

DATED _____ **2017**

LONDON UNDERGROUND LIMITED

and

MARL INTERNATIONAL LIMITED

MANUFACTURE, SUPPLY AND SERVICES

AGREEMENT

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THIS MANUFACTURE AND SUPPLY AGREEMENT is made on

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED**, (Registered No: 1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**"); and
- (2) **MARL INTERNATIONAL LIMITED**, (Registered No: 1109955) a company incorporated under the laws of England and Wales whose registered office is at Marl Business Park, Ulverston, Cumbria LA12 9BN (the "**Supplier**").

WHEREAS:

- (A) The Purchaser wishes to procure the Goods and Services for use on the London Underground.
- (B) The Purchaser and the Supplier have agreed to enter into an agreement for (among other things) the design, manufacture and supply of the Goods and Services, on the terms and conditions set out hereinafter.

IT IS AGREED:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement the following words and expressions shall have the following meanings save where the context requires otherwise:

"**Acceptance for Service**" means in respect of any Goods, that has been installed on the Train and the Installation Tests have been successfully completed and "Accept for Service" and "Accepted for Service" shall be construed accordingly;

"**Additional Spares**" means Spares for use in planned or unplanned maintenance, an indicative list of which is included in Schedule 3 (*Spares*) Part B (*Additional Spares*) (as may be amended in accordance with the Variation Procedure), to be made available by the Supplier in accordance with Clause 11.4.;

"**Agreement**" means this Agreement including the Schedules;

"**Applicable Laws**" means, as the context may require, all or any laws, statutes, by-laws, codes of practice which have force of law, directives, regulations, Industry Standards, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become applicable to this Agreement, any agreement or document referred to herein, any item of Goods, the Services and/or the Supplier's obligations (including their performance) under this Agreement;

"**Change Date**" means the date set out in the Contract Particulars;

"**Change in Law**" means the application to any person of any Applicable Laws and/or LU Standards which did not apply to them at the Change Date, or any change in the application or interpretation after the Change Date of any Applicable Laws and/or LU Standards but excluding any Foreseeable Change in Law;

"**Commencement Date**" means the date specified as such in the Contract Particulars, or if no date is specified, the date specified in a written notice by the Purchaser to the Supplier instructing it to commence the Services under this Agreement;

"**Competent Authority**" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

"**Completion Date**" means the date which is 10 years from the Product Acceptance of the 36th Train, or such earlier date as is notified to the Supplier by the Purchaser in writing;

"**Concept Design**" means the concept design more particularly described in Schedule 1A (*Specification*);

"**Concept Design Review**" means the concept design review more particularly described in Schedule 1A (*Specification*);

"**Concept Design Review Approval**" means the concept design review approval more particularly described in Schedule 1A (*Specification*) and described as Milestone Payments in Schedule 4 (Contract Price);

"**Confidential Information**" has the meaning ascribed to it in Clause 30.1;

"**Consequential Loss**" means in relation to a breach of this Agreement or other circumstances in which an Indemnified Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties and/or indirect or consequential 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 indirect or consequential loss would be likely to be suffered as a result of such breach;

"**Contract Information**" means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Supplier which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

"**Contract Particulars**" means the contract particulars set out in Schedule 16 (*Contract Particulars*);

"**Contract Price**" means the amount payable by the Purchaser to the Supplier under this Agreement as specified in the Contract Particulars and as further detailed in Schedule 4 (*Contract Price*), as such amount may be amended from time to time pursuant to this Agreement;

"**Contract Programme**" means the programme set out in Schedule 2 (*Contract Programme*) or, where no programme is so included or the included programme has subsequently been revised (and such revisions have been accepted by the Purchaser), the latest programme accepted by the Purchaser pursuant to Clause 8. The latest programme accepted by the Purchaser supersedes previous Contract Programmes;

"**Contractual Date**" means, in relation to the Goods, the date(s) specified in Schedule 2 (*Contract Programme*) for:

- (A) successfully completing Routine Production Tests of such Goods;
- (B) achieving Product Acceptance of such Goods;

"**Corrective Action**" has the meaning ascribed to it in Clause 10.6.1;

"**Declaration**" has the meaning ascribed to it in Clause 54.1;

"**Declaration of Ineffectiveness**" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended);

"**Default Interest**" means interest on late payment at the rate of two per cent per annum above the base rate of the Bank of England from time to time;

"**Defect**" means that the Goods or any part of them are defective, damaged, of unsatisfactory quality or not Fit for Purpose whether in consequence of:

- (A) defective materials, workmanship or design;
- (B) transit of the Goods, including from the Supplier's Works into Storage and/or to the Delivery Location, or from Storage to the Delivery Location or from the Delivery Location to the Supplier's Works;
- (C) any act or omission of the Supplier during the Defect Rectification Period; or
- (D) any act or omission of the Supplier during the Warranty Period,

and is not principally caused by:

- (i) any failure by the Purchaser or any third party appointed by the Purchaser to use, operate or maintain the Goods in accordance with the Manuals, Installation Instructions and/or any Applicable Laws and applicable LU Standards; or
- (ii) vandalism, collision or accidental damage caused by any person other than the Supplier, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them; or
- (iii) any failure by the Installer to comply with the Installation Instructions during the installation of the Goods;

"**Defect Rectification Period**" means (without prejudice to the further provisions of this definition) in relation to Goods installed on a Train and those Parts forming part of the Goods installed on the Train, the period commencing on the date that the Goods have received Product Acceptance and ending on the date of Fleet Acceptance;

"**Delivery Location**" means:

- (A) in relation to the Goods (including the Supplementary Spares), save as detailed in (C), the relevant delivery location as notified in writing by the Purchaser to the Supplier;
- (B) in relation to the Training Programme and Training Materials the Purchaser's premises as notified in writing by the Purchaser to the Supplier and to the Purchaser's maintenance team at a location as notified in writing by the Purchaser to the Supplier; or
- (C) in relation to the Design to the Purchaser electronically;

"**Design**" means all design documentation (whether in written or electronic form) produced by or on behalf of the Supplier for the Goods;

"Design Authority" means the entity responsible for ensuring that the Goods and each Part and Spare continues to comply with the Specification and for maintaining Relevant Consents following approved changes to the Design;

"Design Approval" means approval of the Design pursuant to Clause 6.3.8

"Detailed Design Review" means the detailed design review more particularly described in Schedule 1A (*Specification*);

"Detailed Design Review Approval" means the detailed design review approval more particularly described in Schedule 1A (*Specification*) and described as Milestone Payments in Schedule 4 (Contract Price);

"Energy Technology List" means the government managed list of energy efficient plant and machinery that forms part of the Enhanced Capital Allowance Scheme;

"Enhanced Capital Allowances" means the enhanced capital allowance scheme for energy saving technologies (first published on 15 October 2015) as amended from time to time by the Department for Business, Energy and Industrial Strategy (or any other government department or body responsible for the same);

"Environmental Damage" means any material injury or damage to persons, living organisms or property (including offence to man's senses) or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance or energy, noise or vibration save to the extent any of the foregoing are within the requirements of Schedule 1A (*Specification*);

"Equality & Diversity Infraction" has the meaning ascribed to it in Schedule 17 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);

"Escrow Agent" means NCC Escrow International Limited (Company Number 03081952) or any successor or replacement to all or any of its functions;

"Escrow Agreement" means an agreement in the form or substantially in the form set out in Schedule 13 (*Form of Escrow Agreement*);

"Escrow Materials" means the Software, the Source Code and any other such materials notified in writing by the Purchaser to the Supplier that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Supplier's obligations under this Agreement including, but not limited to, Design drawings, product specifications and quality control measures;

"European Railway Agency" means the European Railway Agency established pursuant to Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) and includes any successor to all or any of its functions;

"Excepted Liabilities" means:

- (A) the Supplier's liability for death or personal injury, or fraud, fraudulent misrepresentation or corruption;
- (B) the Supplier's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is or is required to be insured by the Supplier in accordance with the provisions of Clause 28;
- (C) the Supplier's liability for Environmental Damage;

- (D) Not Used;
- (E) the Supplier's liability in respect of its express obligations in relation to warranty claims and for the rectification of any Defect pursuant to each of the Supplier's obligations under Clause 17;
- (F) the Supplier's liability in respect of any IPRs pursuant to Clause 24.6;
- (G) the Supplier's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (H) any Default Interest on any payments falling within (A) to (G) above;
- (I) any policy of insurance that the Supplier is required to maintain under this Agreement (or would have been entitled but for any breach or failure to maintain such insurance), subject to any limits on such Losses stated in Schedule 9 (*Insurance*) and any deductibles payable under such policies;
- (J) the Supplier's liability on termination or cancellation of this Agreement or otherwise to refund and pay to the Purchaser all payments previously paid by the Purchaser in respect of the Goods and Services which are the subject of termination or cancellation in accordance with this Agreement (together with all Default Interest payable on such refund or payment), as such refund is calculated in accordance with Clause 25.5;
- (K) any costs or expenses which the Supplier is obliged or does expend during the term of the Agreement in carrying out its obligations;
- (L) the Supplier's liability in respect of any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;

"**Fault Free**" means, in relation to Goods which are installed in a Train, that such Goods run without a Defect manifesting itself;

"**Financial Close Protocol**" means the financial close protocol set out in Schedule 4 (Contract Price) Part 7 (Foreign Exchange);

"**Fit for Purpose**" means, in relation to any asset or service to be provided under this Agreement:

- (A) that it complies with all requirements and provisions of this Agreement including the Specification;
- (B) that it complies with all Applicable Laws, Relevant Consents and applicable LU Standards and, to the extent that there is non-compliance with an applicable LU Standard, that there is a valid derogation from that LU Standard; and
- (C) where it is a Part and/or Spare, that if such Part or Spare is incorporated into the Goods, such incorporation does not prevent the Goods from complying with (A) or (B) above;

"**Fleet Acceptance**" means that the Goods comply with the Fleet Acceptance Criteria as evidenced by and occurring upon the issue of a Fleet Acceptance Certificate for the Goods;

"**Fleet Acceptance Certificate**" means a certificate in the form or substantially in the form set out in Schedule 6 (Form of Certificates) Part C (Form of Fleet Acceptance Certificate) issued by the Purchaser in respect of the Goods;

"**Fleet Acceptance Criteria**" means the criteria required to be satisfied in order to achieve Fleet Acceptance of the Goods in accordance with Clause 12.7.2;

"Fleet Acceptance Longstop Date" means the date specified as such in Schedule 16 (Contract Particulars);

"Fleet Mean Distance Between Service Affecting Failure" has the meaning ascribed to it in Schedule 1A (*Specification*);

"FM Affected Party" has the meaning ascribed to it in Clause 27.1.1;

"FM Notice" has the meaning ascribed to it in Clause 27.4;

"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 of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Force Majeure Event" means any:

- (A) fire, earthquake or flood;
- (B) act of terrorism;
- (C) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (D) strikes, lock outs or other industrial action not solely affecting the Supplier's and/or their Subcontractors' employees or those of any of its Subcontractors;

save to the extent that such event is caused by the Supplier, any Subcontractor, or their respective agents, officers and/or employees;

"Foreseeable Change in Law" means any Change in Law which:

- (A) is a requirement under the Specification;
- (B) is, provided it comes into force in the same or substantially similar form:
 - (i) enacted prior to the Change Date as coming into effect on a specified future date;
 - (ii) in a draft bill or statutory instrument published on or before the Change Date;
 - (iii) in a draft Industry Standard published on or before the Change Date by Transport for London, the Secretary of State for Transport, RSSB, Network Rail, or the European Rail Agency;
- (C) a prudent manufacturer of LED Lighting should have reasonably known about on or before the Change Date; and/or
- (D) otherwise arises on or before the Change Date;

"Four Car Unit" shall have the meaning ascribed to it in Schedule 1A (*Specification*);

"Further Warranty Period" means the period specified as such in Schedule 16 (*Contract Particulars*);

"GLA Act" means the Greater London Authority Act 1999;

"Goods" means the Saloon LED Lighting, Prototype Goods, Spares, Supplier Documentation and other items to be provided by the Supplier in accordance with this Agreement;

"Greater London" means that term as it is used in the GLA Act;

"Greater London Authority" means the authority established by section 1 of the Greater London Authority Act 1999 and its successors;

"Group" means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes **"subsidiary"** and **"holding company"** have the meanings respectively given to them by section 1159 of the Companies Act 2006;

"Indemnified Parties" has the meaning ascribed to it in Clause 29.2;

"Independent Auditor" has the meaning ascribed to it in Clause 25.10.3;

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Goods which are or have been issued by the Secretary of State, Network Rail, the Office of Rail and Road, RSSB, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including the European Railway Agency and shall include, without limitation, Railway Group Standards, the Rule Book, Notified National Technical Rules and Technical Specifications for Interoperability;

"Information" means information recorded in any form held by or on behalf of the Purchaser;

"Information Request" means a request for any Information under the FOI Legislation;

"Insolvency Event" in relation to any person means:

- (A) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (B) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (C) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (D) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (E) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (F) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (G) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

"Installation Instructions" means the instructions produced by the Supplier for installing the Goods on to each Train so that it is fully functional in accordance with the Specification;

"Installation Tests" means the tests specified by the Supplier to demonstrate the installed system functions as required before Acceptance for Service, as described in Section 7.4 of Schedule 1A (Specification);

"Installer" means the Purchaser or, such other party as notified to the Supplier in writing in accordance with this Agreement;

"Intellectual Property Rights" or "IPRs" means all intellectual property rights in any part of the world, including any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Key Date" means a date, as stated in Schedule 2 (*Contract Programme*) unless later changed in accordance with this Agreement by which the Supplier is to deliver the Goods (or part thereof) to the Installer in accordance with the Programme;

Key Performance Indicators or (KPIs) mean the criteria against which performance under this Agreement will be measured as more particularly described in Schedule 12 (*Key Performance Indicators*);

"Key Personnel" means the persons listed in Schedule 5 (*Key Personnel*) (or any replacements appointed in accordance with Clause 9.1);

"Local Community" means those areas of London affected by the works or services from time to time;

"London Living Wage" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor of London or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Purchaser;

"Losses" means, in the context of the definition of Excepted Liabilities, any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

"LU Standards" means the various standards documents and associated codes of practice identified in Schedule 1A (*Specification*);

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

"**Maintenance Spares**" means those Spares listed in Schedule 3 (*Spares and Special Tools*) Part A (*Maintenance Spares*);

"**Manuals**" means documents which fully describe how the Goods should be operated, serviced, maintained, dismantled, reassembled, repaired and overhauled;

"**Mayor of London**" means the person elected to hold the office as Mayor of London with the powers and function set out in the Greater London Authority Act 1999;

"**Milestone**" means, in the case of the Goods, the achievement of each of the stages in the design, manufacture, testing, commissioning, delivery, Product Acceptance and Fleet Acceptance of the Goods, in each case as more particularly set out in the table in Schedule 4 (*Contract Price*) Part 4 (*Payment Milestones*);

"**Milestone Payment**" has the meaning ascribed to it in Clause 20.2.4;

"**Old Components**" means the existing goods and any other components that are removed from the Trains by the Supplier in order to install the Goods, title to which remains with the Purchaser;

"**OIL**" has the meaning ascribed to it to it in Clause 6.3.3;

"**Part**" means any equipment, component or furnishing forming part of the Goods or Spare;

"**Party**" means each of the Purchaser and the Supplier and "**Parties**" shall be construed accordingly;

"**Permitted Delay Event**" has the meaning ascribed to it in Clause 15.1;

"**Payment Certificate**" has the meaning ascribed to it in Clause 20.2.4;

"**Persistent Breach**" has the meaning ascribed to it in Clause 25.4.2;

"**Pre-Installation and Systems Tests**" means the tests defined by the Supplier that demonstrate the Goods are suitable to be installed on the Train and will meet the requirements of the Specification and will be carried out on Goods after delivery to the Delivery Location prior to installation onto each Train;

"**Preconditions**" has the meaning ascribed to it in Clause 12.6.1;

"**Post-Prototype Review**" has the meaning ascribed to it in Schedule 1A (Specification);

"**Post-Prototype Review Approval**" means the post-prototype review approval more particularly described in Schedule 1A (*Specification*) and described as Milestone Payments in Schedule 4 (*Contract Price*);

"**Potential Obsolete Spares**" means any Spares which will be, or are likely to become, obsolete prior to the termination or expiry of this Agreement;

"**Proceedings**" has the meaning ascribed to it in Clause 47.2;

"**Product Acceptance**" means in respect of any Goods, that it complies with the Product Acceptance Criteria as evidenced by and occurring upon the issue by the Purchaser of a

Product Acceptance Certificate for those Goods and “Product Accepted” shall be construed accordingly;

“**Product Acceptance Certificate**” means a certificate in the form or substantially in the form set out in Schedule 6 (Form of Certificates) Part A (Form of Product Acceptance);

“**Product Acceptance Criteria**” means the criteria as detailed in Clause 12.5.1;

“**Production Readiness Review**” has the meaning ascribed to it in Schedule 1A (Specification);

“**Production Readiness Review Approval**” has the meaning ascribed to it in Schedule 1A (Specification) and described as Payment Milestones in Schedule 4 (Contract Price)

“**Prohibited Act**” means:

- (A) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (B) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;
- (C) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
 - (ii) under any law or legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts,in relation to this Agreement or any other contract with the Purchaser; or
- (D) defrauding or attempting to defraud the Purchaser;

“**Prototype Design**” means all Prototype Goods design documentation (whether written or in electronic form) produced by or on behalf of the Supplier;

“**Prototype Design Review Approval**” as more particularly described in Schedule 1A (Specification) and described as Payment Milestones in Schedule 4 (Contract Price) and as required prior to manufacture of the Prototype Goods;

“**Prototype Design Review**” shall have the meaning ascribed to it in Schedule 1A (Specification);

“**Prototype Goods**” means the goods provided as agreed at the Prototype Design Review for the purposes of demonstrating design compliance;

“**Prototype Train**” means the Train on which the Prototype Goods will be installed;

“Public Procurement Termination Event” means:

- (A) this Agreement has been subject to any substantial modification that would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
- (B) the Purchaser determines that this Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and Directives 2014/24/EU of the European Parliament Council dated 26 February 2014;

“Purchaser’s Premises” means such premises as owned or occupied by the Purchaser;

"Purchaser Termination Notice" has the meaning ascribed to it in Clause 25.2.2;

"Qualified Product Acceptance” means the qualified product acceptance of any Goods which do not comply in all respects with the Product Acceptance Criteria pursuant to Clause 12.5.1, as evidenced by the issue of a signed QPAC;

"Qualified Product Acceptance Certificate" or "QPAC" means a certificate in the form or substantially in the form set out in Schedule 6 (*Form of Certificates*) Part B (*Form of Qualified Product Acceptance Certificate*);

"Railway Group Standards" means, to the extent applicable to the Goods or Goods and their operation:

- (A) technical standards with which railway assets, or equipment used as part of railway assets, must conform; and
- (B) operating procedures with which the operation of railway assets must comply,

known generally as the Railway Group Standards and which are established and maintained by the RSSB and in each case as authorised pursuant to the document known as the Railway Group Standards Code;

“Rectification Works” means any and all works required to ensure that any failed Installation Tests can be passed;

"Recurrent Defect" means:

- (A) a Defect in any Spare or Part and which:
 - (i) in any consecutive 12-month period occurs in or affects three or more items of Spares or Parts; or
 - (ii) occurs three or more times in the same Spare or Part in any consecutive 12-month period; or
 - (iii) the Purchaser reasonably believes will occur in or affect three or more items of the same items of Spares or Parts in any 12-month period; or
- (B) any defect, or actual or potential failure (whether relating to safety, reliability or maintainability), occurring in or affecting any plant and machinery, spares or parts provided by the Supplier which is similar to the Goods to be supplied pursuant to this Agreement;

"Relevant Consents" has the meaning ascribed to it in Clause 4.4;

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

"Relevant Individual" means any servant, employee, officer, consultant or agent of the Supplier or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the LUL Network or any other property owned by the Purchaser;

"Remedial Plan" has the meaning ascribed to it in Clause 25.3.1(B);

"Remedy Notice" has the meaning ascribed to it in Clause 25.3.1;

"Required Insurances" means the insurances specified in Schedule 9 (*Insurance*);

"Responsible Procurement Principles" means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

"Retention Period" has the meaning ascribed to it in Clause 10.3.1(B);

"Routine Production Tests" means the tests detailed in the Routine Production Test Specifications;

"Routine Production Test Specification" means the test plan to be developed and provided by the Supplier and agreed with the Purchaser in accordance with Schedule 1A (*Specification*);

"RSSB" means the Rail Safety and Standards Board;

"Saloon LED Lighting" has the meaning ascribed to it in Schedule 1A (*Specification*);

"Security" means:

- (A) any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, security interest, assignment by way of security, right of possession, right of detention or other encumbrance; or
- (B) any other preferential arrangement resulting in a secured transaction or having the same economic or legal effect as any of the foregoing; or
- (C) any agreement to give any of the foregoing; or
- (D) any arrangement to prefer one creditor over another creditor; or
- (E) the interest of the vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement; or
- (F) any interest described in (A) to (E) above over any interest described in (A) to (E) above;

"Service Affecting Failure" means a failure which causes a disruption to the Train service of 120 seconds or greater, or which requires a Train to be withdrawn from service;

"Service Affecting Failure Period" means the period commencing on the date that the first Goods for a Train has been Accepted for Service and ending on Fleet Acceptance;

"Services" means the design of the Goods and/or the technical and quality support to be provided by the Supplier in accordance with the Training Schedule, Schedule 3A

(*Continuing Support*) and any other support services provided by the Supplier during the term of this Agreement;

"**Software**" means, as may be developed, enhanced, modified, adapted, altered or updated from time to time, the lists of instructions, stored in permanent or semi-permanent form, used:

- (A) to define the functions of microprocessors and similar devices installed on any Goods or any part thereof or in equipment to be used in conjunction with, or for the operation, testing, commissioning, modification and/or refurbishment of, any Goods or any part thereof; and/or
- (B) to run programmes, spreadsheets and/or databases in connection with the operation, testing, commissioning, modification and/or refurbishment of the Goods, in each case except for such as are standard commercial products, usable as made, and which have not been modified in order to perform any of the tasks set out in sub-clause (A) above, which:
 - (i) forms part of the Goods; and
 - (ii) is not Third Party Software;

"**Source Code**" means the source code version of any Supplier-owned Software which is licensed to the Purchaser pursuant to this Agreement in a form capable of being read and interpreted by humans, together with related interpretative documentation and material;

"**Spares**" means all spare parts of any description including fluids, parts and assemblies required in connection with the Goods and Services supplied or to be supplied by the Supplier or any Subcontractor under this Agreement;

"**Specification**" means the specification set out in Schedule 1A (*Specification*), as such requirements may be amended in accordance with this Agreement;

"**Specification Design Review**" means the Specification design review more particularly described in Schedule 1A (*Specification*);

"**Specification Design Review Approval**" means the Specification design review approval more particularly described in Schedule 1A (*Specification*) and described as Payment Milestones in Schedule 4 (Contract Price);

"**Storage**" has the meaning ascribed to it in Clause 12.2A.2;

"**Storage Instructions**" means the storage instructions set out in Schedule 8 (*Storage*);

"**Subcontract**" means any contract awarded by, or to be awarded by, the Supplier in relation to, or connected with, the carrying out of any of the Supplier's obligations under this Agreement and unless the Contract herein requires otherwise, includes a subcontractor or supplier of any such person;

"**Subcontractor**" means any party to a Subcontract other than the Supplier;

"**Supplementary Spares**" has the meaning ascribed to it in Clause 11.3A.1;

"**Supplier Documentation**" means the documentation to be provided by the Supplier as more particularly described in Schedule 1A (*Specification*) including, but not limited to, the Manuals, the Installation Instructions, Storage Instructions, the Training Materials and the Training Programme;

"**Supplier Event of Default**" means any of the events or circumstances listed in Clause 25.1;

"**Supplier Group**" means the Supplier and any member of its Group from time to time;

"**Supplier Guarantee**" means, where the Contract Particulars specifies a Supplier Guarantee is required, the parent company guarantee of the Supplier's obligations under this Agreement provided by the Supplier Guarantor in favour of the Purchaser and substantially in the form set out in Schedule 7 (*Form of Supplier Guarantee*);

"**Supplier Guarantor**" means the Supplier's parent company (if any) identified as such in the Contract Particulars;

"**Supplier IPR**" means any existing or new Intellectual Property Rights owned by the Supplier, any Subcontractor or other third party that:

(A) are used for, or;

(B) arise in connection with,

the performance by the Supplier of its obligations under this Agreement, including design, manufacture, supply, testing, maintenance and delivery of the Goods;

"**Supplier Risk Register**" has the meaning ascribed to it in Schedule 1B (*Contract Management*) Part B (*Risk Management*);

"**Supplier's Records**" has the meaning ascribed to it in Clause 10.3.1(A);

"**Supplier's Works**" means the premises specified as such in the Contract Particulars;

"**Systems Test**" has the meaning ascribed to it in Schedule 1A (*Specification*);

"**Taxes**" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Competent Authority, together with any penalties, additions, fines, surcharges or interest relating thereto and "**Tax**" and "**Taxation**" shall be construed accordingly;

"**Test Rig**" means a test bench or test rig which enables systems level testing of the Saloon LED Lighting prior to installation on a Train. It shall serve to replicate all functions and interfaces of the Saloon LED Lighting for test purposes;

"**Tests**" means the tests identified in the Specification to be carried out by the Supplier in accordance with Schedule 1A (*Specification*) and "**Testing**" shall be construed accordingly;

"**TfL**" or "**Transport for London**" means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

"**TfL Group**" means Transport for London and any member of its Group;

"**Third Party Software**" means software owned by third parties prior to the Commencement Date which has not been produced in connection with or for the purpose of the Goods;

"**Three-Car Unit**" shall have the meaning ascribed to it in Schedule 1A (*Specification*);

"**Train**" means a Four Car Unit and a Three-Car Unit;

"**Training Programme**" has the meaning ascribed to it in Schedule 18 (*Training*);

"Training Materials" means all of the training materials further described in the Training Schedule;

"Training Schedule" means Schedule 18 (*Training*);

"Training Services" means the training services stated in the Training Schedule to be provided by the Supplier;

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

"Variation" means any addition, omission or other change whatsoever to or in respect of this Agreement, including the Specification and/or the Goods and/or any other technical requirement contained in this Agreement;

"Variation Procedure" means the variation procedure set out in Clause 23;

"Variation Quote" has the meaning ascribed to it in Clause 23.1.1;

"Variation Valuation" has the meaning ascribed to it in Clause 23.3.1;

"VAT" means

- (A) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (B) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (A), or imposed elsewhere;

"Warranty Period" means the period specified as such in Schedule 16 (Contract Particulars); and

"Working Day" means a weekday (other than a Saturday or Sunday or other public holiday) on which banks are open for domestic business in the City of London.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 any reference to this Agreement includes the Schedules to it, each of which forms part of this Agreement for all purposes;
- 1.2.2 a reference to an enactment, statutory provision or Industry Standard shall unless otherwise expressly specified in this Agreement include a reference to any subordinate legislation made under the relevant enactment, statutory provision or Industry Standard and unless otherwise expressly specified in this Agreement is a reference to that enactment, statutory provision, Industry Standard or subordinate legislation as from time to time amended, consolidated, modified, reenacted or replaced;
- 1.2.3 words in the singular shall include the plural and vice versa;
- 1.2.4 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership, limited partnership, limited liability partnership or to an individual's executors or administrators;

- 1.2.5 a reference to a Clause or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause or schedule (as the case may be) of or to this Agreement and a reference in a Schedule to a paragraph shall mean a reference to a paragraph of that Schedule;
- 1.2.6 if a period of time is specified as “from” or “within” a given day, or “from” or “within” the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.7 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.8 references to writing shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;
- 1.2.9 a reference to “includes” or “including” shall mean “includes without limitation” or “including without limitation”;
- 1.2.10 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.11 references to this Agreement include this Agreement as amended, varied or supplemented in accordance with its terms and references to other agreements or instruments shall also be to those as amended, varied or supplemented;
- 1.2.12 a reference to the “Purchaser” or the “Supplier” includes its respective (and any subsequent) successors in title, and its respective permitted transferees or assignees;
- 1.2.13 references in the Agreement to costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT or other similar tax properly chargeable therein in any jurisdiction;

2. **CONTRACT TERM**

The Agreement shall commence on the Commencement Date and shall be performed by the Supplier in accordance with the terms of the Agreement (save in the event of earlier termination) and shall continue until the Completion Date.

3. **PURCHASE**

3.1 **Purchase**

The Supplier shall supply each item of Goods to the Purchaser and perform the Services, in each case by the relevant Key Date or Contractual Date (as applicable) for that item in consideration for the Purchaser procuring payment to the Supplier of the Contract Price in respect of each such item of Goods or such Services, in each case in accordance with the terms of this Agreement.

3A **REPRESENTATIONS AND WARRANTIES**

3A.1 **Supplier’s Representations and Warranties**

The Supplier represents and warrants to the Purchaser that as at the date of this Agreement:

- 3A.1.1 it is validly incorporated and has the power, capacity and legal right to enter into this Agreement and any related ancillary documents to which it is a party and perform its obligations and exercise its rights, hereunder and thereunder and has taken all necessary corporate and other action to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
 - 3A.1.2 this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
 - 3A.1.3 the entry by it into this Agreement and performance of its obligations under this Agreement will not conflict with its constitutional documents, which are true, accurate and up-to-date;
 - 3A.1.4 the entering into or the performance of its obligations or the exercise of its rights under this Agreement and any related ancillary documents to which it is a party will not breach, or cause to be breached, any restriction (whether arising in contract or otherwise), that is binding on the Supplier or any of its assets or undertakings;
 - 3A.1.5 the Supplier has not knowingly provided any information or made any statement of fact (whether oral or in writing) to the Purchaser which is untrue or inaccurate or which was intended by the Supplier to mislead the Purchaser;
 - 3A.1.6 except as disclosed on or before the Commencement Date, no legal proceedings are pending or, to the Supplier's knowledge, threatened against it which if decided against the Supplier would have a material adverse effect upon the Supplier's financial condition or business or its ability to perform its obligations under this Agreement and any related ancillary documents; and
 - 3A.1.7 no Insolvency Event has occurred or is reasonably likely to occur in relation to the Supplier.
- 3A.2 The Supplier acknowledges and agrees that the Purchaser is relying on the representations and warranties above and is entering into this Agreement on the basis of them.

4. SUPPLIER'S GENERAL OBLIGATIONS

4.1 General Undertaking and Warranties

The Supplier undertakes and warrants to the Purchaser, for the benefit of the Purchaser that it shall design, manufacture, supply, test, commission and deliver the Goods:

- 4.1.1 so that the Goods are Fit for Purpose;
- 4.1.2 so that the Goods satisfy the Product Acceptance Criteria and the Fleet Acceptance Criteria;
- 4.1.3 so that the Goods are manufactured in accordance with the design agreed in accordance with this Agreement;
- 4.1.4 in accordance with, and so that the Goods shall function in accordance with, sound modern design and engineering principles and practices in the rail industry except where these would conflict with Clauses 4.1.1 and 4.1.2;

- 4.1.5 in accordance with the Specification and the Contract Programme so as to achieve Product Acceptance and/or Fleet Acceptance of the Goods on their respective Contractual Dates;
- 4.1.6 in compliance with all Applicable Laws and all applicable LU Standards;
- 4.1.7 in accordance with good industry practice and with all due skill, care and diligence to be expected of appropriately qualified and experienced professional designers and engineers with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement;
- 4.1.8 using materials and goods that comply with the Specification and all Applicable Laws and LU Standards and so that the Goods will be of new manufacture and comply with the Specification;
- 4.1.9 in accordance with the requirements of any instructed Variation and in all other respects in accordance with this Agreement; and
- 4.1.10 in respect of the Spares, so that each of those is sufficient and adequate to enable maintenance to be carried out on the Goods.

4.2 **Third Party Warranties**

The Supplier shall extend to the Purchaser the benefit of any guarantee, condition or warranty which may have been expressly given to it by any of the Subcontractors in respect of the Goods, and shall use its best endeavours to extend to the Purchaser the benefit of any guarantee, condition or warranty which may have been expressly given to it by any other person in respect of such Goods.

4.3 **Compliance**

In performing its obligations under this Agreement, the Supplier shall, and shall procure that its Subcontractors shall:

- 4.3.1 comply with the version of the Contract Programme in place from time to time; and
- 4.3.2 comply with all Applicable Laws, all applicable LU Standards and all directions of the Purchaser and any other Competent Authority.

4.4 **Licences and Consents**

The Supplier shall obtain and maintain all consents, approvals, authorisations, acceptances, certificates, licences (including export licences), exemptions, registrations, filings, permits and other matters, give all notices and pay all fees, in each case which are required or necessary for the proper performance of the Supplier's duties and obligations under this Agreement ("**Relevant Consents**").

4.5 **Tax Allowances**

The Supplier undertakes and confirms to the Purchaser that neither it nor any other person which is a member of the Supplier Group, a Subcontractor, a supplier or a provider of finance to the Supplier or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any capital allowances or analogous Tax allowances in respect of the Goods

4.6 **Key Dates**

The Supplier shall perform its duties and obligations under this Agreement so that any Key Date is met.

5. **CHANGE IN LAW**

5.1 The Parties have agreed to allocate the risks associated with any Change in Law as set out in this Clause 5.

5.2 On becoming aware of the occurrence of any Change in Law, the Purchaser shall notify the Supplier in writing with an instruction to address and comply with such Change in Law and the Supplier shall forthwith comply with that Change in Law as specified in the instruction. The Purchaser's instruction under this Clause 5.2 shall constitute a Variation and the consequences of implementing such Change in Law shall be dealt with in accordance with Clause 23.

5.3 The Supplier shall, without prejudice to its general obligation to comply with the terms of this Agreement:

5.3.1 use its reasonable endeavours to mitigate the adverse effects of any Change in Law and take all reasonable steps to minimise any increase in costs arising from such Change in Law; and

5.3.2 use its reasonable endeavours to take advantage of any positive or beneficial effects of the Change in Law and take all reasonable steps to maximise any reduction in costs arising from such Change in Law.

5.4 The Purchaser and the Supplier shall adjust the Contract Price by the amount calculated in accordance with the Variation Procedure. The Supplier shall not be entitled to any other payment or compensation or, save as expressly provided otherwise in this Agreement, relief in respect of such Change in Law or associated Variation (or the consequence of either) and the provisions of this Agreement shall be construed accordingly.

5.5 The Parties agree that the Supplier shall not be entitled to propose a Variation for any Foreseeable Change in Law and the Supplier shall be required to comply with and implement such Foreseeable Change in Law at its own risk, cost and expense and with no entitlement to additional remuneration, adjustment to the Contract Price and/or any Key Date or Contractual Date.

5.6 The Supplier shall take all steps necessary to ensure that it performs all of its obligations under this Agreement in accordance with the terms of this Agreement following any Change in Law.

6. **SPECIFICATION AND DEVELOPMENT OF DESIGN**

6.1 **Specification**

The Supplier acknowledges and agrees that it has reviewed and considered the Specification and is satisfied:

6.1.1 as to its feasibility with respect to the design, manufacture, supply, testing, commissioning and delivery of the Goods; and

6.1.2 that it will be able to implement them within the timescales set out in the Contract Programme.

6.2 Design Procedures

- 6.2.1 The Supplier shall undertake the design of the Goods in accordance with the requirements of this Agreement and the Specification.
- 6.2.2 The Purchaser shall make available to the Supplier such Trains as required to enable the Supplier to survey for its Design.

6.3 Design Acceptance Process

- 6.3.1 The Supplier shall provide the required Design review submission documents to the Purchaser in accordance with the Design acceptance process detailed in Schedule 1A (*Specification*).
- 6.3.2 Following submission of such Design review submission documents, the Purchaser shall respond to the submissions in the Design review meetings as envisaged in Schedule 1A (*Specification*).
- 6.3.3 Where a Design review submission document(s) does not provide evidence of compliance with this Agreement and Schedule 1A (*Specification*), the Purchaser shall in consultation with the Supplier, prepare an outstanding issues list whereby actions, action holders and close out dates shall be assigned and agreed (the “OIL”).
- 6.3.4 Following agreement of the OIL to the satisfaction of the Purchaser, or if there are no outstanding issues, the Purchaser shall have the sole discretion as to whether to move the Supplier to the next Design review stage.
- 6.3.5 Clauses 6.3.1 to 6.3.4 inclusive shall apply to each stage in the Design review process.
- 6.3.6 Following the completion of the Prototype Design Review to the satisfaction of the Purchaser, the Supplier shall have achieved Prototype Design Review Approval.
- 6.3.7 The Supplier shall not commence the manufacture of the Prototype Goods until it has achieved Prototype Design Review Approval in accordance with Clause 6.3.6 and the Purchaser has given the instruction to proceed with production of the Prototype Goods.
- 6.3.8 Following the completion of the Production Readiness Review to the satisfaction of the Purchaser, the Supplier shall have achieved Design Approval.
- 6.3.9 The Supplier shall not commence the manufacture of the Goods until it has achieved Design Approval in accordance with Clause 6.3.8 and the Purchaser has given the instruction to proceed with production of the Goods.

6.4 Design Liability

All design liability in relation to the Goods shall be borne solely by the Supplier.

