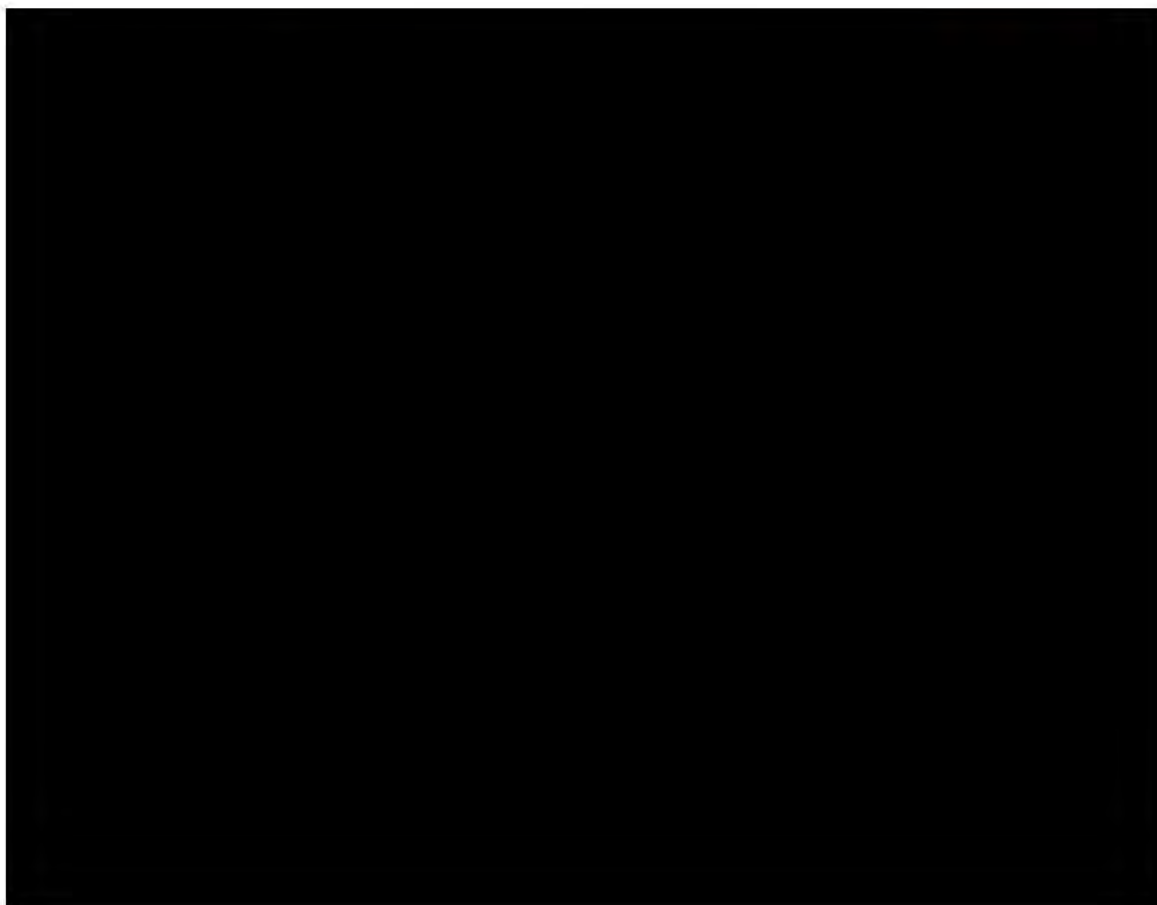
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- Any training required in order for TfL staff to operate equipment sold. This is to include safe use of system, basic fault resets and safety checks before use. Operator user manual to be made available to all attendees

8 Hire

Ver

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Schedule 4 Form of Order

Master Agreement for the supply of Goods and Services
Contract Reference Number: 01540

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE SUPPLIER PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE ABOVE-REFERENCED MASTER AGREEMENT FOR THE SUPPLY OF GOODS AND SERVICES.

Notes: 1. Please confirm receipt of this Order immediately by signing and dating where indicated and returning to the Company's Representative.
2. Please quote the Contract Reference Number and the Order number in all correspondence and on all applications for payment.
3. Please address all correspondence and enquiries to the Company's Representative.

