

Dated 19th November **2015**

TUBE LINES LIMITED (1)

and

FELTHAM COACHWORKS LIMITED (2)

**FRAMEWORK AGREEMENT
for the supply of Vehicle Body Repair
Services**

**CONTRACT REFERENCE NUMBER:
TfL00214**

VERSION 6

Contents

Clause	Page
1 Definitions and Interpretation	4
2 Duration	13
3 Supplier's Primary Obligations	13
4 Records and Audit	15
5 Company's Obligations	17
6 Additional Services	17
7 Variation	17
8 Price and Payment	17
9 Access and Time for Performance of the Services	19
10 Work on Company's Sites	19
11 Free Issue Materials	20
12 Environmental Claims	21
13 Safety	22
14 Independent Supplier	22
15 Supplier Personnel	23
16 London Living Wage	28
17 Responsible Procurement	29
18 Warranty	30
19 Intellectual Property Rights	31
20 Termination and Suspension	33
21 Indemnity and Insurance	36
22 Force Majeure	38
23 Confidentiality	39
24 Assignment, Subcontracting and LUL Step-In Rights	40
25 Company's and Supplier's Representative	41
26 Costs	42

27	Severance.....	42
28	Publicity.....	42
29	Corrupt Gifts and Payments of Commission	42
29A	Criminal Record Declarations	42
30	No Waiver	44
31	Entire Contract.....	44
32	Notices and Service of Process.....	44
32A	Not used.	45
33	Dispute Resolution.....	45
34	Governing Law and Jurisdiction.....	46
35	Contracts (Rights of Third Parties) Act 1999	46
36	Bonds, Warranties and Guarantees	47
37	Default Interest	48
38	Freedom of Information	48
38A	Data Transparency	49
39	Transport for London Group	49
	Schedule 1 Form of Order	60
	Schedule 2 Contract Variation Procedure.....	64
	Schedule 3 Quality and Safety Plan.....	67
	Schedule 4 Deed of Novation	68
	Schedule 5 Prices for Services	70
	Schedule 6 Not used.....	71
	Schedule 7 Form of Parent Company Guarantee and Performance Bond	72
	Schedule 8 Not used.....	777
	Schedule 9 Not used.....	788
	Schedule 10 Not used.....	788
	Schedule 11 Not used.....	789
	Execution Page.....	80

THIS AGREEMENT is made on

19th November

2015

BETWEEN:

- (1) **Tube Lines Limited** (company number 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**” which expression shall include its successors and assigns); and
- (2) **Feltham Coachworks Limited** (company number 02698969) whose registered office is at 583 London Road, Isleworth, Middlesex, TW7 4EJ(the “**Supplier**”).

BACKGROUND

- (A) The Supplier carries on the business of providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to provide the 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 that:

1 Definitions and Interpretation

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

“**Additional Services**” means services which are requested by the Company to be provided by the Supplier in accordance with the terms of any Contract in addition to those set out in the Specification.

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

“**Applicable Laws and Standards**” 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

each Contract, any agreement or document referred to in each Contract (including for clarity any standard referenced in any Order), or the Services.

"BAFO" means 'best and final offer'.

"Cessation Plan" means a plan agreed between the parties or determined by the Company in accordance with Clause 39.1 to give effect to a Declaration of Ineffectiveness.

"Code of Practice" means the document issued in October 1999, as amended in May 2001, by LUL Employee Relations entitled "Code of Practice for Public Private Partnership Transfers in LUL Contracts" (which includes guidance on best practice to be followed when transferring staff under TUPE, to the private sector or between contractors).

"Commencement Date" means the date of the Agreement.

"Company Documents" means any plans, drawings, documents, handbooks, codes of practice or other information provided by the Company to the Supplier in accordance with each Contract.

"Company's Representative" means the person set out in the section headed 'Company's Representative' in the relevant Order.

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

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

"Contract" means a contract as defined in Clause 3.1.

"Contract Information" means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause

8.2 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the clearing date and the invoice amount.

"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 Reference Number" means the number shown on the front page of the Agreement.

"Contract Variation Procedure" means the procedure set out in Schedule 2.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

"Default Interest Rate" means 2% above the base rate from time to time of the Bank of England.

"Dispute" has the meaning given to that term in Clause 33.1 .

"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.

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced).

"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.

"Excess Costs" has the meaning given to that term in Clause 20.5.

"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 LUL's 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 as defined in the Tube Lines Contract;

- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993 in accordance with clause 44 (Railways Act Obligations during Hostilities over Acts of Violence) of the Tube Lines Contract;
- (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.

"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.

"Green Procurement Code" means the programme entitled the "Mayor's Green Procurement Code" launched in 2001 and as may be amended.

"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.

"Key Personnel" means Supplier Personnel identified as such in the Order (if any) and any changes to the same that are made in accordance with Clause 15.

"London Living Wage" means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Mayor or any other relevant Competent Authority.

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

"LUL" means London Underground Limited, whose registered office is at 55 Broadway, London SW1H 0BD, Registered Company Number 1900907.

"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 33.2 .

"Notice to Proceed" has the meaning given to that term in Clause 20.6(b).

"Notified Sum" has the meaning given to that term in Clause 8.7.

"Order" means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 1, entered into by the Company and the Supplier.

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

"Order 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 8.2.

"Policies" means the policies set out in Clause 17.3.

"Prescribed Period" has the meaning given to that term in Clause 8.8.

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or 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, any Contract or any other contract with LUL or the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement, any Contract or any other contract with LUL or the Company; or
- (b) entering into the Agreement, any Contract or any other contract with LUL or 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, any Contract or any other contract with LUL or the Company;
or
- (d) defrauding or attempting to defraud LUL or the Company.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 3 as amended from time to time.

“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.

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

"Replacement Supplier" means any replacement provider of Services appointed by the Company from time to time.

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

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

"Service Cessation" means the cessation of the Services or part thereof.

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

"Specification" means the description of the Services set out in Appendix 1 to the relevant Order (or referenced in the relevant Order) to be provided by the Supplier in accordance with the Agreement.

"Step-in Notice" means a notice issued by LUL to the Company if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract advising the Company that it will, from the date specified in the said notice, exercise its rights to step-in under the Tube Lines Contract.

"Step-out Notice" means a written notice served by LUL on the Supplier that it has exercised its right under the Tube Lines Contract to give a step-out notice to the Company.

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

"Supplier Personnel Information" means information about Supplier Personnel including the numbers of Supplier Personnel involved in providing the Services and their approximate full time equivalents; their location; the skill sets in each location; role definitions; employment status; details of any previous transfer(s) pursuant to the Employment Regulations; information regarding overall annual remuneration (including benefits); length of service; notice period; details of terms and conditions of employment (including pension schemes, annual leave, bonus entitlement, share options, car allowance, health insurance, life assurance and trade union recognition); details of any current grievances or disciplinary issues and any other information relating to Supplier Personnel reasonably requested by the Company.