6.5 Liability for Performance

Notwithstanding any other provision of this Agreement, no examination or lack of examination and/or assurance given by the Purchaser in respect of any document submitted by the Supplier shall in any way relieve or absolve the Supplier from any obligation or liability under or in connection with this Agreement whether in relation to accuracy, safety, suitability, adequacy, performance, time or otherwise.

6.6 **Prototype Trains – Design**

- 6.6.1 The Supplier shall manufacture the Prototype Goods in accordance with the Prototype Design Review Approval.
- 6.6.2 The Supplier shall supply the Prototype Goods by the corresponding Contractual Date.
- 6.6.3 The Prototype Goods will be installed into the Prototype Train by the Supplier in accordance with the Installation Instructions.
- 6.6.4 The Supplier shall carry out the tests on the Prototype Goods once installed in the Prototype Trains
- 6.6.5 The Supplier shall remain on the Purchaser's Premises for the period of the installation and testing of the Prototype Goods on the Prototype Train.
- 6.6.6 The Supplier shall note the testing methodology and results and provide copies of the same to the Purchaser.
- 6.6.7 The Purchaser may, at its option at any time after Production Readiness Review Approval, instruct the Supplier to commence the manufacture of the Goods. Such manufacture shall be in accordance with the Contractual Dates and the Contract Price.

6.7 **Design Authority**

- 6.7.1 The Supplier shall act as the Design Authority for the duration of this Agreement.
- 6.7.2 The Supplier shall comply with the following obligations in its role as Design Authority:
 - (A) operate and maintain a system that tracks changes to the original Design of the Goods;
 - (B) operate a system that can provide the “know-why” (factors which influenced the choice of the Design) in relation to Design information relating to the Goods;
 - (C) operate a system that facilitates validation of technical changes to the current Design of the Goods;
 - (D) maintain a comprehensive understanding of the technical and operational requirements of the Goods;
 - (E) maintain comprehensive knowledge of how the technical and operational requirements influence the Design of the Goods and retain records accordingly;
 - (F) retain information relating to the Design to enable performance and assessment of modifications, evaluation of change of use, understanding of vehicle system and component behaviour, and support incident investigation as reasonably required by the Purchaser;
 - (G) make informed judgements and validate operational safety implications relating to change of use and modifications including where the same is required by the Purchaser; and
 - (H) ensure that records are kept of the configuration levels of Design throughout the duration of this Agreement to ensure the above is carried out accurately and safely and that any modifications are compatible with the original Design and any subsequent modifications.
- 6.7.3 The Parties agree that any failure to comply with this Clause 6.7 will constitute a material breach for the purposes of Clause 25.1.

7. CONFLICTS AND DISCREPANCIES

7.1 Priority of provisions in the Agreement

Unless expressly stated otherwise, where there is any conflict, error, inconsistency or other discrepancy between any Clause of this Agreement and the provisions of any Schedule(s) or between the provisions of any Schedules to this Agreement, the order of priority shall be as follows:

- 7.1.1 first, the Contract Particulars (as set out in Schedule 16 (*Contract Particulars*));
- 7.1.2 second, the Clauses comprising the main body of this Agreement;
- 7.1.3 third, the Specification (excluding the LU Standards);
- 7.1.4 fourth, the LU Standards; and
- 7.1.5 fifth, the remaining Schedules to this Agreement.

7.2 Supplier's acknowledgements regarding discrepancies and errors

The Supplier confirms to the Purchaser that as at the Commencement Date:

- 7.2.1 it has considered in detail this Agreement and has satisfied itself that no conflicts, inconsistencies, discrepancies or errors exist within the Agreement; and
- 7.2.2 it has:
 - (A) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and
 - (B) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws; and
 - (C) satisfied itself as to the feasibility of the Specification with respect to the design, manufacture, supply, assembly, testing, commissioning and delivery of the Goods.

7.3 Notification of errors and inconsistencies

- 7.3.1 Without prejudice to Clause 7.3.3, the Supplier shall notify the Purchaser in writing forthwith upon becoming aware of any conflict, inconsistency, discrepancy or error within the Agreement that cannot be resolved in accordance with Clause 7.1 and the Supplier shall provide with the notice detailed written proposals for resolving such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Supplier of such decision within fifteen (15) Working Days of the Supplier's notice of such conflict, inconsistency, discrepancy or error. The Supplier shall immediately proceed to comply with such decision. The Purchaser's notification under this Clause 7.3.1 shall constitute a Variation provided that the Supplier shall not be entitled to any increase in the Contract Price or any other payment, compensation, extension of time or relief in respect of such Variation instructed in accordance with this Clause 7.3.1.

7.3.2 Without prejudice to Clause 7.3.1 and subject to Clause 7.3.3, whenever a conflict, inconsistency, discrepancy or error appears within this Agreement, the Parties shall consult with each other over, and seek to agree, the manner in which the conflict, error, inconsistency or discrepancy should be resolved.

7.3.3 Where any conflict, inconsistency, discrepancy or error appears within the LU Standards, or between a LU Standard and the equivalent Industry Standard, each Party shall notify the other forthwith in writing upon becoming aware of such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Supplier within fifteen (15) Working Days of receiving or issuing the notice (as the case may be). The Supplier shall comply with such decision in carrying out the manufacture of the Goods. The Purchaser's notification under this Clause 7.3.3 shall constitute a Variation and the provisions of Clause 23 shall apply.

7.4 **Exclusions of Claims or Relief**

The Supplier acknowledges and agrees that it accepts all risks arising from any conflicts, errors, inconsistencies or discrepancies that subsequently appear within this Agreement or between any provisions and/or Schedules of this Agreement and that, subject as aforesaid, it shall not be entitled to make any claim against the Purchaser for any additional payment or compensation, adjustment to the Contract Price, extension of time or relief from the due performance of its obligations, in respect of any such conflicts, errors, inconsistencies or discrepancies.

8. **CONTRACT PROGRAMME**

8.1 **Contract Programme**

8.1.1 The Supplier shall provide a programme to the Purchaser for his acceptance (such acceptance to be achieved on or prior to the date stated in the Contract Particulars) showing:

- (A) the Commencement Date, Key Dates, Contractual Dates and payment dates;
- (B) the sequence and timing of activities by which the Supplier proposes to carry out the Agreement (including design, manufacture, testing, commissioning and delivery);
- (C) the respective dates for submission by the Supplier of the Design, Manuals, and the Installation Instructions for approval thereof by the Purchaser;
- (D) the dates by which, in order to carry out the Agreement, the Supplier will need (to the extent provided for under this Agreement):
 - (i) access to the Purchaser's Premises or Trains;
 - (ii) acceptances or approvals from the Purchaser and/or Purchaser;
 - (iii) any plant, materials, drawings, information or other things to be provided by the Purchaser;
- (E) the dates when the Supplier plans to conduct the Tests or inspections;
and

(F) any other information which the Specification require the Supplier to show on the Contract Programme.

8.1.2 The Supplier undertakes to carry out the design, manufacture, supply, testing, commissioning and delivery of the Goods in a regular and diligent manner and in accordance with the Contract Programme.

8.1.3 The matters set out in the Contract Programme shall be wholly without prejudice to the Supplier's obligation to achieve Product Acceptance for the Goods and (as appropriate) Fleet Acceptance on their respective Contractual Dates.

8.2 Form of programme

8.2.1 The programme shall be in such form as may be specified in the Contract Particulars or, if not so specified, as may reasonably be required by the Purchaser.

8.3 Acceptance of programme

8.3.1 The Purchaser shall either accept a programme (or any revised programme submitted pursuant to Clauses 8.5 or 8.6) or notify the Supplier of his reasons for not accepting it. Reasons for not accepting the programme may include:

- (A) the Supplier's plans shown on it are not practicable;
- (B) it does not show the information which this Agreement requires;
- (C) it does not represent the Supplier's plans realistically; or
- (D) it does not comply with the Contract Particulars or Specification.

8.3.2 Acceptance by the Purchaser of the programme shall not relieve the Supplier of any of his obligations under this Agreement.

8.4 Alterations to programme

8.4.1 The Supplier shall not without the Purchaser's prior written consent make any alteration to the Contract Programme.

8.5 Revision of programme

8.5.1 The Supplier shall submit a revised programme to the Purchaser, such programme to be acceptable to the Purchaser:

- (A) every two weeks from the Commencement Date pursuant to Schedule 1B (*Contract Management*); and
- (B) if instructed to do so pursuant to Clause 8.6.

8.6 Rate of progress

8.6.1 The Purchaser may notify the Supplier if it assesses that any of the Goods will not be capable of any of their respective Key Dates and/or Contractual Dates and that this is not due to a circumstance for which the Supplier is entitled to an extension of time pursuant to Clause 15.

8.6.2 Following receipt of such notice the Supplier shall take such steps as may be necessary and as the Purchaser may approve to remedy or mitigate the likely delay, including submitting a revised programme to the Purchaser for acceptance.

The Supplier will not be entitled to additional payment or an extension of time for taking such steps.

9. **KEY PERSONNEL, MEETINGS AND REPORTS**

9.1 **Key Personnel**

The Supplier shall not replace any Key Personnel without:

- 9.1.1 giving not less than sixty (60) days' notice; and
- 9.1.2 proposing a replacement Key Personnel to the Purchaser who the Purchaser has approved (such approval not to be unreasonably withheld or delayed).

9.2 **Management of Delivery**

The Parties shall comply with Schedule 1B (*Contract Management*) in relation to design management, project management and programme management.

10. **MANUFACTURING FACILITIES AND RIGHTS OF AUDIT AND INSPECTION**

10.1 **Manufacturing facilities**

The Supplier shall ensure that the design, manufacture, assembly and Routine Production Testing of the Goods shall be carried out by the Supplier at the Supplier's Works and the Supplier shall not use any other manufacturing facility for such manufacture, assembly and testing without the prior written agreement of the Purchaser.

10.2 **Access to Facilities for Purpose of Audits**

For the purposes of exercising any of their rights under Clause 10, the Supplier shall (a) grant the Purchaser access on reasonable prior notice to any of the Supplier's premises involved in the design, manufacture, supply, testing, commissioning and delivery of the Goods including the Supplier's Works and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.

10.3 **Right of Audit and Inspection**

10.3.1 The Supplier shall, and shall (unless the Purchaser otherwise agrees in writing) procure that its Subcontractors shall:

- (A) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Supplier's obligations under this Agreement and all transactions and Subcontracts entered into by the Supplier for the purposes of performing its obligations under this Agreement (in respect of the Supplier) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Supplier's Records**"); and
- (B) retain all the Supplier's Records until the date six (6) years (or such longer period as may be required by law or specified in the Contract Particulars) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").

10.3.2 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Supplier's performance of and compliance

with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using agents or representatives:

- (A) audit, inspect or witness any aspects of the manufacturing testing or commissioning of the Goods or any other item of Goods or any of their Parts and to audit the design and certification thereof including being present at, and participating in, amongst other things:
 - (i) any inspection and conformance control of subsystems supplied by Subcontractors;
 - (ii) any inspection and conformance control of the Goods construction at stages to be agreed between the Purchaser and the Supplier;
 - (iii) any system tests (at stages to be agreed) during construction;
 - (iv) any dynamic run testing of the completed Goods; and
 - (v) any inspection and certification of the Goods' compliance with the Specification after completion of manufacture and dynamic testing;
- (B) inspect any and all of the Supplier's Records during the Retention Period as are reasonably necessary to investigate the Supplier's (and any Subcontractor's) performance of its obligations under this Agreement;
- (C) audit the management systems of the Supplier and those of any Subcontractor; and
- (D) inspect and/or audit compliance by the Supplier and its Subcontractors with the Supplier's obligations under this Agreement.

10.4 **Co-operation with Audit Procedure**

To the extent necessary for the purpose of exercising any of the rights granted under Clause 10.3.2 the Supplier shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser including:

10.4.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Supplier's Records required for the purposes of Clause 10.3.2(B) free of charge and within a reasonable time of any request; and

10.4.2 making the Supplier's employees available for discussion with the Purchaser.

10.5 **No Claim for Relief**

No audit, inspection and/or testing by the Purchaser pursuant to Clause 10.3.2 shall relieve the Supplier (nor any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Supplier.

10.6 **Corrective Actions Arising**

10.6.1 Any actions found to be reasonably necessary having regard to the Supplier's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the

Supplier. The Supplier shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, together with the Supplier's confirmation of the timescale allocated by the Purchaser for the Supplier to close out the Corrective Action. The Supplier shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 10.2 to 10.5.

10.6.2 If the Supplier (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Supplier and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Supplier may refer the dispute for determination in accordance with Clause 32.

10.7 **Plans for Remedial Action**

If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 10.3 and 10.6, the Purchaser reasonably determines that any item of Goods does not, or is unlikely in the future to comply with any of the Specification or the requirements of Clause 4.1, the Purchaser shall notify the Supplier of such determination. The Purchaser and the Supplier shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Supplier, at the Supplier's cost, to ensure that that the item of Goods does or will conform to the Specification and the requirements of Clause 4.1.

11. **SPARES AND CONTINUING SUPPORT**

11.1 **Quality and Identifiability**

The Supplier shall ensure that:

- (A) each of the Spares is a brand new part manufactured from materials of sound and satisfactory quality, is Fit for Purpose and has no Defects;
- (B) to the extent of good industry practice, each Spare has a serial number which is clearly identifiable when fitted to the Train; and
- (c) each Spare is clearly labelled or otherwise identifiable as being the property of the Purchaser.

11.2 **Time for Delivery**

11.2.1 Without prejudice to Clause 4.1, the Supplier shall deliver all Spares required up to and including the date of Fleet Acceptance to the relevant Delivery Location in accordance with the requirements of Schedule 3 (*Spares*) and on the dates and in the quantities specified below:

- (A) Maintenance Spares, and any Additional Spares sufficient for one Train shall be delivered by no later than Installation of the Prototype Goods on the Prototype Train;
- (B) 20% of all Maintenance Spares, and any Additional Spares shall be delivered by no later than Product Acceptance of the first Train;
- (C) 30% of all Maintenance Spares and any Additional Spares shall be delivered by no later than Product Acceptance of the second Train's worth of Goods; and

- (D) 50% of all Maintenance Spares and any Additional Spares shall be delivered by no later than Product Acceptance of the tenth Train's worth of Goods.

11.2.2 The Supplier shall deliver the minimum quantity of each type of Maintenance Spare as specified in Schedule 3 (*Spares*) Part A (*Maintenance Spares*) (unless the Parties otherwise agree, acting reasonably).

11.3 **Sufficiency of Maintenance Spares**

The Supplier warrants to the Purchaser at the date of this Agreement that the Maintenance Spares to be delivered to the Purchaser pursuant to Clause 11.2 are sufficient (in terms of both quality and quantity) to enable the Purchaser to carry out, or procure the carrying out of, all maintenance of the Goods during the period from Acceptance for Service of the Goods for the first Train up to and including the date of Fleet Acceptance and for the Purchaser to operate the Goods on the LUL Network in accordance with the Manuals. If this warranty proves to have been incorrect when made, the Supplier shall at its own cost procure and supply the necessary additional Maintenance Spares.

11.3A **Supplementary Spares**

11.3A.1 The Supplier shall, following the issue of the Product Acceptance Certificate for the first Train and up to and including the date of Fleet Acceptance, be responsible for acquiring at its own cost new or overhauled Spares (the "**Supplementary Spares**") to replace any Maintenance Spare which is installed by the Purchaser (or such other party as may be nominated by the Purchaser) on a Train to remedy a Defect, in order to maintain the stock of Maintenance Spares in accordance with the levels specified in Schedule 3 (*Spares*) Part A (*Maintenance Spares*).

11.3A.2 The Supplier shall ensure any Supplementary Spares are placed into the Delivery Location within twenty-four (24) hours of notification by the Purchaser that installation of a Spare in accordance with Clause 11.3A has occurred.

11.3A.3 Not Used.

11.3A.4 Title and risk in each Supplementary Spare shall, from the earlier of the date of (i) their delivery to the Delivery Location or (ii) their incorporation in the relevant Train, pass to the Purchaser with full unencumbered legal and beneficial title.

11.4 **Additional Spares**

11.4.1 The Purchaser may from time to time instruct the Supplier in writing to provide Additional Spares by instructing a Variation setting out reasonable details of its requirements, and the provisions of Clause 23 shall apply.

11.4.2 The Supplier shall use all reasonable endeavours to make Additional Spares available to the Purchaser by delivering them to the Purchaser within the time period specified in the Variation.

11.4.3 Upon delivery of any Additional Spares, the Purchaser shall present a Delivery Certificate signed by a duly authorised representative for the Supplier certifying that the Additional Spares have been delivered in accordance with the time period specified in the Variation. Following receipt of the Delivery Certificate, and provided that the Additional Spares have been delivered in accordance with the

time period specified in the Variation, the Purchaser Representative shall counter-sign and date the Delivery Certificate to certify the same

11.5 **Obsolescence Management**

11.5.1 The Supplier shall provide and update every six (6) months an obsolescence plan in respect of the Goods, which will include:

- (A) a register of Spares at risk of obsolescence
- (B) research and recommend measures by which the Purchaser can mitigate operational or maintenance risks arising from obsolescence at the lowest practical cost to the Purchaser. Implementation of such recommendations shall be subject to the prior written approval of the Purchaser.

11.5.2 The Supplier shall ensure that it regularly communicates with its Suppliers and/or subcontractors via telephone or email or otherwise to ensure that it is notified as soon as possible of any Spares that are at a risk of obsolescence.

11.5.3 The Supplier shall ensure that, at any time, where it intends to or becomes aware that any of its suppliers and/or Subcontractors intends to:

- (A) dispose of any item of Spares due to such Spares becoming obsolete or being replaced by a comparable spare; and/or
- (B) stop the production or sale of any item of Spares,

the Supplier shall notify the Purchaser prior to any such disposal or cessation of production and sale, and the Purchaser may in such circumstances require the Supplier to:

- (i) produce one or more of such Potential Obsolete Spares for the Purchaser; and/or
- (ii) sell any remaining Potential Obsolete Spares or Spares produced in accordance with Clause 11.5.1(i) to the Purchaser at the rates set out in Schedule 3 (*Spares*) or such other amounts as agreed in accordance with this Agreement.

11.5.4 The Parties agree that any failure to comply with this Clause 11.5 will constitute a material breach for Clause 25.1.1

11.6 **Ongoing Spares after Fleet Acceptance**

The Purchaser shall be able to procure further Spares after the date of Fleet Acceptance in accordance with Schedule 3 (*Spares*).

11.7 **Continuing Support**

11.7.1 The Parties shall comply with Schedule 3A (*Continuing Support*) in relation to continuing support. The Supplier agrees with the Purchaser that it shall, in respect of the Saloon LED Lights and each other item of Goods, carry out the Services in accordance with this Agreement.

11.7.2 In addition to the warranties and undertakings contained in this Agreement, the Supplier warrants and undertakes to the Purchaser that it shall:

- (A) maintain and update the obsolescence plan in accordance with Clause 11.5

- (B) perform the obligations of the Design Authority as further described in Clause 6.7

12. TESTING, ACCEPTANCE AND DELIVERY PROCEDURE

12.1 Compliance with the Programmes and Procedures

The Supplier shall ensure that:

- 12.1.1 the Goods are delivered, tested in accordance with Pre-Installation and Systems Tests and made ready for Installation, Installation Tests, Product Acceptance, and Fleet Acceptance by the Purchaser in accordance with the Specification, the Contract Programme, and the other provisions of this Agreement; and
- 12.1.2 no Goods are delivered to the relevant Delivery Location prior to its Key Date respectively unless otherwise agreed by the Purchaser in its absolute discretion. For the avoidance of doubt the Purchaser is not obliged to accept early delivery of any Goods.

12.2 Routine Production Testing

- 12.2.1 The Supplier shall develop and submit to the Purchaser a Routine Production Test Specification in accordance with Schedule 1A (*Specification*).
- 12.2.2 Following approval of the Routine Production Test Specification in accordance with Schedule 1A (*Specification*), the Supplier shall conduct the Routine Production Tests at its own cost in accordance with the production plan.
- 12.2.3 The Purchaser shall be entitled to attend any Routine Production Tests together with such other representatives of the Purchaser and the Supplier shall be responsible for providing such access. The Supplier shall provide the Purchaser with not less than fifteen (15) Working Days' notice of the time, location and subject matter of any such Routine Production Tests.
- 12.2.4 The Supplier shall be responsible for all costs and expenses associated with the Routine Production Tests.
- 12.2.5 Any repetition or prolongation of the Routine Production Tests which is necessary by reason of a failure of any of the Goods to meet the requirements of the Routine Production Tests shall be at the Supplier's cost. The Supplier shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure. The Supplier shall not be entitled to any additional costs.

12.2A Storage

- 12.2A.1 This Clause 12.2A shall apply to all Goods to be installed on Trains, where the Purchaser has exercised its option to request the Supplier to place Goods into Storage (the "**Storage Option**").
- 12.2A.2 The Purchaser may request that Goods are put into Storage at any time prior to Fleet Acceptance. The Purchaser shall make this request to the Supplier no less than seven (7) days before the Goods are due to be delivered to the Delivery Location.

12.2A.3 Where the Purchaser does not request that the Supplier puts the Goods into Storage, the Purchaser shall store any Goods in accordance with the Storage Instructions. The Supplier shall provide the Storage Instructions to the Purchaser no later than the date of the Production Readiness Review in accordance with Section 11.31.5 of Schedule 1 (Specification).

12.2A.4 If the revised Key Date pursuant to the Storage Option is delayed for

- (A) More than 75 days from the original Key Date for delivery for the Goods and Spares to the Delivery Location, then there will be a partial Milestone Payment payable for storing such Goods and Spares in Storage, being 30 percent of the Milestone Payment specified for completion of the Pre-Installation Inspections and Systems Tests in Schedule 4 Contract Price, Part 4 Milestone Payments; and
- (B) More than 6 months from the original Key Date for delivery of the Goods and any Spares to the Delivery Location, then there will be a further partial Milestone Payment payable for maintaining such Goods and Spares in Storage, being 70 percent of the Milestone Payment specified for completion of the Pre-Installation Inspections and Systems Tests in Schedule 4 Contract Price, Part 4 Milestone Payments.

12.3 Delivery

12.3.1 In relation to the Goods, the Supplier shall (at its own cost) deliver the Goods, together with such evidence as the Purchaser may reasonably require that the Goods have passed the Routine Production Tests, to the Delivery Location on the relevant Key Date for such Goods.

12.3.2 The Supplier's ability to deliver Goods for a Train on the relevant Key Date for such Goods will be monitored and assessed against the KPIs as set out at Schedule 12 (*Key Performance Indicators*).

12.4 Installation Tests

12.4.1 Following delivery of the Goods:

- (A) the Purchaser shall procure that the Purchaser will install the Goods on to the Train in accordance with the Installation Instructions; and
- (B) the Installation Tests will be conducted by the Purchaser in accordance with the Specification.

12.4.2 The Supplier undertakes, at its own cost, to provide to the Purchaser (or, at the Purchaser's direction, its nominee):

- (A) the Training Programme and Training Materials; and
- (B) on-site technical support as more particularly described in Schedule 3A (*Continuing Support*),

to enable the Purchaser to procure the installation of the Goods and to conduct the Installation Tests on the Trains in accordance with the Contract Programme.

12.4.3 In the event that any Goods installed on a Train do not pass any Installation Test, the Supplier shall be responsible at its own cost for:

- (A) carrying out the Rectification Works required to ensure that the failed Installation Test(s) can be passed;

- (B) (if required by the Purchaser) removing the relevant Goods from the Delivery Location;
- (C) re-delivering the relevant Goods to the Delivery Location once the Rectification Works are complete on a date to be arranged with the Purchaser; and
- (D) the repetition and/or prolongation of the Installation Test(s) necessary by reason of the failure of any of the Goods to meet the requirements of the Installation Test(s);

and, for the avoidance of doubt, the Supplier shall not be entitled to any additional costs, any extension of time or any other relief in connection with such failure, provided that the costs of undertaking any Rectification Works and/or repeated/prolonged Installation Test(s) shall be met by the Purchaser if the Supplier can demonstrate that the failure of such Goods to meet the requirements of the Installation Test(s) arose wholly and solely due to a failure by the Purchaser to install the Goods in accordance with the Installation Instructions

12.4.4 A Train shall achieve Acceptance for Service when all of the Installation Tests have successfully been completed.

12.5 Product Acceptance

12.5.1 The Product Acceptance Criteria shall be:

- (A) in relation to all Goods:
 - (i) the Purchaser has received evidence acceptable to the Purchaser, including all relevant supporting documentation, that the Goods have passed all Routine Production Tests and Installation Tests required to be performed prior to Product Acceptance of the relevant Goods (including, without limitation, any re-testing as required as a result of the installation of the Goods);
 - (ii) in the case of the second Train's worth of Goods and the tenth Train's worth of Goods (as the case may be), the Supplier has supplied the applicable quantity of Spares in accordance with Clause 11.2.1(C) and Clause 11.2.1(D) of this Agreement;
 - (iii) the Goods meet in all material respects the Specification;
 - (iv) the Goods are Fit for Purpose and have no Defects, or items missing;
 - (v) the Goods comply with Applicable Laws and LU Standards;
 - (vi) the Goods have achieved all Relevant Consents; and
 - (vii) save in relation to any Spares delivered after Fleet Acceptance, the Train in which the Goods have been installed has successfully completed 1,000 consecutive Fault Free kilometres in passenger service, provided that in all cases the Parties agree that each time a Defect occurs, the Fault Free running distance shall be reset to zero and recommence until the target is achieved.

If the Supplier meets the Product Acceptance Criteria, it shall be entitled to request the certification of Product Acceptance in accordance with Clause 12.5.2.

- 12.5.2 Where the Product Acceptance Criteria are satisfied in respect of the Goods for a Train, the Supplier shall be entitled to submit to the Purchaser a Product Acceptance Certificate for such Train signed by a duly authorised representative of the Supplier certifying that the Product Acceptance Criteria have been satisfied. Following receipt of a Product Acceptance Certificate from the Supplier in accordance with this Clause 12.5.2, the Purchaser shall within the period stated in the Contract Particulars (i) counter-sign and date that Product Acceptance Certificate and Product Acceptance shall occur, or (ii) refuse to do so under Clause 12.5.3.
- 12.5.3 The Purchaser may refuse to sign a Product Acceptance Certificate for the Goods for a Train if it, acting reasonably, believes the Product Acceptance Criteria have not been satisfied in full in which case it shall, within five (5) Working Days of such refusal, notify the Supplier in writing setting out which of the Product Acceptance Criteria have not been satisfied.
- 12.5.4 If the Supplier, acting reasonably, disputes any of the reasons set out in the notice issued by the Purchaser pursuant to Clause 12.5.3, it shall notify the Purchaser of this in writing within five (5) Working Days of receipt of such notice and the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

12.6 **Qualified Product Acceptance**

- 12.6.1 If the Purchaser, acting reasonably, believes that one or more of the Product Acceptance Criteria (as the case may be), other than those set out in Clauses 12.5.1(A)(i) and 12.5.1(A)(v), has not been satisfied, and provided that any Goods can nevertheless be operated safely and in accordance with all Applicable Laws and the terms of all Relevant Consents, the Purchaser shall be entitled, at its absolute discretion, to issue a QPAC in respect of Goods, in which case the Purchaser shall list in detail in the QPAC the outstanding conditions to be satisfied and tasks to be performed by the Supplier in order for Product Acceptance of the Goods to occur (the "**Preconditions**"), and require the Supplier to satisfy the Preconditions in accordance with the timetable set out in the relevant QPAC, which timetable shall state that all Preconditions must be completed on or before the date on which of the Goods is scheduled to occur pursuant to the Contract Programme.
- 12.6.2 Upon the Purchaser confirming in writing that such Preconditions have been satisfied, the Goods shall be Product Accepted and the Purchaser shall issue a Product Acceptance Certificate in respect of the Goods.
- 12.6.3 Fleet Acceptance of the Goods shall not occur until all the Preconditions have been satisfied for all of the Trains.
- 12.6.4 In relation to the Milestone Payments, the Goods for which a QPAC is issued shall be treated as if they have been Product Accepted pursuant to Clauses 12.6.1 and 12.6.2.

12.7 Fleet Acceptance

- 12.7.1 The Purchaser shall, using all reasonable endeavours to facilitate the Supplier to achieve Fleet Acceptance of the Goods by the relevant Contractual Date.
- 12.7.2 The Supplier shall make a submission for Fleet Acceptance to the Purchaser once the Fleet Acceptance Criteria have been satisfied. The Fleet Acceptance Criteria are:
- (A) Up to the date upon which the Supplier makes a submission for Fleet Acceptance, all the Goods have met the Fleet Mean Distance Between Service Affecting Failure within the Service Affecting Failure Period;
 - (B) not used;
 - (C) the Preconditions set out in any QPAC under Clause 12.6.1 have been satisfied to the satisfaction of the Purchaser in respect of the relevant Goods;
 - (D) each of the Goods has no Defects;
 - (E) there are no Recurrent Defects or, in the event there is a Recurrent Defect, the Supplier has either:
 - (i) provided to the Purchaser's satisfaction a programme for rectification works in respect of such Recurrent Defects in accordance with Clause 17.5; or
 - (ii) confirmed to the Purchaser's satisfaction that a Recurrent Defect occurring in or affecting any Goods, Spares or Parts provided by the Supplier which is similar to the Goods to be supplied pursuant to this Agreement will not affect the Goods supplied pursuant to this Agreement;
 - (F) each Goods has been Product Accepted.
- 12.7.3 Upon the Fleet Acceptance Criteria having been satisfied in accordance with Clause 12.7.2 the Supplier shall be entitled to submit a Fleet Acceptance Certificate for the Goods signed by a duly authorised representative of the Supplier to the Purchaser, and the Purchaser shall counter-sign and date that Fleet Acceptance Certificate and Fleet Acceptance shall occur. Subject to Clause 12.7.2 and for the avoidance of doubt, the Milestone Payment for Fleet Acceptance shall not become payable until (i) the requirements of this Clause 12.7.3 have been satisfied in full in respect of the Goods and (ii) the Fleet Acceptance Certificate has been counter-signed and dated by the Purchaser.
- 12.7.4 If, the Supplier fails to meet its obligations under Clause 12.7.2(A), the Purchaser shall be entitled to extend the Service Affecting Failure Period until the Fleet Acceptance Longstop Date. If the Goods have failed to meet the Fleet Mean Distance Between Service Affecting Failure by the Fleet Acceptance Longstop Date then the Purchaser shall be entitled at its absolute discretion to issue a Fleet Acceptance Certificate irrespective of such failure and in such circumstances Fleet Acceptance shall occur, provided that the Purchaser may, in its absolute discretion, reduce or withdraw the Milestone Payment for Fleet Acceptance.
- 12.7.5 The occurrence of Fleet Acceptance shall not constitute a waiver of the Purchaser's right to claim damages against the Supplier arising out of the

Supplier's failure to meet the Fleet Mean Distance Between Service Affecting Failure.

13. **KEY PERFORMANCE INDICATORS**

Key Performance Indicators will be used to monitor performance of the Supplier in relation to compliance with the delivery dates of any Goods and Spares in accordance with Schedule 12 (*Key Performance Indicators*).

14. **REJECTION**

14.1 **Rejection**

In the event that the Purchaser, acting reasonably, at any time believes that any Goods (or any part thereof) will not meet the Product Acceptance Criteria, the Purchaser shall be entitled to notify the Supplier in writing that it rejects such Goods or relevant part (as applicable) pursuant to this Clause 14.1, and Clause 14.2 shall apply.

14.2 **Consequences of rejection**

Forthwith upon rejection of the relevant Goods or relevant part (as applicable) pursuant to Clause 14.1:

14.2.1 the Supplier shall, at its own cost, remove any of its equipment, plant or materials from any of the Purchaser's Premises (including the Delivery Location and the LUL Network where so instructed by the Purchaser);

14.2.2 the Supplier shall pay to the Purchaser, as a debt, the aggregate of all amounts paid by the Purchaser to the Supplier in respect of the relevant Goods or relevant part (as applicable) pursuant to this Agreement and all other reasonable costs suffered or incurred by the Purchaser in respect of rejection of such Goods or relevant part (as applicable), together with Default Interest thereon from the Commencement Date to the date of rejection.

For the avoidance of doubt the Purchaser's right to reject any Goods pursuant to this Clause 14.2 will be without prejudice to the Supplier's obligations under this Agreement, including Clauses 12 and 17.

15. **EXTENSIONS OF TIME**

15.1 **Permitted Delays**

For the purposes of this Agreement, the occurrence of one or more of the following shall constitute a "**Permitted Delay Event**":

15.1.1 a Force Majeure Event which prevents the Supplier from performing its obligations under this Agreement;

15.1.2 any breach by the Purchaser of an express obligation under this Agreement;

15.1.3 the suspension of this Agreement in accordance with Clause 18 (other than where the suspension results from the circumstance in Clause 18.3.1 or 18.3.2);

15.1.4 any Variation instructed pursuant to the Variation Procedure including any Variation instructed to:

(A) resolve a Change in Law; or

(B) a conflict, inconsistency, error or discrepancy other than a Variation instructed pursuant to Clause 7.3.1;

15.1.5 the Supplier is denied access to the LUL Network in the circumstances described in Clause 57.12; and

15.1.6 the Purchaser exercises the Storage Option pursuant to Clause 12.2A.1,

but in each case only insofar as any of the events described in Clauses 15.1.1 to 15.1.5:

(A) has a direct and material adverse effect on the Supplier's ability to achieve any of the Key Dates or the Contractual Dates; and

(B) has not been caused or contributed to by the act, omission or default of the Supplier.

15.2 **Qualification to Permitted Delays**

Where any delay in achieving the applicable Key Date or a Contractual Date for the Goods(s) for the relevant Train arises, the Supplier shall be entitled to an extension to the applicable Key Date or a Contractual Date for the Goods but only to the extent that such delay is directly caused by a Permitted Delay Event and provided that the Supplier:

15.2.1 has fully complied with the requirements of Clause 15.3 and subsequently provided such further information as the Purchaser may reasonably require regarding the nature and likely duration of such event;

15.2.2 has provided the Purchaser with reasonable access to the Supplier's Works and/or the facilities of its Subcontractors for investigating the validity of the potential Permitted Delay Event;

15.2.3 has used its reasonable endeavours to mitigate the delay to the applicable Key Date or the Contractual Date for the Goods; and

15.2.4 shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, neglect or default of the Supplier, its Subcontractors or the directors, agents, representatives or employees of any of them and/or any breach of this Agreement by the Supplier, its Subcontractors or the directors, agents, representatives or employees of any of them.

15.3 **Notification of Permitted Delay Event**

The Supplier shall give notice to the Purchaser of the occurrence of a Permitted Delay Event promptly and in any event no later than ten (10) Working Days of when the Supplier became aware of such occurrence. Any notice given under this Clause 15.3 shall specify the Permitted Delay Event upon which the claim for an extension of time is based. Within twenty (20) Working Days (or such other period as the parties may agree) of:

15.3.1 in the case of a Permitted Delay Events under Clauses 15.1.1, 15.1.2 and 15.1.5, the Supplier serving notice on the Purchaser of such event; and

15.3.2 in the case of a Permitted Delay Event under Clauses 15.1.3 or 15.1.4, the Purchaser instructing a Variation or a suspension of this Agreement (as the case may be), the Supplier shall provide the Purchaser with the following details:

- (A) full and detailed particulars of the cause and extent of the delay and the effect of the Permitted Delay Event on the Supplier's ability to comply with its obligations under this Agreement;
- (B) details of the documents and records which the Supplier will rely upon to support its claim for an extension of time; and
- (C) details of the measures which the Supplier has adopted and/or proposes to adopt to mitigate the consequences of the Permitted Delay Event.

Save with respect to Variations instructed under the Variation Procedure, if the Supplier fails to notify the Purchaser of any Permitted Delay Event or fails to provide details of any Permitted Delay Event, in either case within the time periods specified in Clause 15.3, the Supplier shall not be entitled to request an extension of time for that Permitted Delay Event and such event shall not constitute a Permitted Delay Event.

15.4 Grant of Extension of Time

Subject to the Supplier complying with the requirements of this Clause 15 and the Purchaser, acting reasonably, being satisfied that a Permitted Delay Event has occurred, the Purchaser shall, as soon as reasonably practicable, agree with the Supplier a reasonable extension of time to the relevant Key Date and/or Contractual Date and any such extension shall amend the Contract Programme and each relevant Key Date and/or Contractual Date.

15.5 Extensions of Time – General

- 15.5.1 Any extension of time agreed by the Purchaser and the Supplier under this Clause 15 to a Key Date and/or a Contractual Date shall not of itself entitle the Supplier to any extension to any other Key Date and/or Contractual Date.
- 15.5.2 Except as expressly provided elsewhere in this Agreement, any extension of time agreed between the Purchaser and the Supplier pursuant to this Clause 15.5 shall be in full compensation and satisfaction for any loss sustained or sustainable by the Supplier in respect of any Permitted Delay Event in connection with which that extension is granted.

16. TRANSFER OF TITLE AND RISK

16.1 Title to Items of Goods

- 16.1.1 Title to each item of Goods shall pass to the Purchaser either immediately upon (i) delivery into Storage in accordance with Clause 12.2A in respect of the Goods or (ii) upon delivery to the Purchaser in respect of the relevant item of Goods (whichever is the earlier) and such title shall be full unencumbered legal and beneficial title to that item of Goods.
- 16.1.2 Until delivery of any item of Goods to its applicable Delivery Location (including while any item of Goods is in Storage), the Supplier shall ensure that all items of Goods are readily identifiable as the Purchaser's property, including by marking them as the Purchaser's property. The Supplier shall provide access to any premises at which such items are stored, including where the Goods are in Storage in accordance with Clause 12.2A, so that the Purchaser can verify compliance with this Clause 16.1.2.