Company:	London Underground Limited
Supplier:	
Contract Reference Number:	
Order Number:	
Order Title:	
Company's Representative: Address for service of notices: Telephone: Fax:	
Supplier Representative: Address for service of notices: Telephone: Fax:	
Delivery Address:	
Expected Order Delivery Date and times for delivery:	
Expected Order Completion Date:	
Order Specification:	
Order Programme:	

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Order Price (exclusive of VAT) calculated in accordance with Schedule 2:	
Order Payment Profile and application for payment dates:	Please see Schedule 2
Additional Comments/Special Instructions:	

Signed by:
Title:
On behalf of:
London Underground Limited
.....
Date:.....

Signed by:
Title:
On behalf of:
Hiremech Limited
.....
Date:.....

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Appendix 1
Not used (Specification is Schedule 3)

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Schedule 5

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods to be supplied and extent of the Services to be carried out.

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- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.
- 8 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with any applicable rates set out in Schedule 2.
- 9 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Agreement and the relevant Contract, including, but not limited to the Specification and the Order Programme.
- 10 Strict adherence to the procedure described in this Schedule 5 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 5 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

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Appendix 1
Form of Variation Proposal/Variation Order

To:	From:
------------	--------------

Contract Reference Number:
Order Number:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VARIATION ORDER)	
Description of change:	
Reason for changes and impact (if any) on Contract:	
Variation Proposal Authorised by:	Proposal Date:
PART B (TO BE COMPLETED BY THE SUPPLIER)	
Price Breakdown Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Order Delivery Date and/or Expected Order Completion Date:	
Supplier's Representative:	
Print Name:	Signature: Date:
Completed document to be returned to the Company's Representative	

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PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)

Comment on Parts A and B:

Variation Authorisation

Company's Representative:

Print Name:

Signature:

Date:

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F0780 A18 Contract Menu

This Contract Menu must be used in conjunction with
Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

Contract Menu

Contract No:	Tf01540
Contract Name	PPM FLT's, MEWP's and Battery Carts
Client:	LONDON UNDERGROUND Ltd
Supplier:	Hiremech Limited
Principal Contractor:	Yes <input type="checkbox"/>

Guidance

The menu is a tool which is used by the Client to identify conditions that apply to specific contracts and communicate these conditions to the Supplier.

How to complete the menu

- 1) The Client evaluates the scope of work and enters 'Y' or 'N' in the 'Identified by the Client' column of the menu against each condition selected as applicable or not applicable to the Contract. In the 'Other documents / comments' column the Client can make references to other documents which are supplementary information which is available although not contained within the QUENSH manual but should be considered by the Supplier when they review the conditions. Copies of any additional documents identified in the menu shall be made available to the Supplier. All documents referenced in the Menu shall be current issue, unless otherwise advised. This column can also be used to communicate information (comments) to the Supplier which may be of use to the Supplier when reviewing the conditions.
- 2) The Client fills in 'Client menu (Invitation to Tender)' section on the last page of the menu and issues the menu as part of the ITT.
 - a) The Supplier receives the ITT, evaluates the scope of work and, as a requirement of the tendering process, inserts 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable. These selections may be different from those identified by the Client. Where the Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the Supplier. A reference to these explanations shall be put in the 'Reference to explanation' column on the menu.
 - b) The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.
 - c) Differences in the Client and Supplier menu selections will be discussed and resolved with the Client at subsequent tender review meetings. The agreed final version of the menu selections shall form a mandatory part of the Contract and shall be complied with by all Suppliers and their sub-contractors.
 - d) The menu shall be subject to project version and document control.

Queries on the menu

Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative, see contact details/address on last page of the menu.

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Contract menu**Requirements in QUENSH**

Applicable requirements identified by Client			Applicable requirements identified by Supplier		
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
4	Agreement of the applicable QUENSH contract conditions				
4.1	Agreement to comply with Crossrail / RfLi specific Rule Book, HSE Contract Conditions and ITT Access Information	[Y]	[]	[]	[]
5	Supplier's selection of sub-contractors	Y			
6	Identification of Safety Critical Activities	Y			
7	Works Environmental Management	Y			
8	Emergency Plan	Y			
9	Method Statements	Y			
10	Health, Safety and Environment File	Y			
11	Pre-start LU health, safety and environment meeting	Y			
12	Supplier's site induction	Y			
13	Site Person in Charge	Y			
14	Staff requirements				

