

Dated 17 August 2017

LONDON UNDERGROUND LIMITED (1)
and
MILWAUKEE COMPOSITES INCORPORATED (2)

CONTRACT
for the supply and fitting of New Saloon Car
and Cab Flooring for the London
Underground Limited Piccadilly Line 73TS
Fleet of trains
CONTRACT REFERENCE NUMBER: TFL-00735

Contents

Clause	Page
1	Definitions and Interpretation 5
2	Duration 15
3	Supplier's Primary Obligations 15
4	Records and Audit 18
5	Company's Obligations 19
6	Additional Goods and Services 20
7	Variation 20
8	Price and Payment 20
9	Delivery of Goods 22
10	Failure to Supply the Goods 24
11	Failure to Perform the Services 25
12	Access and Time for Performance of the Services 25
13	Supplier Performance 27
14	Work on Company's Sites 28
15	Free Issue Materials 29
16	Risk and Ownership 29
17	Inspection of the Goods 29
18	Warranty 30
19	Intellectual Property Rights 31
20	Termination and Suspension 34
21	Co-operation in Handover 36
22	Indemnity and Insurance 36
23	Force Majeure and Permitted Delay Events 38
24	Environmental Claims 40
25	Safety 41
26	Construction (Design and Management) Regulations 2015 41
27	Independent Supplier 42

28	Supplier Personnel	42
29	Confidentiality	45
30	London Living Wage.....	46
31	Responsible Procurement	47
32	Assignment and Subcontracting.....	48
33	Company's and Supplier's Representative	48
34	Costs	49
35	Severance	49
36	Publicity	49
37	Corrupt Gifts and Payments of Commission	49
38	No Waiver	49
39	Entire Contract.....	50
40	Notices and Service of Process	50
41	Dispute Resolution	50
42	Governing Law and Jurisdiction	51
43	Counterparts.....	51
44	Contracts (Rights of Third Parties) Act 1999.....	51
45	Partnerships and Joint Ventures	52
46	Bonds, Warranties and Guarantees	52
47	Change of Control	53
48	Interest.....	53
49	Freedom of Information	53
50	Data Transparency.....	55
51	Survival.....	55
52	Transport for London Group.....	55
53	CompeteFor.....	64
54	Criminal Record Declarations.....	64
	Schedule 1 Detailed Terms	66
	Schedule 2 Core Pricing.....	68

Schedule 3 Specification and Drawings	70
Schedule 4 Contract Variation Procedure	107
Schedule 5 Programme & Delivery	110
Schedule 6 Quality and Safety Plan	112
Schedule 7 Corporate IPRs	113
Schedule 8 Deed of Novation	114
Schedule 9 Not used	117
Schedule 10 Form of Collateral Warranty	118
Schedule 11 Supplier Performance	126

THIS CONTRACT is made on

17th August

2017

BETWEEN:

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Milwaukee Composites Incorporated.**, a company registered in the United States of America under number 391 92 1060 and having its registered office at 6055 S. Pennsylvania Avenue, Cudahy, Wisconsin 53110, United States of America (the "**Supplier**").

BACKGROUND

- (A) The Supplier carries on the business of manufacturing and selling the Goods and providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Contract.
- (C) This Contract 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 Contract.

THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

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

"Additional Goods" means any goods which the Company requests the Supplier to provide in accordance with the terms of the Contract in addition to those set out in the Specification.

"Additional Services" means any services which the Company requests the Supplier to provide in accordance with the terms of the Contract in addition to those set out in the Specification.

"Aggregated Annual Spend" means the total of all sums paid by the Company to the Supplier (exclusive of VAT) pursuant to the terms of the Contract annually calculated in accordance with Clause 8.

"Applicable Laws" means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to

time in force in the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract, or the Goods and 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 52.1 to give effect to a Declaration of Ineffectiveness.

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

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

"Company's Representative" means the person appointed by the Company and named as such in Schedule 1.

"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 Contract.

"Completion Date" means the date specified as such in Schedule 1 or such other date as may be agreed between the parties in accordance with the terms of the Contract.

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

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

“Contract” means this contract made between the Company and the Supplier.

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

“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 Clauses 8.1 and 8.2 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Price” means the price stated in Schedule 1.