16.2 Risk of loss etc.

Risk of loss, theft, damage or destruction of an item of Goods shall pass to the Purchaser immediately upon delivery of the relevant item of Goods to the Delivery Location. The Supplier shall be responsible for the safe custody and transit of any item of Goods until the relevant item of Goods has been delivered to the Delivery Location.

16.3 Warranty in respect of Title

The Supplier warrants to the Purchaser that the title to the Goods transferred to it under this Agreement shall be with full title guarantee and free and clear of all Security.

16.4 Prohibition on Creating Security

The Supplier undertakes that it shall not at any time create or purport to create any Security over the Goods (including any Manual, Installation Instructions or other documentation) to be Product Accepted in accordance with this Agreement and which has been, or is to be, supplied to the Purchaser under and in accordance with the terms of this Agreement.

17. DEFECT RECTIFICATION

17.1 Removal of defective Parts

Where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall notify the Supplier of such Defect within a reasonable time of its discovery. The Purchaser reserves the right to remove the affected item of Goods, send the affected item of Goods to the Supplier for rectification pursuant to Clause 17.2 (*Rectification of Defects*) and replace the affected item of Goods with a Spare.

17.2 Rectification of Defects

17.2.1 The Supplier shall:

- (A) subject to Clause 17.2.3 at its own cost, rectify (which, for the purposes of this Clause 17, means repair, replace, modify or (as appropriate) amend) each Defect which arises, occurs or becomes apparent in relation to any item of Goods during the Defect Rectification Period for that item and where necessary shall execute or procure the execution by another of all rectification works; and
- (B) submit to the Purchaser a report identifying the root cause of the Defect within twenty-eight (28) days after having identified, or been notified pursuant to Clause 17.1, of such Defect.

17.2.2 Subject to Clause 17.2.3, the Supplier shall commence the rectification of any Defect as set out in Clauses 17.2.1 without delay and complete the rectification within a reasonable period having regard to the circumstances.

17.2.3 The Supplier agrees that the Purchaser may instruct a third party personnel or resources to carry out any rectification works on any item of Goods supplied by the Supplier to the Purchaser hereunder.

17.3 Extended Defect Rectification Period

Where an item of Goods and/or any Part of the same is rectified or replaced due to a Defect, the Defect Rectification Period for that item shall be twelve (12) months from the date of repair or (as the case may be) replacement certified in writing by the Purchaser.

17.4 Rectification by the Purchaser

- 17.4.1 Subject to Clause 17.2.3, where the Purchaser identifies a Defect in an item of Goods, the Purchaser shall be entitled to remedy such Defect at any time using its own or third party personnel or resources.
- 17.4.2 If, in order to remedy a Defect, the Purchaser must install a Maintenance Spare on a Train, the Supplier shall provide the Purchaser with a Supplementary Spare in accordance with and within the timeframes specified in Clause 11.3A.
- 17.4.3 All costs and expenses properly and reasonably incurred by the Purchaser in undertaking any work pursuant to Clause 17.4.1, together with VAT chargeable thereon shall be recoverable by the Purchaser within ten (10) Working Days of demand from the Purchaser as a debt due and owing from the Supplier.

17.5 Recurrent Defects

If, during the Defect Rectification Period, the Parties identify that a Recurrent Defect has occurred or in the reasonable opinion of the Purchaser is reasonably likely to occur, each Party shall notify the other Party of such occurrence. The Supplier warrants to the Purchaser that it shall remedy such Recurrent Defect and undertake necessary rectification on all Goods, Spares and Parts (as appropriate), and undertake such work as may be feasible in order to enable such Goods, Spare or Part (as the case may be) to continue in operation in compliance with the terms of this Agreement pending such rectification. Within twenty (20) Working Days of having identified, or having been notified of, such Recurrent Defect, the Supplier shall submit to the Purchaser a Rectification Programme of such Recurrent Defect and any necessary rectification required on any Goods, Spares or Parts (as the case may be) as soon as is practicable and the Parties shall negotiate and agree such Rectification Programme in good faith, within a period of twenty (20) Working Days after receipt of such Rectification Programme.

17A WARRANTY PERIOD

- 17A.1 At any time after Fleet Acceptance, the Supplier shall, at its own expense, as long as reasonably practicable, and in any event within seven (7) days of being notified of a Defect by the Purchaser, make good (and where necessary shall procure the making good of) any Defect arising from or in connection with:
- (A) any Part or Spare which fails in service after the date of Fleet Acceptance during the Warranty Period, or
 - (B) any act or omission of the Supplier in the performance of the Service and complete any work to make good any such Defect within a reasonable period having regard to the circumstances.
- 17A.2 The Supplier shall submit to the Purchaser a report identifying the root cause of the Defect within twenty-eight (28) days after having identified, or been notified pursuant to Clause 17A.1, of such Defect
- 17A.3 The Purchaser shall notify the Supplier in writing as soon as reasonably practicable after it becomes aware of a Defect.
- 17A.3 If the Supplier makes good such Defect on any Part or Spare during the Warranty Period, such Part or Spare will be covered by the Further Warranty Period commencing on the date on which the Defect is made good. If a Defect arises on such Part or Spare during the Further Warranty Period, the Supplier shall comply with its obligations to make good

such Defect under this Clause 17A, provided that the Further Warranty Period cannot be extended, replaced or renewed under this Clause 17A.

17A.4 If any Defect identified pursuant to this Clause is not remedied within a reasonable period of being notified to the Supplier by the Purchaser, the Purchaser may proceed on notice to make good, or procure the making good of, the Defect at the Supplier's expense. If the Purchaser makes good a Defect, the Supplier's obligations under Clauses 17A.1 and 17A.2 shall not apply to the works required to make good the Defect where the works are carried out by any persons other than the Supplier, provided that the exercise by the Purchaser of its rights under Clause 17A shall not in any way prejudice or affect the Purchaser's other rights or remedies under this Agreement (including pursuant to Clause 29) nor shall it relieve the Supplier from any of its obligations and liabilities under this Agreement other than to the extent specified under this Clause 17A.

17A.5 If, during the Warranty Period, the Parties identify that a Recurrent Defect has occurred or in the reasonable opinion of the Purchaser is reasonably likely to occur, each Party shall notify the other Party of such occurrence. The Supplier warrants to the Purchaser that it shall remedy such Recurrent Defect and undertake necessary rectification on all Goods, Spares and Parts (as appropriate), and undertake such work as may be feasible in order to enable such Goods, Spares or Parts (as the case may be) to continue in operation in compliance with the terms of this Agreement pending such rectification. Within twenty (20) Working Days of having identified, or having been notified of, such Recurrent Defect, the Supplier shall submit to the Purchaser a Rectification Programme of such Recurrent Defect and any necessary rectification required on any Goods, Spares or Parts (as the case may be) as soon as is practicable and the Parties shall negotiate and agree such Rectification Programme in good faith, within a period of twenty (20) Working Days after receipt of such Rectification Programme.

18. **SUSPENSION**

18.1 **Right to Suspend Work**

The Purchaser may at any time instruct the Supplier to suspend the design, manufacture, supply, testing, commissioning or delivery of the Goods (or any part thereof) or performance of the Services (or part thereof).

18.2 **Protection of Work in Progress**

The Supplier shall during any such suspension take reasonable steps to protect, secure and insure the Goods affected at the Supplier's premises (or other location agreed with the Purchaser).

18.3 **Entitlement to Costs for Suspension**

If a suspension occurs, the additional reasonable and documented costs incurred by the Supplier in complying with an instruction under Clause 18.1 (including those costs incurred in protecting, securing and insuring the items described in Clause 18.2) shall be reimbursed by the Purchaser save that the Supplier shall not be entitled to be paid any additional costs:

18.3.1 where the suspension arises by reason of material default on the part of the Supplier or any of its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them; or

18.3.2 arising from remedying any deterioration, defect or loss caused by the Supplier's faulty workmanship or materials or by the Supplier's failure to comply with any of its obligations under this Agreement, including under Clause 18.2.

18.4 **Prolonged Suspension**

Unless otherwise agreed, if any suspension lasts for three hundred and sixty (360) or more days the Purchaser shall, if requested to do so by the Supplier, terminate this Agreement in accordance with Clause 25.7.

18.5 **Resumption**

Subject to Clause 18.4, the Purchaser may at any time instruct the Supplier to resume any activities suspended pursuant to Clause 18.1.

18.6 **Making Good Deterioration**

Upon receipt by the Supplier of an instruction from the Purchaser to proceed with any suspended activities pursuant to Clause 18.5, the Supplier shall examine the Goods affected by the suspension. The Supplier shall make good any deterioration or defect in or loss of such Goods that may have occurred during suspension.

18.7 **Entitlement to Costs for Resumption**

The additional reasonable and documented costs incurred by the Supplier in complying with an instruction under Clause 18.5 and its obligations under Clause 18.6 shall be added to the Contract Price, provided that the Supplier shall not be entitled to be paid any cost arising from:

- 18.7.1 remedying any deterioration, defect or loss caused by the Supplier's faulty workmanship or materials; or
- 18.7.2 the Supplier's failure to comply with any of its obligations under this Agreement, including under Clause 18.2.

19. **HEALTH AND SAFETY**

Where the Supplier or any of its Subcontractors carries out any work, including testing and commissioning work on the Goods on the LUL Network or any other site under the control or supervision of the TfL Group, the Supplier shall and shall procure that its Subcontractors shall:

- 19.1.1 comply with all applicable LU Standards and Applicable Laws and carry out such work in a manner which would be adopted by a diligent and skilled contractor;
- 19.1.2 comply with any direction or instruction (whether written or oral) given by the Purchaser or their respective employees, contractors or agents, including any direction to cease working; and
- 19.1.3 comply with Schedule 14 (*QUENSH*).

20. **PAYMENT**

20.1 **Not used**

20.2 **Payment**

Payment

- 20.2.1 In consideration of performance of the Supplier's obligations under this Agreement, the Purchaser shall pay the Supplier the amount of the Contract Price in the manner set out in this Clause 20.

20.2.2 Each Milestone Payment shall be sequential and no Milestone Payment shall be due to the Supplier unless and until:

- (A) if no programme is included in Schedule 2 (*Contract Programme*), the Supplier has submitted an initial programme to the Purchaser showing the information required under Clause 8.1.1 and which is capable of acceptance in accordance with Clause 8.3.1; and
- (B) the Supplier Guarantee is in place in accordance with Clause 22.

Payment applications

20.2.3 On completion of each Milestone, the Supplier shall submit a payment application for:

- (A) the amount set out against the relevant Milestone, setting out in reasonable detail a description of the Milestone achieved; and
- (B) any amounts due (less any payments already made) pursuant to Clause 23.3, and in accordance with the principles set out in paragraph 2 of Schedule 4 (*Contract Price*) Part 2 (*Payment*), in respect of any properly completed Variation (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation) provided that the Supplier's payment application sets out the details and value of any Variation payment being sought,

to the Purchaser at the address specified in Clause 36. The Supplier shall ensure that each payment application is dated and issued no earlier than the date on which the relevant Milestone and/or the Variation to which it relates has been completed.

20.2.4 The Purchaser shall consider the Supplier's payment application and assess and verify the amount due (the "**Milestone Payment**") in a timely manner. The Purchaser shall certify the Milestone Payment (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Supplier details of how the Milestone Payment due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 20.2.4 and there is an undue delay in considering and verifying the Milestone Payment, the Payment Certificate shall be regarded as issued for the purposes of Clause 20.2.6 after a reasonable time has passed.

VAT invoice

20.2.5 Within ten (10) days of receipt of the Payment Certificate the Supplier shall issue a corresponding VAT invoice for the amount of the relevant Milestone Payment, accompanied by a copy of the Payment Certificate, to the Purchaser in accordance with any instructions received from him. The Supplier shall ensure that such VAT invoice:

- (A) is dated and issued no earlier than the date when the Payment Certificate was issued; and
- (B) clearly states the purchase order number.

Payment due date

- 20.2.6 Subject to Clause 20.3, the Purchaser shall, on receipt by it of an appropriate VAT invoice in accordance with Clause 20.2.5, pay to the Supplier within ten (10) days of receipt by it of such VAT invoice the relevant Milestone Payment calculated in accordance with Clause 20.2.4. If the Supplier fails to issue a VAT invoice that complies with the requirements of this Clause 20 then the time period for payment of the relevant Milestone Payment set out in this Clause 20.2.6 shall be automatically extended by the number of days that the VAT invoice remains outstanding.

Payments owed by Supplier

- 20.2.7 Where a payment application shows a net amount owed by the Supplier to the Purchaser the Supplier shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser or, at the option of the Purchaser, carry forward that amount to the next Milestone Payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Supplier.

Payment recovery

- 20.2.8 Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Supplier by mistake of law or fact.

Late payment

- 20.2.9 Save where otherwise specifically provided where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier is not entitled to suspend works under the Agreement or delivery of the Goods as a result of any sums being outstanding.

20.3 Disputed Payment Applications

The Purchaser shall notify the Supplier in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in accordance with Clause 32. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser in accordance with this Clause 20.

20.4 Exchange Rate Risk

All risks associated with movements in foreign currency exchange rates and/or the costs of activities performed outside of the United Kingdom shall be borne by the Supplier from the Commencement Date, subject to the application of the Financial Close Protocol.

20A ENHANCED CAPITAL ALLOWANCES

20A.1 For the purposes of this Clause 20A, “**Eligible Components**” shall mean any products or components of the Goods that are listed on, or meet the requirements of the Carbon Trust in order to be capable of being listed on, the Energy Technology List.

20A.2 The Milestone Payment for Enhanced Capital Allowances shall not become payable until the requirements of this Clause 20A have been satisfied in full.

20A.3 Registration of Eligible Components

20A.3.1 The Supplier shall use Eligible Components in its Design. In developing its Design in accordance with Clause 6 (Specification and Development of Design), the Supplier shall comply with the following obligations:

- (A) if the Supplier has the choice between an Eligible Component and another product, the Supplier shall use the Eligible Component; and
- (B) if the Supplier develops a product that is capable of being an Eligible Component, the Supplier shall ensure that this product is designed in a way that allows it to become an Eligible Component.

20A.3.2 The Supplier’s obligations contained in Clause 20A.3.1 above shall not apply to a particular product if the Supplier provides to the Purchaser evidence that is satisfactory to the Purchaser that it is not reasonably practicable to comply with the obligations contained in Clause 20A.3.a above in relation to that particular product.

20A.3.3 The Supplier shall register all Eligible Components on the Energy Technology List and shall provide to the Purchaser evidence of such registration that is acceptable to the Purchaser by no later than the date for Design Approval.

20A.4 Claim for Enhanced Capital Allowances

20A.4.1 To enable the Purchaser to support TfL’s claim to HM Revenue and Customs in relation to Enhanced Capital Allowances, the Supplier shall provide such information as required, including but not limited to the following:

- (A) detail of all Eligible Components, including:
 - (i) the number of Eligible Components;
 - (ii) unique model reference numbers; and
 - (iii) manufacturer details and evidence of conformance with minimum performance as required by the Carbon Trust;
- (B) the cost per each Eligible Component;
- (C) any applicable professional fees directly associated with the provision of each Eligible Component;
- (D) the installation, delivery and testing costs, as incurred by the Supplier of each Eligible Component and associated preliminaries directly associated with the provision of each Eligible Component

20A.4.2 For the purposes of Clauses 20A.4.1(B) to 20A.4.1(D) inclusive, the Supplier shall provide to the Purchaser an invoice or payment certificate along with supporting evidence that demonstrates to the satisfaction of the Purchaser that the costs incurred as referred to in Clauses 20A.4.1(B) to 20A.4.1(D) inclusive are sufficiently linked to each Eligible Component (where applicable).

20A.4.3 For the purposes of section 5 of the Capital Allowances Act 2001, the Supplier shall provide the Purchaser with the delivery date for each Eligible Component.

20A.4.4 The Supplier agrees to co-operate with the Purchaser and TfL and its professional advisers in relation to the submission and agreement of such claim to HM Revenue and Customs.

20A.4.5 The Supplier undertakes and confirms to the Purchaser that neither it nor any other person who is a member of the Supplier Group, a Subcontractor, a supplier or a provider of finance to the Supplier or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any Enhanced Capital Allowances or analogues Tax allowances in respect of the performance of any part of this Agreement.

21. **VAT**

21.1 **Payment of VAT**

The Contract Price is, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of the Contract Price and the Supplier is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Supplier to the Purchaser at the rate in force on the date of the relevant payment application and must be shown as a separate amount on such payment application and shall accordingly be paid by the Purchaser to the Supplier. To the extent that VAT is chargeable in respect of the Contract Price and the Purchaser is liable to account for such VAT to any Competent Authority, the Contract Price shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Supplier pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

21.2 **Reimbursement of VAT**

Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes).

21.3 **VAT Credit Note to be Issued on Repayment**

Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

22. **SECURITY**

22.1 **Not Used**

22.2 **Supplier Guarantee**

22.2.1 Where the Contract Particulars specify a Supplier Guarantee is required, this Clause 22.2 shall apply.

22.2.2 On or prior to the date of this Agreement, the Supplier shall procure at its cost a valid and effective Supplier Guarantee in favour of the Purchaser. The Supplier Guarantee shall:

- (A) substantially in the form set out in Schedule 7 (*Form of Supplier Guarantee*);
- (B) expire upon Fleet Acceptance; and
- (C) be duly executed and delivered by the Supplier Guarantor.

22.3 **Not Used**

23. **VARIATION PROCEDURE**

23.1 **Right to request a quote**

23.1.1 The Purchaser may, at any time prior to instructing a Variation, request the Supplier to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Contract Price and any effect on the Contract Programme as a result of implementing the proposed variation (the "**Variation Quote**").

23.1.2 The Supplier shall:

- (A) provide the Purchaser with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser may agree) of a request from the Purchaser; and
- (B) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.

23.1.3 The Purchaser may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 23.2.1, and the remaining provisions of this Clause 23.1 shall apply in respect of such Variation.

23.1.4 The Supplier shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

23.2 **Right to vary**

23.2.1 The Purchaser may at any time until the date of the Fleet Acceptance Certificate instruct the Supplier in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 23.2.

23.2.2 Upon instruction of a Variation by the Purchaser, the Supplier shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.

23.2.3 Nothing in this Clause 23.2 shall prevent the Supplier from making a proposal to the Purchaser for a Variation but no Variation so proposed shall be carried out by the Supplier except as directed in writing by the Purchaser.

23.3 Valuation of Variations

23.3.1 As soon as possible after having received any instruction under Clause 23.2, the Supplier shall notify the Purchaser if, in the Supplier's opinion, the Variation will involve an adjustment to the Contract Price (the "**Variation Valuation**").

23.3.2 Subject to Clause 23.3.3, the Variation Valuation shall, if not the subject of a Variation Quote from the Supplier which has been accepted by the Purchaser in accordance with Clause 23.1.3, be determined by the Purchaser:

(A) in the case of a Variation instructed pursuant to Clause 11.4, in accordance with the prices stated in the price list set out in Schedule 3 (*Spares*) Part B (*Additional Spares*) in the case of a Spare of the kind listed in that list and otherwise at cost plus 3%;

(B) in all other cases, in accordance with the rates and prices set out in Schedule 4 (*Contract Price*) or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates.

Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation; and

23.3.3 The Supplier shall not be entitled to any increase in the Contract Price with respect to any Variation:

(A) instructed pursuant to Clause 7.3.1; or

(B) to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Supplier its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Supplier has failed to take all reasonable steps to mitigate any actual or potential increase in the Contract Price.

23.4 Notice of variations

23.4.1 When instructing any Variation, the Purchaser shall, to the extent possible, give the Supplier such reasonable notice as will enable him to make his arrangements accordingly.

23.5 Progress with variations

23.5.1 The Supplier shall, on receipt of an instruction from the Purchaser to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Supplier shall not, without the prior written consent of the Purchaser, be delayed pending determination of the Variation Valuation in accordance with Clause 23.3.2.

23.5.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser pursuant to Clause 23.2.1.

24. **INTELLECTUAL PROPERTY RIGHTS**

24.1 **Not used**

24.2 **Licence of Supplier IPR**

The Supplier grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Supplier IPR, Software and Source Code for:

- 24.2.1 the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Goods or any related activity, or permitting the Purchaser to use the Goods and/or any other item to be supplied pursuant to this Agreement for the purposes envisaged pursuant to the Specification;
- 24.2.2 modifying, refurbishing, repairing, maintaining and overhauling the Goods, supplied pursuant to this Agreement or any related activity;
- 24.2.3 complying with all Applicable Laws, LU Standards and all Relevant Consents;
- 24.2.4 using and copying the Manuals and/or Installation Instructions in order to perform any of the above;
- 24.2.5 training personnel to carry out any of the activities described in Clause 24.2.1, 24.2.2 and 24.2.4;
- 24.2.6 inviting tenders for any of the activities described in Clause 24.2.1 to 24.2.5 inclusive;
- 24.2.7 in the event of termination of this Agreement, procuring fulfilment and performance of the Supplier's obligations under this Agreement, including the manufacture of any Parts and Spares or other equipment for use in connection with the Goods; and
- 24.2.8 the Purchaser performing its obligations under this Agreement.

Other than in accordance with this Clause 24, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 24 shall, have the right to manufacture (i) the Goods or (ii) any Part that is the subject of Supplier IPR.

24.3 **Subcontractors**

The Supplier shall ensure that all Subcontracts entered into by the Supplier shall permit the Supplier to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

24.4 **Documentation**

The Supplier shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 24 at no cost to the Purchaser.

24.5 **Warranties**

The Supplier represents and warrants to the Purchaser that:

- 24.5.1 the Supplier IPR and the Software constitute all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;
- 24.5.2 it has the right and power to grant the licence set out in Clause 24.2; and
- 24.5.3 use of any Supplier IPR, Software, the Goods, Part, Supplier Documentation or part thereof does not infringe any Intellectual Property rights of another person.

24.6 **Indemnity**

The Supplier shall indemnify the Purchaser and any member of the TfL Group as provided for in Clause 29.2 against any claim for infringement of any Intellectual Property Rights.

24.7 **Remedy for Infringement**

Without prejudice to the provisions of Clauses 24.5 and 29.2.4, if the use of any Supplier IPR, Software, Goods and/or Part thereof is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Supplier shall, at its cost, either:

- 24.7.1 procure for the Purchaser the right to continue to use that Supplier IPR, Software, Goods and/or Part; or
- 24.7.2 (to the extent Clause 24.7.1 is not applicable) modify the Goods and/or Part so that it no longer infringes those rights, or replace the item of Goods with a non-infringing Goods and/or Part provided however that the modified or replacement Goods and/or Part shall at all times comply with all the requirements of this Agreement.

24.8 **Software**

- 24.8.1 The Supplier shall ensure in respect of all Software that is used for the design, manufacture, testing, commissioning, supply, operation, maintenance, modification, refurbishment or sale of the Goods that:
 - (A) there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process;
 - (B) the documentation for Software is such as to enable an appropriately qualified person (who was not involved in the original design) to relate the Software to the performance of the relevant equipment under normal and fault conditions, and to verify its compliance with the functional requirements of that equipment; and
 - (C) where no particular LU Standard is specified by the Specification, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

The Supplier shall provide copies of the documentation and information at Clause (A) and (B) above to the Purchaser on the request of the Purchaser.

- 24.8.2 The Supplier shall in respect of Supplier-owned Software, at all times during the period from the Commencement Date until the end of the thirty (30) year design life of the Goods:

- (A) retain updated "as made" copies, in machine readable form, of the final structure of the Software, and of the intermediate stages leading to it (including Source Code and object codes);
- (B) retain updated usable copies of any ancillary computer programmes used to generate such codes (such as, without limitation, compilers);
- (C) subject to the provisions of any Escrow Agreement entered into under Clause 24.11, keep copies of the materials referred to in this Clause 24.8.2 in a secure manner and place such that they will not deteriorate;
- (D) retain the Software designed by the Supplier; and
- (E) allow the Purchaser reasonable access to the Software and the Source Code and its documentation.

24.9 **Cessation of Software Support**

If the Supplier or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Supplier shall, without additional charge (save where the Subcontractor stops trading or makes such intention to withdraw support known in which case the Purchaser shall pay the reasonable and properly incurred costs of the Supplier in complying with this Clause 24.9), use reasonable endeavours to procure the transfer to the Purchaser of all rights in and to the Software in question for the relevant type of Goods.

24.10 **Survival**

Each licence granted under this Clause 24 and/or any liability arising in connection with the same shall survive the termination of this Agreement.

24.11 **Escrow**

Within twenty (20) Working Days of the Commencement Date the Supplier shall execute the Escrow Agreement. The Supplier shall place the Escrow Materials in escrow with the Escrow Agent on the terms set out in the Escrow Agreement as soon as reasonably possible after its completion and in any event within twenty (20) Working Days thereof. The Supplier shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Escrow Materials and shall provide evidence of the same to the Purchaser on written request.

25. **TERMINATION**

25.1 **Supplier Events of Default**

The occurrence of one or more of the following shall constitute a Supplier Event of Default:

- 25.1.1 the Supplier commits a material breach of its obligations under this Agreement;
- 25.1.2 the Supplier commits a Persistent Breach as provided for in Clause 25.4;
- 25.1.3 the Supplier commits a breach of Clause 10.1;
- 25.1.4 Not Used;
- 25.1.5 an Insolvency Event occurs in relation to the Supplier;

- 25.1.6 the Supplier fails to make payment of any sum (including any liquidated damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
- 25.1.7 the Supplier fails to take out and/or maintain any of the Required Insurances in accordance with Schedule 9 (*Insurance*);
- 25.1.8 Not Used;
- 25.1.9 Acceptance for Service for the Goods still has not occurred by the Longstop Date,
- 25.1.10 (where the Contract Particulars specify a Supplier Guarantee is required,) the Supplier Guarantor's obligations under the Supplier Guarantee are or become wholly or partly invalid or unenforceable or the Supplier Guarantor fails to comply promptly with any of its obligations pursuant to the Supplier Guarantee;
- 25.1.11 there is a breach by the Supplier of its obligations under Clause 34; or
- 25.1.12 the Supplier fails to remedy an Equality & Diversity Infraction to the satisfaction of the Purchaser or fails to terminate its Subcontract with a defaulting Subcontractor in accordance with and within the timeframes specified in paragraph 1.6 of Schedule 17 (*Responsible Procurement*) Part A (*Equality and Supplier Diversity*);
- 25.1.13 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Supplier's share capital, and for this purpose, a "**controlling interest**" being either:
 - (A) the ownership or control (directly or indirectly) of more than 30% of the Supplier's voting share capital or the share capital of the Supplier's holding company; or
 - (B) the ability to direct the casting of more than 30% of the votes exercisable at the Supplier's general meetings or those of the Supplier's holding company on all, or substantially all, matters.

25.2 Procedures in relation to Termination for a Supplier Event of Default

- 25.2.1 The Supplier shall notify the Purchaser forthwith on the Supplier becoming aware of the occurrence of a Supplier Event of Default.
- 25.2.2 Following the occurrence of a Supplier Event of Default (and notwithstanding that the Supplier may not have notified it pursuant to Clause 30.2.1), the Purchaser may by notice in writing to the Supplier ("**Purchaser Termination Notice**") specifying the Supplier Event of Default in question terminate this Agreement either in respect of all of the Goods which have not been Accepted for Service or (as specified in the notice) in relation to specific items of Goods which have not been Accepted for Service, such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of Insolvency, forthwith) provided that, in respect of a Supplier Event of Default under Clauses 25.1.1, 25.1.3 or 25.1.6 which is capable of remedy, the provisions of Clause 25.3 shall apply.
- 25.2.3 This Clause 25.2 shall be without prejudice to the Purchaser's right of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015.

25.3 Remedial Plan

- 25.3.1 Where a Supplier Event of Default that is capable of remedy arises under Clauses 25.1.1, 25.1.3 or 25.1.6, the Purchaser shall by notice in writing to the Supplier signed on behalf of the Purchaser (a "**Remedy Notice**") require the Supplier either
- (A) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice or
 - (B) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed.
- 25.3.2 Where the Supplier puts forward a Remedial Plan in accordance with Clause 25.3.1, the Purchaser shall notify the Supplier in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Supplier, the Purchaser shall be deemed to have accepted the Remedial Plan.
- 25.3.3 If the Purchaser notifies the Supplier that it does not accept that Remedial Plan pursuant to Clause 25.3.2, the Purchaser and the Supplier shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Supplier Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 25.2.2 (notwithstanding the proviso thereto). Where the Purchaser and the Supplier agree the form of the Remedial Plan, the Supplier shall forthwith implement such Remedial Plan in accordance with its terms.
- 25.3.4 If any breach specified in a Remedy Notice served under Clause 25.3.1 is not remedied
- (A) within the thirty (30) Working Day period specified in Clause 25.3.1(A) (if applicable); or
 - (B) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Supplier otherwise fails to comply with the terms of that Remedial Plan,
- then the Purchaser may exercise its rights under Clause 25.2.2 as if the Supplier Event of Default is not capable of remedy.

25.4 Persistent breach

- 25.4.1 If the Supplier breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Supplier:
- (A) specifying that it is a formal warning notice;
 - (B) giving reasonable details of such breach; and

- (C) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 25.4.

25.4.2 If, following service of such a warning notice pursuant to Clause 25.4.1, the breach specified has continued unremedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 25.4.1, serve another notice on the Supplier specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 25.1.2.

25.5 Consequences of Termination for Supplier Fault

25.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 25.2.2 (and, where relevant, the Supplier Event of Default has not been remedied pursuant to Clause 25.3), or (b) a notice of termination under Clause 33.3, the Purchaser shall be entitled (in its absolute discretion) to:

- (A) procure the completion of the Goods so that they satisfy the conditions necessary for the passing of title to the Purchaser and, upon completion, pay to the Supplier that part of the Contract Price for the Goods and any other item of Goods not yet paid as at the date of termination less the cost of completion including procurement of the same. Where this gives rise to a negative figure, the corresponding positive amount will be payable by the Supplier to the Purchaser together with Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Supplier); or
- (B) purchase any work in progress, wholly or partly manufactured Goods at an amount representing a fair assessment of the value of the Goods, less an amount equal to those instalments of the Contract Price and/or any advance payments already paid by the Purchaser in respect of such Goods; or
- (C) be reimbursed for all payments made to the Supplier in relation to the supply of the Goods (other than those in respect of which title has transferred to the Purchaser pursuant to Clause 16). The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Supplier);
- (D) if Termination occurs prior to Acceptance for Service of the first Train, return any Goods in the possession of the Purchaser and be reimbursed for all payments made to the Supplier. The amount to be reimbursed shall attract Default Interest (calculated from the date of termination of this Agreement to the date of payment by the Supplier);
- (E) require the Supplier to return all Old Components to the Purchaser in a reusable condition. If the Purchaser requires the Supplier to return Old Components pursuant to this Clause 25 the Supplier shall store and deliver the Old Components to the Purchaser with care and attention and in accordance with good industry practice.

25.5.2 Subject Clause 29.4, if this Agreement is terminated at any time between the Commencement Date and the Fleet Acceptance as a result of:

(A) the occurrence of a Supplier Event of Default in accordance with Clause 25.2.2 (and, where relevant, the Supplier Event of Default has not been remedied pursuant to Clause 25.3); or

(B) the occurrence of a Prohibited Act in accordance with Clause 33,

the Supplier shall, in addition to any amounts payable pursuant to Clause 25.5.1 above, be responsible for and release and indemnify the Indemnified Parties on demand on an after-Tax basis from and against all liability for the costs, losses and expenses suffered or incurred by the Indemnified Parties arising from the termination of this Agreement including, but not limited to:

(i) the costs of procuring a replacement contract including any increase in the price of the replacement contract and all project management, legal and other professional costs and fees in relation to such replacement contract;

(ii) all other reasonable direct losses, costs and claims of the Indemnified Parties (including but without limitation, project management, legal and other professional costs and fees);

(ii) the costs of the Purchaser procuring replacement Goods; and

(iii) the cost of satisfying any outstanding Preconditions relating to the first Train.

25.6 **Additional Remedies**

Without prejudice to Clause 38, where this Agreement has been terminated pursuant to Clause 25.2, 33.3, 33.4, 53.2, 54.5 or 56.10, the Purchaser shall be entitled to require the Supplier:

25.6.1 to assign the benefit of any warranties which have been given by any third parties, Subcontractors or suppliers to the Supplier in respect of the Goods; or

25.6.2 to provide all drawings of all Parts and all design, technical and maintenance records relating to the Goods including all Manuals and Interface Definition Document relating to the Goods save to the extent the same have already been provided in accordance with this Agreement and such information shall be treated as Supplier IPR for the purposes of this Agreement.

25.7 **Voluntary Termination**

The Purchaser may terminate this Agreement without cause at any time by giving notice to the Supplier of such termination and the date when such termination shall become effective and the termination shall take effect upon such date.

25.8 **Declaration of Ineffectiveness and Public Procurement Termination Event**

The Purchaser may terminate this Agreement at any time in the event that:

25.8.1 there is a Declaration of Ineffectiveness

25.8.2 a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

25.9 **Not used**

25.10 **Consequences of Voluntary Termination**

25.10.1 Not used

25.10.2 Where this Agreement is terminated by the Purchaser in accordance with Clause 25.7, the Purchaser shall pay to the Supplier:

- (A) an amount equivalent to the amount that would be payable by the Purchaser to the Supplier in respect of a termination as a result of a Force Majeure Event in accordance with Clause 25.11; and
- (B) provided that, where the amount would be a negative figure, the corresponding positive amount shall be payable by the Supplier to the Purchaser on the same basis as set out in Clause 25.5.1(A)); and
- (C) subject to Clause 25.10.4, the costs, expenses and other liabilities reasonably and properly incurred by the Supplier as a direct result of the termination of this Agreement provided that the Supplier shall use all reasonable endeavours to mitigate such costs, expenses and/or other liabilities.

The Supplier shall not be entitled to payment of any other loss and/or damage arising from such termination.

25.10.3 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Supplier as a direct result of termination of this Agreement and determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Supplier as a direct result of the termination of this Agreement.

25.10.4 Where the Purchaser exercises its rights pursuant to Clause 25.10.3, it shall give written notice to the Supplier identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Supplier shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

25.10.5 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Supplier. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Supplier as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Supplier.

25.10.6 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Supplier, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Supplier.

25.10.7 In the event the Supplier disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 32.

25.11 Consequences of Termination for Force Majeure

25.11.1 Where this Agreement is terminated in whole or in part by the Purchaser as a result of a Force Majeure Event in accordance with Clause 27, the Purchaser will acquire any:

- (A) Design that has been produced in connection with this Agreement prior to the date of service upon the Supplier of the FM Notice; and
- (B) partially completed Goods or other item of Goods that is the subject of the FM Notice.

25.11.2 The value of the Purchaser's acquisition will be assessed, where appropriate, in accordance with Schedule 4 (*Contract Price*) (and in particular the Contract Price Breakdown contained in Schedule 4 (*Contract Price*) Part 3 (*Contract Price breakdown*) or, to the extent that this is not appropriate due to the level of Design development, the costs and expenses reasonably and properly incurred by the Supplier in carrying out its obligations under this Agreement less the amount of progress or advance payments made to the Supplier. Where this gives rise to a negative figure, the corresponding positive amount shall be payable by the Supplier to the Purchaser on the same basis as set out in Clause 25.5.1(A).

25.12 Consequences of Termination for other reasons

Where this Agreement is terminated by the Purchaser under Clause 33.3, 33.4, 53.2, 54.5 or 56.10, the provisions of Clauses 25.5 and 25.6 shall apply.

25.13 Rejection

This Clause 25 shall not apply to any rejection of the Goods pursuant to Clause 14.

26. SURVIVAL OF CLAUSES

26.1 Consequence of Termination or Expiry

Upon termination or expiry of this Agreement, whether in respect of any one item of Goods or all Goods, the obligations of the Parties under this Agreement in respect of the terminated Goods shall cease except for:

- 26.1.1 any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and
- 26.1.2 the provisions of Clauses 1, 3A, 4.1.1, 4.1.3, 4.1.4, 4.1.7, 4.1.8, 4.2, 4.4, 4.5, 5, 6.7, 10.2 to 10.7 inclusive, 17, 20, 20A.4, 21, 22, 24, 25.5, 25.6, 25.11, 25.12, 25.13, 26, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 47 and 51 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

27. FORCE MAJEURE

27.1 Consequence of a Force Majeure Event and Notification Requirements

No Party shall be in breach of an obligation under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

- 27.1.1 if any Party seeks to rely on this Clause 27 (the "**FM Affected Party**"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and
- 27.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 27.2 below.

27.2 **Mitigation**

- 27.2.1 An FM Affected Party shall:
- (A) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Supplier, complying with the requests of the Purchaser and, in relation to the Supplier's Works, using all reasonable endeavours to find alternative facilities at which to carry out its obligations), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
 - (B) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
 - (C) shall provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.
- 27.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 27.2.1 above.