"Supplier's Representative" means the person set out in the section headed 'Supplier Representative' in the relevant Order.

"Term" means the period of four years (4) from the Commencement Date unless extended in accordance with Clause 2.3 of 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.

"TfL Supplier Diversity Policy" means the policy document entitled "Supplier Diversity Policy" developed by TfL, issued in November 2006 and as may be amended.

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

"Tube Lines Contract" means the service agreement dated 31 December 2002 made between LUL and the Company, as subsequently amended by the Company and LUL.

"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 2.

"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 or any Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the Agreement, that 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 any 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.

2 Duration

- 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.
- 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. To the extent that any provisions of this Agreement is relevant to the Contract, such provisions shall survive expiry or termination of this Agreement.
- 2.3 The Company shall at its own discretion be entitled at any time during the first four (4) years of the Term from the Commencement Date to inform the Supplier of its intention to extend the Term of the Agreement by a period of up to two (2) years. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Agreement duration (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 provide the 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**”, and in the event of any inconsistency between the terms of the Agreement and the terms of any Order, the terms set out in the Order shall prevail.

3.2 When Services are required by the Company, the Company shall give the Supplier an Order for the Services to be performed and each Order so given shall be final.

3.3 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 in accordance with the standards or methods (if any) detailed in the Order and where standards or methods are not detailed in the Order, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
- (c) be performed in accordance with the Order Programme;
- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable to LUL or the LUL network); and
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

3.4 The Supplier shall perform its obligations under each Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.

3.5 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, including, but not limited to, those required by any Applicable Laws and Standards.

3.6 Unless otherwise stated in any Order, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.

3.7 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.

4 Records and Audit

4.1 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 each Contract and all transactions related to each Contract and the Agreement. 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.

- 4.2** The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.
- 4.3** The Company and its authorised representatives and LUL, its authorised representatives and any party legally authorised to inspect any part of the LUL network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time during the period referred to in Clause 4.2.
- 4.4** 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 and/or LUL's auditor and/or granting copying facilities to the Company and/or LUL's auditor for the purposes of making such copies; and
 - (e) complying with the Company and/or LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.
- 4.5** 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.
- 4.6** The Supplier shall permit the Company's authorised representatives and/or LUL, 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 and/or LUL with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's and/or LUL's request for the same.

5 Company's Obligations

- 5.1** The Company shall pay the Supplier the Order Price for the Services in accordance with the terms of the relevant Contract.
- 5.2** 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 Additional Services

The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Services, the Order shall be amended to include such Additional Services, the Order Completion Date for them and the quoted price.

7 Variation

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

8 Price and Payment

- 8.1** The prices for the Services shall be as set out in Schedule 5. Each Order Price applicable to any Contract shall be based upon the prices set out in Schedule 5. The prices for the Services or any Order Price shall only be changed in accordance with the Contract Variation Procedure or as provided for in Schedule 5..
- 8.2** The Company shall be entitled to the Supplier's standard discount for prompt payment.
- 8.3** Not used.

- 8.4** The Supplier shall comply with the Company's payment procedures and requirements. The Company shall pay for the Services in accordance with the Contract less any sums due from the Supplier to the Company pursuant to any provision of the Contract-
- 8.5** An invoice bearing all information required by the Company including the Purchase Order number, Accident Reference number, vehicle registration number, Supplier's estimate reference, delivery address and a brief description of the Services performed under a Contract(s) shall be sent by the Supplier to the Company at the address for invoices stated in Schedule 1 (or such other address as the Company may notify from time to time) after the delivery and satisfactory completion of vehicle repairs. Any invoice shall be accompanied by an advice note signed by an authorised representative of the Company as proof that delivery taken place.
- 8.6** The Company shall pay the amount specified in the invoice less any amounts due from the Supplier within 30 days of receipt of an invoice that complies with the provisions of clause 8.5 or, if later, after satisfactory completion of vehicle repairs. The Supplier shall provide the Company with its bank account details. Payments shall be made by direct bank to bank transfer (using Bank Automated Clearance System) or such other method that the Company may choose from time to time)..
- 8.7** Not used.
- 8.8** Not used.
- 8.9** Not used.
- 8.10** The Order Price shall be fixed and inclusive of all expenses and disbursements.
- 8.11** 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 invoice and will be shown as a separate item on all such invoices .
- 8.12** All Losses which the Company may have paid, suffered or incurred, and for which the Supplier is liable under any Contract, may be set off against any other amounts payable in respect of that or any other Contract, provided that the Company's Representative informs the Supplier in writing of any deductions made, if possible, prior to and in any event no later than the date upon which any such deduction is made.
- 8.13** Not used.
- 8.14** 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 Access and Time for Performance of the Services

- 9.1** The Company shall upon reasonable notice from the Supplier, provide access for the Supplier to the Company's premises and information records and other materials as the Supplier may reasonably require in order to provide the Services, provided that the Company shall only be obliged to procure such access during the normal working hours applicable to the premises/location at which the Services are to be performed and provided that such access shall not cause undue commercial disruption to the Company.
- 9.2** In the event that access is required to the premises of any third party for the purpose of provision of the Services, the Company shall use its reasonable endeavours to secure such rights of access for the Supplier provided that the Supplier shall be responsible for arranging such access on a day to day basis with the third party.
- 9.3** The Supplier shall ensure that the Services are satisfactorily performed by the Order Completion Date. The time of the performance of the Services shall be of the essence in respect of each Contract.
- 9.4** Not used.
- 9.5** Not used.
- 9.6** Not used.
- 9.7** Not used.

10 Work on Company's Sites

- 10.1** 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 10.1(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, LUL 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.

10.2 Without prejudice to Clauses 10.1(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.

11 Free Issue Materials

11.1 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.

11.2 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.

- 11.3 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.

12 Environmental Claims

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 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 and LUL can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 12.5 The Supplier shall provide to the Company's Representative:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Services (for the purposes of this Clause 12.5, 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.

13 Safety

- 13.1** 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 Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 13.2** 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 LUL category one standard number 2-05104-432, 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.
- 13.3** Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to each Contract as if the term "LU Premises" means any of LUL's and/or the Company's property where the Services are carried out and as if references to "LU" are references to the Company.
- 13.4** 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.

14 Independent Supplier

The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier's employees or 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.

15 Supplier Personnel

Commencement of Services

- 15.1** The Company and the Supplier agree that the commencement of the Services on the Commencement Date will not constitute a relevant transfer for the purposes of the Employment Regulations.
- 15.2** If the contract of employment of any individual is found or alleged to have effect on or after the Commencement Date as if originally made with the Company by reason of the Employment Regulations, the Supplier agrees that:
- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the Commencement Date; and
 - (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Commencement Date; and
 - (c) it will do nothing to discourage the acceptance of the offer.
- 15.3** Upon that offer being made in accordance with Clauses 15.2(a) and 15.2(b) (or after fourteen (14) days, if the offer is not made as requested), the Company may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company in respect of: (i) the employment of such person after the Commencement Date until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

Supplier Personnel

- 15.4** The Supplier will be responsible and liable for the recruitment, training, management, removal and termination of all Supplier Personnel and the acts and omissions of the Supplier Personnel in the provision of the Services and will indemnify the Company on demand in respect of all Losses that may be suffered or incurred by the Company in connection with the acts or omissions of Supplier Personnel in connection with or relating to the provision of the Services and/or when dealing with any individuals employed or engaged in any capacity by the Company.