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Transport for London



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Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
14.1	Behaviours				
14.1.1	Alcohol and drugs	Y			
14.2	Control of hours worked				
14.2.1	Working Time Regulations	Y			
14.2.2	Fatigue	Y			
14.3	Knowledge				
14.3.1	English language	Y			
14.3.2	Access Card and Worksite Briefing	Y			
14.3.3	Visitors to sites	Y			
14.4	General competence				
14.4.1	Evidencing competence of safety critical staff	Y			
14.4.2	Identification of safety critical staff	Y			
14.4.3	Competent external safety critical personnel	Y			
14.4.4	Training	Y			
14.4.5	Asset specific competence	Y			
14.5	Medical requirements	Y			

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Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
14.6	Identification of Suppliers staff	Y			
14.7	Clothing	Y			
15	Permits and licences				
15.1	LU specific permits and licences	Y			
15.2	Permits, licences and certificates for Supplier's staff	Y			
16	The Principles of Access				
16.1	Introduction	Y			
16.2	Access to Stations	N			
16.3	Access to Track	N			
16.4	Access to depots	Y			
17	Applying for Planned Access				
17.1	Introduction	Y			
18	Applying for General Access	Y			
18.1	Constraints that apply to Generic Access	Y			
19	Access for fault repair	Y			
20	Operational Assurance	Y			

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Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
21	Closures and possessions				
21.1	Requirements for closures	N			
21.2	Requirements for possessions	N			
22	Controls at point of access				
22.1	Publication of works	N			
22.2	Checks at point of access	Y			
22.3	Signing-on with the Station Supervisor	N			
22.4	Track specific requirements				
22.4.1	Person providing protection	N			
22.4.2	Possessions	N			
23	Removal of supplier's personnel from LU Premises	N			
24	Incidents	N			
25	Notification of regulatory concern or action	N			
26	Confidential Incident Reporting and Analysis System (CIRAS)	N			
27	Monitoring				
27.1	LU inspections	Y			

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Document No.: F0780

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Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
27.2	Monitoring the supply chain	Y			
27.3	Health, safety and environmental surveillance by the supplier's personnel	Y			
27.4	Work location inspection and audit	Y			
27.5	Timescales for rectifying non-compliances	Y			
28	Radio transmitters and transceivers	N			
29	Mobile phones	Y			
30	Knives	N			
31	Site health, safety and environment committee	N			
32	Site housekeeping and security	Y			
33	Accidental damage, obstruction or interference with assets	Y			
34	Delivery of materials	Y			
35	Conveyance of loads				
35.1	Conveyance of loads on lifts and escalators	N			
35.2	Conveyance of hazardous materials and substances	N			
36	Asbestos (non-asbestos removal projects)	N			

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Document No.: F0780

Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
37	Working in or near lifts and escalators	N			
38	Work on or adjacent to utilities and High Voltage cables (buried services)	Y			
39	Working on or about the track	N			
40	Access to electrical sub-stations, working equipment, relay and other secure rooms	N			
41	Entering areas with gaseous fire suppression systems	N			
42	Fire prevention				
42.1	General requirements	Y			
42.2	Temporary fire points	Y			
42.3	Timber	N			
42.4	Composites	N			
42.5	Sheeting materials	N			
42.6	Gas cylinders				
42.6.1	Use of gas cylinders in below ground locations	N			
42.6.2	Storage of gas cylinders (above ground)	N			
42.7	Flammable and highly flammable materials				

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Document No.: F0780

Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
42.7.1	Use of flammable and highly flammable materials below ground	N			
42.7.2	Storage of flammable and highly flammable materials below ground	N			
43	Hot work and fire hazards				
43.1	Hot work	N			
43.2	Reasonable notice of works	N			
43.3	Precautions				
43.3.1	Buildings and assets	Y			
43.3.2	Gas cylinders	Y			
43.3.3	Gas detection	N			
44	Storage				
44.1	General requirements for storage	Y			
44.2	Trackside storage	N			
44.3	Hazardous materials and substances	N			
44.4	Allocation of space on operational property	Y			
45	Plant and equipment	Y			
46	Clearance approvals	N			

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Document No.: F0780

Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
47	Access equipment	Y			
48	Temporary works	Y			
49	Temporary fences and hoardings	Y Tape barriers			
50	Temporary lighting and power supplies				
50.1	General requirements	N			
50.2	Lighting in tunnels and shafts	N			
51	Screening of lights and positioning	N			
52	Environmental requirements				
52.1	General environmental requirements	Y			
52.2	Environmental nuisance	N			
52.3	Water	N			
52.4	Waste management	Y			
52.5	Noise and vibration	Y			
52.6	Archaeology, historical interest and listed buildings	N			
52.7	Wildlife and Habitats	N			
52.8	Resource Use	N			