27.3 **Extensions of Time for Force Majeure**

Subject to Clauses 27.2 and 27.4 the occurrence of a Force Majeure Event which directly causes delay to the supply of the Goods and/or any other item of Goods will constitute a Permitted Delay Event and the provisions of Clause 15 shall apply.

27.4 **Termination for Force Majeure**

Notwithstanding the provision of Clause 27.3 entitling the Supplier to a Permitted Delay Event, the Purchaser shall be entitled to terminate this Agreement by notice in writing (a "**FM Notice**") to the Supplier if the Acceptance for Service of the Goods or other item of Goods has been or would be delayed as the result of a Force Majeure Event for more than an aggregate total of ninety (90) days following the Contractual Date for such Goods or other item. The provisions of Clause 25.12 shall apply in respect of such termination.

27.5 **Effect on payments**

If a Force Majeure Event results in the Supplier being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have

been due on fulfilment of that obligation until and to the extent that the Supplier has performed that obligation.

27.6 **Cessation of Force Majeure**

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated or varied in accordance with Clause 27.4.

27.7 **Continuing Obligations**

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 27.4, remain in effect for the duration of a Force Majeure Event.

28. **INSURANCE**

The Supplier and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 9 (*Insurance*).

29. **INDEMNITIES AND LIMITATIONS ON LIABILITY**

29.1 **Application**

The provisions of this Clause 29 shall apply notwithstanding any other provision of this Agreement.

29.2 **General Indemnities**

Subject to Clause 29.3, the Supplier shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and TfL and any member of the TfL Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:

- 29.2.1 death or personal injury to any person;
- 29.2.2 any loss of, or damage to, any property or assets (including the LUL Network, the Goods or any other item of Goods);
- 29.2.3 any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- 29.2.4 breach of statutory duty;
- 29.2.5 any Environmental Damage;

arising from or in connection with:

- (A) the design, manufacture, supply, assembly, testing, commissioning and delivery of the Goods (and/or any subsystem or Part forming part of the Goods); and/or
- (B) the operation and/or use of the Goods in accordance with Manuals, Installation Instructions, or Interface Definition Document or as otherwise directed by the Supplier;

- (C) the performance or non-performance (including any negligent performance) of the obligations of the Supplier, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
- (D) any acts or omissions, breach, negligence or wilful misconduct by the Supplier.

29.3 **Qualifications**

The Supplier shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 29.2 in the case of any loss referred to in Clauses 29.2.1 and 29.2.2 to the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

29.4 **Limitation on Supplier's Liability**

29.4.1 Subject to Clause 29.4.2, the Supplier's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited as set out in the Contract Particulars.

29.4.2 The Supplier's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 29.4.1.

29.5 **Consequential Breach and Loss**

29.5.1 Neither the Supplier nor the Purchaser shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.

29.5.2 Other than in respect of Excepted Liabilities, neither Party shall be liable for any matter howsoever arising out of or in connection with this Agreement (including Clause 29.2) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party, (or make any claim against that Party), the Purchaser or any member of the TFL Group in respect of Consequential Loss.

29.6 **No Double Recovery**

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

29.7 **Duty to Mitigate**

The Supplier and the Purchaser shall each be under a duty to mitigate any damages and losses in respect of which it makes any claim pursuant to this Agreement.

30. **CONFIDENTIALITY**

30.1 **Obligations of Confidentiality**

Subject to Clause 30.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Supplier or by the Supplier to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and

the Supplier shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of their subcontractors and suppliers shall not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

- 30.1.1 disclose Confidential Information to any person whomsoever;
- 30.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or
- 30.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

30.2 Permitted Disclosure

Without prejudice to the Purchaser's rights under its licence granted pursuant to Clause 24.2, the restrictions in Clause 30.1 shall not apply to the disclosure of Confidential Information:

- 30.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 31) or LU Standard to do so;
- 30.2.2 to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;
- 30.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- 30.2.4 to any Competent Authority;
- 30.2.5 in the case of the Purchaser to the Mayor of London and/or the Greater London Authority and/or the Secretary of State for Transport;
- 30.2.6 in the case of the Purchaser to any member of the TfL Group;
- 30.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 30.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 30.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 30.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- 30.2.11 to any member of the Supplier Group for the purposes of the performance by the Supplier of its obligations under this Agreement.

30.3 Confidentiality Undertaking

Where disclosure is permitted under Clause 30.2, other than Clauses 30.2.1, 30.2.2, 30.2.7 or 30.2.8, the Party disclosing the Confidential Information shall procure that the

recipient of the Confidential Information shall be subject to the same obligations of confidentiality as that contained in this Agreement.

30.4 Prior Notice of Disclosure

If a Party becomes required in circumstances contemplated by Clauses 30.2.1 to 30.2.11 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to, co-operate with, have due regard to the views of, and take steps as reasonably required by the Supplier.

30.5 Standard of Care

In fulfilling its obligations under this Clause 30, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

30.6 Announcements

The Supplier shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the design, manufacture, supply, testing, commissioning, delivery, maintenance or support of any Goods.

30.7 Reputation

The Supplier shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

30.8 Survival

The obligations of the Parties under this Clause 30 shall survive the expiry or the termination of this Agreement for whatever reason.

31. FREEDOM OF INFORMATION

31.1 The Supplier acknowledges that the Purchaser:

31.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, and

31.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Supplier.

31.2 Without prejudice to the generality of Clause 31.1, the Supplier agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

31.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Supplier each Information Request relevant to this Agreement or any member of the TfL Group that the Supplier or its Subcontractors (if any) (as

the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and

31.2.2 in relation to Information held by the Supplier on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

31.3 The Purchaser (as may be directed by TfL) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.

31.4 The Supplier acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

32. **DISPUTE RESOLUTION**

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 9 0 (*Dispute Resolution Procedure*).

33. **PROHIBITED ACTS**

33.1 The Supplier shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.

33.2 The Purchaser may audit and check any and all such records of the Supplier as are necessary in order to monitor compliance with this Clause 33 at any time during performance of this Agreement and during the three (3) years after the date on which the Fleet Acceptance Certificate has been given.

33.3 If the Supplier, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Supplier or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.3, Clauses 25.5 and 25.6 shall apply.

33.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Supplier then the Purchaser may serve a warning notice upon the Supplier instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Supplier removes or procures the removal of the relevant Subcontractor, employee or agent (as the case may be) from further involvement with any aspect of the performance of this Agreement and (if necessary) procures the provision of the affected works and/or services by another Subcontractor, employee or agent (as the case may be) this constitutes a material breach of this Agreement and entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33.4, Clauses 25.5 and 25.6 shall apply.

34. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING BY THE SUPPLIER

34.1 Subcontracting

- 34.1.1 The Supplier may sub-contract its obligations under this Agreement either in whole or in part to any Subcontractor provided that the written consent of the Purchaser is obtained by the Supplier prior to the Supplier entering into any Subcontract. The Supplier shall provide the company name, address and contact details for any Subcontractor prior to requesting consent of the Purchaser.
- 34.1.2 Unless the Purchaser otherwise agrees in writing, the Supplier shall procure that each Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at 0 (*Form of Subcontractor Warranty*).
- 34.1.3 The Supplier shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Supplier or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Supplier.
- 34.1.4 The Supplier shall ensure that it includes any Subcontract provisions on substantially similar terms to Clause 20 (Payment);

34.2 Assignment

Without prejudice to Clause 34.1, the Supplier shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 34 shall be ineffective.

35. ASSIGNMENT AND NOVATION OR GRANTING OF SECURITY BY THE PURCHASER

35.1 Permitted Transfers

The Purchaser shall be entitled without the consent of the Supplier to assign (whether absolutely or by way of security and whether in whole or in part) transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person including for the purposes of financing its obligations under this Agreement.

35.2 Implementation of Transfers

If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clause 35.1, the Supplier shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

36. NOTICES

36.1 Form of Communications

Any notice, approval, consent or other communication referred to in this Agreement:

- 36.1.1 must be in writing; and

36.1.2 must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause 36.1 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in England or Wales, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 36.1.

The relevant details of each Party at the date of this Agreement are:

Purchaser: as specified in the Contract Particulars

Supplier: as specified in the Contract Particulars

36.2 Each such communication shall, unless otherwise shown, be deemed to have been received:

36.2.1 if personally delivered, at the time of delivery;

36.2.2 if sent by first class post, on the third Working Day following the date on which it was posted or, if posted to or from a place outside the United Kingdom, the seventh Working Day after posting;

36.2.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and

36.2.4 in the case of electronic mail, five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in Clause 36.1 are used. The place of delivery of email will be deemed to be the postal address nominated by the recipient in Clause 36.1.

36.3 Not Used

36.4 **Receipt on a Non-Working Day**

A notice received or deemed to be received in accordance with Clause 36.1 above on a day which is not a Working Day or after 5.00 p.m. on a Working Day according to local time in the place of receipt, shall be deemed to be received on the next following Working Day.

36.5 **Change of Address**

Each Party undertakes to notify immediately the other Parties by notice served in accordance with this Clause 36 if the address specified herein is no longer an appropriate address for the service of notice.

36.6 **Service of Proceedings**

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

37. **ENTIRE AGREEMENT**

37.1 **Whole Agreement**

Each Party confirms that this Agreement and any other documents referred to in this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

37.2 **Non Reliance**

Each Party acknowledges and agrees that:

- 37.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement or any other documents referred to in this Agreement; and
- 37.2.2 no Party has any other right or remedy in respect of the matters set out in Clause 37.2.1 (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) save for any liability for fraudulent misrepresentation or fraudulent misstatement.

38. **RIGHTS CUMULATIVE WITH THOSE AT LAW**

38.1 **Rights Cumulative**

Except where expressly stated to the contrary the powers, rights and remedies conferred on the Parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties by law.

38.2 **Equitable Remedies**

Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this Agreement by any Party shall be available to the Parties and that no proof of special damages shall be necessary for the enforcement of the provisions of this Agreement.

39. **FURTHER ASSURANCE**

Each Party to this Agreement shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Agreement.

40. **SET-OFF**

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Supplier, any amounts due or expressed to be due by the Supplier to the Purchaser. Any payment payable by the Supplier under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Supplier under this Agreement.

41. **WAIVER**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by the other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

42. **SEVERANCE**

If any provision or part of this Agreement is void or unenforceable due to the operation of any Applicable Law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

43. **COSTS**

Each Party shall be responsible for their own costs (including legal costs) in relation to the negotiation and execution of this Agreement.

44. **LANGUAGE**

This Agreement is executed in English and all communications under this Agreement shall be made in English.

45. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

45.1 With the exception of the right of:

45.1.1 any member of the TfL Group;

45.1.2 any person expressly stated to be indemnified by a Party;

45.1.3 the Installer,

to enforce any term of this Agreement which either expressly or by implication confers any benefit upon such person, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a signatory to this Agreement.

46. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

47. **GOVERNING LAW AND JURISDICTION**

47.1 **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

47.2 **Exclusive Jurisdiction**

Subject to the terms of Clause 32, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

47.3 **Forum**

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

48. **RESPONSIBLE PROCUREMENT**

48.1 The Supplier shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles insofar as they are relevant to this Agreement, the Supplier and/or any Subcontractor.

49. **CRIME AND DISORDER**

49.1 The Supplier acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

49.1.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;

49.1.2 where appropriate, identify actions to reduce levels of crime and disorder; and

49.1.3 without prejudice to any other obligation imposed on the Purchaser, exercise his 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 this Agreement the Supplier shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser where possible to enable the Purchaser to satisfy its duty.

50. **LONDON LIVING WAGE**

50.1 The Supplier acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Purchaser) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.

50.2 Without prejudice to the generality of Clause 50.1, the Supplier shall and shall procure that its Subcontractors (if any) shall:

50.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

50.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and

50.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

51. **DATA TRANSPARENCY**

51.1 The Supplier acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to

the FOI Legislation or confidentiality, the Supplier hereby gives its consent for the Purchaser to publish the Contract Information to the general public.

- 51.2 The Purchaser 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 Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 51.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

52. **DATA PROTECTION**

- 52.1 The Supplier shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.

- 52.2 The Supplier shall:

52.2.1 take appropriate technical and organisational security measures satisfactory to the Purchaser against unauthorised or unlawful Processing of Purchaser Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;

52.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Supplier with the requirements of this Clause 52; and

52.2.3 cooperate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Act.

53. **CONFLICT OF INTEREST**

- 53.1 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 performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.

- 53.2 The Supplier shall undertake ongoing and regular conflict of interest checks throughout the duration of this Agreement and in any event not less than once in every six months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 53, Clauses 25.5 and 25.6 shall apply.

54. **CRIMINAL RECORDS DECLARATION**

- 54.1 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 he has committed. The Supplier shall confirm to the Purchaser in

writing on an annual basis upon request 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 throughout the duration of this Agreement and the Supplier shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 54.2 The Supplier shall not engage or allow to act on behalf of the Supplier or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 54.3 The Purchaser may audit and check any and all such records of the Supplier as are necessary in order to monitor compliance with this Clause 54 at any time during performance of this Agreement.
- 54.4 If the Supplier fails to comply with the requirements under Clause 54.1 and/or 54.2, the Purchaser may, without prejudice to its rights under Clause 54.5, serve notice on the Supplier requiring the Supplier to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 54.1) within seven (7) days of receipt of the notice the Supplier confirms to the Purchaser that it has procured all of the Declarations required under Clause 54.1.
- 54.5 A persistent breach of Clause 54.1 and/or 54.2 by the Supplier shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 54, Clauses 25.5 and 25.6 shall apply.
- 54.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 54.7 Nothing in this Clause 54 in any way waives, limits or amends any obligation of the Supplier to the Purchaser arising under this Agreement and the Supplier's obligation to perform this Agreement remains in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 54.
- 54.8 The Supplier confirms that, for the duration of this Agreement, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

55. **BEST VALUE**

- 55.1 The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Purchaser are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Purchaser (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Purchaser (and, where appropriate, TfL) to achieve best value.

56. **WORK RELATED ROAD RISK**

Definitions

56.1 For the purposes of Clauses **56.2** to **56.10** (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
"Category N2 Lorry"	means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
"Category N3 Lorry"	means a vehicle designed and constructed for the carriage of goods and having a MAM over 12,000 kilograms
"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 twelve (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 delivering the Goods;
"DVLA"	Driver and Vehicle Licensing Agency;
"Direct Vision Standard" or "DVS"	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at www.tfl.gov.uk

"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
"Front Underrun Protection"	devices that are fitted at the front of Lorries and which comply with EC Directive 2000/40/EEC and the Road Vehicles (Construction and Use) Regulations 1986
"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 Underrun Protection"	devices 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
"to provide the Goods"	to provide the Goods in the United Kingdom;

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

Fleet Operator Recognition Scheme Accreditation

56.2 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, it shall within ninety (90) days of the Commencement Date:

56.2.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of Purchaser, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and

56.2.2 (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.

Safety Equipment on Lorries

56.3 The Supplier shall ensure that every Lorry, which it uses to provide the Goods, shall have:

56.3.1 Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of Purchaser that the Lorry will not perform the function for which it was built if Side Underrun Protection are fitted;

Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of Purchaser that the Lorry will not perform the function for which it was built if Side Underrun Protection are fitted

56.3.2 equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and

56.3.3 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;

56.3.4 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.

Direct Vision Standard

56.4 Where applicable:

56.4.1 The Supplier shall comply with Schedule 19 (Heavy Goods Vehicle Direct Vision Standard Schedule) and

56.4.2 The Supplier shall ensure that:

- (A) from and including 1 October 2018, all Category N3 Lorries used in a provision of the Goods achieve a minimum of a one (1) star Direct Vision Standard rating;
- (B) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Goods achieve a minimum of three (3) star Direct Vision Standard rating; and
- (C) So far as reasonably practicable, the conditions at all sites and locations within the control of the Supplier where:
 - (i) the Goods are being delivered, or
 - (ii) in connection with the performance of the Goods, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provisions of the Goods. The Supplier shall not incur any costs or make any changes to the site(s) without the prior written consent of the Purchaser.

Driver Licence Checks

56.5 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods the Supplier shall ensure that:

56.5.1 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

56.5.2 each of its Drivers engaged in the provision of the Goods has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods 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 Purchaser within the last twelve (12) months:

56.4.2.1 0-5 points on the driving licence – six monthly checks;

56.4.2.2 6-8 points on the driving licence – quarterly checks; or

56.4.2.4 9 or more points on the driving licence – monthly checks.

Driver Training

56.6 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods the Supplier shall ensure that each of its Drivers undergo Approved Progressive Training throughout the term of the Agreement.

Collision Reporting

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

56.7.1 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

56.7.2 within fifteen (15) days of the Commencement Date, provide to Purchaser a Collision Report. The Supplier shall provide to Purchaser an updated Collision Report within five (5) Working Days of a written request from Purchaser.

Self Certification of Compliance

56.8 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, within ninety (90) days of the Commencement Date, the Supplier shall make a written report to Purchaser detailing its compliance with Clauses 56.3, 56.5, 56.6, 56.5, 56.6 and 56.7 of this Agreement (the "**WRRR Self-certification Report**"). The Supplier shall provide updates of the WRRR Self-certification Report to Purchaser on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Supplier Regarding Subcontractors

56.9 The Supplier shall ensure that those of its Subcontractors or suppliers who operate Category N2 Lorries, Category N3 Lorries, Vans and/or Car-Derived Vans to provide the Goods shall comply with the corresponding provisions of this Agreement:

56.9.1 comply with Clause 56.2; and

56.9.2 for Category N2 Lorries – Clauses 56.3, 56.5, 56.6, 56.7 and 56.8

56.9.3 for Category N3 Lorries – Clauses 56.3, 56.4, 56.5, 56.6, 56.7, 56.8 and where appropriate provisions of Schedule 19(Heavy Goods Vehicle Direct Vision Standard Schedule); and

56.9.4 for Vans and Car-Derived Vans – Clauses 56.6, 56.7 and 56.8 :

Failure to Comply with Freight-related Obligations

56.10 Without limiting the effect of any other clause of this Agreement relating to termination, if the Supplier fails to comply with Clauses, 56.3, 56.5, 56.6 (where applicable), 56.7, 56.8, 56.9, 56.8, 56.9 and 56.10:

56.10.1 the Supplier has committed a material breach of this Agreement; and

56.10.2 the Purchaser may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by Purchaser for any purpose (including but not limited to deliveries).

57. ACCESS

57.1 The Purchaser shall give the Supplier access to the parts of the LUL Network required for the performance of this Agreement in accordance with the provisions of this Clause 57.

57.2 Subject to the provisions of this Clause 57, the Purchaser shall use reasonable endeavours to give access to such parts of the LUL Network to the Supplier on the dates and times on which it has stated that it requires such access.

57.3 The Supplier acknowledges that the Purchaser does not guarantee uninterrupted or exclusive possession to any parts of the LUL Network and that its access to some parts of the LUL Network may be limited in accordance with the Agreement.

57.4 Where the Supplier requires access to the LUL Network to carry out its obligations under this Agreement, it shall

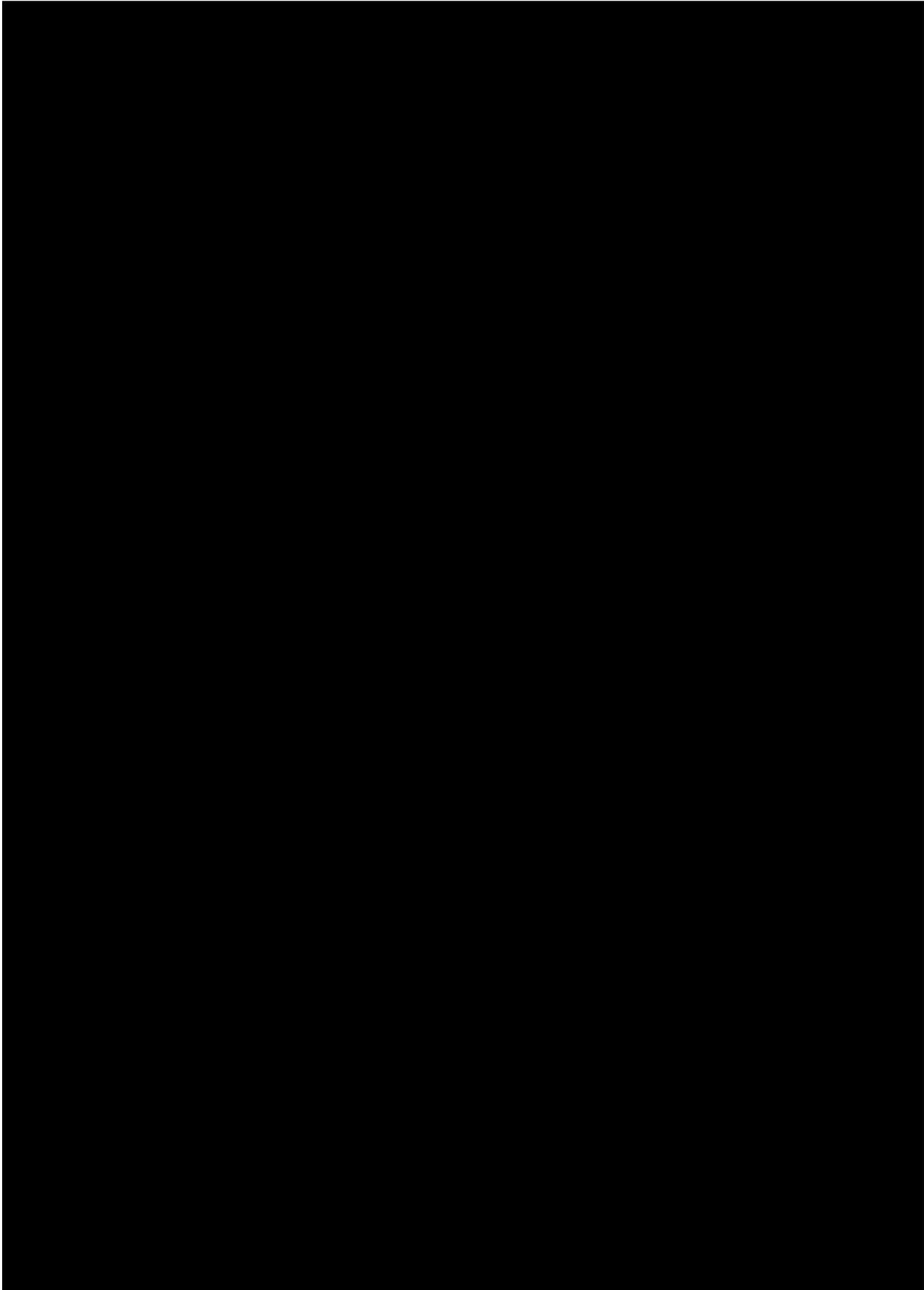
57.4.1 apply for access at the earliest available opportunity; and

57.4.2 provide the Purchaser without delay with such additional information as the

Purchaser may reasonably require in respect of the Supplier's access request.

- 57.5 The Purchaser shall confirm access bookings in accordance with this Clause.
- 57.6 The Purchaser does not warrant or guarantee to the Supplier that such access will be granted. If any request for access is rejected, the Purchaser 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.
- 57.7 If the Supplier fails to apply for access in accordance with this Clause 57, the Purchaser shall not be liable for any delays or costs arising and the Supplier shall be responsible for any failure to comply with the terms of the Agreement.
- 57.8 The Supplier shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access.
- 57.9 If the Supplier fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Purchaser 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.
- 57.10 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 Purchaser.
- 57.11 Prior to returning any part of the LUL Network to the Purchaser 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 LUL Network in a clean and workmanlike condition to the satisfaction of the Purchaser.
- 57.12 Where the Supplier is denied booked access to any part of the LUL Network through no fault of the Supplier having fully complied with the requirements of Clause 57.4, this shall constitute a Permitted Delay Event.

IN WITNESS whereof this Agreement has been executed and unconditionally delivered as a deed the day and year first above written.



SCHEDULE 1A: SPECIFICATION

SCHEDULE 1B: CONTRACT MANAGEMENT

PART A: PROJECT EXECUTION PLAN

1 INTRODUCTION

- 1.1 The Project Execution Plan (“**PEP**”) sets out how the Supplier must manage the design, manufacture and supply of all items of Goods and the Services in accordance with this Agreement. The PEP is comprised of the plans, information and obligations set out in paragraphs 2 to 11 of this Schedule 1B Part A. The Supplier shall ensure that all plans contained within the PEP remain in place for the duration of this Agreement and shall perform its obligations under this Agreement in accordance with the PEP.
- 1.2 The PEP will be a working document for the duration of the Agreement. The Supplier may submit additional information to be included in the PEP to the Purchaser from time to time for the Purchaser’s approval (such approval not to be unreasonably withheld or delayed). Following approval by the Purchaser, such additional information shall form part of the PEP.
- 1.3 For the purposes of this Schedule 1B Part A, the procurement of the Goods and the Services shall be referred to as the “Project”.

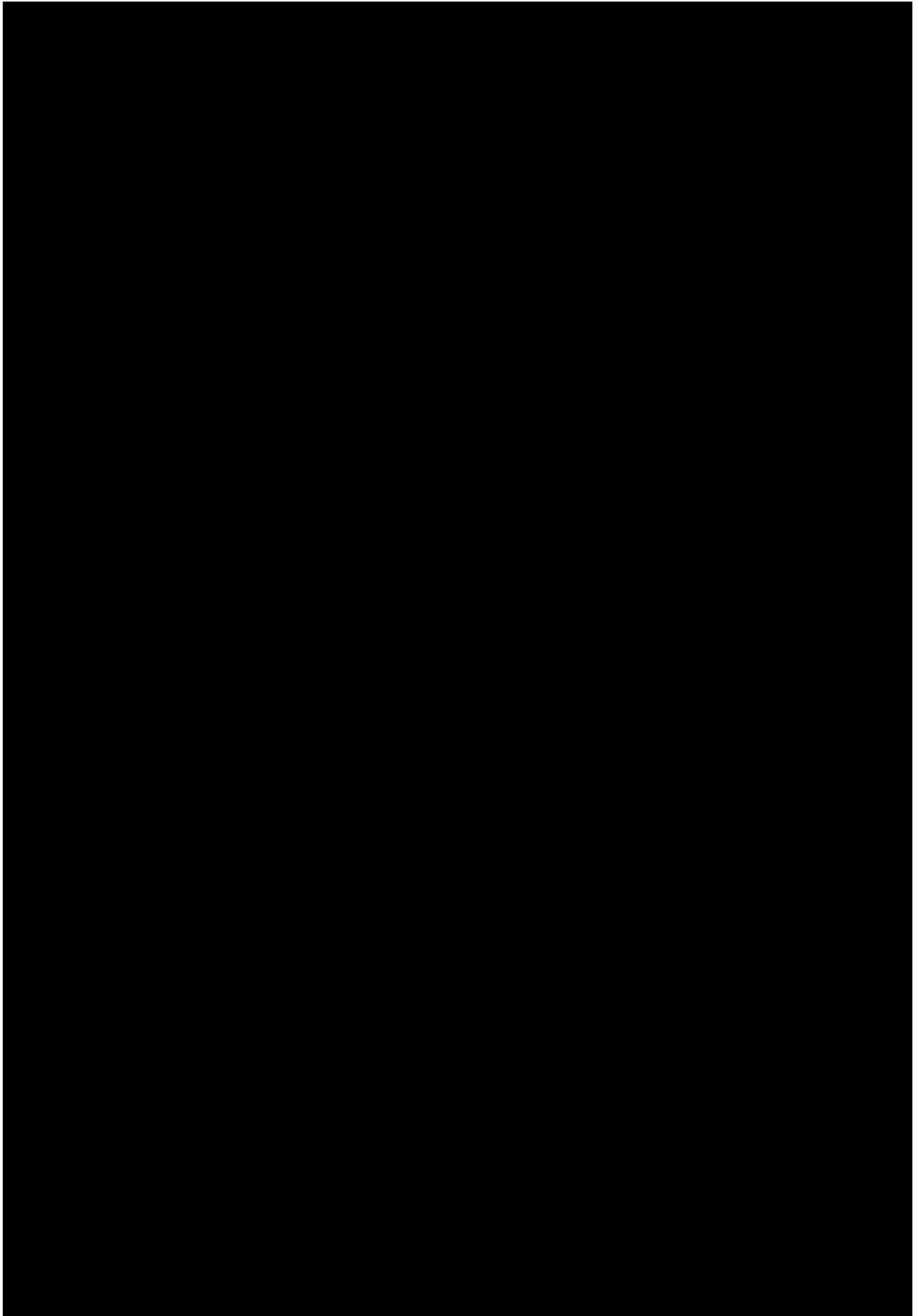
2 DESIGN AND MANUFACTURING MANAGEMENT PLAN

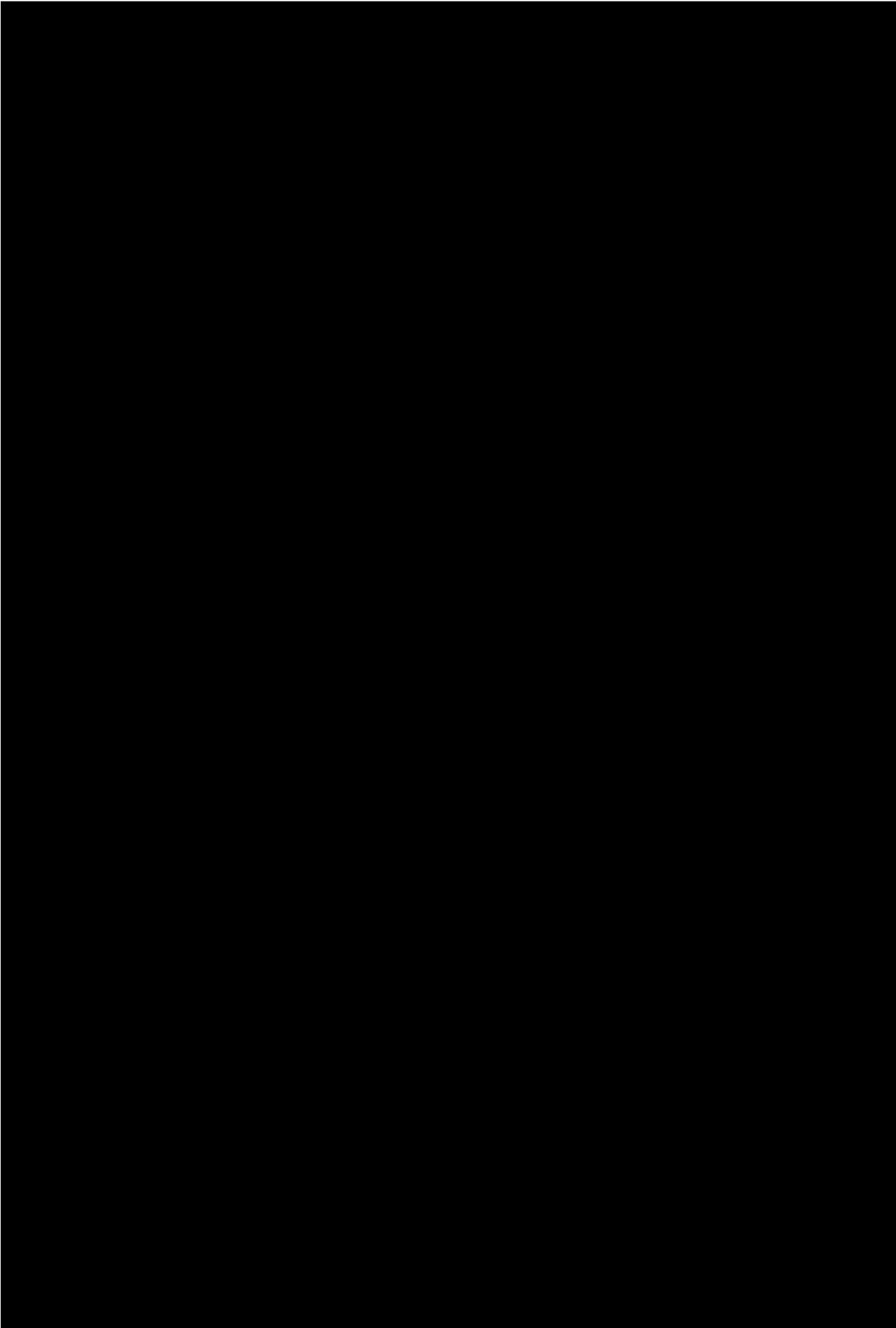
- 2.1 The document titled “DS-01: Design and Manufacturing Management Plan” (set out in Appendix 1 of Schedule 1B Part A) shall form part of the PEP and provides details of the following:
 - 2.1.1 the activities that demonstrate how the Supplier will mobilise and organised with sufficient, appropriately qualified and experienced staff.
 - 2.1.2 the suitability of the Supplier’s Works required for the design, development, manufacturing assembly and Routine Production Testing of the Goods
 - 2.1.3 the principal locations where the design, development, manufacturing, assembly and Routine Production Testing of Goods will take place.

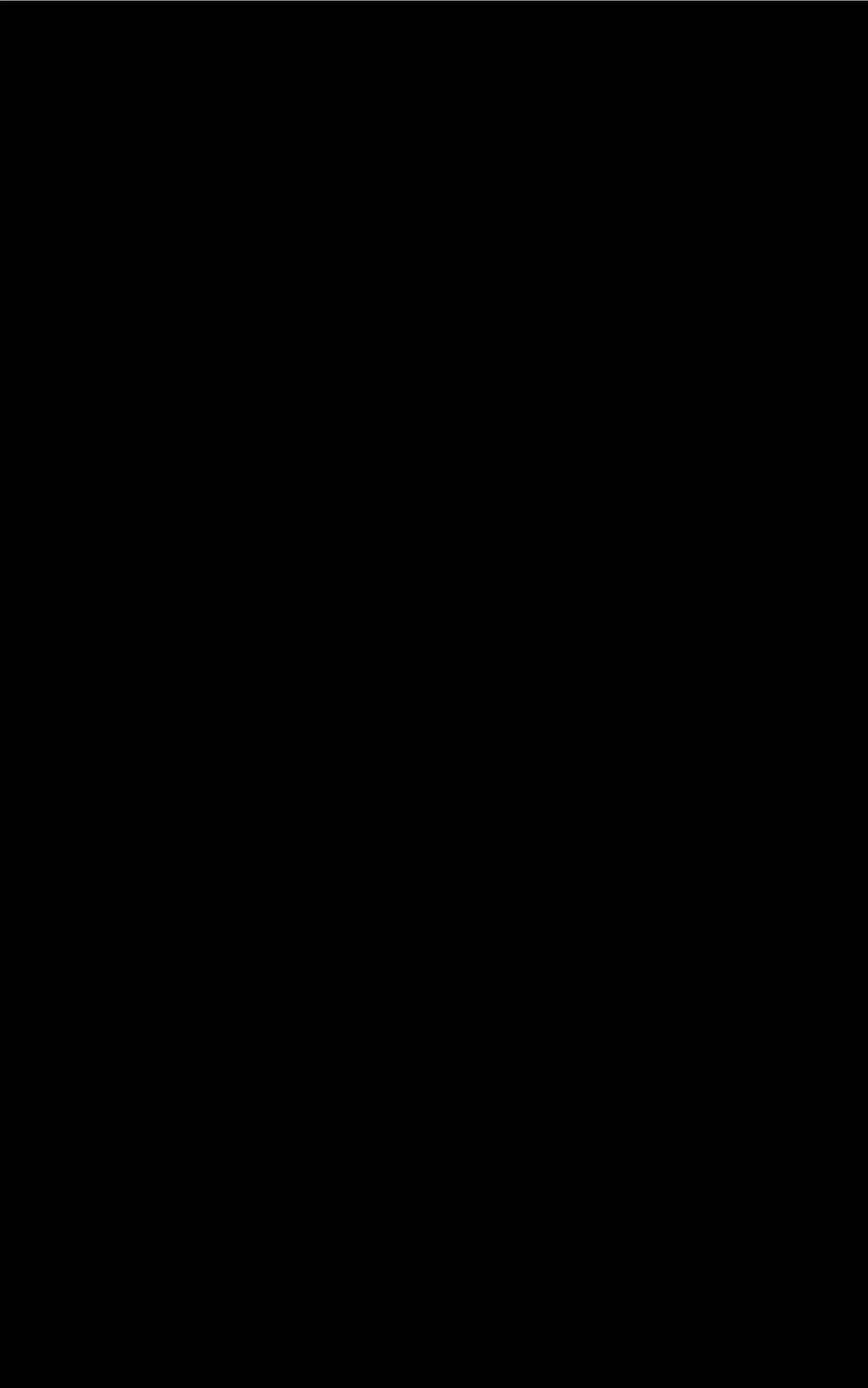
3 PRINCIPAL LOCATIONS

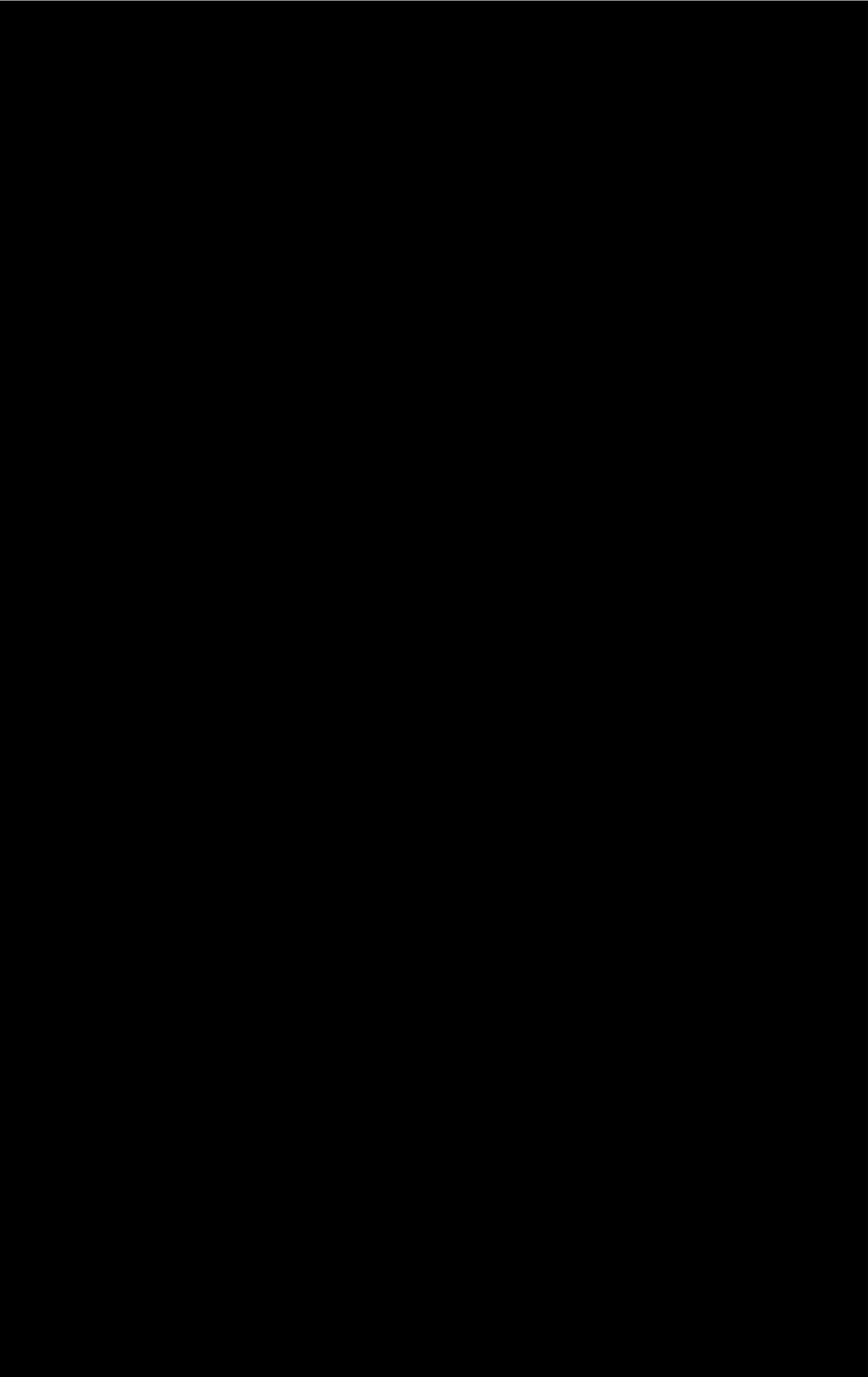
- 3.1 Paragraph 4 sets out how the Supplier will achieve the requirements of Paragraph 2.1.2 and 2.1.3.
- 3.2 The Supplier will use the Supplier’s Works detailed below as the principal location for the design, development, manufacturing, assembly, testing and Storage of the goods. Third party type testing will take place at certified test houses for EMC, shock, IP and flammability testing, the location of which will be provided and agreed with the Purchaser in accordance with Clause 10.1.