- 15.5** The Supplier will, to the extent required, secure the consent of Supplier Personnel to the disclosure of data falling within the scope of the Data Protection Act 1998.

Supplier Personnel Information and Supplier Personnel Indemnity

- 15.6** The Supplier:

15.6.1 will, on request at any time (including for the avoidance of doubt after the expiry of the Contract), provide to the Company, the Supplier Personnel Information. Such Supplier Personnel Information shall be provided to the Company as soon as reasonably practicable and in any event no later than twenty eight (28) days after such a request;

15.6.2 warrants and undertakes to the Company that any Supplier Personnel Information disclosed pursuant to Clause 15.6.1 above is complete and accurate; and

15.6.3 will indemnify and hold harmless the Company and any Replacement Supplier from and against all Losses incurred or suffered by the Company and any Replacement Supplier in connection with, or as a result of, any claim or demand:

- (i) by any Supplier Personnel which relates wholly or in part to the Supplier Personnel's employment in the period on or after the Commencement Date;
- (ii) by any Supplier Personnel which relates to the Supplier's failure or alleged failure to employ such Supplier's Personnel on the terms and conditions which they enjoyed immediately prior to the Commencement Date;
- (iii) by or on behalf of any Supplier Personnel which relates to a breach of any of the warranties and undertakings given by the Supplier in this Clause 15; or
- (iv) relating to any incomplete or incorrect information relating to the Supplier Personnel which the Supplier has provided to the Company pursuant to this Clause 15 or otherwise and which the Company has relied upon.

- 15.6A** The Company will keep any Supplier Personnel Information confidential although such information may be disclosed to a prospective Replacement Supplier in any tender exercise.

Staff Travel Facilities

- 15.7** Not used.

Code of Practice

15.8 The parties shall comply with the Code of Practice in relation to any Supplier Personnel.

15.9 Surplus Supplier Personnel

15.9.1 The Supplier shall deal with any surplus Supplier Personnel as follows:

- (a) where Supplier Personnel become surplus to requirements and are displaced, the Supplier shall use reasonable endeavours to identify and offer one suitable alternative job to each such Supplier Personnel elsewhere in the Supplier;
- (b) where within one (1) month of the displacement of Supplier Personnel, the Supplier is unable to identify a suitable alternative job within its respective organisation the Supplier shall ask the Company whether there are any suitable vacancies within its organisation or other subcontractor organisations;
- (c) where the Company is asked by the Supplier whether there are any suitable vacancies within its organisation, the Company shall use reasonable endeavours to identify a suitable alternative job and shall notify the Supplier in writing within one (1) month of the request being made whether such an alternative position has been identified;
- (d) where the Supplier is asked by another subcontractor whether there are any suitable vacancies within its organisation, the Supplier shall use reasonable endeavours to identify a suitable alternative job and shall notify the other subcontractor in writing within one (1) month of the request being made whether such an alternative position has been identified; and
- (e) where the Company or another subcontractor has a suitable vacancy for that Supplier Personnel and is prepared to offer that vacancy to such employee, it shall provide full details of that vacancy to the Supplier (together with the notification as to whether the position has been identified and that Supplier Personnel shall upon accepting an offer from the Company or the other subcontractor (as the case may be) transfer on the standard terms and conditions for that organisation unless otherwise agreed between the Supplier Personnel and, as the case may be, the Company or the other subcontractor.

15.9.2 In the event that the Supplier, having complied with its obligations under this Clause 15.9 is unable to identify a suitable alternative job for the displaced employee or the displaced employee rejects any suitable alternative job offer (including any job offer made by the Company or another subcontractor), then the Supplier may dispense with the services of the displaced employee.

Key Personnel

15.10 Unless otherwise stated in any Order, the following Clauses shall apply in respect of Key Personnel:

- (a) The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- (b) 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.
- (c) The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within 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.
- (d) 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.

- (e) 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.

Service Cessation

- 15.11** The Company and the Supplier agree that no Service Cessation will constitute a relevant transfer for the purposes of the Employment Regulations.
- 15.12** If the contract of employment of any Supplier Personnel is found or alleged to have effect on or after a Service Cessation as if originally made with the Company or a Replacement Supplier by reason of the Employment Regulations, the Supplier agrees that:
- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the relevant Service Cessation; and
 - (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Service Cessation; and
 - (c) it will do nothing to discourage the acceptance of the offer.
- 15.13** Upon that offer being made in accordance with Clauses 15.12(a) and 15.12(b) (or after fourteen (14) days, if the offer is not made as requested), the Company or the Replacement Supplier may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company and the Replacement Supplier against any Losses in respect of: (i) the employment of such person after the Service Cessation until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company or the Replacement Supplier under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.
- 15.14** The Supplier shall indemnify the Company and the Replacement Supplier against any Losses in respect of any claim to the extent that it is in relation to:
- (a) the employment and termination of the employment of any Supplier Personnel up to and including the Service Cessation;

- (b) all emoluments and other benefits of Supplier Personnel arising in respect of the period up to and including the Service Cessation regardless of when they fall due for payment;
- (c) any act, fault or omission up to and including Service Cessation in respect of the employment of Supplier Personnel;
- (d) any claim by any Supplier Personnel relating to that person's employment or its termination after the date of the Service Cessation.

15.15 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 15 at any time during performance of the Contract and during the twelve (12) year period following completion of performance.

15.16 The obligations of the parties under this Clause 15 shall survive the expiry or termination of the Contract for whatever reason.

16 London Living Wage

16.1 The Supplier shall, to the extent each Contract is for the provision of Services to be undertaken within Greater London or on the LUL network:

- (a) ensure that none of its employees engaged in the provision of services under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 16 and the provisions of this Clause 16 are included in any subcontract (of any tier).

16.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or

purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 16.