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Document No.: F0780

Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
52.9	Pest control	N			
52.10	Land and water pollution prevention	N			
53	Quality requirements				
53.1	Records	Y			
53.2	Retention period	Y			
53.3	Availability of records for inspection	Y			
53.4	Statistical process control, audit and inspection procedures	Y			
53.5	General quality requirements	Y			
53.6	Quality Plan	Y			
53.7	Testing and inspection	Y			
53.8	Certification of conformity	Y			
53.9	Quarantine	N			
53.10	Traceability	Y			
53.11	Maintenance and servicing	Y			
53.12	Design	Y			
53.13	Computer aided design	Y			

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Document No.: F0780
Issue No: A18

Applicable requirements identified by Client				Applicable requirements identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Y / N	Reference to explanation - see Section 2a in attached Guidance Notes
53.14	Asset commissioning and handover	Y			



Other requirements / comments

--



Client/Supplier approval

Client Menu (Invitation to Tender)

Prepared by:

[Redacted]

Approved by
(the Client's
representative):

Signature:

Title: Asset Manager

Address:

[Redacted]

Phone No:

Email:

Revision of this menu: 1

Supplier Menu (Tender)

Approved by
(the Supplier's):

Title:

Address:

Phone No:

Email:

[Redacted]

Revision of this menu:

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Contract Menu (Final Approval of Menu)

Evidence shall be recorded of any amendments to the Client's menu which were agreed in establishing the Contract Menu.

Client's
representative
approval:

[Redacted signature area]

Supplier's
representative
acceptance:

Signature:

[Redacted signature area]

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- 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;
- 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
- 2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and
- 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier.
- 2.4 the Company transfers its rights and obligations under the Contract to the New Company.
3. A person who is not a party to this Deed may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

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

Executed as a deed by affixing the Common Seal of)

London Underground Limited)

in the presence of:-)

.....

Authorised Signatory

Executed as a Deed by Hiremech Limited)

Printed copies of this document are uncontrolled .

Document No.: F0780

Issue No: A18

acting by

)

) Authorised Signatory

and

)

) Authorised Signatory

Executed as a Deed by [NEW COMPANY]

)

acting by

)

) Authorised Signatory

and

)

) Authorised Signatory

Schedule 8

Not used

Schedule 9

Form of Collateral Warranty

THIS AGREEMENT is made the _____ day of 20[]

BETWEEN : -

- (1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the “**Company**”);
- (2) [] a company registered in England and Wales under number: [.....]and having its registered office at [.....] (the “**Sub-Contractor**”); and
- (3) Hiremech Limited company registered in England and Wales under number: 03639237 and having its registered office at Orbital 7 Orbital Way, Cannock, England, WS11 8XW (the “**Supplier**”).

WHEREAS :-

- (A) The Company has entered into a framework agreement, pursuant to which contracts may be made, with the Supplier (together the **"Main Contract"**) pursuant to which the Supplier is to undertake and complete the following supply: [] (the **"Supply"**).
- (B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the **"Sub-Contract Supply"**) of the Supply 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 Supply 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 Supply;
 - (b) reasonable skill and care has been and will continue to be exercised in connection with:

- (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
 - (ii) the selection of all goods and materials comprised in the Sub-Contract Supply (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Supply (the “**Sub-Contract**”);
 - (iv) the execution and completion of the Sub-Contract Supply;
 - (v) the Sub-Contract Supply 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 Supply 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-license) of all intellectual property rights as contemplated in this Agreement.

For the purposes of construing the warranties in this Clause 1 references to the Sub-Contract Supply shall include any part of the Sub-Contract Supply. 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 Supply:
- (a) Execute and complete the Sub-Contract Supply 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 Supply 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 Supply;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Supply;
 - (c) extending, interfacing with, integrating with, connecting into and adjusting the Supply;
 - (d) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the Underground Network (as such capitalised terms are defined in the Main Contract);
 - (e) executing and completing the Supply; and
 - (f) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the Underground Network (as such capitalised terms are defined in the Main Contract)

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

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

5. The Sub-Contractor agrees:

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

6. The parties hereby agree that:

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

7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Supply, 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 Supply. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Supply provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.