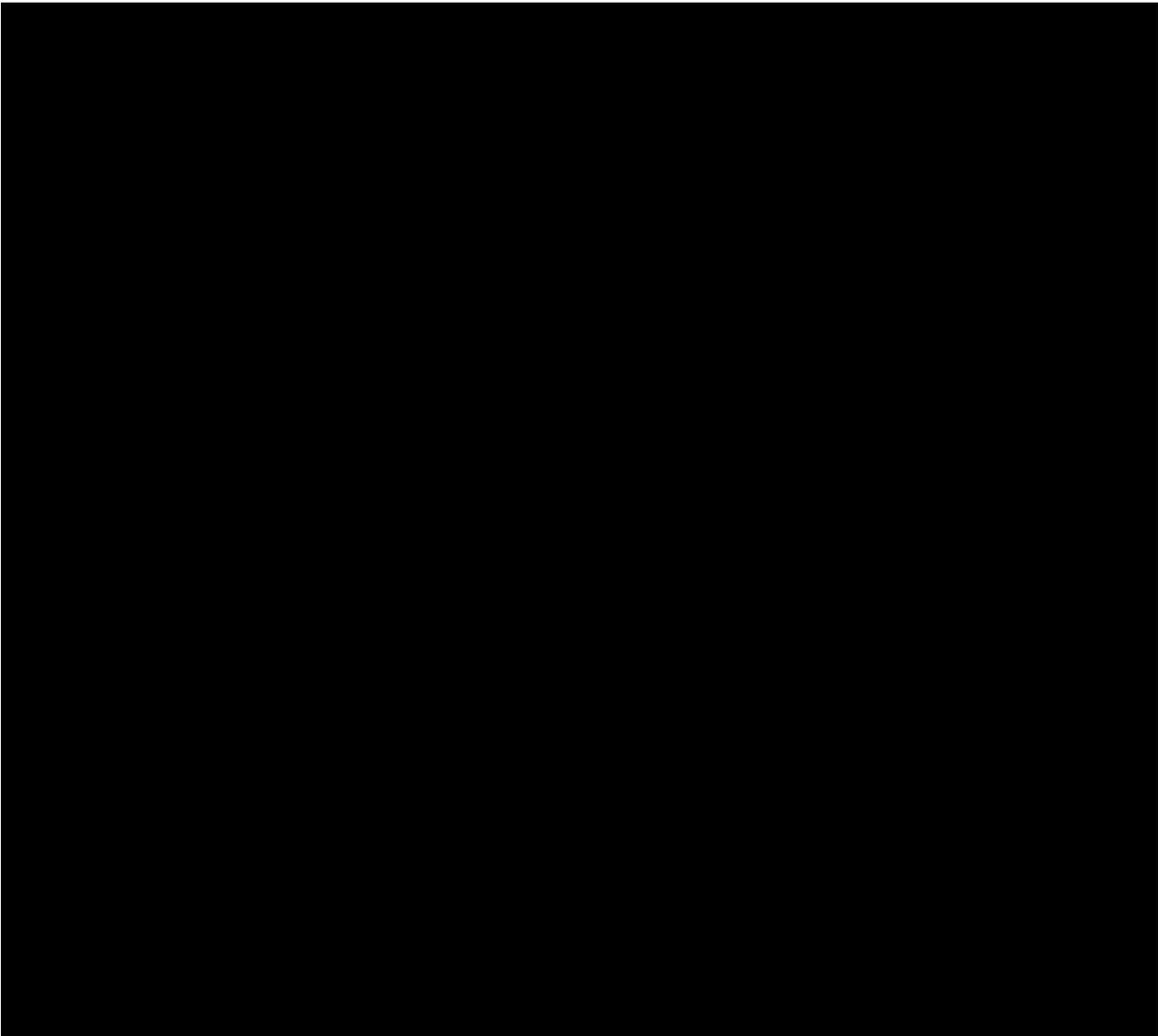
4 Specifications of the Supplier's facilities:





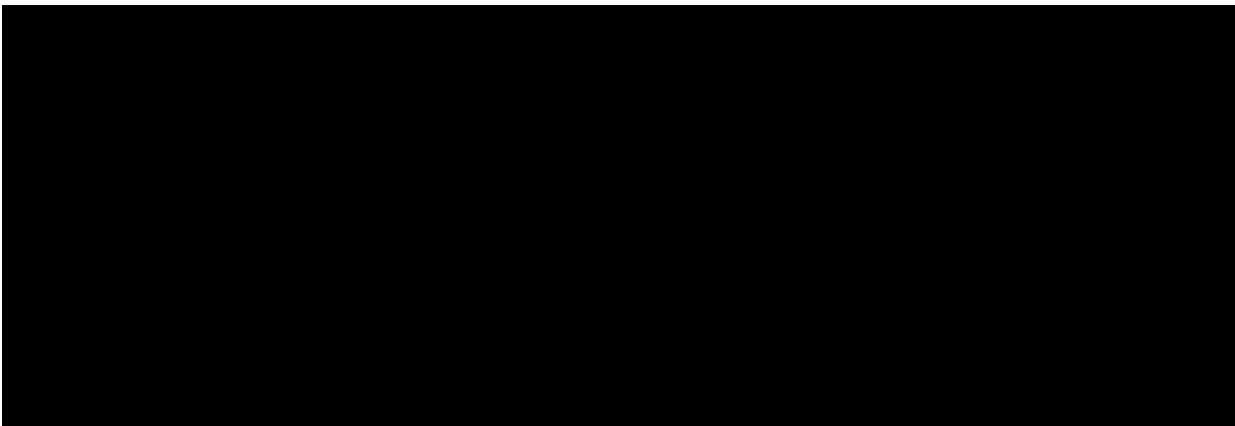






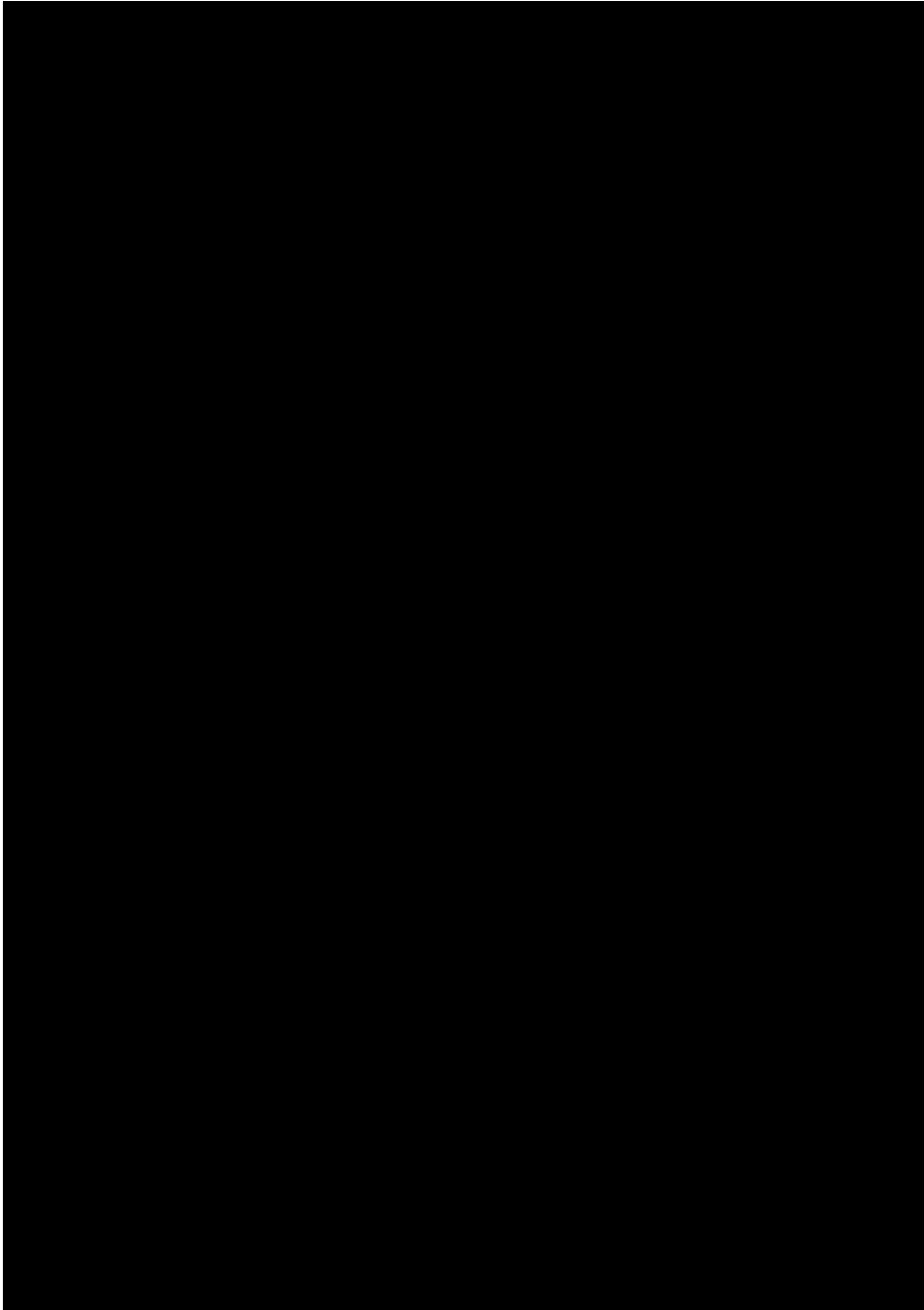
5 LONG LEAD TIME ITEMS

5.1 The table below sets out details of any long lead items, being any Parts or Spares which will take longer than [REDACTED] The Supplier shall ensure that any long lead items are ordered promptly on becoming aware that they will be required.



5.2 Paragraph 5.3 provides details of the principal Subcontractors that the Supplier will use to perform its obligations under this Agreement and sets out how assurance will be obtained from those Subcontractors.

5.3 The Subcontractors listed below have been provisionally identified and form part of the Supplier's approved Subcontractor list. The Supplier shall update the below list within [REDACTED] of the Commencement Date following key Subcontractor selection and order placement.





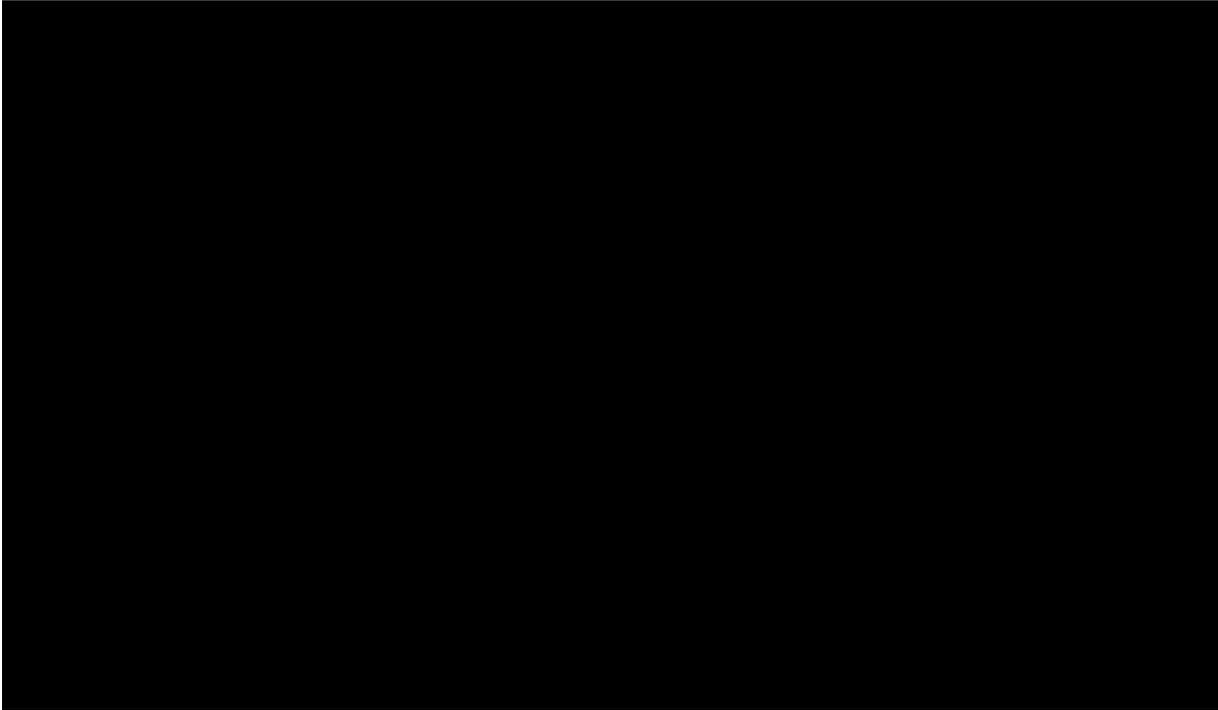
6 TRAINING STRATEGY

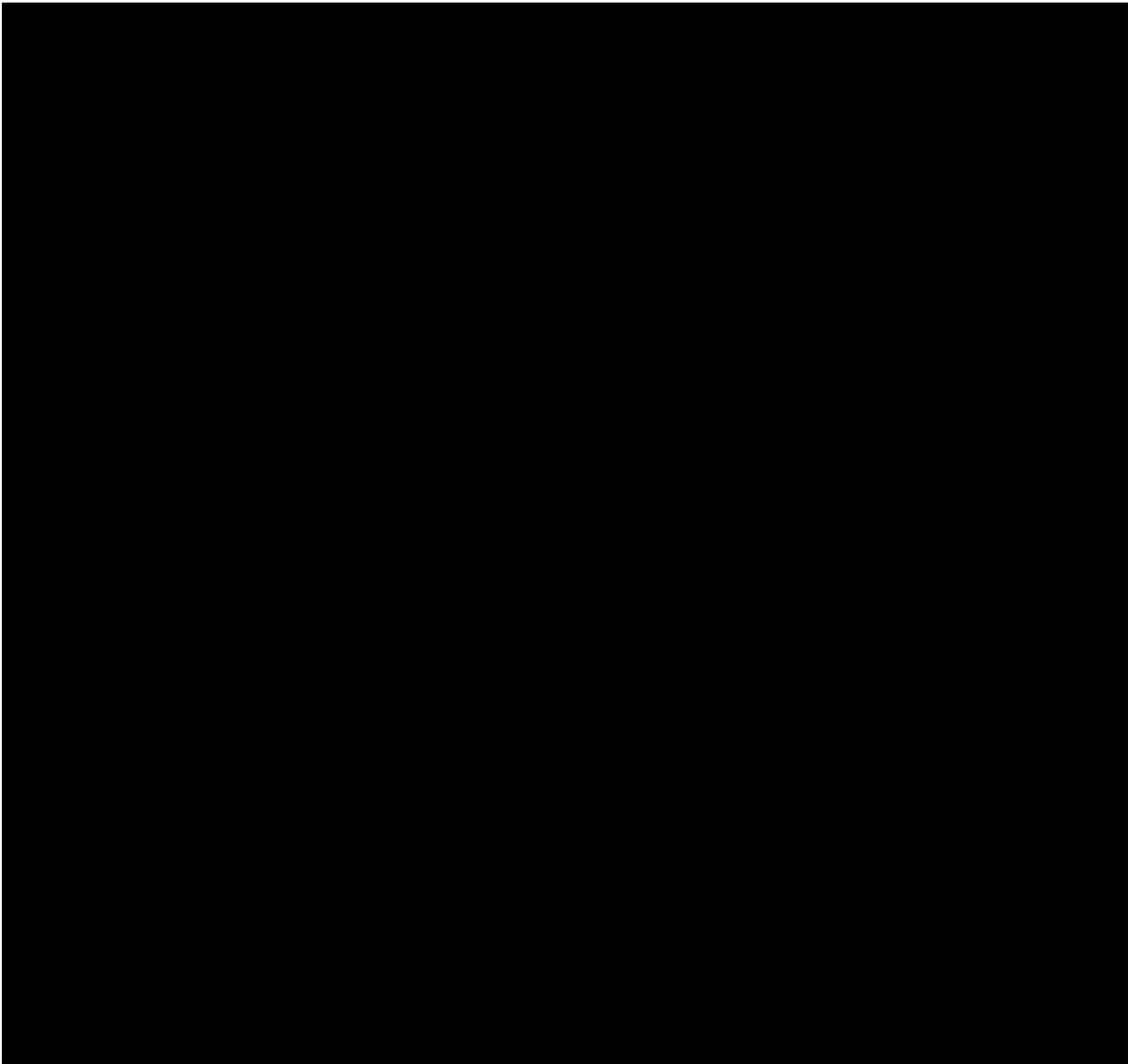
- 6.1 The document titled “DS-02: Training Strategy” (set out in Appendix 2 of this Schedule 1B Part A) outlines how the Supplier will deliver Training Services in line with Schedule 18 (Training) and shall form part of the PEP.

7 PROJECT QUALITY PLAN

- 7.1 The document titled “DS-03: Project Quality Plan” (set out in Appendix 3 of this Schedule 1B Part A) shall form part of the PEP, it sets out the Supplier’s approach to delivering the quality aspect referred to in Schedule 1A (Specification) Schedule 3A (Continuing Support) and Schedule 14 (QUENSH).
- 7.2 The Project Quality Plan details how the Supplier ensures:
- 7.2.1 Quality requirements are delivered in their sourcing of Parts and Subcontractors; and
 - 7.2.2 the effective knowledge transfer in relation to the quality requirements to the Purchaser’s staff for the installation and maintenance of all items of the Goods.
- 7.3 The Supplier will perform its obligations under the Agreement in accordance with the Project Quality Plan.

8 HEALTH, SAFETY AND ENVIRONMENT PLAN

- 8.1 The document titled “DS-04: Project Health, Safety and Environmental Plan” (set out in Appendix 4 of this Schedule 1B Part A) shall form part of the PEP.
- 8.2 The Supplier confirms that the documents set out in Paragraph 8.1 above are consistent with the following guidelines and policies below.
- 



- 8.3 The Health, Safety and Environmental Plan (“HSEP”) includes the following:
- 8.3.1 Information on the Supplier’s Information on the Supplier’s health, safety and environmental incident reporting procedures and how any such incidents will be reported to the Purchaser.
 - 8.3.2 details of the Supplier’s health and safety management system;
 - 8.3.3 method statements and risk assessments (to be provided by the Supplier during the period from the delivery of the first Train’s worth of Goods until the handover of all the Goods to the Installer) that demonstrate a safe system of work in the delivery of the Goods and handover of the Goods to the Installer, including any special provisions associated with the size or weight of the Goods and Spares;
 - 8.3.4 a schedule of activities to meet delivery of the HSEP. This may be included with the Contract Programme in Schedule 2;
 - 8.3.5 a completed QUENSH ‘supplier menu’ in accordance with Schedule 14
 - 8.3.6 a signed Health and Safety Executive (“HSE”) policy statement; and

9 PROJECT GOVERNANCE PLAN

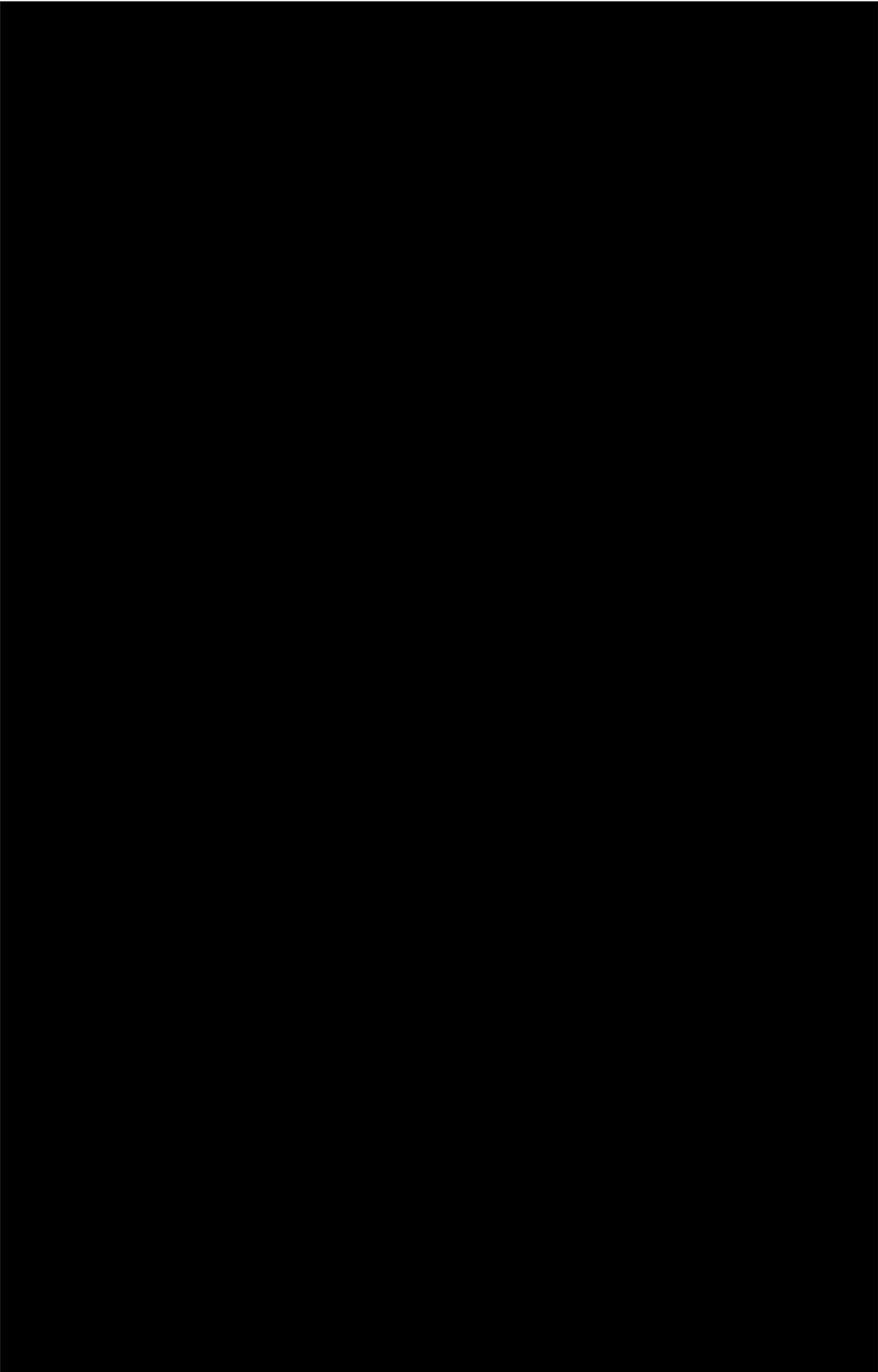
- 9.1 The document titled “DS-05: Project Governance Plan and Organisation” (Set out in Appendix 5 of this Schedule 1B Part A) shall form part of the PEP.
- 9.2 The Project Governance Plan (“PGP”) details the Supplier’s agreed internal governance process for the design, manufacture, assembly and testing of the Goods and provision of the Services.
- 9.3 The Supplier’s agreed internal project controls include but are not limited to the following:
- 9.3.1 Organisation (responsibilities for Project controls);
 - 9.3.2 Scope management;
 - 9.3.3 change control (including design change control);
 - 9.3.4 estimation of any Variations; and
 - 9.3.5 the delivery of Section 9 of Schedule 1A (Specification);
- 9.4 The PGP includes details of the Supplier’s project boards, or equivalent, that may affect the delivery of all items of Goods and the Services, including any terms of reference;
- 9.5 The PGP includes details of resources, processes, and procedures that will
- 9.5.1 ensure that the progress of the Project is reviewed, assessed and reported on; and
 - 9.5.2 demonstrate how all aspects of the development of the Goods and Services, and Project risk are communicated to and agreed with the Purchaser.

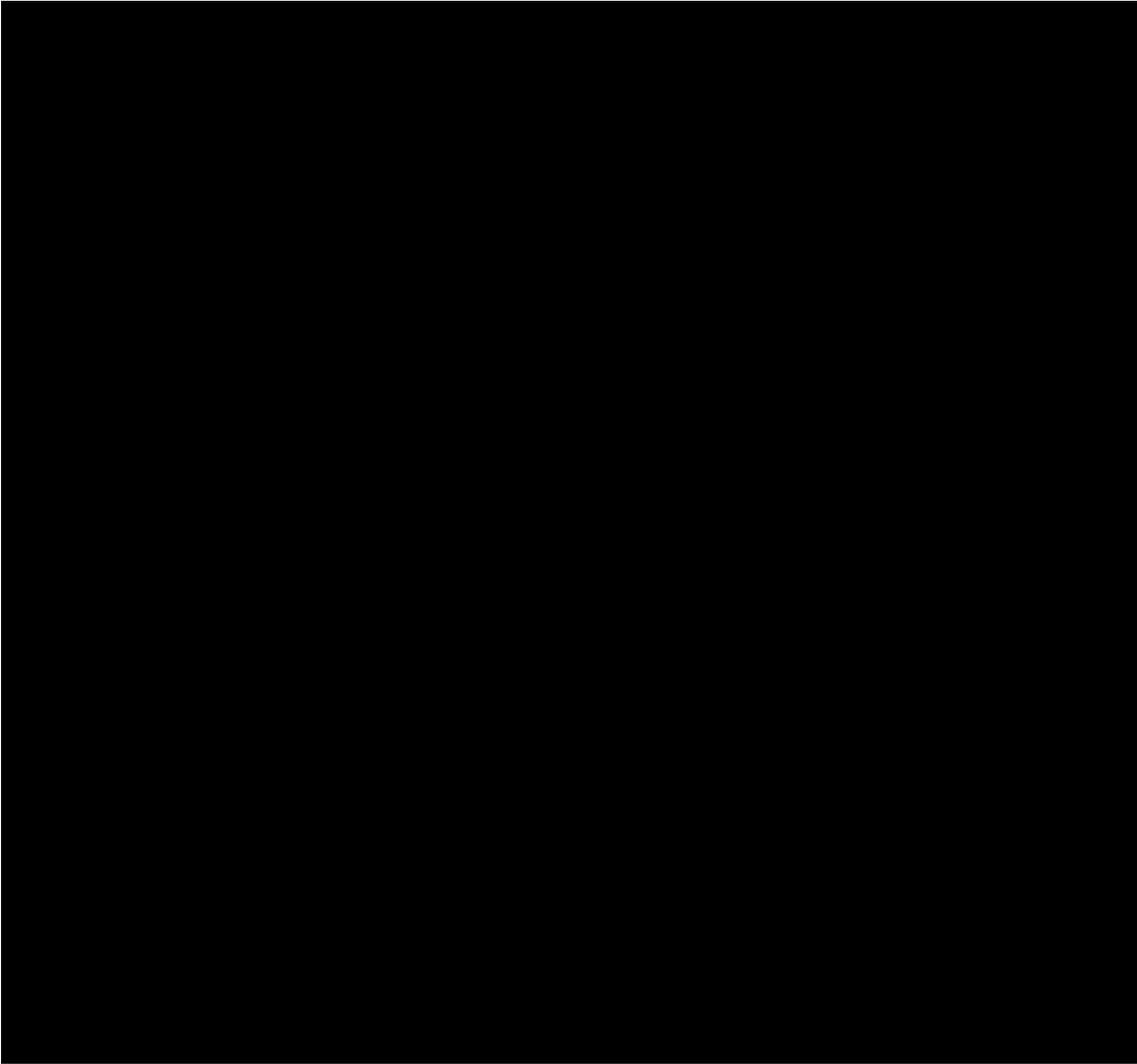
10 PROJECT ORGANISATION

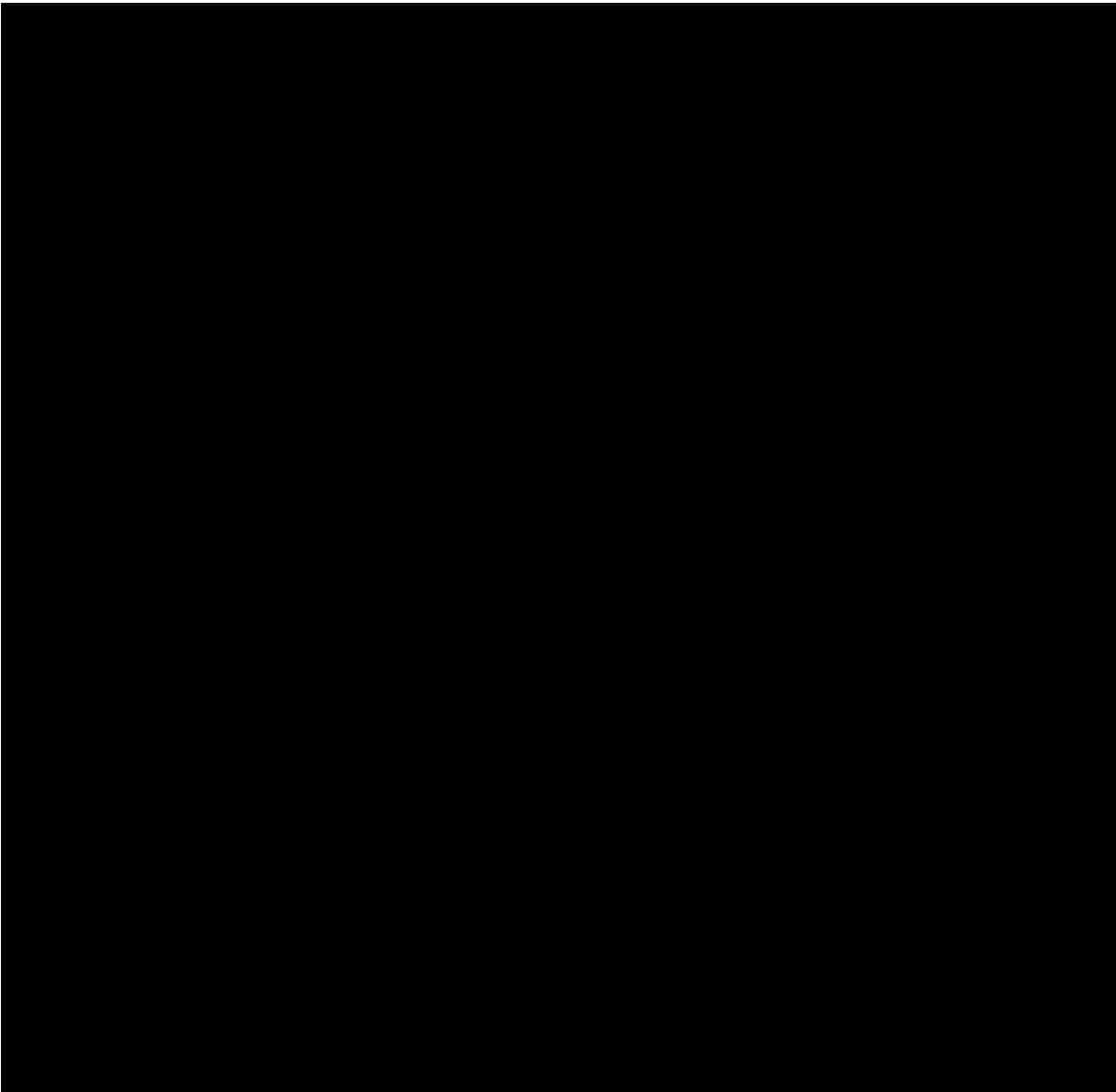
- 10.1 The document titled “DS-05: Project Governance Plan and Organisation (Set out in Appendix 5 of this Schedule 1B Part A) shall form part of the PEP.
- 10.2 The Supplier’s Project Organisation Plan, includes, but is not limited to, the following:
- 10.2.1 an organisational chart showing a hierarchical management chart;
 - 10.2.2 key interfaces (including the Purchaser, regulatory and approving bodies, sub-suppliers and other stakeholders);
 - 10.2.3 A RACI (Responsible, Accountable, Consulted and Informed) Matrix for the Project Organisation.
- 10.3 The Project Organisation Plan details how the Supplier will organise the Project and sets out the Key Personnel. The table below sets out the details of the Key Personnel that the Supplier intends to use to perform its obligations under this Agreement. This table indicates whether such personnel are “Key Personnel” for the purpose of this Agreement.

Role	Person	Name of Person	Commitment* (hrs/wk)	Key Personnel (Y/N)
Managing Director				Y
Sales and Marketing Director				Y
Principal Project Manager				Y
Operations Director/Dep MD				Y
Design Manager				Y
Engineering Manager				Y
Senior Design Engineer				Y
Production Manager				Y
Quality Systems Engineer				Y
Production Supervisor				Y
Purchasing Co- ordinator				Y
Surface Mount Supervisor				Y
European Sales Manager				Y
Principal Engineer				N
Design Technician				N
Head of Finance				N
HR Office				N
Accounts Administrator				N
Company Administrator				N

*Average working hours over the complete development/build programme







11 DATA MANAGEMENT & COMMUNICATION PLAN

- 11.1 The document titled “DS-06: Data and Communications Plan (set out in Appendix 6 of this Schedule 1B Part A) shall form part of the PEP.
- 11.2 The method of data sharing and communication between the Supplier and Purchaser during this Agreement shall be the online contract management tool ‘Asite’. The Purchaser will provide the licences for 'Asite' to the Supplier’s Key Personnel at no charge.
- 11.3 The Data and Communications Plan (“DCP”) sets out details of how the Supplier will share data and communicate with the Purchaser and the structure of the review meetings that are required;
- 11.3.1 Document control;
 - 11.3.2 methods of communication;
 - 11.3.3 in accordance with Schedule 3A (Continuing Support)
- 11.3.4 periodicity of meetings with the Purchaser, which shall be in accordance with Paragraphs 11.3 and 11.4 below.
- 11.4 A fortnightly project review meeting shall be held every two (2) weeks from the

Commencement Date, in a manner, method and location which is agreed by both Parties (the "**Project Progress Meetings**"). Project Progress Meetings will include, but not be limited to:

- 11.4.1 a presentation from the Supplier on the current project status;
 - 11.4.2 a health, safety and environmental review;
 - 11.4.3 a review of the Contract Programme;
 - 11.4.4 a review of any outstanding project communications;
 - 11.4.5 a review of the Supplier Risk Register;
 - 11.4.6 a review of the Risk Management Plan;
 - 11.4.7 a review of key performance indicators;
 - 11.4.8 a review of outstanding issues list; and
 - 11.4.9 a review of the change control log;
- 11.5 [REDACTED] in advance of each alternate project review meeting, the Supplier shall provide the Purchaser with a current progress report containing details of the Design, manufacture, supply, Testing, development and implementation of all items of Goods and the Services including but not limited to the following:
- 11.5.1 a report recording performance against specific key performance indicators, as agreed with the Purchaser;
 - 11.5.2 an updated Contract Programme with a specific report including but not limited to:
 - (A) all changes to critical path from previous update;
 - (B) activity float; and
 - (C) a report on progress against Milestones;
 - 11.5.3 a brief narrative describing progress since the previous report including photos and videos if required; and
 - 11.5.4 progressed details and update on all items and infrastructure required to deliver all items of Goods and the Services (such as all spares and long lead items).
- 11.6 Where required the Supplier may be requested to take part in a further meetings with the Purchaser during term of this Agreement, at the Purchaser's discretion. The topics of such meetings will include but are not limited to:
- 11.6.1 reactions to commercial meetings via the Asite process;
 - 11.6.2 project status update; and
 - 11.6.3 risk reduction reviews.