17 Responsible Procurement

- 17.1** 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 LUL) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities and the TfL Supplier Diversity Policy and that LUL is under a duty to comply with that direction and that the Company is similarly under a duty to comply under the Tube Lines Contract.
- 17.2** 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 and LUL to comply with, the Responsible Procurement Policy, the TfL Supplier Diversity Policy and the Green Procurement Code.
- 17.3** The Supplier acknowledges and agrees that the Company is required to develop the following policies (the "**Policies**") which shall, in each case, reflect and be consistent with the relevant principles of the Responsible Procurement Policy, the TfL Supplier Diversity Policy and the Green Procurement Code:
- (a) a policy relating to the promotion of diversity in the Company's and the Supplier's supply chain which reflects and is consistent with the principles of the TfL Supplier Diversity Policy (the "**Supplier Diversity Policy**");
 - (b) a policy relating to the promotion of fair employment practices and ensuring minimum standards for employees which shall expressly describe the manner by which the Company and the Supplier shall comply with its requirement to pay and ensure that its subcontractors pay the London Living Wage (the "**Fair Employment Practices Policy**");
 - (c) a policy relating to the promotion of environmental sustainability which shall reflect and be consistent with the principles of the Green Procurement Code (the "**Environmental Sustainability Policy**");
 - (d) a policy relating to the promotion of community benefits (the "**Community Benefits Policy**");

- (e) a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "**Ethical Sourcing Policy**");
- (f) a policy relating to the meeting of strategic labour needs including the provision of training opportunities (the "**Strategic Labour Needs and Training Policy**"); and
- (g) a policy relating to the promotion of the welfare of the workforce (the "**Workforce Welfare Policy**"),

and the Supplier shall and shall procure that all of its subcontractors shall comply with such Policies (once approved by LUL) to the extent they do not conflict with the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code.

17.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code (and any adjustment or amendment to the Policies as a result of such amendment or adjustment to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).

17.5 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code (and any change to the Policies as a result of such change to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).

17.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 17 and the provisions of this Clause 17 are included in any subcontract (of any tier).

17.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 17.

18 Warranty

18.1 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.

- 18.2** The provisions of this Clause 18 shall survive the termination of the Agreement and each Contract for whatever reason.

19 Intellectual Property Rights

- 19.1** Intellectual Property Rights owned by the Supplier at the date of the Agreement shall continue to vest in and remain the sole property of the Supplier. Intellectual Property Rights owned by the Company at the date of the Agreement shall continue to vest in and remain the sole property of the Company. Intellectual Property Rights created by or on behalf of either party in respect of any Contract at any time after the date of the Agreement shall vest in and shall continue to vest in and remain the sole property of the Company.
- 19.2** Any specification (which term shall include but is not limited to the Specification, any documents, drawings, items, designs, software and processes) supplied by the Company or its agents to the Supplier, or specifically produced or developed by the Supplier for the Company in connection with each Contract (whether in conjunction with the Company or its agents or not), together with the Intellectual Property Rights in such specification, shall be the exclusive property of the Company, and the Supplier shall assign with full title guarantee to the Company all such Intellectual Property Rights for no further consideration. The Supplier shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of each Contract.
- 19.3** Without prejudice to any other rights which each party may have against the other, if, notwithstanding Clause 19.1, a party acquires any proprietary rights in or to any Intellectual Property Rights referred to in Clause 19.1 as belonging to the other party, that party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other party, or to its nominee, and to deliver to the other party, or to its nominee, such materials as it may reasonably require in this regard.
- 19.4** All royalties or other sums payable to any third party in respect of the use of any Intellectual Property Rights necessary for the performance of each Contract shall be paid by the Supplier.
- 19.5** The Supplier shall grant to the Company and to LUL and shall procure that its subcontractors and suppliers grant to the Company and LUL a perpetual, irrevocable, transferable, royalty-free, non-exclusive licence (with rights to transfer, assign and sub-license on the same terms) to use

and copy all Intellectual Property Rights owned, controlled or used by the Supplier in connection with each Contract.

19.6 Not used.

19.6A The Supplier agrees to provide to the Company or any person nominated by the Company's Representative immediate access to all Documentation in whatever form requested by the Company's Representative at any time but at the latest on termination or expiry of each Contract.

19.7 The Company shall grant to the Supplier a royalty free, non-exclusive licence (without a right to assign or sub-license save in respect of a sub-licence to any subcontractor for the purposes of any Contract) to use all Intellectual Property Rights it owns and has the rights to sub-license, for the sole purpose of performing its obligations under each Contract. In the case of Intellectual Property Rights which are licensed to the Company and which the Company has the right to sub-license, any sub-licences granted under this Clause 19.7 shall be granted subject to all the terms, conditions, restrictions and limitations contained in the licence to the Company.

19.8 The Supplier shall indemnify the Company from and against all Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights arising out of the performance of each Contract including (but not limited to) any claim that the Services infringe, or their importation, use or resale, infringes the Intellectual Property Rights of any other person.

19.9 Not used.

19.10 Not used.

19.11 The parties shall notify the other as soon as either becomes aware that:

- (a) any Intellectual Property Rights of any person are infringed (or are likely to be infringed) in connection with any Contract; or
- (b) the Company is prevented from using the Services as a result of the infringement of any Intellectual Property Rights of any person.

19.12 The Company may provide an instruction to obviate any infringement referred to in Clause 19.11 and in such circumstances the Supplier, at the Company's option, shall:

- (a) modify or re-perform the Services or any infringing parts to avoid the infringement; or
- (b) not perform the infringing Services, and the Order Price shall be reduced accordingly.

- 19.13** The Supplier shall not be entitled to any addition to the Order Price or extension to the Order Completion Date as a result of any instruction in respect of an infringement of the Intellectual Property Rights of others.
- 19.14** Save for the licence granted in accordance with Clause 19.7, no Intellectual Property Rights shall pass from the Company to the Supplier.
- 19.15** The Supplier shall use and shall procure that its subcontractors and suppliers shall use the trademarks, trade names and other Intellectual Property Rights as amended by the Company from time to time (the “**Corporate IPRs**”) in compliance with any relevant LUL standards from time to time in force.
- 19.16** The Supplier shall not use and shall procure that its subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trademarks, trade names and other Intellectual Property Rights without the Company’s and LUL’s prior written consent.
- 19.17** On written request from the Company and/or LUL, the Supplier shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company and/or LUL reasonably determines that any use of the Corporate IPRs falls below the quality standards notified to it in accordance with Clause 19.15, the Company shall give the Supplier written notice of that fact and the Supplier shall correct the use so as to comply with such quality standards taking into account the Company’s and/or LUL’s instructions.
- 19.18** The provisions of this Clause 19 shall survive the termination of the Agreement and each Contract for whatever reason.

20 Termination and Suspension

- 20.1** 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 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; or

- (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 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

20.2 Without prejudice to Clause 20.1, the Company shall have the right:

- (a) to terminate the Agreement or any individual Contract (in which case the 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 provision of the Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

20.3 In the event that the Company terminates the Agreement or any Contract for any reason under this Clause 20, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under such Agreement or Contract or under general law, permit the Company, at the Company's option, to:

- (a) enter the Supplier's premises and, solely in respect of the Agreement or Contract that has been terminated, take possession of any equipment or goods which are the property of the Company, the Specification and any applicable Company Documents; and
- (b) take the provision of the remaining Services wholly or in part out of the Supplier's hands and to place an order for such Services with any other person or persons or complete the provision of such Services by its own workmen.