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

“Contract Variation Procedure” means the procedure set out in Schedule 4.

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

“Defect” means that the Goods or any part of them do not comply with the requirements of the Contract, or are not fit for their intended purpose, or are of unsatisfactory quality whether in consequence of faulty design, faulty materials, negligence, bad workmanship or in consequence of any other reason attributable to the Supplier or its suppliers or the employees of any of them. For the avoidance of doubt, this shall include damage which occurs during transit from the Supplier to the Company.

“Delivery Address” means the address at which the Supplier shall deliver the Goods to the Company and which is set out in Schedule 1 or such other destination as may be notified by the Company to the Supplier.

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

“Delivery Note” has the meaning given to that term in Clause 9.6.

“Dispute” has the meaning given to that term in Clause 41.1.

"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 the Contract and whether in paper form or stored electronically.

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

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

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

"Excepted Liabilities" means the liability of the Supplier for:

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

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

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

“Expected Delivery Date” means the date set out in Schedule 1 upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

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

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

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

"Goods" means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 6.

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

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

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

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

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

"Liquidated Damages" means the sums identified and calculated in accordance with Schedule 1;

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

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

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

"Nominated Representatives" has the meaning given to that term in Clause 41.2.

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

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

"Payment Application" has the meaning given to that term in Clause 8.1.

"Policies" means the policies set out in Clause 31.3.

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

"Programme" means the programme of work set out in Schedule 5 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 Contract or otherwise by agreement in writing between the Supplier and the Company.

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Company; or
- (b) entering into the Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before the Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
 - (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 Contract or any other contract with the Company; or

(d) defrauding or attempting to defraud the Company.

"Quality and Safety Plan" means the Supplier's quality and safety plan set out in Schedule 6 as amended from time to time.

"QUENSH" has the meaning given to it in Schedule 6.

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

"Rejected Goods" has the meaning given to that term in Clause 17.2.

"Rejection Notice" has the meaning given to that term in Clause 17.2.

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

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

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

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

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

"Standards" means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to supply the Goods and Services in accordance with good

industry practice. A full set of current Standards is available for the Supplier's use on-line at the LUL Standards e-library or as notified to the Supplier.

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

"Supplier Personnel Information" means information about Supplier Personnel including the numbers of Supplier Personnel involved in supplying the Goods and 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 Clause 28; 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 appointed by the Supplier and named as such in Schedule 1.

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

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

"Transparency Commitment" means 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.

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

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

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

“**Variation Proposal**” means the written proposal put by the Company or the Supplier to vary the Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 4.

“**Volume Discount**” is the figure calculated annually in accordance with Clause 8.18.

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

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

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

- 1.2 The headings in the 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 Contract and references to the Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Contract or any other document shall be construed as references to the 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 Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the “**Company**” shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Contract, the order of priority for the purpose of construction in descending order shall be:
 - (a) the Clauses of the Contract;
 - (b) the Schedules to the Contract (equal priority but subject to Clause 1.10); and
 - (c) any other document referred to in, or incorporated by reference into, the Contract.
- 1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the Clauses of the Contract and a

provision of any other Schedule then the Clauses of the Contract shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Contract.

2 Duration and Option to Extend

- 2.1 The Contract shall commence on the Commencement Date and shall be performed by the Supplier in accordance with the terms of the Contract (save in the event of earlier termination) and shall continue until the Completion Date.
- 2.2 The Company shall at its own discretion be entitled at any time prior to the Completion Date inform the Supplier of its intention to extend the duration of the Contract by a period of up to twelve (12) additional months. The provisions of the Contract shall continue to apply mutatis mutandis to any such extension of the Contract (other than this Clause 2.2 containing the option to extend). On receipt of such notice from the Company by the Supplier the Contract shall be deemed extended accordingly.

3 Supplier's Primary Obligations

- 3.1 The Supplier shall supply the Goods and shall perform the Services in accordance with the terms of the Contract.
- 3.2 The Supplier shall ensure and warrants to the Company that the Goods will:
- (a) conform in all respects with the Specification and the provisions of the Contract including, without limitation, specifications as to quantity, quality and description;
 - (b) be of satisfactory quality and fit for the purpose for which they are intended;
 - (c) comply with all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
 - (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
 - (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company;
 - (f) have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment.
- 3.2A The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the duration of the Contract in accordance with the requirements set out in the Specification.