If a Party submits an early warning notice to notify the other Party of a particular risk or issue in advance, then the Parties shall convene a risk reduction meeting within [REDACTED] [REDACTED] to formally address and resolve the issue.

Appendix 1: DS-01: Design & Manufacturing Management Plan

Appendix 2: DS-02: Training Strategy

Appendix 3: DS-03: Project Quality Plan

Appendix 4: DS-04: Project Health, Safety and Environment Plan

Appendix 5: DS-05: Project Governance Plan and Organisation

Appendix 6: DS-06: Data and Communication Plan

PART B: RISK MANAGEMENT

1 GENERAL

- 1.1 The Purchaser's risk management policy recognises that managing risk is critical to the successful delivery of this Agreement, and the Purchaser has implemented a programme wide risk management framework to enable effective and efficient risk management (the “**Risk Management Framework**”).
- 1.2 The Supplier shall carry out its out risk management activities in accordance with the Risk Management Plan to meet the requirements of Schedule 1B.
- The Supplier shall provide assurance to the Purchaser that any risks associated with the Design, manufacture, testing, commissioning, delivery and Product Acceptance of all items of Goods under this Agreement are fully recognised, understood and effectively controlled.
- 1.3 The Supplier shall involve the Purchaser in:
- 1.3.1 the review and management of all risks identified under this Agreement; and
- 1.3.2 the implementation of the Risk Management Plan.
- 1.4 The Purchaser shall hold quarterly joint review meetings with the Supplier to review the Supplier Risk Register and discuss any risks that the Supplier is responsible for managing. The Purchaser shall be entitled from time to time to instruct the Supplier to attend additional ad-hoc risk review meetings.
- 1.5 Any general information related to risk that the Supplier develops pursuant to its obligations under this Schedule 1B Part B shall be in addition to (and will not replace) the Supplier Risk Register. In the case of any conflict between such general information and the Supplier Risk Register, the contents of the Supplier Risk Register will prevail.
- 1.6 The document titled “DS-07: Risk Management Plan” (set out in Appendix 1 of this Schedule 1B Part B) shall form part of the PEP.

2 RISK MANAGEMENT OBJECTIVES

- 2.1 The Purchaser’s Risk Management Framework aims to ensure that:
- 2.1.1 any risks associated with the Design, manufacture, testing, commissioning, delivery and Product Acceptance of all items of Goods under this Agreement are identified, assessed and managed by the appropriate people in a consistent and cost-effective manner;
- 2.1.2 the Supplier, the Purchaser and any other relevant stakeholders (including industry partners and insurers) are provided with appropriate and reliable risk information in order to provide assurance that any risks are being effectively dealt with; and
- 2.1.3 the Supplier’s practices are fully aligned with and demonstrably meet the Purchaser’s requirements in relation to risk management.

3 RISK MANAGEMENT PLAN

3.1 Within four (4) weeks of the Commencement Date, the Supplier shall produce a draft risk management plan and submit the draft risk management plan (in accordance with the requirements set out in paragraph 3.2 below) to the Purchaser for the Purchaser's approval. The Purchaser shall notify the Supplier in writing within four (4) weeks of the date of submission whether it:

3.1.1 approves the draft risk management plan; or

3.1.2 requires the Supplier to make further revisions to the draft risk management plan (and the Purchaser shall provide details of such revisions in writing to the Supplier).

If the Purchaser requires the Supplier to make further revisions to the draft risk management plan in accordance with paragraph 3.1.2, the Supplier shall submit a revised draft to the Purchaser for approval no later than the date falling four (4) weeks after the Supplier's receipt of the Purchaser's required revisions.

3.2 The draft risk management plan shall describe how the Supplier will meet its obligations under this Schedule 1B Part B. The draft risk management plan may include details of existing corporate procedures, plans or other documents that the Supplier shall use to deal with risk, provided that such procedures, plans or documents:

3.2.1 comply with all Applicable Laws and all applicable LU Standards; and

3.2.2 comply with the terms and conditions of this Agreement.

3.3 Upon the Purchaser's approval of the draft risk management plan, the draft risk management plan shall become the "**Risk Management Plan**" for the purposes of this Agreement.

4 RISK MANAGEMENT REQUIREMENTS

4.1 General

4.1.1 The Supplier shall provide the Purchaser with a procedure or other appropriate document that describes the activities that the Supplier will undertake in order to manage all of the risks associated with performing the Supplier's obligations under this Agreement. The Purchaser may, at its sole discretion, allow the Supplier to submit the Risk Management Plan in fulfilment of this requirement.

4.2 Accountabilities and responsibilities

4.2.1 The Supplier shall:

(A) define clear accountability for the management of risk within the Supplier's organisation and for the maintenance of the risk management process.

(B) ensure that its teams carry out risk management in full and that key staff have an appropriate level of competency and training in risk management; and

(C) make available adequate competent specialist resources to ensure that risk management obligations are met.

4.3 Deliverables

4.3.1 The Supplier shall produce the following deliverables:

- (A) a risk management plan describing the activities required to manage risk associated with supplying each item of Goods and performing the Services under the Agreement;
- (B) a register of significant risks (the "**Supplier Risk Register**"), to be used for discussion with the Purchaser Representative. The Supplier Risk Register will reflect those risks inherent in this Agreement that the Supplier considers are material to the Agreement's objectives and that are necessary to provide assurance to the Purchaser that the key risks are being appropriately managed. This will form the basis of meeting with the Supplier's and Purchaser to jointly review the risks;
- (C) A regular report of the key risks and risk management actions based on the Supplier's Risk Register described in Paragraph 4.3.1(B) above and presented in a format accepted by the Purchaser;
- (D) comprehensive records to demonstrate the application of continuous risk management practices (e.g. records of meetings, approvals,); and.
- (E) other reports, KPIs and measures as required to ensure the effective management of all risks under this Agreement.

4.4 **Quantified Risk Assessment**

The Supplier shall provide assistance to the Purchaser in undertaking cost and schedule risk assessments by contributing to workshops and advising on quantitative assessment of risks as and when required.

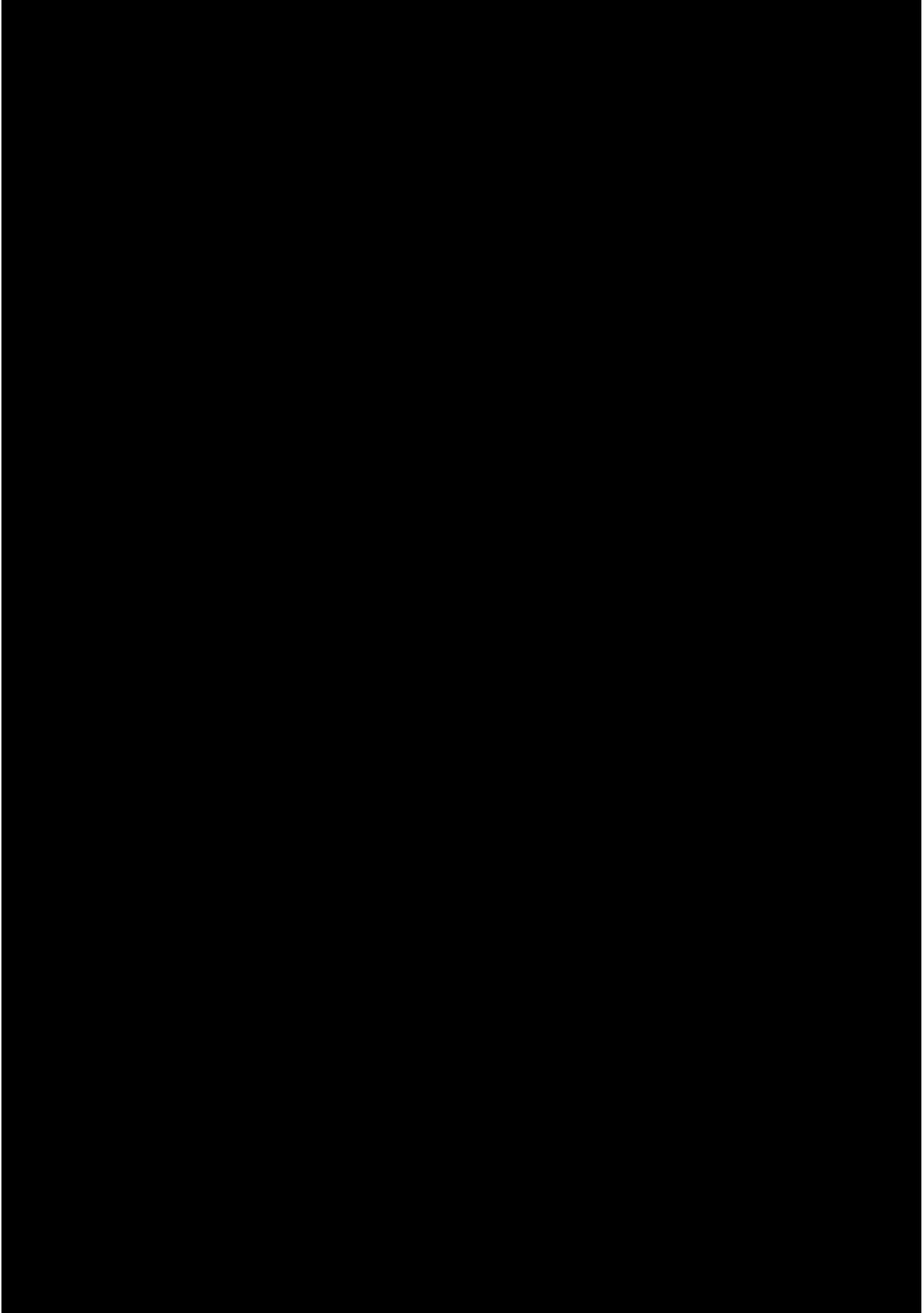
4.5 **Communication**

The Supplier shall make the Purchaser aware of any significant changes to existing risk information including scoring, details of new emerging risks, and the status of any existing risks.

Appendix 1: DS-07: Risk Management Plan

SCHEDULE 2: CONTRACT PROGRAMME

The Supplier shall provide a detailed Contract Programme in accordance with Clause 8 of this Agreement and this Schedule 2.



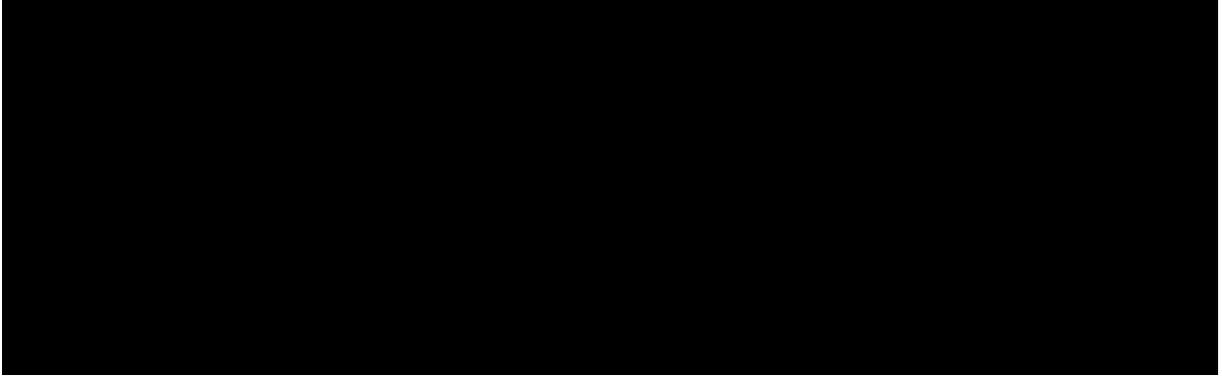
Train 33	T + 84	T + 88	T + 109
Train 34	T + 84	T + 88	T + 109
Train 35	T + 91	T + 95	T + 116
Train 36	T + 91	T + 95	T + 116

The Purchaser's key assumptions for the above milestone schedule dates table as follows:

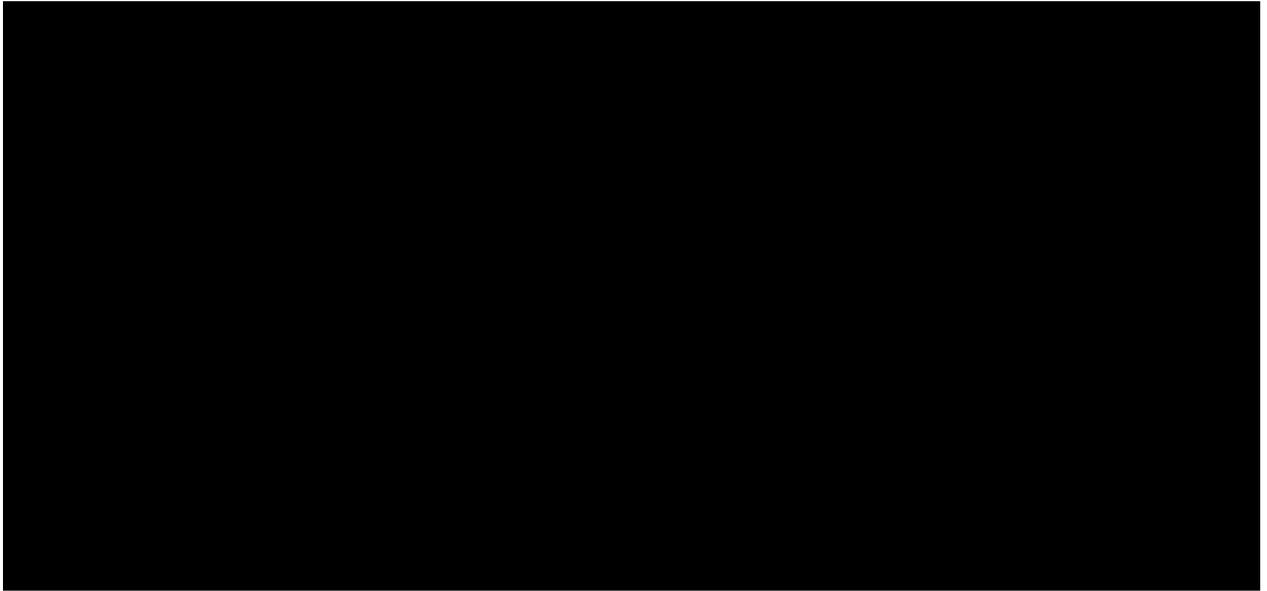
- *Delivery to Installer shall occur on a Friday*
- *Delivery is based on rate of installation*
- *All resources are available for installation*
- *Product Acceptance: Assume 20 days after Acceptance for Service, Payment trigger is 1000km fault free running whenever this occurs the Product Acceptance payment become due.*

SCHEDULE 3: SPARES

PART A: MAINTENANCE SPARES



PART B: ADDITIONAL SPARES



SCHEDULE 3A: CONTINUING SUPPORT

1. The Supplier shall comply with its obligations under this Schedule 3A at its own cost and shall not be entitled to any adjustment to the Contract Price, unless expressly stated otherwise in this Schedule 3A.

2. In this Schedule 3A the terms below shall have the following definitions;

"1st Line Maintenance" means maintenance which is conducted by Maintenance Staff at depot(s). It includes routine maintenance and casualty maintenance;

"Installer's Site" means the location where the installation is to be carried out;

"Installation Hours" means 8am to 6pm, Saturday and Sunday;

"Interface Notice" means a notice issued by the Supplier to the Purchaser requesting that the Purchaser, in its sole discretion, halt installation for technical or quality reasons;

"Maintainer" means the organisation that carries out all routine maintenance and casualty maintenance of the 72TS as defined in Schedule 1A of this Agreement (*Specification*);

"Maintainer's Site" means any of the London Underground premises including depots;

"Maintenance Staff" means the persons responsible for correct maintenance of assets to the issued design drawings and documentation;

"On-Site" means:

(A) (in the case of the Installer) Technical Support located at the Installer's Site;

(B) (in the case of the Maintainer) Technical Support located at the Maintainer's Site;

"Off-Site" means

(A) (in the case of the Installer) Technical Support available away from the Installer's Site;

(B) (in the case of the Maintainer) Technical Support available away from the Maintainer's Site;

"On-Call" means Technical Support available on the phone and in person at the Installer's Site or Maintainer's Site when required;

"Standard Support" means: a telephone customer support service provided by the Supplier as part of their usual business operations, to support as the Maintainer may require to enable it to fault-find and maintain the Goods. The Standard Support will at a minimum have the ability to instruct the Maintainer on a course of action(s) remotely in enough detail to enable the Maintainer to rectify the issue itself;

"Technical Support" means: (in the case of the Installer or the Maintainer) support to solve any technical problems with the Installation and 1st Line Maintenance of the Goods;

"Technical Support Desk" means a telephone support team provided by the Supplier and available during Installation Hours, comprising Technical Support persons who are qualified to offer Technical Support and fault finding assistance to the Installer or Maintainer. These individuals should have specialised knowledge exceeding the Training Services provided to the Purchaser by the Supplier pursuant to this Agreement.

PART A: TECHNICAL SUPPORT AND OFFICE SPACE

1. TECHNICAL SUPPORT TO THE INSTALLER

1.1 On-Site Technical Support

- 1.1.1 The Supplier shall provide On-Site Technical Support to the Installer at the Installer's Site from the date that the first Train's worth of Goods is delivered to the Delivery Location until the date that the first Train's worth of Goods achieves Product Acceptance.
- 1.1.2 The Supplier shall ensure that at least one (1) of the Supplier's employees is available during Installation Hours to provide On-Site Technical Support to the Installer. The Supplier shall make additional employees available as soon as reasonably practicable if required by the Installer. The Supplier shall not be required to provide On-Site Technical Support to the Installer on public holidays in the United Kingdom.
- 1.1.3 The Supplier shall comply with Clause 57 (*Access*) of this Agreement if it requires access to part(s) of the LUL Network in order to provide On-Site Technical Support to the Installer.
- 1.1.4 The Supplier shall ensure that all of its employees, agents or Subcontractors who require access to the Installer's Site in order to provide On-Site Technical Support to the Installer have completed all relevant safety and access training courses for the Installer's Site by no later than the date that the Installer commences installation of the Goods.
- 1.1.5 The Supplier shall ensure that all of its employees, agents or Subcontractors who require access to the LUL Network in order to provide On-Site Technical Support to the Installer have obtained all relevant access permits and have completed all associated track qualifications by no later than the date that the Installer commences installation of the Goods.

1.2 Off-Site Technical Support

- 1.2.1 The Supplier shall provide On-Call Off-Site Technical Support to the Installer as follows:
 - (A) the Supplier shall be available via telephone to provide On-Call support to the Installer (with telephone numbers to be provided to the Installer prior to commencement of installation); and
 - (B) the Supplier's United Kingdom-based staff shall be available via telephone during installation hours (with telephone numbers to be provided to the Installer prior to commencement of installation).

2. TECHNICAL SUPPORT TO THE MAINTAINER

2.1 Standard Support

- 2.1.1 The Supplier shall provide the Maintainer with access to their Standard Support package from Product Acceptance of the first Train expiry or termination of this Agreement (whichever is the earlier).

- 2.1.2 Prior to Product Acceptance for Service of the first Train, the Supplier shall provide the Maintainer with a full list of contact details for the Standard Support Desk including, at a minimum, telephone numbers of the relevant personnel who will provide the Standard Support.

2.2 **Additional On-Site Technical Support**

- 2.2.1 The Purchaser may require the Supplier to attend the Installer or Maintainer's Site to provide On-Call On-Site Technical Support from time to time. The Purchaser shall ensure that the Installer gives reasonable prior notice to the Supplier if it requires On-Site Technical Support.
- 2.2.2 If the Supplier requires access to the Installer or Maintainer's Site in order to provide On-Site Technical Support to the Installer or Maintainer, then the Supplier shall:
- (A) comply with Clause 57(Access) (if part of the Installer's Site is located on the LUL Network); and
 - (B) ensure that all of the Supplier's employees, agents or Subcontractors who require access to the Installer or Maintainer's Site have completed all relevant safety and access training courses and obtained all relevant permits for the Installer or Maintainer's Site.

3. **GENERAL SUPPORT REQUIREMENTS**

3.1 **Technical and quality issues**

- 3.1.1 If, while providing On-Site or Off-Site Technical Support or Quality Support to the Installer, a technical or quality issue arises which in the Supplier's opinion (acting reasonably) requires the Installer to stop installing the Replacement Systems, the Supplier shall issue an Interface Notice to the Purchaser.
- 3.1.2 Following receipt of an Interface Notice from the Supplier, the Purchaser shall decide, in its sole discretion, what action (if any) shall be taken by the Installer to resolve the technical issue(s).
- 3.1.1 This paragraph 3.1 shall be without prejudice to:
- (A) the Purchaser's rights under Clause 17 (*Defect Rectification*) of this Agreement; and
 - (B) the Supplier's rights under the Health and Safety at Work etc Act 1974 and other relevant health and safety legislation to require the Installer to suspend installation of the Goods without notice (strictly to the extent necessary to comply with such legislation).

3.2 **Welfare facilities**

- 3.2.1 The Purchaser shall ensure that the Installer's Site provide the Supplier with the following welfare facilities for any personnel providing On-Site Technical Support:
- (A) toilet;
 - (B) hand basin;

- (C) showering facilities (if possible and depending on the facilities already available at the Installer's Site).

3.2.2 The Supplier shall inform the Purchaser as soon as possible if any of its personnel have special requirements (such as access to a disabled toilet).

3.3 Access to IT systems

3.3.1 The Supplier shall not be permitted to have direct access to TfL or London Underground internal IT systems in order to provide Technical Support to the Installer or Technical Support to the Maintainer.

4. ACCOMMODATION AND OFFICE SPACE

4.1 Office space for the Supplier

4.1.1 The Purchaser shall provide the Supplier with office space at the Installer's Site during the Design and manufacture of the Goods as follows:

- (A) there shall be space for a minimum of one (1) of the Supplier's employees at the Installer's Site at any one time;
- (B) there shall be a minimum of one (1) desk and one (1) seat;
- (C) power sockets shall be available for computers and phone chargers;
- (D) the office space shall have normal office lighting;
- (E) the office space shall have ventilation and adjustable heating;
- (F) the Purchaser's employees shall have access to an internet connection (preferably by way of Wi-Fi);
- (G) the office space shall have access to standard on-site safety features such as fire extinguishers.

PART B

The schedule of rates set out

1. in paragraph 5 below shall be used to calculate the cost of any Variation instructed by the Purchaser in accordance with the Variation Procedure to require the Supplier to provide additional Technical Support to the Installer or to the Maintainer outside of the Installation Hours set out in Part A of this Part A Schedule 3A. Any such Variation shall be instructed at the Purchaser's sole discretion.
2. The Supplier shall not be entitled to a Variation for Technical Support provided to the Maintainer pursuant to Part A of this Part B Schedule 3A, regardless of the number of support hours provided. For the avoidance of doubt, the cost of such Technical Support is included in the Contract Price and there shall be no additional charge to the Purchaser or Maintainer.
3. Payment for any Variation referred to above shall be made in accordance with the Variation Procedure and Clause 20 (*Payment*).
4. The Supplier shall, where instructed to do so by the Purchaser in accordance with the Variation Procedure, support any additional Installation working hours, over and above that outlined in Part A, in accordance with this Schedule 3A and the schedule of rates set out in paragraph 5 below:

5. SCHEDULE OF RATES

Continuing Support	Rate	Unit	Notes
A rate per 8 hour day shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 12 hour day shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 8 hour day shift for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 12 hour day shift for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 8 hour night shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 12 hour night shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 8 hour night shift for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift
A rate per 12 hour night for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Cost per shift

SCHEDULE 4: CONTRACT PRICE

PART 1 - PRICING PREAMBLES

1. PRICING INTRODUCTION

1.1 This Part 1 (*Pricing Preambles*) provides further details with respect to the Contract Price.

2. PRICING CONCEPT

2.1 The Contract Price is a fixed sum, for the duration of the Agreement, adjusted in accordance with the contractual Variation procedure. The VAT treatment of the Goods and Services pursuant to this Agreement shall be as set out in Clause 21 of this Agreement.

2.2 The Contract Price shall be inclusive of all costs and charges whatsoever and shall be deemed to include all costs, overheads, profit, risk allowances and the like required for the Supplier's performance of this Agreement.

3. PRICING APPROACH

3.1 The Contract Price shall be in Great British Pounds and shall include all applicable taxes including any import/export taxes and all other statutory costs and the like but excluding VAT (which shall be dealt with pursuant to Clause 21 of this Agreement).

3.2 The rates and prices for all items and activities required for the Supplier's performance of this Agreement are deemed to be fully inclusive, and shall include (without limitation) the costs set out in paragraphs 3.2.1 to 3.2.5 below.

3.2.1 Preliminaries

The following preliminaries are included:

- (A) head office, branch office and Supplier's Works support - All head office, branch office and Supplier's Works costs directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff costs (and includes all associated overheads, communications and data costs, stationery costs, printing costs and postage costs not included in the percentage addition for overheads and profit);
- (B) all costs of temporary accommodation and sanitary facilities necessary for site staff and all associated costs (including heating, lighting, furniture, first aid, associated consumables and all other safety, health and welfare facilities);
- (C) site communications costs, including all costs in connection with the provision of telephones and portable telephones including installation costs, rental and calls, costs of usage of public telephones and other communication equipment and consumables required to enable the Supplier to perform its obligations under this Agreement;
- (D) training requirements including course and examination fees, all costs of staff attending medical examinations and training courses to enable the Supplier to perform its obligations under this Agreement, and all costs of Supplier-run costs and licensing of staff; and

(E) all costs of complying with the insurance requirements as set out in Clause 28 (*Insurance*) of this Agreement.

3.2.2 Mobilisation

The mobilisation costs shall include (without limitation) staff costs, costs of training, recruitment, establishment of facilities, purchase of equipment, establishment of process and procedures and all other items necessary for the successful commencement of the performance of the Agreement. All costs in connection with mobilisation, set-up and the like and management thereof are deemed to be included.

3.2.3 Overheads and Profit

For the avoidance of doubt, overheads shall be deemed to include (without limitation) corporate overhead contribution, profit recovery, headquarters staff costs, Supplier offices, yards, depots and other buildings and associated plant, Supplier's equipment and vehicles. rents, rates, insurances, running, maintenance and replacement costs for the above, general and administrative head and branch office staff salaries and wages, emoluments, expenses and allowances and all other costs of employment, including costs of and allowance for motor cars, subsistence, hotels, accommodation and the like, travel and associated expenses for directors and general and administrative head and branch office staff, legal and accountancy fees and costs, any financing costs and depreciation associated with all of the above, other non-job related costs and other indirect costs incurred by the Supplier in performing its obligations under this Agreement.

3.2.4 Attendance and Reporting

The Contract Price is deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with this Agreement, including as requested by the Purchaser. The Contract Price is also deemed to include the costs of the Supplier's personnel attending any meetings.

3.2.5 Administration of Change

The Contract Price is deemed to be fully inclusive of the costs that the Supplier incurs in recording and providing information in accordance with any Variation Quote, or in the costing or administering of the Variation Procedure.

PART 2 - PAYMENT

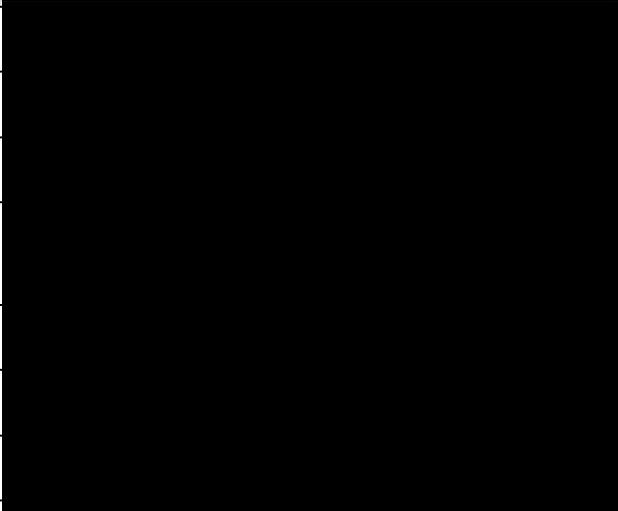
1. CONTRACT PRICE

- 1.1 The Supplier will be entitled to submit a payment application in respect of a Milestone upon completion of all of the stated criteria, as set out in Part 4 (*Payment Milestones*) for each relevant Milestone.

2. VARIATIONS

- 2.1 Where a Variation varies the Contract Price, the Variation will be paid by varying the amount due at the relevant Milestone to which the Variation relates. Where the Variation relates to two or more Milestones, the value of the Variation will be divided between those Milestones, based on allocating the value of the Variation between the Milestones in proportion to the value of the Variation related to each Milestone.
- 2.2 Where a Variation varies the Contract Price and the Milestone to which the Variation relates has been paid, payment will be made by varying the amount due in respect of the subsequent Milestone.
- 2.3 Otherwise Variations will be paid once the instructed Variation has been fully completed, unless it is set out in the Variation that payment may be applied for on an interim basis.
- 2.4 Where a Variation does not relate to a Milestone, the Supplier will be entitled to apply for payment in respect of Variations at intervals of not less than a month. The Supplier may apply for payment of one or more Variations at the same time.

PART 3 - CONTRACT PRICE BREAKDOWN

MSA Contract Price Breakdown	
Section	£
Goods and Services	
Maintenance Spares	
Supplier Documentation	
Design Authority and Obsolescence Management	
Services	
Other MSA Costs	
Total Manufacture Supply	

PART 4 - PAYMENT MILESTONES

The Payment Milestones for the Fixed Price Element of the Contract Price are:

#	Payment Milestone	Train	Payment proportion (%)	Milestone amount (£)	Evidence supporting milestone attainment
1	Specification Design Review Approval	-	2.50%		Purchaser approval of Systems Design Review in accordance with the Agreement including Section 9.4 of the Specification
2	Concept Design Review Approval	-	1.00%		Purchaser approval of Preliminary Design Review in accordance with the Agreement including Section 9.5 of the Specification
3	Detailed Design Review Approval	-	3.00%		Purchaser approval of Detailed Design Review in accordance with the Agreement including Section 9.6 of the Specification
4	Prototype Design Review Approval	-	0.75%		Purchaser approval of Prototype Design Review in accordance with the Agreement including Section 9.7 of the Specification
5	Post-Prototype Readiness Approval	-	0.75%		Purchaser approval of Post-Prototype Readiness in accordance with the Agreement including Section 9.8 of the Specification
6	Design Approval (Production Readiness Review)	-	3.50%		Purchaser approval of Design Approval (Production Readiness Review) in accordance with the Agreement including Section 9.9 of the Specification
7	Energy Technology List Registration	-	5.00%		The Supplier's compliance, to the Purchaser's satisfaction, with Clause 20A (Enhanced Capital Allowances) of the Agreement
8	Pre-Installation Inspection & Systems Test Approval	1	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
9	Product Acceptance	1	1.00%		The Purchaser issues a valid,

					counter-signed Product Acceptance Certificate in accordance with the Agreement
10	Pre-Installation Inspection & Systems Test Approval	2	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
11	Product Acceptance	2	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
12	Pre-Installation Inspection & Systems Test Approval	3	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
13	Product Acceptance	3	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
14	Pre-Installation Inspection & Systems Test Approval	4	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
15	Product Acceptance	4	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
16	Pre-Installation Inspection & Systems Test Approval	5	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
17	Product Acceptance	5	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
18	Pre-Installation Inspection &	6	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection

	Systems Test Approval				and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
19	Product Acceptance	6	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
20	Pre-Installation Inspection & Systems Test Approval	7	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
21	Product Acceptance	7	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
22	Pre-Installation Inspection & Systems Test Approval	8	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
23	Product Acceptance	8	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
24	Pre-Installation Inspection & Systems Test Approval	9	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
25	Product Acceptance	9	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
26	Pre-Installation Inspection & Systems Test Approval	10	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
27	Product Acceptance	10	1.00%		The Purchaser issues a valid,

					counter-signed Product Acceptance Certificate in accordance with the Agreement
28	Pre-Installation Inspection & Systems Test Approval	11	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
29	Product Acceptance	11	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
30	Pre-Installation Inspection & Systems Test Approval	12	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
31	Product Acceptance	12	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
32	Pre-Installation Inspection & Systems Test Approval	13	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
33	Product Acceptance	13	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
34	Pre-Installation Inspection & Systems Test Approval	14	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
35	Product Acceptance	14	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
36	Pre-Installation Inspection &	15	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection

	Systems Test Approval				and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
37	Product Acceptance	15	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
38	Pre-Installation Inspection & Systems Test Approval	16	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
39	Product Acceptance	16	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
40	Pre-Installation Inspection & Systems Test Approval	17	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
41	Product Acceptance	17	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
42	Pre-Installation Inspection & Systems Test Approval	18	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
43	Product Acceptance	18	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
44	Pre-Installation Inspection & Systems Test Approval	19	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
45	Product Acceptance	19	1.00%		The Purchaser issues a valid,

					counter-signed Product Acceptance Certificate in accordance with the Agreement
46	Pre-Installation Inspection & Systems Test Approval	20	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
47	Product Acceptance	20	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
48	Pre-Installation Inspection & Systems Test Approval	21	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
49	Product Acceptance	21	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
50	Pre-Installation Inspection & Systems Test Approval	22	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
51	Product Acceptance	22	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
52	Pre-Installation Inspection & Systems Test Approval	23	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
53	Product Acceptance	23	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
54	Pre-Installation Inspection &	24	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection

	Systems Test Approval				and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
55	Product Acceptance	24	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
56	Pre-Installation Inspection & Systems Test Approval	25	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
57	Product Acceptance	25	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
58	Pre-Installation Inspection & Systems Test Approval	26	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
59	Product Acceptance	26	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
60	Pre-Installation Inspection & Systems Test Approval	27	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
61	Product Acceptance	27	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
62	Pre-Installation Inspection & Systems Test Approval	28	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
63	Product Acceptance	28	1.00%		The Purchaser issues a valid,

					counter-signed Product Acceptance Certificate in accordance with the Agreement
64	Pre-Installation Inspection & Systems Test Approval	29	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
65	Product Acceptance	29	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
66	Pre-Installation Inspection & Systems Test Approval	30	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
67	Product Acceptance	30	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
68	Pre-Installation Inspection & Systems Test Approval	31	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
69	Product Acceptance	31	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
70	Pre-Installation Inspection & Systems Test Approval	32	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
71	Product Acceptance	32	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
72	Pre-Installation Inspection &	33	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection

	Systems Test Approval				and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
73	Product Acceptance	33	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
74	Pre-Installation Inspection & Systems Test Approval	34	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
75	Product Acceptance	34	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
76	Pre-Installation Inspection & Systems Test Approval	35	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
77	Product Acceptance	35	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
78	Pre-Installation Inspection & Systems Test Approval	36	1.00%		Issue by the Purchaser of a valid, signed Pre-installation Inspection and System Tests certificate evidencing that such Tests have been passed, in accordance with the Agreement
79	Product Acceptance	36	1.00%		The Purchaser issues a valid, counter-signed Product Acceptance Certificate in accordance with the Agreement
80	Achievement of Key Performance Indicators	-	5.00%		The Supplier's compliance, to the Purchaser's satisfaction, with Schedule 12 (Key Performance Indicators) of the Agreement
81	Fleet Acceptance	-	6.50%		The Purchaser issues a valid, counter-signed Fleet Acceptance Certificate in accordance with the

					Agreement
	Total Milestone Payments		100%		

PART 5 – VALUATION OF VARIATIONS

1. SCHEDULE OF RATES AND PRICES

- 1.1 The rates and prices that shall be used to determine the value of Variations in accordance with Clause 23.3 are set out in Part 6 of this Schedule 4.

2. CONVERSION OF SUMS INTO STERLING

- 2.1 Where a sum forming part or all of the value of a Variation is not in Sterling, the Purchaser may in its discretion apply the following:

- 2.1.1 A dated invoice / quotation from the third party will form the basis of the valuation.