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

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

20.5 Where the Company exercises its rights under Clause 20.3(b), following a termination in accordance with Clause 20.1 (but not a termination in accordance with Clause 20.2(a)) and in so

doing and securing the full provision of the Services, incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Agreement and the relevant Contract(s) ("**Excess Costs**"), the Supplier shall be liable to the Company for such Excess Costs in addition to being liable to the Company for any Losses of whatever nature arising out of or in connection with the relevant breach.

20.6 In the event that any Contract is suspended in accordance with Clause 20.3(b), the Supplier shall:

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

20.7 In the event that any Contract is suspended in accordance with Clause 20.3(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.

20.8 In the event that the parties are unable to agree upon the variation requested under Clause 20.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 33.

20.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and such Contract(s) as at the date of termination and in particular but without limitation the right to recover damages against the other party. All provisions which are expressed to survive the Agreement and each Contract shall remain in full force and effect.

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

21 Indemnity and Insurance

21.1 The Supplier acknowledges that the Company shall in the course of the provision of the Services be relying on:

- (a) the Supplier's skill, expertise and experience in the provision of the Services;
- (b) the accuracy of all representations or statements made by the Supplier to the Company;
- (c) the advice given by the Supplier to the Company in connection with the Services; and
- (d) the accuracy of the Contractual Documentation.

21.2 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers on an after-tax basis against all Losses suffered or incurred by the Company and/or any third party, arising from or in connection with the performance or non-performance of the Supplier under any Contract:

- (a) in respect of sickness, disease, death or injury to any person;
- (b) in respect of loss of or damage to any property (including any rail vehicles and property belonging to the Company or for which it is responsible);
- (c) in respect of a warranty claim made under Clause 18;
- (d) in respect of the presence of the Supplier, its employees or agents on the Company's premises whether such Losses be caused by negligence or otherwise;
- (e) arising out of or in the course of or by reason of any negligence or breach of contract or breach of statutory duty, wilful misconduct or other wrongful act or omission of the Supplier, its employees, agents or subcontractors, except to the extent that such Losses result solely from the negligence, breach of contract or other wrongful act or omission of the Company, its employees and agents;
- (f) arising out of or in the course of or by reason of the Supplier's performance, non-performance or part performance of each Contract; and
- (g) in respect of any liability under the Consumer Protection Act 1987 or any other similar statutory provisions,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

- 21.3** For the avoidance of doubt any Losses suffered or incurred by the Company under Clause 21.2(b) shall include, but not be limited to, any damages claims made against the Company by LUL as a result of a warranty claim under Clause 18.
- 21.4** The Supplier shall keep the Company indemnified against all claims arising as a result of the Supplier failing to comply with any relevant Applicable Laws and Standards, including but not limited to any liquidated damages claims made against the Company by an operator of a rail vehicle in circumstances where that rail vehicle is taken out of service as a result of the Supplier failing to comply with a relevant Applicable Law and Standard, provided always that the Supplier shall not be required to indemnify the Company for claims directly arising solely out of the wrongful acts or omissions of the Company, its employees or agents and provided further that the Supplier's liability to indemnify the Company shall be reduced proportionately to the extent that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.
- 21.5** The Supplier's indemnity under Clause 21.2 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of twelve (12) years after the Order Completion Date or earlier termination of each Contract.
- 21.6** 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 Clauses 21.2 to 21.4 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 21.7** Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Agreement or any Contract.
- 21.8** Without prejudice to the obligation to indemnify the Company set out in Clauses 21.2 and 21.4, 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 public liability insurance in respect of the Supplier's liability for death or injury to any person in an amount not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (c) maintain at its own cost public liability insurance in respect of the Supplier's liability for loss or damage to any property arising out of its performance of the Services in an amount of not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;

- (d) maintain at its own cost professional indemnity insurance to ensure that its activities under each Contract are insured and remain insured in an amount not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;
- (e) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;
- (f) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (g) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under any Order satisfactory evidence confirming the existence of insurance in accordance with the terms of this Clause 21.

21.9 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 21.8.

21.10 If the Supplier fails to maintain the insurance policies as provided in this Clause 21, 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.

21.11 Not used

21.12 The provisions of this Clause 21 shall survive the termination of the Agreement and each Contract for whatever reason.

22 Force Majeure

22.1 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 such Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under 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 such 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 such Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

23 Confidentiality

- 23.1** 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.
- 23.2** 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.
- 23.3** The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 23.1 and 23.2 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.
- 23.4** 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.
- 23.5** The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, LUL, any Contract or the Services without the prior written consent of the Company.

- 23.6** 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 Services, or any Dispute arising under or in connection with any Contract.
- 23.7** The provisions of Clauses 23.1 to 23.6 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.
- 23.8** The obligations of the parties under this Clause 23 shall survive the expiry or the termination of the Agreement and each Contract for whatever reason.

24 Assignment, Subcontracting and LUL Step-In Rights

- 24.1** 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.
- 24.2** The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under any Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 24.3** The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any parts thereof) to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 24.4** 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 4 in favour of any person to whom the Agreement and/or any Contract is being novated.
- 24.5** The Supplier acknowledges that if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract then LUL may issue a Step-in Notice to the Company advising the Company that it shall, from the date specified in the Step-in Notice, exercise its rights to step-in. The Supplier acknowledges LUL's rights to step-in under the Tube Lines Contract and accepts the Step-in Notice as conclusive proof of LUL's entitlement to step-in.

- 24.6** The Supplier acknowledges and accepts that, from the date specified in the Step-in Notice to the relevant date specified in any Step-out Notice served on the Supplier by LUL as referred to in Clause 24.10, it:
- (a) shall comply with the reasonable instructions of LUL or its appointee given in accordance with the Agreement and any Contract; and
 - (b) is not in breach of the Agreement or any Contract by complying with the instructions of LUL.
- 24.7** Subject to Clause 24.8 the Company shall remain liable to the Supplier for all amounts due and payable to the Supplier under each Contract and for all the Company's obligations under each Contract.
- 24.8** If LUL serves a notice on the Supplier requiring the Supplier to accept instructions from LUL or its appointee in respect of the Agreement or any Contract, then all amounts due and payable to the Supplier, or which may become due to the Supplier under such Contracts without right of retention or set off in respect of any prior breach of such Contracts (and which have not been discharged by the Company or any other person) shall be paid directly to the Supplier by LUL or its appointee.
- 24.9** The Supplier shall not hinder or prevent LUL or its appointee from exercising its step-in rights under the Tube Lines Contract. The Supplier shall not exercise any Intellectual Property Rights owned by it so as to prevent or hinder LUL or any third party appointed by LUL in accordance with its step-in rights from exercising its step-in rights.
- 24.10** If LUL serves a Step-out Notice on the Supplier then, if so required by the Step-out Notice, from the relevant date specified in the Step-out Notice, the Supplier shall comply with the instructions of the Company on the terms and conditions of the Agreement and each Contract.
- 24.11** The Supplier and the Company shall not be in breach of the Agreement or any Contract for complying with the obligations imposed by Clauses 24.5 to 24.11]

25 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 each Contract. The names and contact details of the representatives shall be recorded in each 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.