- 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 performed in accordance with the Programme;
 - (c) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
 - (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification; and
 - (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.
- 3.4 The Supplier warrants to the Company that it has entered into and executed the Contract by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.
- 3.5 The Supplier shall perform its obligations under the Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and provision of the Services and the Quality and Safety Plan, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.6 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery including, but not limited to, those required by any Applicable Laws and Standards.
- 3.7 Unless otherwise stated in the Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under the Contract.
- 3.8 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.
- 3.9 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.10 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Contract.

3.11 Not Used

3.12 Design

The Supplier shall carry out his design in accordance with the Specification and the Contract terms. The Supplier shall submit the particulars of his design which the Specification requires to the Company's Representative for acceptance. The Supplier shall not proceed with the supply of Goods and/or Services until the Company's Representative has accepted his design. Reasons for not accepting the Supplier's design shall include (without limitation):

- a) it does not comply with the Specification, or any other part of the Contract;
- b) it does not comply with Applicable Laws and Standards;
- c) it is not integrated and coordinated with the designs of others where the Supplier is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Supplier to provide the Goods and/or Services; or
- d) it is not in a format which is accepted for use by the Company's Representative.

The Supplier shall not be entitled to any changes to the Contract Price, Expected Delivery Date and/or Date for Completion by reason of anything in this Clause 3.12.

3.13 The Supplier may submit his design for acceptance in parts if the design of each part can be assessed fully.

3.14 The Supplier integrates and coordinates his design with the designs of others in accordance with the Specification and instructions of the Company's Representative, and where necessary to provide the Goods and Services.

3.15 The Supplier in designing and specifying the parts of the Goods which he is required to design and specify, warrants, undertakes and represents to the Company that the design:

- a) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Contract;
- b) complies with all Applicable Laws and Standards, and
- c) is fit for the purpose defined in the Specification.

3.16 The Supplier accepts entire responsibility for the design and specification of the Goods and Services which he is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between his design and specification of the Goods and Services and the documents which are part of the 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 the Contract and all transactions related to the Contract. For the avoidance of doubt, such records shall include but are not limited to:
- (a) all necessary information for the evaluation of claims or variations;
 - (b) management accounts, information from management information systems and any other management records;
 - (c) accounting records (in hard copy as well as computer readable data);
 - (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
 - (e) original estimates;
 - (f) estimating worksheets;
 - (g) correspondence;
 - (h) variation and claims files (including documentation covering negotiated settlements);
 - (i) general ledger entries detailing cash and trade discounts and rebates;
 - (j) commitments (agreements and leases) greater than £5,000;
 - (k) detailed inspection records; and
 - (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.
- 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 the 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 any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 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 the 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 the 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 the Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of the 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 the Contract requirements.

4.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's request for the same.

4.7 The Supplier shall, and shall ensure that any subcontractor or sub-supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of, or alteration to data, during any audit undertaken pursuant to the Contract

5 Company's Obligations

5.1 The Company shall pay the Supplier the Contract Price for the Goods and Services in accordance with the terms of the Contract.

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

6 Additional Goods and Services

The Company may, at any time during the term of the Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure and Schedule 2 (Core Prices). If a Variation Order is made in respect of such Additional Goods and/or Additional Services, Schedule 1 shall be amended to include such Additional Goods and/or Additional Services, the Expected Delivery Date and/or Completion Date and the Contract Price.

7 Variation

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

8 Price and Payment

- 8.1 The Supplier shall submit an application for payment to the Company's Representative according to the rates and prices set out in Schedule 2 for the relevant portion of the Contract Price in respect of the Goods after the Delivery Date of such Goods (a "**Payment Application**"). If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application for the relevant portion of the Contract Price to the Company's Representative after the Delivery Date of each instalment.
- 8.2 The Supplier shall submit a Payment Application for the relevant portion of the Contract Price in respect of the Services using the rates and prices set out in Schedule 2, to the Company's Representative on the application for payment dates.
- 8.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.