8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Supply which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Supply to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the

Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.

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

- (iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:
 - (1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and
 - (2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
 - (d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.
- 10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
- 11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.
- 12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.
- 13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Supply.
- 14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
- 15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

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

Executed as a deed by affixing the Common Seal of)

London Underground Limited)

in the presence of:-)

.....

[Authorised Signatory]

Executed as a Deed by [SUB-CONTRACTOR])

acting by)

) Authorised Signatory

and)

) Authorised Signatory

Executed as a Deed by Hiremech Limited)

acting by)

) Authorised Signatory

and)

) Authorised Signatory

Schedule 10

Supplier Performance

The KPIs in Schedule 10 will rely on data sources compiled by Service Users that represent the Company. This data will be collated and assessed by the Contract Manager. The Supplier and Contract Manager will discuss KPI scores, and the Contract Manager can decide to impose abatements at their discretion. The first 6 months of the Contract is a grace period within which no abatements will be imposed. All KPI abatements are discretionary. Observance of a red score does not oblige / require the Company to apply abatement, suspend or terminate the contract.

1. From Contract Award to the end of Year 1 is a grace period for all KPIs except E1, S1, S2 and R. Abatements will not be applied within the first year in order to give the supplier due time to adapt and improve during contract mobilisation. Following Year 1 if red scores are received the abatements / escalation will take place at the discretion of the Contract Manager.
2. KPIs will be monitored by assessment sheets. These will record data on the measures listed below. TfL Operations staff will be responsible for filling in these sheets. These will be held by Commercial and discussed at Review Meetings.
3. Due to the COVID-19 Pandemic, certain PPE types are required to be worn on TfL sites. The Supplier's operatives who enter site must abide by the site rules in terms of social distancing and PPE rules.
4. Contract Review Meetings (CRMs) will take place once a year. A senior representative from TfL and the supplier must attend. CRMs will be arranged by the supplier. CRMs will cover a broad range of issues relating to the contract. Any yearly adjustments to contract rates due to the agreed index will be finalised in this meeting

In addition to these large, formal CRMs. A review meeting will take place every Period on Wednesday, Week 4. These meetings will be organised by the Contract Manager. Topics to be discussed in this meeting will include but are not limited to:

- Upcoming Contract Payment Application Forms
 - Overview of what the Supplier will include in its “Application for Payment” (AFP)
 - Concerns or difficulties from the Supplier's perspective and discussions on how to alleviate these and work forward more efficiently
 - Review of performance reports for Periodic and Quarterly Key Performance Indicators.
- Application of abatements by the Contract Manager.

5. **KPI Scoring explained:** Green KPI scores indicate good performance. Amber indicates acceptable, perhaps with minor concerns or improvements to be made. Red indicates below standard performance in that area. Red scores require immediate attention and review by both parties to correct, and if recurring can result in the application of abatements at the discretion of the Company
- LUL Framework Agreement for the Supply of Non-complex Goods and Services

6. Escalation Procedure / Process: the purpose of the escalation process is to provide a structured framework within which the Parties can address unsatisfactory performance standards against timescales and deliverable targets. This is without prejudice to the Company's rights elsewhere in the Contract. For the purposes of this process, notified levels of poor performance (including failure to meet the KPIs set out below) will be termed "Non-Conformances".

This procedure operates with four levels; the lowest level Non-Conformance being Level 1. Should Non-Conformances escalate they will receive an appropriate level of management intervention from the Company and the Supplier. Level 3 gives final review and opportunity for remedial actions to resolve issues before the Non-Conformance reaches Level 4, which may invoke contract termination.

In the event that a performance issue is not resolved between the Company and the Supplier then the Non-Conformance may be raised formally to a Level 1 or Level 2 Non-Conformance, depending upon the severity of the performance failure. It is possible for a number of Level 1 and/or Level 2 issues to be in hand at any one time.

Issues shall be resolved locally on a day-to-day basis to the mutual satisfaction of all parties and shall not be raised to Level 1 without prior endeavours to resolve.