26 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.

27 Severance

If a provision of any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of such Contract, provided that the operation of this Clause 27 would not negate the commercial interest and purpose of the parties under such Contract. The provisions of this Clause 27 shall survive the termination of the Agreement and each Contract for whatever reason.

28 Publicity

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

29 Corrupt Gifts and Payments of Commission

29.1 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.

29.2 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.

29.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 29 at any time during performance of each Contract and during the twelve (12) year period following completion of performance.

29A Criminal Record Declarations

29A.1 For the purposes of this Clause 29A:

"Relevant Individual" means any servant, employee, officer, consultant or agent of either the Supplier or any subcontractor or supplier carrying out, or intended to carry out, any aspect of the Services; and

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

29A.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request 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.

29A.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 Services any Relevant Individual who has disclosed a Relevant Conviction.

29A.4 The Company and/or LUL shall have the right in accordance with the audit rights set out in Clause 4 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 29A at any time during performance of the Agreement and/or any individual Contract.

29A.5 If the Supplier fails to comply with the requirements under Clause 29A.2 and/or Clause 29A.3 the Company may, without prejudice to its rights under Clause 20.1, 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 any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 29A.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 29A.2.

29A.6 A persistent breach of Clause 29A.2 and/or Clause 29A.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any individual Contract in whole or in part with immediate effect in accordance with Clause 20.1(a).

29A.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 any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.

29A.8 Nothing in this Clause 29A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any individual Contract and the Supplier's responsibilities in respect of performance of the 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 29A.

30 No Waiver

No failure or delay on the part of either party to exercise any right or remedy under 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 any Contract are cumulative and are not exclusive of any rights or remedies provided by law. The provisions of this Clause 30 shall survive the termination of the Agreement and each Contract for whatever reason.

31 Entire Contract

Each 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 such 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 such Contract.

32 Notices and Service of Process

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

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

- (c) if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered.

The address and fax numbers of the Company and the Supplier are as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

Company: Tube Lines Limited
Distribution Services,
130 Bollo Lane, Acton
London, W3 8BZ

Attn: Gaynor Clancy

Facsimile: 020 7918 6492

Supplier: 583 London Road,
Isleworth, Middlesex, TW7 4EJ

Attn: Andrew J Dowsett

Facsimile: 020 8891 8099

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 32.1.

32A Not used.

33 Dispute Resolution

- 33.1** Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 33
- 33.2** 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.
- 33.3** 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 33.2 (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.

33.4 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 33.3 either party may refer the matter for resolution in accordance with the provisions of Clause 34.

33.5 Clauses 33.1 to 33.4 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 33.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

34 Governing Law and Jurisdiction

The Agreement and each Contract and any non-contractual obligations connected with the Agreement and each Contract shall be governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

35 Contracts (Rights of Third Parties) Act 1999

35.1 Subject to:

- (a) LUL's rights under Clause 24;
- (b) LUL's rights in accordance with Clauses 4.3, 4.4 and 4.6;
- (c) LUL's rights in accordance with Clauses 19.5 and 19.16;
- (d) LUL's rights in accordance with Clause 12.4; and
- (e) the Replacement Supplier's rights in accordance with Clause 15.6.3, 15.13 and 15.14

no person except any member of the TfL Group may enforce 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.

35.2 Notwithstanding LUL's rights referred to in Clause 35.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

36 Bonds, Warranties and Guarantees

- 36.1** If required by the Company, the Supplier shall provide within seven (7) days of the Company's request any or all of the following:
- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 7 in favour of the Company;
 - (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 7 in favour of the Company.
- 36.2** The Supplier shall ensure that any bond required under Clause 36.1 provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the aggregate of the Order Price of each Contract at all times until the Order Completion Date.
- 36.3** If at any time the existing bond and/or parent company guarantee cease to meet the requirements of Clauses 36.1 and 36.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee that meets the requirements within seven (7) days.
- 36.4** 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 8 in favour of:
 - (i) the Company;
 - (ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Agreement or any Contract;
 - (iii) any persons who have acquired or may acquire an interest in or over the Agreement, any Contract or any part of the Services or in relation to any infrastructure or works to which the Services relate; 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 36.4

- 36.5** In addition to the obligation to procure warranties as set out in Clause 36.4(a), the Supplier shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Services in favour of any of the parties referred to in Clause 36.4 (a) (ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request.

37 Default Interest

- 37.1** If either party fails to pay to the other any amount payable in connection with 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 Default Interest Rate. Any interest accruing under this Clause 37.1 shall be immediately payable by the paying party on demand.
- 37.2** Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.
- 37.3** The Late Payment of Commercial Debts (Interest) Act 1998 and related Regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under any Contract.

38 Freedom of Information

- (a) For the purposes of this Clause 38:

"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.

- (b) The Supplier acknowledges that the Company:

- (i) 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

- (ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.
- (c) Without prejudice to the generality of Clause 38(b) the Supplier shall and shall procure that its subcontractors (if any) shall:
 - (i) 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 and/or any individual Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
 - (ii) 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.
- (d) 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.

38A Data Transparency

- 38A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 38, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 38A.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 38A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

39 Transport for London Group

39.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any individual Contract under Clause 20.1, Clause 20.2(a) or at common law, the Company may terminate the Agreement and/or any individual Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 39.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 39.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 20.1 and this Clause 39.1 or the Cessation Plan, the provisions of this Clause 39.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 39.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any individual 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/or any individual Contract in accordance with this Clause 39.1.

39.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 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, crime and disorder in its area,

and in the performance of the Agreement and/or any individual 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.

39.3 The Company's business

The Supplier acknowledges that it:

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

39.4 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 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/or any individual Contract in order for the Company to achieve best value.

39.5 Data Protection

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.
- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
 - (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
 - (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Agreement and/or any individual Contract.

39.6 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 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 on-going and regular checks for any conflict of interest throughout the duration of the Agreement and/or any individual Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement and/or any individual Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services

from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and/or any individual Contract.

39.7 Not used.

39.8 Equality and Diversity

(a) Without limiting the generality of any other provision of the Agreement and/or any individual Contract, the Supplier:

- (i) shall not unlawfully discriminate;
- (ii) shall procure that its personnel do not unlawfully discriminate; and
- (iii) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976 (including the Race Relations (Amendment) Act 2000), the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005), the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Equality Act 2006, and any other relevant enactments in force from time to time in relation to discrimination in employment.

(b) The Supplier acknowledges that the Company is under a duty under Section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and shall use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible in satisfying this duty.

(c) The Supplier acknowledges that the TfL Group are under a duty by virtue of the Mayor's direction under Section 155 of the GLA Act (in respect of the Greater London Authority's duty under Section 404(2) of the GLA Act) to have due regard to the need to:

- (i) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;
- (ii) eliminate unlawful discrimination; and

- (iii) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible to enable the Company to satisfy this duty.