8.4 Not Used

8.5 The Company's Representative shall assess the Payment Application and shall notify the Supplier in writing not later than fourteen (14) days after the date of receiving the Payment Application of:

(a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and

(b) the basis on which the amount was calculated

a "Payment Certification". It is immaterial for the purposes of this Clause 8.5 that the amounts referred to in Clause 8.5(a) and Clause 8.5(b) may be zero.

8.6 Not Used

8.7 Not Used

8.8 Not Used

8.9 Not Used

8.10 Not Used

8.11 The Contract Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Contract Price for the Goods and Services shall only be changed in accordance with the Contract Variation Procedure.

8.12 The Contract Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all Payment Applications.

8.13 In addition to any other rights of the Company whether at law or equity under this Contract, whenever under or arising out of this Contract or any other contract between the Company and the Supplier

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

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

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

- 8.14 All Payment Applications shall clearly show the Contract Reference Number and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.
- 8.15 All sums payable to the Company by the Supplier under the 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.
- 8.16 The Company shall be entitled to the Supplier's standard discount for prompt payment.
- 8.17 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Contract Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Contract Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 8.17, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 8.18 The Company calculates the Volume Discount annually by applying the relevant Volume Discount Percentage to the Aggregated Annual Spend. The Company issues an invoice to the Supplier for the Volume Discount. The Supplier pays the Volume Discount to the Company within 30 days of receipt of the invoice.
- 8.19 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or Services performed or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Contract or otherwise.

9 Delivery of Goods

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Delivery Date at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods. The Company shall be under no obligation to accept partial delivery of an order.
- 9.2 The time of delivery of the Goods shall be of the essence of the Contract.

- 9.3 If the Goods are not supplied on the Expected Delivery Date then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event, or (iii) a Permitted Delay Event.
- 9.4 The Supplier accepts that the amount of Liquidated Damages under the Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Delivery Date.
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of the Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Delivery Date in accordance with Clause 40.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 9.8 In the event that all or any of the obligations of the Supplier under the Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 9 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.
- 9.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in

the Company under Clause 16.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.

- 9.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate
- 9.11 Notwithstanding Clause 9.6 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) days notice of the revised Delivery Date (the "Revised Delivery Note").

10 Failure to Supply the Goods

- 10.1 Without prejudice to any other right or remedy of the Company under this Contract or general law and its rights under Clause 20, if the Supplier fails to supply the Goods or any part to the Company's satisfaction the Company may give the Supplier at least seven (7) days' notice in writing (except in an emergency when no notice need be given) requiring the Supplier to remedy such failure.
- 10.2 If the Supplier fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the supply of the Goods or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 10.1 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 10.3 For the purposes of Clause 10.1 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 10.1 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 10.1.

11 Failure to Perform the Services

- 11.1 If the Supplier has not performed the Services in accordance with the terms of the Contract, without prejudice to any other rights the Company shall have under the 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.
- 11.2 Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 11.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 11.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 11.3 For the purposes of Clause 11.2 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 11.2 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 11.2.

12 Access and Time for Performance of the Services

- 12.1 The Company shall give the Supplier access to the parts of the Underground Network required for the performance of the Services in accordance with the provisions of this Clause 12.
- 12.2 Subject to the provisions of Clause 11, the Company shall use reasonable endeavours to give access to such parts of the Underground Network to the Supplier on the dates and times on which it has stated that it requires such access.
- 12.3 The Supplier acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Contract.
- 12.4 Where the Supplier requires access to the Underground Network to carry out the Services, it shall:
- (a) apply for access at the earliest available opportunity; and

- (b) provide the Company's Representative without delay with such additional information as the Company's Representative may reasonably require in respect of the Supplier's access requests.
- 12.5 The Company shall confirm access bookings in accordance with this Clause 12. The Company does not warrant or guarantee to the Supplier that such access will be granted. If any request for access is rejected, the Company shall advise the Supplier and agree with the Supplier alternative dates for resubmission. The rejection of an access request shall not entitle the Supplier to an extension of time.
- 12.6 If the Supplier fails to apply for access in accordance with this Clause 12, the Company shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Contract.
- 12.7 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access.
- 12.8 If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Company's Representative setting out all details including the part of the Underground Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Supplier is aware.
- 12.9 The Supplier shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network. The Supplier shall make good any such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Company's Representative.
- 12.10 The Supplier shall indemnify and keep indemnified the Company in respect of any claims by third parties relating to the disruption, delay or cancellation of their access due to the actions or omissions of the Supplier.
- 12.11 Prior to returning any part of the Underground Network to the Company at the end of any period of booked access, the Supplier shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the Underground Network in a clean and workmanlike condition to the satisfaction of the Company's Representative.
- 12.12 If the Supplier fails to comply with the requirements of Clause 12.11 within such reasonable time as may be allowed by the Company's Representative, then the Company may dispose of those items as the Company sees fit and at the Supplier's cost, which cost if met by the Company shall become a debt due from the Supplier to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Supplier under this Contract.