The triggers for levels 1, 2, 3 and 4 of the Escalation Process are defined as below:

Level 1

(a) The Level 1 Non-Conformance will be recorded by the Company and a notice submitted to the Supplier. The Supplier shall in response (such response to be within 10 Working Days of service of the notice by the Company) prepare and submit to the Company, a Level 1 Non-Conformance Report. This report will contain:

- Confirmation of the date and details of the level 1 Non-Conformance
- The steps to be taken by the Supplier to ensure there is no repetition of such Level 1 Non-Conformance (the "Level 1 Required Action")
- The time within which such Level 1 Required Action is to be completed (which shall be a reasonable period and no longer than the "Level 1 Rectification Period").

(b) The Supplier and the Company will use all reasonable endeavours to agree the Level 1 Rectification Period (which shall in any case be no longer than two months) and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out within the agreed Level 1 Rectification Period then the Non-Conformance will be classed as closed.

Level 2

- (a) If the Company determines, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or the Supplier fails to provide the Company with a Level 1 Non-Conformance Report within 10 Working Days; or the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period, then this shall be a “Level 2 Non-Conformance” and the Company will submit a notice to the Supplier.
- (b) The Supplier shall in response (such response to be within 10 Working Days of service of the notice by the Company) prepare and submit to the Company a Level 2 Non-Conformance Report. Such report will contain:
- The date and details of the Level 2 Non-Conformance
 - The steps to be taken by the Supplier to ensure there is no repetition of such Level 2 Non-Conformance (the “Level 2 Required Action”)
 - The time within which such Level 2 Required Action is to be completed (Which shall be a reasonable period and no longer than the “Level 2 Rectification Period”).
- (c) The Supplier and the Company will use all reasonable endeavours to agree the Level 2 Rectification Period (which shall in any case be no longer than two months) and the Level 2 Required Action.
- (d) If the Level 2 Required Action is taken within the agreed Level 2 Rectification Period then the Non-Conformance will be considered resolved. However, a record of the Non-Conformance will be made and Level 2 trends monitored.

Level 3

- (a) If the Company determines, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or the Supplier fails to provide the Company with a Level 2 Non-Conformance Report within 10 Working Days; or the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period, then this shall be a “Level 3 Non-Conformance” and the Company will submit a notice to the Supplier.
- (b) The Supplier will provide the Company a report (a “Level 3 Non-Conformance Report”), setting out:
- The steps which the Supplier has taken, or will take, to ensure that no further Non-Conformance of this type shall arise (the “Level 3 Required Action”) ;

- The period (being no greater than 2 months from time of occurrence of the Level 3 Non-Conformance) for the Supplier to put in place steps to ensure that no further Non-Conformances of the same type occur (the “Level 3 Rectification Period”).

Level 4

(a) If the Supplier fails to provide the Company by the agreed deadline, a Level 3 Non-Conformance Report; or the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period, then this shall be “Level 4 Non-Conformance” and the Company may elect to apply abatements, suspend or terminate the Contract.

Summary of Escalation Process

LEVEL	ACTION	BY	RESULT
Level 1	Improvement plan with precise and date required. On-going review dates specified.	Supplier	Satisfactory – Stop Unsatisfactory Level 2
Level 2	Improvement plan with precise end date required. Ongoing review dates specified.	Supplier	Satisfactory – Stop Unsatisfactory Level 3
Level 3	Final review. Final opportunity for remedial action. Precise end dates required.	Supplier	Satisfactory – Stop Unsatisfactory Level 4
Level 4	Possible Termination		

Please note the below KPIs will take into account mitigating circumstances. Scoring will not reflect issues caused by factors outside the Supplier’s control (force majeure).

<u>DELIVERY</u> <u>GENERIC KPIS</u>	KPI METRICS	RED	AMBER	GREEN	FREQUENCY OF REPORTING	Data Source - Enter the origin of the data to measure each KPI (i.e. system / report)	Owner - name who owns the reporting of each KPI	Abatement (per incident)	Reference
CONTRACT MANAGEMENT	Work assessment sheets completed after Corrective fault repair / PPM must be at least amber. Red scores will incur a £50 abatement after Year 1 of the contract. Customers are end users within the relevant TfL departments.	Unsatisfactory	Acceptable, with minor concerns	Good	Periodically	Corrective Faults and Assessment Sheets	Site specific stakeholders	£50 per red score	D1
	Fault callouts with equipment (owned or hired) to be resolved within the time periods defined in adjacent columns (excepting unorthodox repairs which cannot be repaired within 24 hours).	Faults take more than 24 hours to resolve	No amber	Faults resolved within 24 hours	Periodically	Corrective Faults and Assessment Sheets	Site specific stakeholders	For any callouts which take over 24 hours, there will be a charge of £50 per incident	D2
	100 % planned maintenance/scheduled maintenance activities (servicing) to be undertaken, every 6 months, for all applicable vehicles unless advised otherwise.	Red < x%	No amber	G = 100%	Bi-Annually	Maintenance Log. When a vehicle is a serviced Representative will sign and date to confirm servicing is taking place within agreed time intervals	Site specific stakeholders	£50 charge per incident where an asset is not serviced at least every 6 months, unless advised otherwise by a Company representative	D3