A currency conversion will be applied based on the Bank of England's Sterling foreign exchange reference rates as published at:

<http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp>

or such other address as may be used by the Bank of England or other body which takes over its function, as at the same date as that on the invoice / quotation.

detailed in Part A Schedule 3A;			
A rate per 12 hour day shift for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Shift Rate
A rate per 8 hour night shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Shift Rate
A rate per 12 hour night shift for weekend working, to cover all staff detailed in Part A Schedule 3A;		GBP	Shift Rate
A rate per 8 hour night shift for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Shift Rate
A rate per 12 hour night for public holiday working, to cover all staff detailed in Part A Schedule 3A;		GBP	Shift Rate

PART 7: FOREIGN EXCHANGE

Hedging Rights Process

1. The Purchaser shall procure that TfL confirm that it elects to utilise its hedging powers.
2. The Financial Close Spreadsheet shall be updated and sent to the Purchaser for approval.
3. The Purchaser either approves the Financial Close Spreadsheet or if not then the Purchaser informs the Supplier of any discrepancies in the Financial Close Spreadsheet.
4. If approved, an updated Part 3 (*Contract Price Breakdown*) of Schedule 1 (*Contract Price*) with amended prices will be sent to the Purchaser for approval. These will include Milestone Payments in Part 3 (*Contract Price Breakdown*) of Schedule 1 (*Contract Price*) split into the relevant currencies to be paid by the Purchaser. The Supplier will invoice any VAT payable on the foreign currencies in GBP at the prevailing rate at the VAT point (as evidenced by Bloomberg screenshots).
5. For the purposes of this Schedule 1 Part 7 the following words and expressions shall have the following meanings:

“Financial Close Spreadsheet” shall mean the spreadsheet referred to by such name and initialled by the Parties as at the date of this Agreement.

SCHEDULE 5: KEY PERSONNEL

The Key Personnel roles are set out in Paragraph 10.3 of the PEP.

SCHEDULE 6: FORM OF CERTIFICATES

PART A: FORM OF PRODUCT ACCEPTANCE CERTIFICATE

Purchaser		
Supplier		
Purchaser		
PRODUCT ACCEPTANCE CERTIFICATE	PAC No.		
<p>In accordance with the Agreement including Clause 12.5(<i>Product Acceptance</i>) we hereby certify that the Goods specified in the schedule below are complete and have passed all Tests required by the Test Plan required to be performed prior to the Product Acceptance and the Product Acceptance Criteria have been satisfied.</p>			
<p>SCHEDULE</p> <p>[Train no. to which this certificate applies]</p>			
Planned completion was	Day	Month	Year
<p>Signed For the Supplier Date</p>			
<p>Signed Purchaser Date</p>			

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Product Acceptance was achieved on	Day	Month	Yea r
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Signed	Purchaser	Date
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PART C: FORM OF DELIVERY CERTIFICATE¹

Purchaser		
Supplier		
Purchaser Representative		
DELIVERY CERTIFICATE		SD No.	
In accordance with the Agreement, we hereby certify that the items as listed in the schedule below have been delivered.			
<p>SCHEDULE</p> <p>[Train no. to which this certificate applies/Items of additional Spares delivered]</p>			
Delivery Date	Day	Month	Year
Signed For the Supplier Date			
Signed Purchaser Representative Date			

PART D: FORM OF FLEET ACCEPTANCE CERTIFICATE

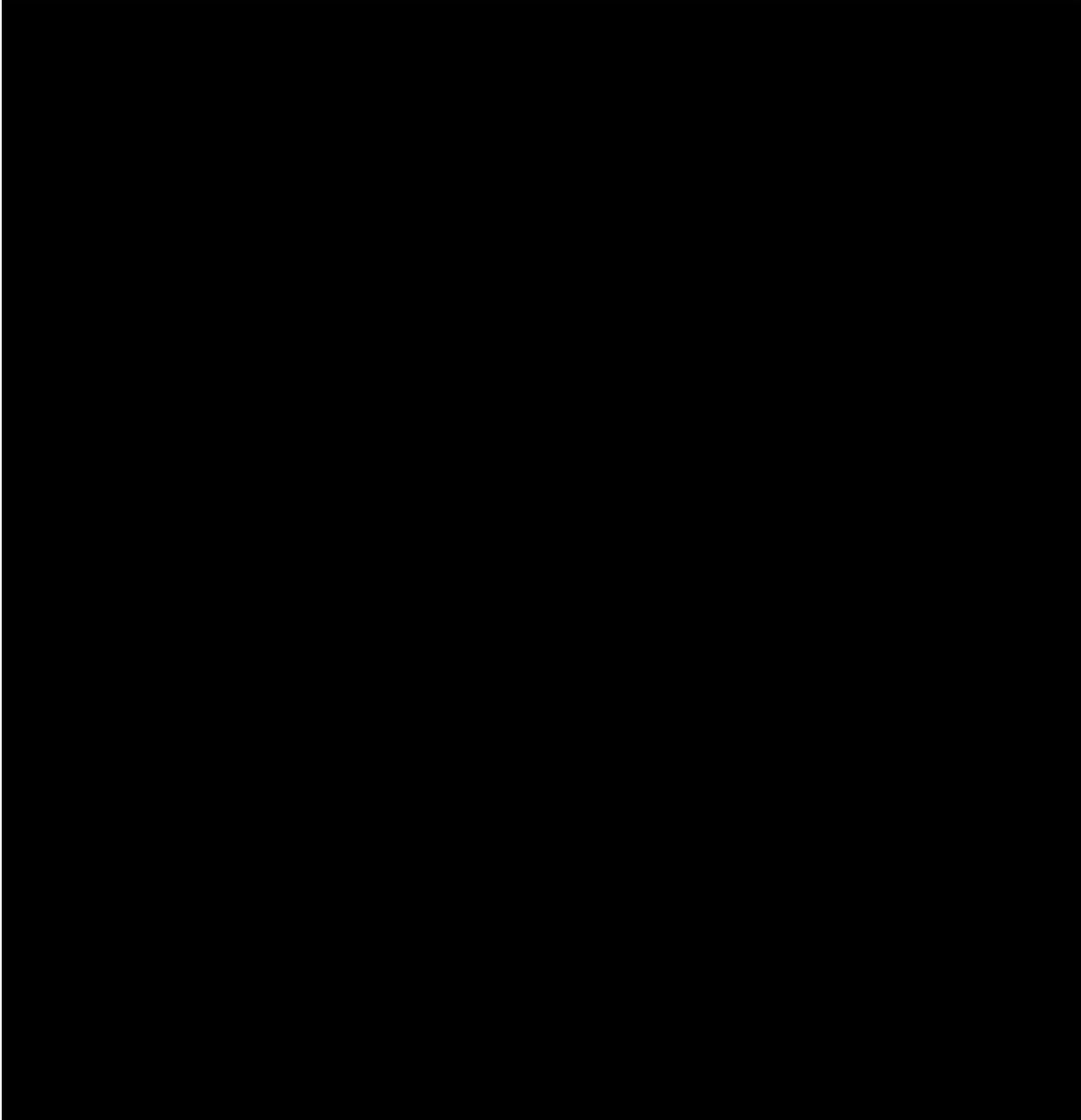
Purchaser	
Supplier	
Purchaser	
FLEET ACCEPTANCE CERTIFICATE	
In accordance with Clause 12.7 (<i>Fleet Acceptance</i>) of the above contract we hereby certify that the Fleet Acceptance Criteria have been satisfied.	
SCHEDULE [Train No. to which this certificate applies]	
Planned completion was	Day Month Year
Signed	For the Supplier Date
Signed	Purchaser Date

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; 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.
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.

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



SCHEDULE 8: STORAGE

PART A

The Supplier is required to provide Storage for the Goods in accordance with the Agreement, including Clause 12.2A.

General Storage condition requirements

The Supplier shall ensure that the facility used for Storage of the Goods shall as a minimum requirement:

- i) store the Goods in a permanent weather proof building.
- ii) be safe, secure and be covered by the Required Insurances.
- iii) be located to enable the Supplier to be able to deliver the Goods to the Purchaser's Premises in no more than 7 days; , such location shall be agreed between the Parties acting reasonably
- iv) be large enough to meet the requirements of the Contract Programme in accordance with Clause 8 and Schedule 2 (*Contract Programme*) of the Agreement;
- v) be provided in accordance with the Contract Programme in Schedule 2 of this Agreement.

Bidders are required to provide a Storage Schedule detailing as a minimum the following:

In populating this schedule the Supplier is required to provide the following information (as a minimum) in relation to the Storage conditions for the Goods:

- i) A proposed address for the storage facility;
- ii) Ownership details of the storage facility;
- iii) Security arrangements;
- iv) Not Used;
- v) Not Used;
- vi) Insurance arrangements in compliance with Schedule 9;
- vii) The environmental conditions of the storage facility should be within the specified operating parameters of the Goods, including temperature and humidity;
- viii) Storage instructions and any constraints e.g. stacking;
- ix) Details of any special equipment that may be required to get the Goods into or out of Storage;
- x) Any and all maintenance required whilst in storage (if applicable)

SCHEDULE 9: INSURANCE

1. The Supplier will at its sole cost maintain the following insurances with reputable insurers throughout the duration of the Agreement or such other period specified below (“the Insurances”):
 - 1.1 Employer’s liability and motor liability insurance in an amount and on terms that comply with the appropriate statutory obligations in which the Supplier operates;
 - 1.2 Public liability insurance to cover all sums for which the Supplier shall be legally liable to pay in respect of personal injury, death, illness or disease to third parties or damage to third party property. Such insurance shall be in an amount not less than [REDACTED] per occurrence or series of occurrence arising out of one event;
 - 1.3 Product liability insurance to cover all sums for which the Supplier shall be legally liable to pay in respect of personal injury, death, illness or disease to third parties or damage to third party property arising as a result of a defect, fault or flaw in the goods manufactured and/or supplied. Such insurance shall be in an amount not less than [REDACTED] per occurrence or series of occurrence arising out of one event;
 - 1.4 Professional Indemnity insurance or, where professional indemnity insurance is not available, a “financial loss” extension to the public liability insurance referred to in Clause 1.1.2 and the product liability insurance referred to in Clause 1.1.3. Such professional indemnity insurance (or financial loss extension) shall be in an amount not less than [REDACTED] per incident and the aggregate per annum with two automatic reinstatements. Such insurance shall be in effect throughout the duration of the Agreement and for 12 years following expiry or termination of this Agreement, subject to such insurance being available at commercially reasonable rates however this exception shall not apply in the event that rates are no longer commercially reasonable as a result of the Supplier’s claims history.
 - 1.5 Transit insurance in an amount sufficient to cover all risks of loss or damage (including theft and vandalism) to the Goods during transit (or being stored during a journey) by road, rail, air, sea or inland waterways, until the point that these items are delivered and unloaded to the Delivery Location.
2. The Supplier will:
 - 2.1 ensure that the public liability and product liability insurances extend to indemnify the Purchaser as principal;
 - 2.2 where the Insurances contain a care, custody or control exclusion, procure that the relevant policy shall be endorsed so as to delete the exclusion in respect of any assets belonging to the Purchaser (or for which it is responsible) that are used by the Supplier for the purpose of providing the Goods.
 - 2.3 prior to the Commencement Date and thereafter whenever reasonably requested by the Purchaser produce evidence to the Purchaser in the form of a broker’s letter or similar that that the Insurances are in effect all premiums due on each policy have been paid.

3. In the event that any of the Insurances are cancelled or not renewed, the Supplier shall immediately notify the Purchaser and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Purchaser.

SCHEDULE 10: DISPUTE RESOLUTION PROCEDURE

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

"**Adjudicator**" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this: DISPUTE RESOLUTION PROCEDURE (*Dispute Resolution Procedure*).

"**Dispute**" means any dispute, controversy or claim arising out of or in connection with this Agreement.

"**Nominating Authority**" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

"**Notice of Adjudication**" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought.

"**Referral Notice**" means a notice referring a Dispute to the Adjudicator in accordance with paragraph;

"**Senior Representative**" means a representative of a Party at senior executive level.

1. The Purchaser and the Supplier shall follow the procedure set out in this Schedule 10 (*Dispute Resolution Procedure*) for the management and resolution of Disputes.
2. Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
3. Within fourteen (14) days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
4. The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
5. If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within fourteen (14) days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–28 and notice has been given in accordance with paragraph 29.
6. Each Party bears its own costs in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior

Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7. Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7–29 by giving a Notice of Adjudication to the other parties to the Dispute.

8. Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within four (4) days of receiving a request to do so.

9. Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:

9.1 shall be a natural person acting in his personal capacity; and

9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute

10. The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within seven (7) days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

11. Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within seven (7) days of the date of the Notice of Adjudication or within two (2) days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

12. The Referral Notice shall:

12.1 include the facts relied upon by the referring Party in support of its claim(s);

12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);

12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject

matter of the Dispute;

12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and

12.5 include the addresses of all Parties to the Dispute.

The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.

13. If a matter disputed by the Supplier under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Supplier may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.

14. The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:

14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

15. The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.

16. The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

17. The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within twenty-eight (28) days of the date of receipt of the Referral Notice

mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 10 (*Dispute Resolution Procedure*)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.

18. The Adjudicator may extend the period of twenty-eight (28) days referred to in paragraph 17 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.
19. The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.
20. The Adjudicator:
 - 20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - 20.3 shall reach his decision in accordance with the law applicable to this Agreement;
 - 20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - 20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
 - 20.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
21. The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
 - 21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - 21.2 submit lists of questions to the parties to the Dispute to be answered in such

- meetings or in writing within such reasonable time as he requires;
- 21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- 21.5 inspect any part of the LUL Network, the Supplier's Works or the facilities of any relevant Subcontractor.
22. The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
23. All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
24. The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 10 (*Dispute Resolution Procedure*).
25. After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
26. Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
27. All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by

facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.

28. All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
29. If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

SCHEDULE 11: NOT USED

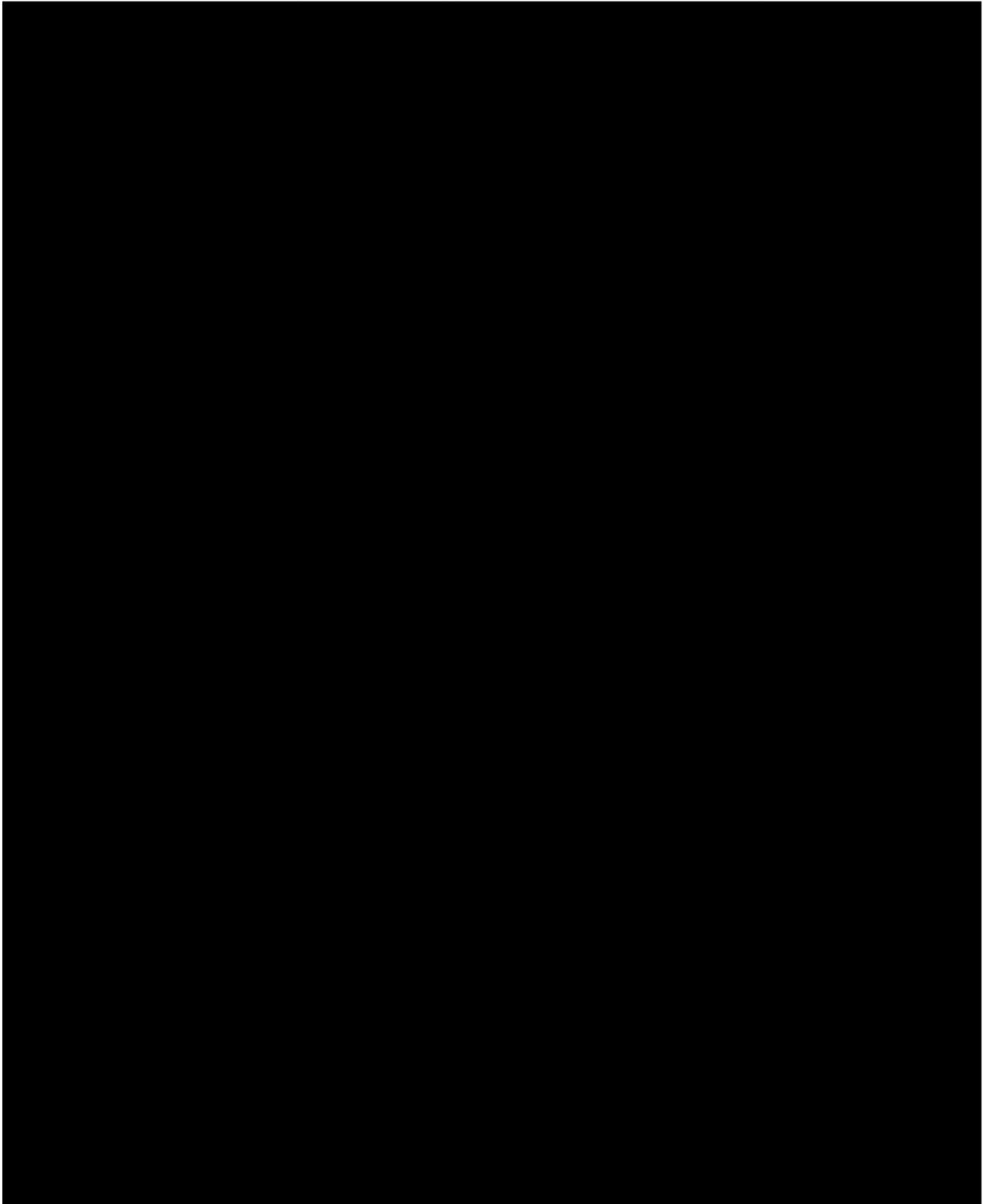
SCHEDULE 12: KEY PERFORMANCE INDICATORS

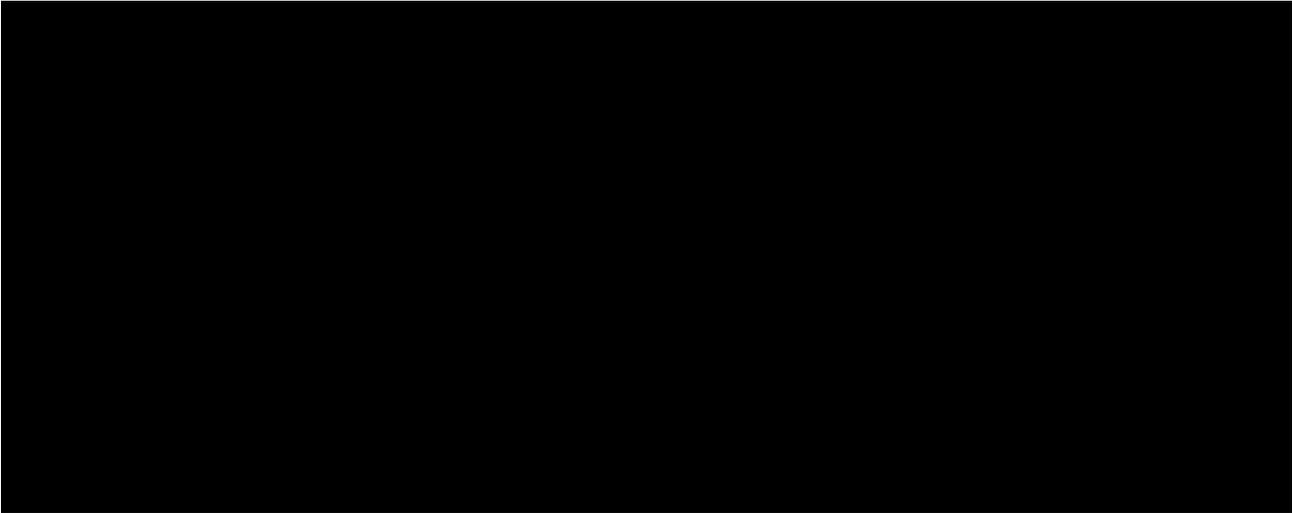
1. Delivery arrangements

1.1 Monitoring will be based on a cooperative approach and will be transparent.

Core Performance

1.2 The following table outlines the core performance requirements which apply to all Goods being delivered under this Agreement. The Supplier will submit the information required below.





Single Licensee Escrow Agreement³

Date: []

Owner: []

Agreement Number: []

Notice: The parties to this Agreement are obliged to inform the Escrow Agent of any changes to the Escrow Materials or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Escrow Materials)

³ This agreement has been negotiated with the Escrow Agent. Any proposed amendments should be agreed with the Legal team prior to being sent to either the Supplier or the Escrow Agent.

Escrow Agreement Dated:

Between:

- (1) **[SUPPLIER]** (Registered Number:[]) a company incorporated under the laws of England and Wales whose registered office is at [] (the "**Supplier**");
- (2) **LONDON UNDERGROUND LIMITED**, (Registered Number:1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**"); and
- (3) **NCC ESCROW INTERNATIONAL LIMITED** (Registered No: 03081952) a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, ENGLAND ("**The Escrow Agent**").

Background:

- (C) The Purchaser and the Supplier have agreed that the Supplier will manufacture and supply replacement Saloon LED Lighting for the London Underground Bakerloo Line Fleet and related spares (the "**Goods**") and provide related services to the Purchaser on and subject to the terms set out in the Manufacture and Supply Agreement.
- (D) The Escrow Materials are the confidential property of the Supplier and are required for the manufacture, operation, maintenance and modification of the Goods.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1. Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Escrow Materials" means the Software, Source Code and any other such materials notified in writing by the Purchaser to the Supplier that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Supplier's obligations under the Manufacture and Supply Agreement including, but not limited to, design drawings, product specifications and quality control measures.

"Full Verification" means the tests and processes forming the Escrow Agent's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Escrow Materials.

"Independent Expert" means a suitably qualified and independent solicitor or barrister.

"Integrity Testing" means those tests and processes forming the Escrow Agent's Integrity

Testing service, in so far as they can be applied to the Escrow Materials.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"Licence" means the licence granted to the Purchaser to use the Software.

"Licence Agreement" means the agreement listed in schedule 3 under which the Purchaser was granted the Licence.

"Order Form" means the order form setting out the details of the order placed with the Escrow Agent for setting up this Agreement.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Software exclusively for and on behalf of the Purchaser together with such other purposes (if any) as are permitted under the Licence Agreement.

"Release Events" has the meaning given to it in Clause 6.1 of this Agreement.

"Software" means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Purchaser under the Licence Agreement.

"Source Code" means the computer programming code of the Software in human readable form and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause of this Agreement.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Supplier or the Purchaser.

1.2 This Agreement shall be interpreted in accordance with the following:

1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;

1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement; and

1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2. Supplier's Duties and Warranties

2.1 The Supplier shall:

2.1.1 deliver a copy of the Escrow Materials each time there is a change to such item of Escrow Materials;

2.1.2 ensure that each item of the Escrow Materials deposited with the Escrow Agent comprises the latest version of such item of information or documentation used by the Purchaser and, where such item comprises the Source Code, ensure that each copy of the Source Code comprises the Source Code of the latest version of the

Software used by the Purchaser;

- 2.1.3 deliver to the Escrow Agent a replacement copy of the relevant Escrow Materials within thirty (30) days after the anniversary of the last delivery of the relevant Escrow Materials to ensure that the integrity of the Escrow Material media is maintained;
 - 2.1.4 deliver a replacement copy of the Escrow Materials to the Escrow Agent within fourteen (14) days of a notice given to it by the Escrow Agent under the provisions of clause 4.1.3;
 - 2.1.5 deliver with each deposit of the Escrow Materials the following information:
 - 2.1.5.1 details of the deposit including, where applicable, the full name of the relevant Escrow Material (i.e. the original name as set out under schedule 1 together with any new names given to the Escrow Materials by the Supplier), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.5.2 password/encryption details required to access the Escrow Materials;
 - 2.1.5.3 any other information or documentation required to be disclosed under any Licence Agreement or to facilitate the use of any of the Escrow Materials.
 - 2.1.6 deliver with each deposit of the Source Code the following technical information (where applicable):
 - 2.1.6.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - 2.1.6.2 software design information (e.g. module names and functionality); and
 - 2.1.6.3 name and contact details of employees with knowledge of how to maintain and support the Source Code; and
 - 2.1.7 if required by the Purchaser, deposit a backup copy of the object code of any third party software package and any other information or documentation required to access, install, build or compile or otherwise use the Source Code.
- 2.2 The Supplier warrants to both the Escrow Agent and the Purchaser at the time of each deposit of the Escrow Materials with the Escrow Agent that:
- 2.2.1 other than any third party object code referred to in clause 2.1.7, any Third Party Material or any Escrow Materials owned by the Purchaser by virtue of the provisions of the Licence Agreement, it owns the Intellectual Property Rights in the Escrow Materials;
 - 2.2.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Supplier has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by the Escrow Agent;
 - 2.2.3 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);

- 2.2.4 the Source Code deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.7) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software; and
- 2.2.5 in respect of any third party object code that the Supplier, at its option, or, at the request of the Purchaser, deposits with the Escrow Agent in conjunction with the Source Code pursuant to clause 2.1.7, it has the full right and authority to do so.

3. Purchaser's Responsibilities and Undertakings

- 3.1 The Purchaser shall notify the Escrow Agent of any change to the Escrow Materials that necessitates a replacement deposit of the Escrow Materials.
- 3.2 In the event that the Escrow Materials are released under clause 6, the Purchaser shall, subject to the terms of the Licence Agreement:
 - 3.2.1 keep the Escrow Materials confidential at all times and ensure that any other person to whom the Escrow Materials is disclosed pursuant to clause 3.2.3 does the same;
 - 3.2.2 use the Escrow Materials only for the Release Purposes;
 - 3.2.3 not disclose the Escrow Materials to any person save as permitted under the terms of any relevant Licence Agreement or as otherwise required for the Release Purposes;
 - 3.2.4 hold all media containing the Escrow Materials in a safe and secure environment when not in use; and
 - 3.2.5 forthwith destroy the Escrow Materials should the Purchaser cease to be entitled to use the Escrow Materials under the terms of the Licence Agreement.
- 3.3 In the event that the Escrow Materials are released under clause 6, it shall be the responsibility of the Purchaser to obtain the necessary licences to utilise the object code of any third party material deposited by the Supplier pursuant to clause .

4. The Escrow Agent's Duties

- 4.1 The Escrow Agent shall:
 - 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Escrow Materials in a safe and secure environment;
 - 4.1.2 inform the Supplier and the Purchaser of the receipt of any deposit of the Escrow Materials by sending to both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10; and
 - 4.1.3 notify the Supplier and the Purchaser if it becomes aware at any time during the term of this Agreement that the copy of the Escrow Materials held by it has been lost, damaged or destroyed so that a replacement may be obtained.
- 4.2 In the event of failure by the Supplier to deposit any Escrow Materials with the Escrow Agent, the Escrow Agent shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Purchaser of the Supplier's failure to deposit any Escrow Materials.
- 4.3 The Escrow Agent may appoint agents, contractors or sub-contractors as it deems fit to carry

out the Integrity Testing and the Full Verification processes. The Escrow Agent shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8.

- 4.4 The Escrow Agent has the right to make such copies of the Escrow Materials as may be necessary solely for the purposes of this Agreement.

5. Payment

- 5.1 The parties shall pay the Escrow Agent's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. The Escrow Agent's fees as published are exclusive of value added tax.
- 5.2 The Escrow Agent shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.
- 5.3 All invoices are payable within thirty (30) days from the date of invoice. The Escrow Agent reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of 2% per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6. Release Events

- 6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by the Escrow Agent of its release fee and any other fees and interest (if any) outstanding under this Agreement, the Escrow Agent will release the Escrow Materials to a duly authorised officer of the Purchaser if any of the following events ("**Release Event(s)**") occur:

6.1.1 if the Supplier is a company:

6.1.1.1 an order is made for the winding up of the Supplier, the Supplier passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Supplier is appointed; or

6.1.1.2 an order is made for the appointment of an administrator of the Supplier or an administrator of the Supplier is appointed; or

6.1.1.3 the Supplier enters into a compromise or arrangement with creditors; or

6.1.1.4 the Supplier has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or

6.1.1.5 the Supplier is dissolved; or

6.1.2 if the Supplier is an individual:

6.1.2.1 the Supplier enters into a compromise or arrangement with creditors; or

6.1.2.2 the Supplier is declared bankrupt; or

6.1.2.3 the Supplier dies; or

6.1.3 if the Supplier is a partnership:

6.1.3.1 any of the partners in the Supplier are declared bankrupt or enter into a

compromise or arrangement with creditors; or

6.1.3.2 the Supplier is wound up or dissolved; or

6.1.3.3 the Supplier enters into a compromise or arrangement with creditors; or

6.1.3.4 a partnership administration order is made in respect of the Supplier; or

6.1.4 any similar or analogous proceedings or event to those in clauses 6.1.1 to 6.1.3 above occurs in respect of the Supplier within any jurisdiction outside England; or

6.1.5 the Supplier ceases to carry on its business or the part of its business which relates to the Escrow Materials; or

6.1.6 the Supplier assigns its rights to the Intellectual Property Rights in the Escrow Materials to a third party ("**Assignee**") and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Purchaser by failing to enter into either:

6.1.6.1 a novation agreement with the Purchaser and the Escrow Agent for the assumption of the Supplier's rights and obligations under this Agreement by the Assignee; or

6.1.6.2 a new escrow agreement with the Purchaser for the Escrow Materials which offers the Purchaser substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Purchaser,

provided that if the Assignee offers to enter into a novation or new escrow agreement within sixty (60) days of all parties' knowledge of the assignment and the Purchaser fails to accept the Assignee's offer within thirty (30) days of such offer being notified to the Purchaser, there shall be no Release Event under this clause; or

6.1.7 the Supplier or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations under the relevant Licence Agreement or any maintenance agreement entered into in connection with the Escrow Materials and has failed to remedy such default as required by the terms of the Licence Agreement or such maintenance agreement.

6.2 The Purchaser must notify the Escrow Agent of the Release Event specified in clause 6.1 by delivering to the Escrow Agent a statutory or notarised declaration ("**Declaration**") made by an officer of the Purchaser declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Licence Agreement and any maintenance agreement, if relevant, for the Escrow Materials was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as the Escrow Agent shall reasonably require.

6.3 Upon receipt of a Declaration from the Purchaser claiming that a Release Event has occurred:

6.3.1 the Escrow Agent shall submit a copy of the Declaration to the Supplier by courier or other form of guaranteed delivery; and

6.3.2 unless within fourteen (14) days after the date of despatch of the Declaration by the Escrow Agent, the Escrow Agent receives a counter-notice signed by a duly

authorised officer of the Supplier stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,

The Escrow Agent will release the Escrow Materials to the Purchaser for its use for the Release Purposes.

- 6.4 Upon receipt of the counter-notice from the Supplier under clause 6.3.2, the Escrow Agent shall send a copy of the counter-notice and any supporting evidence to the Purchaser by courier or other form of guaranteed delivery.
- 6.5 Upon receipt by the Purchaser of the counter-notice from the Escrow Agent or, in any event, within ninety (90) days of despatch of the counter-notice by the Escrow Agent, the Purchaser may give notice to the Escrow Agent that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within ninety (90) days of despatch of the counter-notice by the Escrow Agent to the Purchaser, the Escrow Agent has not been informed by the Purchaser that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Purchaser will be deemed to be no longer valid and the Purchaser shall be deemed to have waived their right to release of the Escrow Materials for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1.1 to 6.1.5, a subsequent assignment of the Intellectual Property Rights in the Escrow Materials shall not prejudice the Purchaser's right to release of the Escrow Materials and its use for the Release Purposes.

7. Disputes

- 7.1 The Escrow Agent shall notify the Supplier of the Purchaser's request for dispute resolution. Unless the Supplier or the Purchaser objects, the Escrow Agent's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Supplier or the Purchaser objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within seven (7) days of registering their objection. If they fail to appoint an Independent Expert within this seven (7) day period, the Escrow Agent shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within five (5) working days of the appointment of the Independent Expert, the Supplier and the Purchaser shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within fourteen (14) days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Supplier, Purchaser and the Escrow Agent. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 If the Independent Expert's decision is in favour of the Purchaser, the Escrow Agent is hereby authorised to release and deliver the Escrow Materials to the Purchaser within five (5) working days of the decision being notified by the Independent Expert to the parties.
- 7.5 The parties hereby agree that the costs and expenses of the Independent Expert shall be

borne by the party against whom the decision of the Independent Expert is given.

8. Confidentiality

- 8.1 The Escrow Materials shall remain at all times the confidential and intellectual property of its owner.
- 8.2 Subject to the terms of the Licence Agreement, in the event that the Escrow Agent releases the Escrow Materials to the Purchaser, the Purchaser shall be permitted to use the Escrow Materials only for the Release Purposes.
- 8.3 The Escrow Agent agrees to keep all Confidential Information relating to the Escrow Materials that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. The Escrow Agent further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9. Intellectual Property Rights

- 9.1 The release of the Escrow Materials to the Purchaser will not act as an assignment of any Intellectual Property Rights that the Supplier or any third party possesses in the Escrow Materials.
- 9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in the Escrow Agent. The Supplier and the Purchaser shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10. Integrity Testing and Full Verification

- 10.1 The Escrow Agent shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Escrow Materials received by the Escrow Agent under this Agreement.
- 10.2 As soon as practicable after the Escrow Materials has been deposited with the Escrow Agent, the Escrow Agent shall apply its Integrity Testing processes to the Material.
- 10.3 Any party to this Agreement shall be entitled to require the Escrow Agent to carry out a Full Verification. Subject to clause 10.4, the Escrow Agent's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by the Escrow Agent in carrying out the Full Verification processes shall be payable by the requesting party.
- 10.4 If the Escrow Materials fail to satisfy the Escrow Agent's Full Verification tests as a result of being defective or incomplete in content, the Escrow Agent's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Supplier.
- 10.5 Should the Escrow Materials deposited fail to satisfy the Escrow Agent's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Supplier shall, within fourteen (14) days of the receipt of the notice of test failure from the Escrow Agent, deposit such new, corrected or revised Escrow Materials as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Supplier fails to make such deposit of the new, corrected or revised Escrow Materials, the Escrow Agent will issue a report to the Purchaser detailing the

problem with the Escrow Materials as revealed by the relevant tests.

11. The Escrow Agent's Liability

11.1 Nothing in this clause 11 excludes or limits the liability of the Escrow Agent for:-

11.1.1 fraud or fraudulent misrepresentation;

11.1.2 death or personal injury caused by the Escrow Agent's (or its employees', agents' or sub-contractors') negligence; or

11.1.3 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Without prejudice to clauses 11.1.1 to 11.1.3(inclusive), the following provisions set out the entire financial liability of the Escrow Agent (including any liability for the acts or omissions of its employees, agents and sub-contractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Escrow Agent's obligations under this Agreement.

11.2 The Escrow Agent shall not be liable for any loss or damage caused to the other parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by the Escrow Agent, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event the Escrow Agent's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Escrow Agent's obligations under this Agreement, shall be limited to £2,500,000 (two million five hundred thousand pounds).

11.3 Subject to clause 11.1 the Escrow Agent shall not be liable to the other parties for any;

11.3.1 indirect, consequential and/or special loss or damage;

11.3.2 loss of profit (direct or indirect);

11.3.3 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

11.3.4 loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);

11.3.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect); and/or

11.3.6 loss or damage arising out of any failure by the Supplier to keep full and up to date back-ups and security copies of any Escrow Materials delivered under this Agreement,

arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any

of the Escrow Agent's obligations under this Agreement.

- 11.4 The Escrow Agent shall not be liable in any way to the Supplier or the Purchaser for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 11.5 The Escrow Agent shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Supplier or the Purchaser to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.

12. Indemnity

- 12.1 Save for any claim falling within the provisions of clause 11.1.1, the Supplier and the Purchaser jointly and severally agree at all times to indemnify and hold harmless the Escrow Agent in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Supplier and the Purchaser in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.
- 12.2 The Supplier shall assume all liability and shall at all times indemnify and hold harmless the Escrow Agent and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by the Escrow Agent, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of the Escrow Agent in respect of the Escrow Materials as contemplated under this Agreement.

13. Term and Termination

- 13.1 This Agreement shall continue until terminated in accordance with this clause 13.
- 13.2 If the Supplier or the Purchaser, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within thirty (30) days of its issue, the Escrow Agent reserves the right to give that party written notice to pay the outstanding invoice within thirty (30) days. If the Purchaser has not paid its invoice by the expiry of the thirty (30) day notice period, this Agreement will automatically immediately terminate. If the Supplier has not paid its invoice by the expiry of the thirty (30) day notice period, the Escrow Agent will give the Purchaser a period of 15 days to pay the Supplier's invoice. If the Supplier's invoice has not been paid by the expiry of the fifteen (15) day optional payment period given to the Purchaser, this Agreement will automatically immediately terminate. Any amounts owed by the Supplier but paid by the Purchaser will be recoverable by the Purchaser direct from the Supplier as a debt and, if requested, the Escrow Agent shall provide appropriate documentation to assist in such recovery.
- 13.3 Upon termination under the provisions of clause 13.2, for thirty (30) days from the date of termination the Escrow Agent will make the Escrow Materials available for collection by the Supplier or its agents from the premises of the Escrow Agent during office hours. After such thirty (30) day period the Escrow Agent will destroy the Escrow Materials.