- (d) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of 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.
- (e) The Supplier acknowledges that the Company is under a duty under Section 49A of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) to have due regard to the need to:
 - (i) eliminate discrimination that is unlawful under the Disability Discrimination Acts;
 - (ii) eliminate harassment of disabled persons related to their disabilities and promote equality of opportunity between disabled persons and other persons;
 - (iii) take steps to take account of disabled persons' disabilities (even when that involves treating disabled persons more favourably than other persons); and
 - (iv) promote positive attitudes towards disabled persons and encourage participation by disabled persons in public life,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company where possible to enable the Company to satisfy this duty.

39.9 Work Related Road Risk

- 39.9.1 For the purposes of Clauses 38.9.2 to 38.9.9 (inclusive) of this Agreement, the following expressions shall have the following meanings:

“Bronze Accreditation”	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Car-derived Vans”	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
“Collision Report”	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	a Lorry, a Van or a Car-derived Van;
“Driver”	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“FORS”	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk

"Gold Accreditation" the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

"Lorry" a vehicle with an MAM exceeding 3,500 kilograms;

"MAM" the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

"Side Guards" guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

"Silver Accreditation" the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

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

39.9.2 Fleet Operator Recognition Scheme Accreditation

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

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the

maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

39.9.3 Safety Equipment on Vehicles

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

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

39.9.4 Driver Licence Checks

- (a) Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that:
- (b) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (c) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been Approved in writing by the Company within the last 12 months:
- (d) 0 – 3 points on the driving licence – annual checks;
- (e) 4 – 8 points on the driving licence – six monthly checks;
- (f) 9 – 11 points on the driving licence – quarterly checks; or

- (g) 12 or more points on the driving licence – monthly checks.

39.9.5 Driver Training

- (a) Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Agreement and each Contract.

39.9.6 Collision Reporting

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

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five working days of a written request from the Company.

39.9.7 Self Certification of Compliance

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 38.9.3, 38.9.4 and 38.9.5 of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

39.9.8 Obligations of the Supplier Regarding Subcontractors

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

- (a) comply with Clause 38.9.2; and

(b) where its subcontractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Agreement:

(i) For Lorries – Clauses 38.9.3, 38.9.4, 38.9.5 and 38.9.6; and

(ii) For Vans – Clauses 38.9.4, 38.9.5, and 38.9.6,

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

39.9.9 Failure to Comply with Work Related Road Risk Obligations

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 38.9.2, 38.9.3, 38.9.4, 38.9.5, 38.9.6, 38.9.7 and/or 38.9.8:

(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).

Schedule 1

Form of Order

Example Master Agreement for the supply of Services Contract Reference Number: Tfl00214

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 SERVICES.

Notes: 1. Please confirm receipt of this Order immediately by fax to the Company's Representative.
 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all Payment Applications.
 3. Please address all correspondence and enquiries to the Company's Representative.

Company:	Tube Lines Limited
Supplier:	Feltham Coachworks Limited
Contract Reference Number:	TfL00214
Order Number:	
Company's Representative: Address for service of notices: Telephone: Fax:	
Supplier Representative: Address for service of notices: Telephone: Fax:	
Delivery Address	
Order Commencement Date:	
Order Completion Date:	
Services to be provided:	
Location of Services:	
Order Programme:	
Order Price £ (exclusive of VAT) and application for payment date(s):	

Key Personnel:	The provisions of Clause 15.10 do not apply
Applicable levels of: Public liability insurance: Product liability insurance: Employer's liability insurance: Third Party Motor Liability insurance: Motor Traders insurance:	£10M per occurrence £10M per occurrence £10M per occurrence As required by law To include as a minimum cover for Carriage of Vehicles, Stock of Vehicles and Liability arising out of defective workmanship and/or products supplied as part of the Vehicle Body Repair Services
Additional Comments/Special Instructions:	Invoicing Address: 14 Pier Walk, London, SE10 0ES

Signed by:
Title:
On behalf of:
Tube Lines Limited
.....
Date:.....

Signed by:
Title:
On behalf of:
[]
.....
Date:.....

Appendix 1

Specification

1. Scope of Vehicle Repairs Services:

- This Framework is only for the repairs to Company accident damaged vehicles.

The vehicles covered by this tender include small, medium and large cars (including 4x4 vehicles) and light commercial vehicles of small, medium and large panel van configuration as well as drop-side variants, up to a maximum Gross Vehicle Weight (GVW) of 3500gs. This list is for guidance purposes only and other vehicle variants may from time to time be included.

- All other administration and management activities associated with this requirement are excluded from this procurement.
- The Company will not require courtesy vehicles or direct contact with the drivers.
- The Company's Vehicle Examiner will inspect each vehicle to identify the required repairs prior to allocation to the Supplier.
- The Supplier will be notified by the Company that a vehicle requires repair and is ready for collection from Acton.
- Occasionally a supplementary estimate will be required to be submitted where additional work or parts have been identified as necessary to complete the repair. These will also be authorised by the Company Vehicle Examiner.

Compliance:

- The supplier shall comply with all aspects of recognised industry PAS 125
- BSI Kite mark standards applicable to vehicle repairs
- The Supplier is a Member of The Motor Vehicles Repair Association

2. Delivery & Collections:

- Vehicles will be collected and delivered free of charge from the West London Distribution Services site (W3) as and when requested.
- Non-runners will be dealt with in accordance with the pricing agreed as detailed in the pricing schedule.
- A copy of the Company's own Estimate Sheet will be given to the collecting Supplier for their reference and guidance.

3. Systems:

- The Supplier shall provide an industry recognised "Audatex" estimate for all vehicles prior to any work being undertaken. These will be authorised by the Company Vehicle Examiner.

4. Service Levels

- All repairs must be completed and returned to the Company on a timely basis and in accordance with the estimated timescales provided at the outset of each repair.
- The Company Vehicle Examiner will inspect all vehicles upon their return and will raise any issues directly with the Supplier. Should any dispute remain unresolved between both parties then an independent insurance engineer shall be appointed to arbitrate and whose decision shall be final.
- The Supplier shall collect accident damaged vehicles within one (1) working day from the time notified by the Company, and collection will be from Acton or nominated Company location
- The supplier shall provide Autatex Estimate within 24hrs from collection of vehicles
- Turnaround times for completed repairs will be determined as per individual agreement
- Recording non-conforming products, services, and repairs should be 2 % or less of total repairs per annum

Schedule 2

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 extent of the Services to be carried out.
- 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.

- 8.1 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with a labour rate of £27per hour, 10% parts discount for all manufacturers without exception; and
- 8.2 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 each Contract, including but not limited to, the Specification and the Order Programme.
9. Strict adherence to the procedure described in this Schedule 2 shall be a condition precedent to any addition to the price for the Services. If the Supplier does not adhere to each paragraph in this Schedule 2 then the Supplier shall not be entitled to any addition to the price for the Services notwithstanding that the Supplier may have supplied additional or varied Services.