<u>SAFETY</u> <u>ENVIRONMENTAL</u> &	KPI METRICS	RED	AMBER	GREEN	FREQUENCY (WEEKLY/PERIODICALLY/QUARTERLY)	Data Source - please identify where these will be found	Owner - identify who owns the KPIs/produces the information	Abatement	Reference
ENVIRONMENTAL	Number of environmental claims in Quarter	>0	No Amber	0	Quarterly	Env Claims Tracking Sheet	Site specific stakeholders	£50 per incident	E
	RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) Injuries	Any injuries within a period	No Amber	No injuries within period	Periodically	LU Operations and the Supplier must report any incidents of injury immediately to the Contract Manager. Work Assessment Sheets completed by the Company will record.	Site specific stakeholders	£200 per incident. Detailed report for root cause analysis. Should more than 2 incidents take place within a 6-month period we reserve the right to terminate the contract. Reportable accidents under RIDDOR. Serious and non-serious	S1
	Maintenance & (Health Safety)	Any incidents of staff entering site without required permits	No Amber	No incidents of staff entering site without required permits	Periodically	LU Operations and the Supplier must report any incidents of injury immediately to the Contract Manager. Work Assessment Sheets completed by the Company will record.	Site specific stakeholders	£50 charge. Discretionary	S2
ZERO HARM									

INNOVATION GENERIC KPIS	KPI METRICS	RED	AMBER	GREEN	FREQUENCY OF REPORTING (i.e. Weekly, Periodically Monthly Quarterly)	Data Source - Enter the origin of the data to measure each KPI (i.e. system / report)	Owner - name who owns the reporting of each KPI	Reference	Outcome
INNOVATION	No. of value engineering initiatives agreed & implemented by operating business & supplier in he year	No value engineering initiatives implemented	One value engineering initia ive implemented	More than one value engineering initiatives implemented	Annually	Supplier to provide data on an annual basis	Engineering stakeholders	I1	Savings generated through innovation by the Supplier will be shared 50/50 between the Company and the Supplier
	No of benefits/initiatives/process improvements suggested versus no. of benefits/initiatives/process improvements implemented/achieved	<no. benefits/initiatives/process improvements implemented	No amber	1 >no. benefits/initiatives/process improvements implemented	Quarterly	Supplier to provide data on a quarterly basis	Engineering stakeholders	I2	
	No. of actual savings achieved as a result of engineering/analysis/creative solution/process improvement agreed & implemented by the supplier versus savings/benefits target to be achieved within any given 12-month period	< % savings achieved	bet % savings achieved	> %savings achieved	Annually	Supplier to provide data on an annual basis	Engineering stakeholders	I3	

RESPONSIBLE PROCUREMENT GENERIC KPIs	EXAMPLE KPI METRICS	EXAMPLE RED	EXAMPLE AMBER	EXAMPLE GREEN	FREQUENCY OF REPORTING (i.e. Weekly, Periodically Monthly Quarterly)	Data Source - Enter the origin of the data to measure each KPI (i.e. system / report)	Owner who owns the reporting of each KPI	Abatement	Reference
RESPONSIBLE PROCUREMENT (RP)	% of supplier employees declaration of understanding and acceptance of the supplier's Responsible Procurement policy / agenda on an annual basis	Failure of the Supplier to accept TfL's RP policy	No Amber	Acceptance of RP policies	Annually	Supplier to declare receipt, understanding and acceptance of TfL's Responsible Procurement policy / agenda on an annual basis	The Contract Manager	Contract termination	R

Schedule 11

Heavy Goods Vehicle Direct Vision Standard

1 Introduction

1. In this Schedule, the following terms shall have the corresponding meanings:

“Agreed Plan” **DVS** means the Initial DVS Plan as updated and approved in accordance with the terms of this Schedule;