- 12.13 Where the Supplier is denied booked access to any part of the Underground Network, through no fault of the Supplier, the Supplier shall be entitled to an extension of time in accordance with Clause 23.2.
- 12.14 The Supplier shall ensure that the Services are satisfactorily completed by the Completion Date. The time of the performance of the Services shall be of the essence of the Contract.
- 12.15 The Supplier shall ensure that the Services are satisfactorily completed by the Completion Date. If the Services are not performed by the Completion Date then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Services or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Services. The Company shall not be entitled to deduct such amount from the price payable for such Services or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event or (iii) a Permitted Delay Event.
- 12.16 The Supplier accepts that the amount of Liquidated Damages under the Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to perform the Services by the Completion Date.
- 12.17 In the event that all or any of the obligations of the Supplier under the Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 11 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

13 Supplier Performance

- 13.1 On the date that the Company's Representative receives the first Payment Application and every 4 weeks after that date, the Company assesses the Supplier's performance under the Contract in accordance with Schedule 11.
- 13.2 The Company shall have the right to:

- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 11; and
- (b) use the escalation process stated in Schedule 11 to rectify any unsatisfactory performance by the Supplier in its performance of the Contract or any failure by the Supplier to meet the performance standards set out in Schedule 11.

14 Work on Company's Sites

14.1 During the term of the Contract, the Supplier shall:

- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
- (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
- (c) notwithstanding the terms of Clause 14.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of the Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Supplier including any of the Supplier's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and
- (g) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway.

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

15 Free Issue Materials

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

16 Risk and Ownership

- 16.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 17.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 17.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.
- 16.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Delivery Date.

17 Inspection of the Goods

- 17.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.

- 17.2 If, following the inspection referred to in Clause 17.1, the Goods do not comply with the terms of the Contract, including but not limited to, conforming to the Specification and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").
- 17.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company's option:
- (a) replace such Rejected Goods with Goods which conform in all respects with the Contract within five (5) Working Days; or
 - (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
 - (c) pay the Company's Losses resulting from the Supplier's delivery of Goods that were not in conformity with the terms of the Contract.
- 17.4 The Company's rights and remedies under this Clause 17 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.
- 17.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 17.3(a), the Company may, without affecting its rights under Clause 17.3(c), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall promptly reimburse the Company for the costs it incurs in doing so.
- 17.6 The Goods shall conform in all respects with any sample approved by the Company and in the absence of a sample; all the Goods provided shall be within the normal limits of industrial quality.

18 Warranty

- 18.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under the Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of

the Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.

- 18.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 18, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of the Contract and the provisions of Clauses 9, 16 and 17 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 9 or, where applicable, re-delivers the Goods in accordance with this Clause 18.
- 18.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.

19 Intellectual Property Rights

Existing Contracts

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

Vesting of Intellectual Property Rights created under this Contract

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

Ownership of the Supplier's Intellectual Property Rights

- 19.3 Without prejudice to Clause 19.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 19.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

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

- 19.4 The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 19.3 for the purposes of:

- (a) understanding the Goods and Services;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Goods and Services;
- (c) extending, interfacing with, integrating with, connecting into and adjusting the Goods and Services;
- (d) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) executing and completing the provision of the Goods and Services; and
- (f) enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

Provision of Supporting Documentation and Other Materials

19.5 The Supplier shall:

- 19.5.1 promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractors (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractors (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 19.2, 19.3 and 19.4 above; and
- 19.5.2 keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

Company's Rights of Retention

19.6 If the Supplier has not complied with its obligations under Clause 19.5.1, the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 19.5.1.

Company's Rights to the Software

19.7 If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Goods and/or as part of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 20.1 (including their equivalent in any