Appendix 1

Form of Variation Proposal/Variation Order

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

Contract Reference:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)

Description of change:		
Reason for changes and impact (if any) on Contract:		
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">Variation Proposal Authorised by:</td> <td style="width: 40%; padding: 5px;">Proposal Date:</td> </tr> </table>	Variation Proposal Authorised by:	Proposal Date:
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 Delivery Date:	
Supplier's Representative:	
Print Name:	Signature:
Date:	

Completed document to be returned to the Company's Representative

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:
LUL Representative (if applicable):		
Print Name:	Signature:	Date:

Schedule 3
Quality and Safety Plan

Not Used.

Schedule 4
Deed of Novation

NOVATION / TRANSFER

Within 14 days of any written request by Tube Lines Limited to the Contractor, the Contractor shall execute one or more agreements substantially in the form specified in [Schedule / Appendix] [1] by which Tube Lines Limited shall transfer all or such part as may be specified by Tube Lines Limited of its rights and obligations under this Contract to one or more third parties to be nominated by Tube Lines Limited.

NOVATION / TRANSFER] AGREEMENT

THIS DEED is made day of 201[]

BETWEEN:

Tube Lines Limited a company registered in England and Wales under number 3923425 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1 0TL (the "**Company**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**Contractor**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**New Company**").

WHEREAS:

- (A) The Company has an agreement dated [] and referenced [insert contract number] with the Contractor for the provision of [describe in brief the scope of work/services] (the "**Contract**").
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Contractor and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:

1.1 "**Transfer Date**" means [];

1.2 "**Transferred Part**" means all that part of the undertaking of the Company which consists of [describe part of undertaking that the New Company will be taking responsibility for.

2. With effect from the Transfer Date [and only in so far as the Contract relates to the Transferred Part]:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the Contractor 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 Contractor against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Contractor against the New Company; and
 - 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Contractor accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Contractor.
 - 2.4 the Company transfers its rights and obligations under the Contract to the New Company.

EXECUTED under Hand and delivered the day and year first above written.

THE COMMON SEAL of)	_____
TUBE LINES LIMITED	)	Authorised Signatory
was hereunto affixed in)	_____
the presence of:-	)	Authorised Signatory

THE COMMON SEAL of)	_____
[CONTRACTOR]	)	Director
was hereunto affixed in)	_____
the presence of:-	)	Director/Secretary

THE COMMON SEAL of)	_____
[NEW COMPANY]	)	Director
was hereunto affixed in)	_____
the presence of:-	)	Director/Secretary

Schedule 5

Prices for Services

- 1.All prices quoted are to be exclusive of VAT.
- 2.All prices are to be inclusive of delivery and collection from Acton or the nominated site as required.
- 3.The cost of running Audatex estimates are not reimbursable.
- 4.Prices and rates are to remain fixed for a period of 2 years and thereafter subject to variation in accordance with the RPI. "RPI" shall mean the Retail 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. On and with effect from second anniversary of the Commencement Date, the Order Price shall be adjusted upwards or downwards (as the case may be) by the amount of the change (if any) in RPI between its rate last published (as final) immediately before such anniversary and its rate published (as final) twelve months before that.
- 5.As detailed in the Framework Agreement, invoices may only be raised upon satisfactory completion of vehicle repair and approved by the Company Vehicle Examiner.
- 6.Invoices must contain all required information and as a minimum include the Company Purchase Order number, Accident Reference number, vehicle registration number and Supplier's estimate reference.

Section	Description	Cost	Notes
1	Hourly Rate		
2	Parts discount rate		
3	Delivery/Collection charges for non runners		
4	Item		
	Air Con re-charge (per job)		
	Alloy Wheel Refurbishments (per wheel)		
	Anti-Corrosion Protection (per panel)		
	Anti-Freeze (per litre)		
	Check and Quality Control (per job)		
	De Nib/Polish (per job)		
	Door Membranes (each)		
	Door Skin Bonding Kit (each)		
	Door Skin Sealer (each)		
	Door Sound Pad (each)		
	E. P. A. - Charge (per job)		
	Geometry Check/Adj (per job)		
	Glass Bonding Kit (each)		
	Glass Masking (wu)		
	Glass Remove/refit (wu)		
	Health and Safety Close Down (per job)		
	Jig Bracket Hire (per job)		
	No Plates - Std/GB (each)		
	Paint Index		
	PAS125 - Charge (per job)		
	Quarter Panel Bonding Kit (each)		
	Sundries (per job)		
	Valve and Balance (each)		
	Car Care Kit (each)		

Schedule 6 Not used.

Schedule 7

Form of Parent Company Guarantee and Performance Bond

THIS GUARANTEE is made the

day of

201

BETWEEN:

- (1) [] (company registration number []) whose registered office/principal place of business is at [] (the "**Guarantor**");
- (2) [] (company registration number []) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors in title and assigns); and
- (3) [] (company registration number []) whose registered office/principal place of business is at [] (the "**Supplier**").

WHEREAS:

- (A) This Guarantee is supplemental to a contract (the "**Contract**") for the carrying out of [] at [] made between (1) the Company and (2) the Supplier.
- (B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.
- (C) The Supplier is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.

3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.
4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;
 - (c) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;
 - (h) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;
 - (j) the termination of the Contract; or
 - (k) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or

discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
- (b) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs in which case it shall; or
- (c) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs in which case it shall.

7. This Guarantee is irrevocable.

8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.

9. The Guarantor:

- (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
- (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
- (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.

11. The Company is entitled to make any number of demands under this Guarantee.

12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
14. No person other than TfL (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

16. [For non-UK resident Guarantors only:

For the purposes of this Guarantee the Guarantor hereby appoints of [to be a London address] to accept service of process on its behalf, and service on the said at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate such appointment).]

EXECUTED as a DEED under

THE COMMON SEAL of

[GUARANTOR]

in the presence of:-

Signature of Authorised Signatory

Print name of Authorised Signatory

Signature of Authorised Signatory

Print name of Authorised Signatory

EXECUTED as a DEED under

THE COMMON SEAL of

[COMPANY]

in the presence of:-

Signature of Authorised Signatory

Print name of Authorised Signatory

**EXECUTED as a DEED under
THE COMMON SEAL of
[SUPPLIER]**

in the presence of:-

Signature of Authorised Signatory	.....
Print name of Authorised Signatory	.....
Signature of Authorised Signatory	.....
Print name of Authorised Signatory	.....

Schedule 8

Not used.

Schedule 9

Not used.

Schedule 10 Not used.

Schedule 11 Not used.

EXECUTION PAGE:

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

Executed as a deed by affixing the Common Seal of)

Tube Lines Limited)

in the presence of:-)

.....
[Redacted Signature]

[Authorised Signatory]



Executed as a Deed by [SUPPLIER])

acting by)

ANDREW J. DONSETT.

and)

IAN TILMS

[Redacted Signature]

) Authorised Signatory

[Redacted Signature]

) Authorised Signatory