“Business Day” means any day excluding Saturday, Sundays or public or bank holidays in England;

“Category N3 HGV” **N3** means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;

“Direct Vision Standard” or “DVS” **Vision or** means Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time, that measures how much direct vision a driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: www.tfl.gov.uk;

“Initial Plan” **DVS** means the initial plan set out at Appendix 1 which sets out and proposes how the Supplier shall ensure that:

(a) from and including 26 October 2019, all Category N3 HGVs used in the delivery of the contract achieve a minimum of a one (1) star Direct Vision Standard rating;

(b) from and including 26 October 2023 all Category N3 HGVs used in the provision of the Goods and Services achieve a minimum of three (3) star Direct Vision

Standard rating;

“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.

2 DVS Plan

2.1 The Supplier shall comply with the Initial DVS Plan from the Contract Commencement Date. Within three months of the Contract Commencement Date the Company shall either;

2.1.1 confirm that the Initial DVS Plan is approved, in which case such plan shall become the Agreed DVS Plan; or

2.1.2 provide the Supplier with any comments on and/or amendments to the Initial DVS Plan.

2.2 Within thirty (30) Business Days (for the purpose of paragraph 2.1.2) or 15 Business Days (for the purpose of paragraph 2.3.2) of receipt of any comments and/or amendments from the Company in accordance with paragraph 2.1.2 or paragraph 2.3.2 (as applicable), the Supplier shall:

2.2.1 develop the Initial DVS Plan to reflect such comments and/or amendments; and

2.2.2 submit an updated Initial DVS Plan to the Company for approval.

2.3 Within fifteen (15) Business Days of receipt of the updated Initial DVS Plan, the Company shall confirm that either the updated Initial DVS Plan:

2.3.1 is approved, in which case it shall become the Agreed DVS Plan; or

2.3.2 not approved and provide its further comments and/or amendments to the Supplier and the Supplier shall revise and re-submit the updated Initial DVS Plan for approval in accordance with paragraph 2.2.

The process set out in this paragraph 2.3 shall be repeated until the updated Initial DVS Plan is approved by the Company.

- 2.4 Where the Company, acting reasonably, has not approved the updated Initial DVS Plan, the Supplier may refer that decision to the dispute resolution process set out in the Contract.
- 2.5 Without limiting any other provision of this Contract, the Supplier shall, at no additional cost to the Company, and as part of the Services:
- 2.5.1 implement, observe and comply with the Agreed DVS Plan; and
- 2.5.2 review and amend the Agreed DVS Plan (as necessary) on each 12 month anniversary of the Contract Commencement Date or earlier if requested by the Company, to reflect:
- 2.5.2.1 any changes to the nature of the Services; and
- 2.5.2.2 any comments and/or amendments made or proposed by the Company.

3 DVS Co-ordinator

- 3.1 The Supplier shall nominate an employee with the necessary experience, competency and authority to:
- 3.1.1 be responsible for implementation and compliance with the Agreed DVS Plan; and
- 3.1.2 act as the Supplier's authorised representative on all matters concerning the Agreed DVS Plan ("**DVS Co-ordinator**").
- 3.2 The Supplier shall add the DVS Co-ordinator's details to the list of Key Personnel set out in Schedule 1.

4 Self Certification and Reporting

On each 12 month anniversary of the Contract Commencement Date the Supplier shall submit a report to the Company which sets out the Supplier's progress in respect of implementation of the Agreed DVS Plan and confirms (with supporting evidence) that the Supplier has complied with the Agreed DVS Plan.

5 DVS Infractions

5.1 Without limiting the effect of any other provision of this Agreement relating to termination, if the Supplier fails to comply with the terms of this Schedule:

5.1.1 the Supplier shall be deemed to have committed a material breach of this Agreement; and

5.1.2 TfL may refuse the Supplier, its employees, agents and each Category N3 HGV entry onto any property that is owned, occupied or managed by or on behalf of TfL for any purpose (including but not limited to deliveries).

APPENDIX 1 TO SCHEDULE 11

Schedule 12
Not Used

Schedule 13

Not used

Schedule 14
Execution Page

EXECUTION PAGE:

IF TO BE SIGNED UNDER HAND

This Agreement has been signed by for and on behalf of the parties on the day and year written above.

Signed by