- 13.4 Notwithstanding any other provision of this clause 13, the Escrow Agent may terminate this Agreement by giving thirty (30) days written notice to the Supplier and the Purchaser. In that event, the Supplier and the Purchaser shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within fourteen (14) days of delivery of such notice, the Supplier or the Purchaser shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Supplier and the Purchaser. If the Escrow Agent is notified of the new custodian within the notice period, the Escrow Agent will forthwith deliver the Escrow Materials to the new custodian. If the Escrow Agent is not notified of the new custodian within the notice period, the Escrow Agent will return the Escrow Materials to the Supplier.
- 13.5 The Purchaser may terminate this Agreement at any time by giving written notice to the Escrow Agent. Upon such termination, the Escrow Agent will return the Escrow Materials to the Supplier.
- 13.6 If the Escrow Agent discovers that a Release Event has occurred and the Purchaser has failed to exercise its right to claim for release of the Escrow Materials under clause 6.2, the Escrow Agent shall have the right to terminate this Agreement upon thirty (30) days written notice to the Supplier and the Purchaser. The Purchaser shall have the option of applying for release in accordance with clause 6 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement shall automatically terminate and, unless otherwise instructed by the Supplier or the Assignee prior to expiry of the notice period, the Escrow Agent shall destroy the Escrow Materials.
- 13.7 If the Intellectual Property Rights in the Escrow Materials have been assigned to a third party and the proviso in clause 6.1.6 applies such that there has been no Release Event under that clause, the Escrow Agent shall be entitled to terminate this Agreement immediately by written notice to the Supplier and the Purchaser and upon such termination, unless otherwise instructed by the Supplier or the Assignee, the Escrow Agent shall destroy the Escrow Materials.
- 13.8 If the Licence has expired or has been lawfully terminated, then the Purchaser shall give notice to the Escrow Agent within fourteen (14) days thereof to terminate this Agreement, failing which, the Supplier shall be entitled to give written notice to the Escrow Agent to terminate this Agreement. Upon receipt of such a notice from the Supplier, the Escrow Agent shall notify the Purchaser of the Supplier's notice to terminate. Unless within fourteen (14) days of the Escrow Agent giving such notice to the Purchaser, the Escrow Agent receives a counter-notice signed by a duly authorised officer of the Purchaser disputing the termination of the Licence Agreement, then the Purchaser shall be deemed to have consented to such termination and this Agreement shall immediately automatically terminate. Any disputes arising under this clause shall be dealt with in accordance with the dispute resolution procedure in clause 7. Upon termination under this clause, the Escrow Agent shall return the Escrow Materials to the Supplier.
- 13.9 Subject to clause 13.8, the Supplier may only terminate this Agreement with the written consent of the Purchaser.
- 13.10 This Agreement shall automatically immediately terminate upon release of the Escrow Materials to the Purchaser in accordance with clause 6.
- 13.11 If this Agreement is superseded and replaced by a new agreement in respect of the Escrow Materials, this Agreement shall, upon the coming into force of the new agreement,

automatically terminate. The relevant party or parties shall request the Escrow Agent to either transfer the Escrow Materials to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, the Escrow Agent shall, unless otherwise instructed, destroy the Escrow Materials.

- 13.12 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.12 to 13.14 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.13 On and after termination of this Agreement, the Supplier and/or the Purchaser (as appropriate) shall remain liable to the Escrow Agent for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 13.14 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14. General

- 14.1 A party shall notify the other parties to this Agreement, within 30 days of its occurrence, of any of the following:
 - 14.1.1 a change of its name, registered office, contact address or other contact details; and
 - 14.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within fourteen (14) days of any assignment or transfer by the Supplier of any part of its Intellectual Property Rights in the Escrow Materials, the Supplier shall notify:
 - 14.2.1 The Escrow Agent and the Purchaser of such assignment and the identity of the Assignee; and
 - 14.2.2 the Assignee of the provisions of clause 6.1.6.
- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 This Agreement, together with the Order Form and any relevant the Escrow Agent standard terms and conditions represent the whole agreement relating to the escrow arrangements between the Escrow Agent and the other parties for the Escrow Materials and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:
 - (i) if delivered by hand or courier, at the time of delivery;
 - (ii) if sent by first class recorded delivery (airmail if overseas), 2 business days after

posting (6 days if sent by airmail);

(iii) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.

- 14.6 The Supplier and the Purchaser shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.
- 14.7 The Escrow Agent shall be entitled to transfer or assign this Agreement upon written notice to both the Supplier and the Purchaser.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.
- 14.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of []⁵

Name:
|.....

Position: | (Authorised Signatory)

Signed for and on behalf of **TRANSPORT FOR LONDON**

Name: |
.....

Position: | (Authorised Signatory)

Signed for and on behalf of **THE ESCROW AGENT ESCROW LIMITED**

Name: |
.....

Position: | (Authorised 'signatory)

⁵ Insert company name of Supplier

Schedule 1

NOT USED

Schedule 2

The Escrow Agent's Fees

	DESCRIPTION	OWNER	LICENSEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
2	Scheduled Update Fee (2 nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
3	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
4	Release Fee (plus the Escrow Agent's reasonable expenses)	100%	Nil

Additional fees will be payable to the Escrow Agent by the Purchaser (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of 1 cubic foot;
- Any novation or replacement of this Agreement at the request of the Supplier or the Purchaser;
- Integrity Testing Fee for deposits consisting of more than 5 media items.

Schedule 3

Licence Agreement

[Insert full details of the agreement related to the Escrow Materials.]

SCHEDULE 14: QUENSH

For purposes of this Schedule 14 the 'Purchaser' shall be referred to as the 'Client' and the 'Supplier' shall be referred to as the 'Supplier'.

- 1.1 The Client has provided the 'f0780 Contract Menu'*(“Contract Menu”) (attached at Appendix 1 of this Schedule 14 (QUENSH)) an evaluation of the scope of works in the identified by the client column of the menu by providing a 'Y' or 'N'. The Client has provided information and assumptions the 'Other documents / Comments' column where applicable. The Client has signed and dated the 'Client menu (Invitation to Tender)' on the last page of the 'Contract Menu'.
- 1.2 The Parties shall comply with the Contract Menu, and the Supplier shall procure that all of its Subcontractors comply with the Contract Menu, for the duration of this Agreement.
- 1.3 The menu shall be subject to project version and document control. Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative. Any Variations to the 'Contract Menu' post Contract Award will be reviewed by the Client and may, at the Client's absolute and sole discretion be subject to the Variation Procedure.

SCHEDULE 15: FORM OF SUBCONTRACTOR WARRANTY

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** (company number 1900907) whose registered office is Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Supplier**").

WHEREAS:

- (A) The Supplier has entered into a contract dated ● (the "**Contract**") with the Purchaser for the manufacture and supply of Saloon LED Lighting for the Bakerloo Line fleet on the London Underground along with associated services (the "**Works**").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the Supplier for the design and carrying out of certain parts (the "**Subcontract Works**") of the Works more particularly defined in Annex ● hereto.⁶

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Completion" means [];⁷
 - (b) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (c) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the Subcontract Works (whether in existence or to be made);
 - (d) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the Purchaser may reasonably request;
 - (e) "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements or otherwise;

⁶ A description of the Works is to be provided in the Annex.

⁷ LUL to insert definition.

- (f) "Prohibited Act" means:
- (i) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the Supplier any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the Purchaser or the Supplier or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the Purchaser or the Supplier;
 - (ii) entering into the Subcontract or any other contract with the Purchaser or the Supplier in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser or the Supplier;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the Purchaser or the Supplier; or
 - (iv) defrauding or attempting to defraud the Purchaser or the Supplier;
- (g) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the Subcontract Works, the safe operation of the Underground Network and/or the safety of the Purchaser's employees, or the public or any other persons;
- (h) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries;
- (i) "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 the "London Underground".

2. The Subcontractor warrants and undertakes to the Purchaser that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the Subcontract Works; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the Purchaser that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with all Applicable Laws and LU Standards, general good building and engineering practice and the requirements of the Specification.
4. The Subcontractor further warrants and undertakes to the Purchaser that:
 - (a) the Subcontract Works will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the Subcontract Works and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and the Specification and will be of sound manufacture and workmanship;
 - (c) the Subcontract Works are integrated with the designs of the Purchaser, the Supplier and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the Subcontract Works insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the Subcontract Works will on Completion comply with all Applicable Laws and all applicable LU Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the Subcontract Works will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Purchaser that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the Subcontract Works, he has professional indemnity insurance with a limit of indemnity of not less than £[]⁸ in respect of each and every claim which may be made against the Subcontractor in relation to the Subcontract Works. The Subcontractor shall maintain such professional indemnity insurance for a period of twelve (12) years from Acceptance for Service (as defined in the Contract) provided such insurance remains available at commercially reasonable rates and shall notify the Purchaser forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Purchaser, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the Purchaser or the Supplier, the Subcontractor grants to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable

⁸ Insert professional indemnity insurance amount.

licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:

- (a) the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Goods (as they are defined under the Contract) or any related activity, or permitting the Purchaser to use the Goods and any other item of Goods and/or any other item to be supplied pursuant to the Contract for the purposes envisaged pursuant to the Specification;
- (b) modifying, refurbishing, repairing, maintaining and overhauling the Goods supplied pursuant to the Contract or any related activity;
- (c) complying with all Applicable Laws, LU Standards and all Relevant Consents;
- (d) using and copying the Manuals and/or Installation Instructions and/or Interface Definition Document (as they are defined under the Contract) in order to perform any of the above;
- (e) training personnel to carry out any of the activities described in Paragraphs (a), (b) and (d) above;
- (f) inviting tenders for any of the activities described in Paragraphs (a) to (e) inclusive above;
- (g) in the event of termination of both the Contract and the Subcontract, procuring fulfilment and performance of the Subcontractor's obligations under the Subcontract, including the manufacture of any Parts and Spares (as they are defined under the Contract) or other equipment for use in connection with the Goods; and
- (h) the Purchaser performing its obligations under the Contract.

provided always that the Subcontractor shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose.

8. The Subcontractor agrees:
- (a) on request at any time to give the Purchaser or any persons authorised by the Purchaser access to the material referred to in Clause 7 and at the Purchaser's expense to provide copies of any such material; and
 - (b) at the Subcontractor's expense to provide the Purchaser with a set of all such material on Completion of the Subcontract Works.
9. If called upon to do so by the Purchaser, the Subcontractor shall provide the Purchaser with such information relating to the Subcontract Works as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the Works provided that neither the provision of such information nor any inspection of the Works by the Purchaser nor the approval by the Purchaser of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the Subcontract Works.
10. The Subcontractor warrants and undertakes to the Purchaser that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the

Works with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the Purchaser that the Subcontract contains open-book audit rights in favour of the Purchaser and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The Purchaser and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation, the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the Purchaser may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the twelve (12) years thereafter.

11. The Subcontractor shall provide such assistance to the Purchaser as it may reasonably require in connection with the Subcontract Works.
12. In the event that the Contract or the employment of the Supplier thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Supplier (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the Purchaser treat the Purchaser as Purchaser under the Subcontract to the exclusion of the Supplier whereupon all rights and obligations of the Supplier under the Subcontract shall thereafter be exercisable and performed by the Purchaser; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the Purchaser.
13.
 - 13.1 The Subcontractor warrants and undertakes to the Purchaser that he will promptly inform the Purchaser of any default by the Supplier under the Subcontract and that he will not, without first giving the Purchaser at least twenty-one (21) days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the Supplier or to suspend performance of his obligations under the Subcontract.
 - 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the Purchaser shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the Purchaser or its appointee to the exclusion of the Supplier in respect of the carrying out and completion of the Subcontract Works upon the terms of the Subcontract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the Purchaser pursuant thereto stating that the Purchaser or its appointee accepts liability for

payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the Purchaser, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the Purchaser or its appointee under the Subcontract in lieu of its liability to the Supplier. If any notice given by the Purchaser under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the Purchaser's appointee, the Purchaser shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the Purchaser's appointee. For the avoidance of doubt neither the Purchaser nor his appointee shall be liable for any work carried out prior to the date of the Purchaser's notice.

15. The Supplier has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the Purchaser to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the Works.
19. The Subcontractor hereby covenants that if required by the Purchaser it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the Subcontract Works. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the Purchaser.
- 20.
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the Purchaser that:
 - (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the Purchaser, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the Subcontract Works relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the Subcontract Works, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) he shall not, without the prior written consent of the Purchaser, disclose any information obtained by him concerning the Purchaser or the TfL Group to any other person.

- 20.2 The Purchaser may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Purchaser.
- 20.3 Clause 20.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any Applicable Laws, LU Standards or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the Purchaser for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the Purchaser promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the Purchaser all assistance the Purchaser may reasonably require in connection with any proceedings the Purchaser may bring or other steps the Purchaser may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the Purchaser may be entitled to as a matter of law) the Purchaser shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
- 20.7 At the Purchaser's request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the Purchaser or destroy as the Purchaser may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Purchaser in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.
- 21.1 The Subcontractor shall owe no greater obligations to the Purchaser than he owes to the Supplier under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the Purchaser to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the Supplier thereunder.
22. The rights and benefits conferred upon the Purchaser by this Deed are in addition to any other rights and remedies the Purchaser may have against the Subcontractor including without limitation any remedies in negligence.
23. The Supplier agrees that he will not take any steps which would prevent or hinder the Purchaser from exercising his rights under this Deed and confirms that the rights of the

Purchaser in Clauses 12 and 13 override any obligations of the Subcontractor to the Supplier under the Subcontract.

24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 10 (*Dispute Resolution Procedure*) of the Contract which shall be deemed to be included in this Deed as if it were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

THE COMMON SEAL of

LONDON UNDER GROUND LIMITED

was affixed to **THIS DEED**

in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

THE COMMON SEAL of

[THE SUBCONTRACTOR]

was affixed to **THIS DEED**

in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

EXECUTED AND DELIVERED AS

A DEED by

[THE CONTRACTOR]

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

]

ANNEX
(Subcontract Works)

SCHEDULE 16: CONTRACT PARTICULARS

Items of Contract Particulars:

(a) The Change Date is:	The date that the Parties execute this Agreement
(b) The Commencement Date is:	The date that the Parties execute this Agreement
(c) The Contract Price is:	██████████
(d) Fleet Acceptance	6 months after Product Acceptance of 36 th Train
(e) The Fleet Acceptance Longstop Date is:	12 Months after Fleet Acceptance provided in Schedule 2 Contract Programme
(f) Warranty Period	18 months from Fleet Acceptance
(g) Further Warranty Period	18 months
(h) Supplier Guarantee to be provided:	Yes
(i) Supplier Guarantor is:	Marl Holdings Limited
(j) The Supplier's Works are:	██████████ ██████████ ██████████ ██████████ ██████████ ██████████
(k) The Storage Location is:	██████████ ██████████ ██████████ ██████████ ██████████ ██████████

(l) Performance Bond to be provided:	No
(m) The Purchaser is:	London Underground Limited
(n) Under Clause 8.2.1 the programme should be in the following form:	As per Schedule 2 Contract Programme
(o) If the Retention Period is not the period stated under Clause 10.3.1(B), it is:	As per Clause 10.3.1(B)
(p) The period for the Purchaser to respond to the Supplier under Clause 12.4.2 is the following number of Working Days following receipt by the Purchaser of an Acceptance for Service Certificate from the Supplier in accordance with Clause 12.4.2:	10 Working Days
(q) The Purchaser's VAT registration number under Clause 21 is:	01900907
(r) The Supplier's total aggregate liability to the Indemnified Parties under clause 29.4.1 is:	100% of the Contract Price
(s) The notice details for the Purchaser / Purchaser under Clause 36.1.2 are:	Address: London Underground Limited, Templar House, 4 th Floor Central, 81-87 High Holborn, London WC1V 6NU Attention: Chanel Lau Email: [REDACTED]
(t) The notice details for the Supplier under Clause 36.1.2 are:	Marl International Limited [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

SCHEDULE 17: RESPONSIBLE PROCUREMENT

PART A: EQUALITY AND SUPPLIER DIVERSITY

A list of equality and supplier diversity definitions can be found in Appendix 1 of this Schedule 17 Part A.

1. EQUALITY & DIVERSITY

1.1 Strategic Equality & Diversity Plan

1.1.1 For the purposes of the Agreement the expression "**Agreed Strategic Equality & Diversity Plan**" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to this Schedule 17 Part A at Appendix 2.

1.1.2 For the duration of the Agreement, the Supplier shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its Subcontractors:

(A) adopts and implements; and

(B) in respect of indirect Subcontractors uses reasonable endeavours

1.1.3 to procure that those indirect Subcontractors adopt and implement, a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as that agreed with the Purchaser and set out in the Agreed Strategic Equality & Diversity Plan.

1.1.4 Where any Subcontractor has, pursuant to paragraph 1.1.1 of this Schedule 17 Part A or otherwise, adopted a Strategic Equality & Diversity Plan, the Supplier shall procure that each Subcontractor:

(A) provides; and

(B) in respect of indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.2 Diversity Training

1.2.1 For the duration of the Agreement, the Supplier shall comply with the Agreed Diversity Training Plan in relation to all of its employees engaged in the performance of the Agreement. For the purposes of the Agreement the expression "**Agreed Diversity Training Plan**" means the diversity training plan set out as agreed and attached to this Schedule 17 at Appendix 3. The Supplier shall procure that each of its Subcontractors:

• adopts and implements; and

• in respect of indirect Subcontractors uses reasonable endeavours,

to procure that those indirect Subcontractors adopt and implement, a diversity training plan in respect of their respective employees engaged in the performance of the Agreement which is at least as extensive in scope as the requirement of paragraph 1.2.3 of this Schedule 17 Part A.

1.2.2 Where a Subcontractor has, pursuant to paragraph 1.2.1 of this Schedule 17 Part A or otherwise, adopted a diversity training plan, the Supplier shall procure that each of its Subcontractors:

- (A) provides; and
- (B) in respect of indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide,

a copy of its diversity training plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

- 1.2.3 The Supplier ensures that all of its employees engaged in the performance of the Agreement receive equality and diversity training annually and that new employees receive an equality and diversity induction within three (3) months of starting. Equality and diversity training will consist of an awareness workshop, toolbox talk or refresher course delivered with an emphasis on equality and diversity.

1.3 Supplier Diversity

- 1.3.1 For the duration of the Agreement the Supplier shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of the Agreement the expression "**Agreed Supplier Diversity Plan**" means the supplier diversity plan set out as agreed and attached to this Schedule 17 Part A at Appendix 4. The Supplier shall procure that each of its Subcontractors:

- (A) adopts and implements; and
- (B) in respect of indirect Subcontractors uses reasonable endeavours to procure that those indirect Subcontractors adopt and implement, a supplier diversity plan in relation to the performance of the Agreement which is at least as extensive as the Agreed Supplier Diversity Plan.

- 1.3.2 Where a Subcontractor has, pursuant to paragraph 1.3.1 of this Schedule 17 Part A or otherwise, adopted a supplier diversity plan, the Supplier shall procure that each of its Subcontractors:

- (A) provides; and
- (B) in respect of Indirect Subcontractors, use reasonable endeavours to procure that those indirect Subcontractors provide, a copy of its supplier diversity plan (and any amendments thereto) to the Purchaser or its nominee as soon as reasonably practicable.

1.4 Not Used

1.5 Monitoring and Reporting

- 1.5.1 Subject to paragraph 1.5.3 of this Schedule 17 Part A, the Supplier shall use reasonable endeavours to provide the Purchaser on the date of this Agreement and subsequently every 12 months from the date or such other frequency as the Purchaser may reasonably request of this Agreement with the following information:

- (A) An annual report on performance and compliance with the equality and diversity provisions as set out in paragraphs 1.1 to 1.4 of this Schedule 17 Part A. The annual report should set out:
- (B) the performance of the Supplier over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and/or the action plan submitted for the previous 12 months in accordance with the fourth bullet point below;

- (C) the proportion of its employees engaged in the performance of the Agreement and, to the extent reasonably possible, the employees of its Subcontractors or Indirect Subcontractors engaged pursuant to the terms of the relevant Subcontracts in the performance of the Agreement who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;
 - (iv) disabled;
- (D) a statement broken down by activity and material type of how they have used and how much has been spent with:
 - (i) Small and Medium Enterprises;
 - (ii) Black, Asian and Minority Ethnic businesses;
 - (iii) Suppliers from other under-represented or protected groups;
 - (iv) Suppliers demonstrating a diverse workforce composition;
 - (v) under each Call-Off Agreement;
- (E) The Supplier's Annual Equality and Diversity Action Plan containing actions which:
 - (i) support the equality and diversity requirement within this equality and diversity compliance schedule;
 - (ii) have realistic target dates assigned and be challenging but achievable;
 - (iii) have been presented to and agreed by the Purchaser before the Agreement Service Commencement Date or during the month preceding the next Anniversary.

1.5.2 Progress and approval (where due) of actions will be monitored via four (4) weekly (or as otherwise agreed) progress meetings with the Purchaser. The Supplier shall provide a written update prior to the progress meetings and should request additional meetings (if necessary) with the Purchaser to discuss progress or seek sign-off for completed actions.

1.5.3 The Supplier shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Purchaser pursuant to paragraph 1.5.1 of this Schedule 17 Part A.

1.5.4 The Supplier's equality and diversity manager shall attend the equality and diversity managers meeting with the Purchaser and, if appropriate, others, on a quarterly basis to discuss:

- (A) Equality and diversity legislation, Mayor of London strategies and Purchaser policies;
- (B) Performance & benchmarking;
- (C) Innovations & efficiencies;
- (D) Training.

Meetings will be hosted at venues agreed by the attendees. The meetings will be chaired by the Purchaser.

1.6 Equality and Diversity Infractions

1.6.1 If the Supplier or any of its Subcontractors commits an Equality & Diversity Infraction, the Purchaser shall be entitled (but not obliged) to act as follows:

- (A) if an Equality & Diversity Infraction is committed by the Supplier then the Purchaser may serve written notice upon the Supplier identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Supplier shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (B) if the Equality & Diversity Infraction is committed by a Subcontractor of the Supplier, the Purchaser may serve written notice upon the Supplier identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Supplier shall procure that the Subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Supplier of such notice (or such longer period as may be specified in the notice). If the Supplier fails to procure the remedy of the Diversity Infraction, the Purchaser may serve a further written notice upon the Supplier and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Supplier shall terminate, at its own cost, the relevant Subcontract with its Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 1.1 to 1.5 of this Schedule 17 Part A.

1.6.2 It shall be a fundamental term and condition of the Agreement that the Supplier complies with its obligations under paragraphs 1.6.1(A) and (B) of this Schedule 17 Part A. Where, following receipt of a notice given pursuant to paragraph 1.6.1(A) or (B), the Supplier fails to remedy an Equality & Diversity Infraction to the satisfaction of the Purchaser or in the case of paragraph 1.6.1(B) fails to terminate the Subcontract with a defaulting Subcontractor and procure performance by another person on the terms specified in paragraph 1.6.1(B), the Supplier will be in breach of the Agreement and the Purchaser shall be entitled (but not obliged) to terminate the Agreement in accordance with Clause 25 of the Agreement.

1.6.3 For the purposes of this paragraph 1.6 "**Equality & Diversity Infraction**" means any breach by the Supplier of its obligations specified in paragraphs 1.1 to 1.5 of this Schedule 17 Part A and/or any failure by a Subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 1.1 to 1.3 of this Schedule 17 Part A.

1.7 Equality and Diversity Audit

1.7.1 The Purchaser or its nominee may from time to time undertake any audit or check of any and all information regarding the Supplier's compliance with paragraphs 1.1 to 1.5 of this Schedule 17 Part A. The Purchaser's rights pursuant to this paragraph 1.7.1 shall include any and all documents and records of the Supplier and its Subcontractors and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 17 Part A, indirect Subcontractors and shall include the Minimum Records.

1.7.2 The Supplier shall, maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the Agreement (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 17 Part A. The Supplier shall procure that each of its Subcontractors and, where applicable subject to the provisions of

paragraphs 1.1 to 1.3 of this Schedule 17 Part A, indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the Agreement (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 17 Part A. The Supplier shall procure that each Subcontract between it and its Subcontractors and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 17 Part A, each Subcontract between its Subcontractors and any Indirect Subcontractors of the Supplier shall contain rights of audit in favour of and enforceable by the Purchaser substantially equivalent to those granted by the Supplier pursuant to paragraph 1.7.1 of this Schedule 17 Part A.

- 1.7.3 The Purchaser shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Supplier and each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Agreement and/or relevant Subcontract (as the case may be).
- 1.7.4 The Supplier shall promptly provide, and procure that its Subcontractors and, where applicable subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 17 Part A, indirect Subcontractors 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 the Supplier's performance of the Agreement or in the relevant Subcontractor or indirect Subcontractor's performance of its Subcontract, whether the Supplier's own premises or otherwise;
 - (B) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's or the relevant Subcontractor or indirect Subcontractor's obligations specified in paragraphs 1.1 to 1.5 of this Schedule 17 Part A, wherever situated and whether the Supplier's own equipment or otherwise; and
 - (C) complying with the Purchaser's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Agreement or the relevant Subcontractor or indirect Subcontractor's performance of its Subcontract.
- 1.7.5 For the purposes of this paragraph 1.7 the expression "**Minimum Records**" means all information relating to the Supplier's performance of and compliance with paragraphs 1.1 to 1.5 of this Schedule 17 Part A and the adoption and implementation of a Strategic Equality and Diversity Plan, an Agreed Training Plan and an Agreed Supplier Diversity Plan by each Subcontractor and, where applicable, subject to the provisions of paragraphs 1.1 to 1.3 of this Schedule 17 Part A, indirect Subcontractor of the Supplier.

Appendix 1

Equality and Supplier Diversity Definitions

General Equality and Supplier Diversity Definitions

(1) Access

The methods by which people with a range of needs find out about and apply for employment opportunities and find out about and use services and information.

(2) Black Asian and Minority Ethnic Groups

This is an inclusive term that refers to all ethnic groups who have a common experience of discrimination on the basis of their skin colour or ethnic origin. Children and young people can be further subdivided into:

- Young children – those that use the transport network escorted by parents or carers.
- School children – those, usually at secondary school, that use the transport network independently or with members of their peer group.

(3) Young adults – generally defined as ages 16 – 24, whether in education or employment.

(4) Consultation

Any suitable means by which advice is given or views are exchanged. Consultation involves consultees in meaningful, genuine dialogue when proposals are still in the formative stage.

(5) Disability

The Disability Discrimination Act 1995 defines disability as ‘a physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities’.

(6) Discrimination

The law recognises two main types of discrimination, direct and indirect:

- Direct discrimination

Occurs when someone is treated less favourably than others on the basis of their race, colour, age, religion, nationality (including citizenship), marital status, sex, sexual orientation, disability, ethnic or national origin, religion or belief.

- Indirect discrimination

Occurs when a provision, criterion or practice is applied which applies equally to everyone, but can be shown to put people at a much greater disadvantage than others by reason of their race, sex, disability etc where such treatment cannot be objectively justified.

(7) Diversity

The differences in the values, attitudes, cultural perspective, beliefs, ethnic background, sexuality, skills, knowledge and life experiences of each individual in any group of people. Diversity is essentially the acknowledgement and respect of differences within and between groups of people and or organisations. The primary differences that are recognised legislatively are age, disability,

ethnicity, faith, gender and sexual orientation. However, TfL accepts that our society is diverse in numerous other ways including employment and general social condition.

(8) Equalities

A term used to refer to all work addressing issues of discrimination and disadvantage, particularly as it relates to age, disability, faith, gender, race or sexual orientation.

(9) Equality

The vision or aim of creating a society (or aspects of society) where power and quality of life is shared equally and both individuals and groups are able to live their lives free from discrimination and oppression. The definition of equality that has been adopted by the Greater London Authority/TfL is that "an equal society protects and promotes equal, real freedom and the opportunity to live in the way people value and would choose, so that everyone can flourish. An equal society recognises people's different needs, situations and goals, and removes the barriers that limit what people can do and be." This is further explained as: "It is about what we can do to create a fairer society and recognises that equality is an issue for us all. We don't all start from the same place and to create a fairer society we need to recognise different needs. This focuses on promoting equality for those groups who enjoy legal protection against discrimination, but also for other groups who may face discrimination and disadvantage – for example, due to class or income - whose needs have often been ignored." This is the definition adopted by the Greater London Authority/TfL in 'Equal Life Chances for All' and is designed to ensure that all Londoners are able to access opportunities in all spheres without impediments.

(10) Equality and Supplier Diversity

Equality and Supplier Diversity is the terminology that will be used in TfL to relate to what has previously been defined as the 'supplier diversity' agenda. It is all embracing and reflects TfL's approach to this aspect of responsible procurement and the delivery of the Mayor's equal life chances for all agenda. This term will be used to replace "supplier diversity" in all aspects of procurement other than when it is being used to refer to specific supply chain areas activities and the supplier diversity plan. For TfL the principles of equality and diversity underpin all that we do and all that our Suppliers do on our behalf. It is about recognising differences but at the same time recognising that equality and diversity are issues for us all.

(11) Equality Impact Assessments ("EqIA")

An EqIA is a means to ensure that what TfL does as a service provider and a Purchaser meets the needs of all customers and staff. It is an exercise to test thinking and assumptions and to build in best practice at the design stage of a project. EqIAs are a statutory requirement for public sector organisations. EqIAs are used to ensure that the organisation does not discriminate and that equality is promoted whenever possible. This requires project managers to assess projects at the earliest possible stage of development to determine what if any impact the project is likely to have on the different equality and diversity target groups in London. For any project where the impact is likely to be either positive or negative it is likely that equality and diversity will be a core requirement.

(12) Ethnicity

An individual's identification with a group sharing any or all of the following: nationality, lifestyles, religion, customs and language.

(13) Equal Opportunities

The development of practices that promote the possibility of fair and equal chances for all to develop their full potential in all aspects of life and the removal of barriers of discrimination and oppression experienced by certain groups.

(14) Exemplary Employer

An employer that is at the leading edge of good practice, that people want to work for, and that offers favourable terms and conditions to its employees.

(15) Gender

The social differences between women and men that have been learned are changeable over time and have wide variations both within and between cultures. The term is often used to differentiate from 'sex' a term referring to biological differences.

(16) Gay

This term is preferable when referring to gay men or women. The word 'homosexual' (implying a condition or illness) is usually viewed as an offensive term by gay people. The word 'gay' is normally attributed to men. However at times it can be used as an all-encompassing term for gay men, lesbians and bisexual people.

(17) Inclusion

A belief in every person's inherent right to participate fully in society. The goal of inclusion is for all people to lead productive lives as full, participating members of their communities.

(18) Mainstreaming

The integration of equalities into policy, development, implementation evaluation and review. Each part of the organisation accepts its own responsibility for promoting equality of opportunity and challenging discrimination.

(19) Medical Model of Disability

The medical model looks at disability as being caused by medical symptoms. It is the impairments that prevent the person from fully participating in society, and the disabled person should adapt to fit into a non-disabled world. If this is not possible, then the needs should be met outside of mainstream society. It focuses on the disability rather than the needs of the person.

(20) Sexual Orientation

A person's emotional, physical and/or sexual attraction, and the expression of that attraction. It is believed that (or) frequent studies have found sexual orientation is possibly something you are born with, and refers to both gay and heterosexual (or 'straight') people.

(21) Social Inclusion

The position from where someone can access and benefit from the full range of opportunities available to members of society. It aims to remove barriers for people or for groups that experience a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, poor health and family breakdown.

(22) Social Model of Disability

Disability is a social phenomenon. While many individuals have physical or sensory impairments, learning difficulties or are living with mental health, it is the way that society responds to these

which creates disability and the impairment. The social model believes the 'cure' to the problem of disability lies in the restructuring of society, an achievable goal that benefits everyone.

(23) Transgendered

An acceptable term for referring to a person with a recognised medical condition known as gender dysphoria, where an individual has the desire to live and be accepted as a member of the opposite sex. Another commonly used term is 'transsexual'. The terms 'trans man' (female to male) and 'trans women' (male to female) are also acceptable.

(24) Diverse Suppliers Definitions

For the purposes of TfL's procurement equality and supplier diversity programme, "**Diverse Suppliers**" comprise the following four subsets:

- Small and Medium Enterprises (SMEs);
- Black, Asian and Minority Ethnic (BAME) business;
- Suppliers from other under-represented or protected groups;
- Suppliers demonstrating a diverse workforce composition.

The more detailed explanations of the four above subsets are given in the sections below.

Small And Medium Enterprises (SMES)

A Small Enterprise is a business which has both the following:

- 0-49 Full Time Equivalent employees;

AND EITHER

- Turnover per annum of no more than £5.6 million net (or £6.72 million gross) in the last financial year;

OR

- Balance sheet total of no more than £2.8 million net (£3.36 million gross).

Medium Enterprise

A Medium Enterprise is a business which has both the following:

- 50-249 Full Time Equivalent employees;

AND EITHER

- Turnover per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- Balance sheet total of no more than £11.4 million net (or £13.68 million gross).

Large Enterprise

A Large Enterprise is a business which has both the following:

- 250 and over Full Time Equivalent employees;

AND EITHER

- Turnover per annum over £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- Balance sheet total of over £11.4 million net (or £13.68 gross).

Black, Asian And Minority Ethnic (BAME) Owned Businesses

A Black Asian and Minority Ethnic business (BAME) is a business which is 51% or more owned by members of one or more minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The monitoring ethnic classification groups used by the Purchaser for monitoring purposes are:

- White British
- Irish
- Any other White background
- Mixed White and Black Caribbean
- White and Black African
- White and Asian
- Any other Mixed background
- Asian or Asian British Indian
- Pakistani
- Bangladeshi
- Any other Asian background
- Black or Black British Caribbean
- African
- Any other Black background
- Chinese or other Ethnic Group Chinese
- Any other Ethnic Group

In respect of Bidders who are based in countries other than the UK, local definitions of ethnic classification groups will be acceptable in respect of the BAME definition.

Suppliers From Other Under-Represented Groups Or Protected Groups

A supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

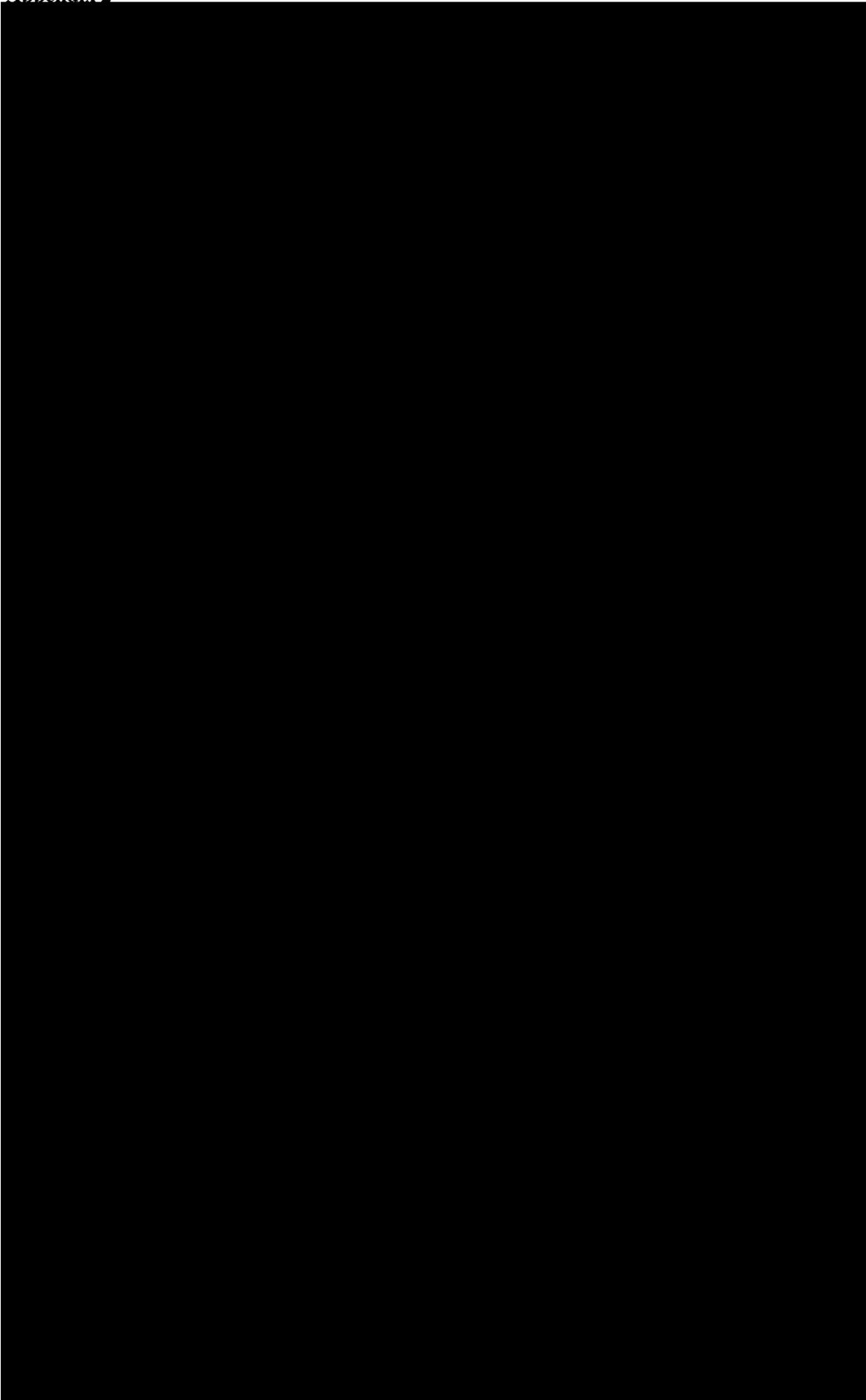
- Women (gender)

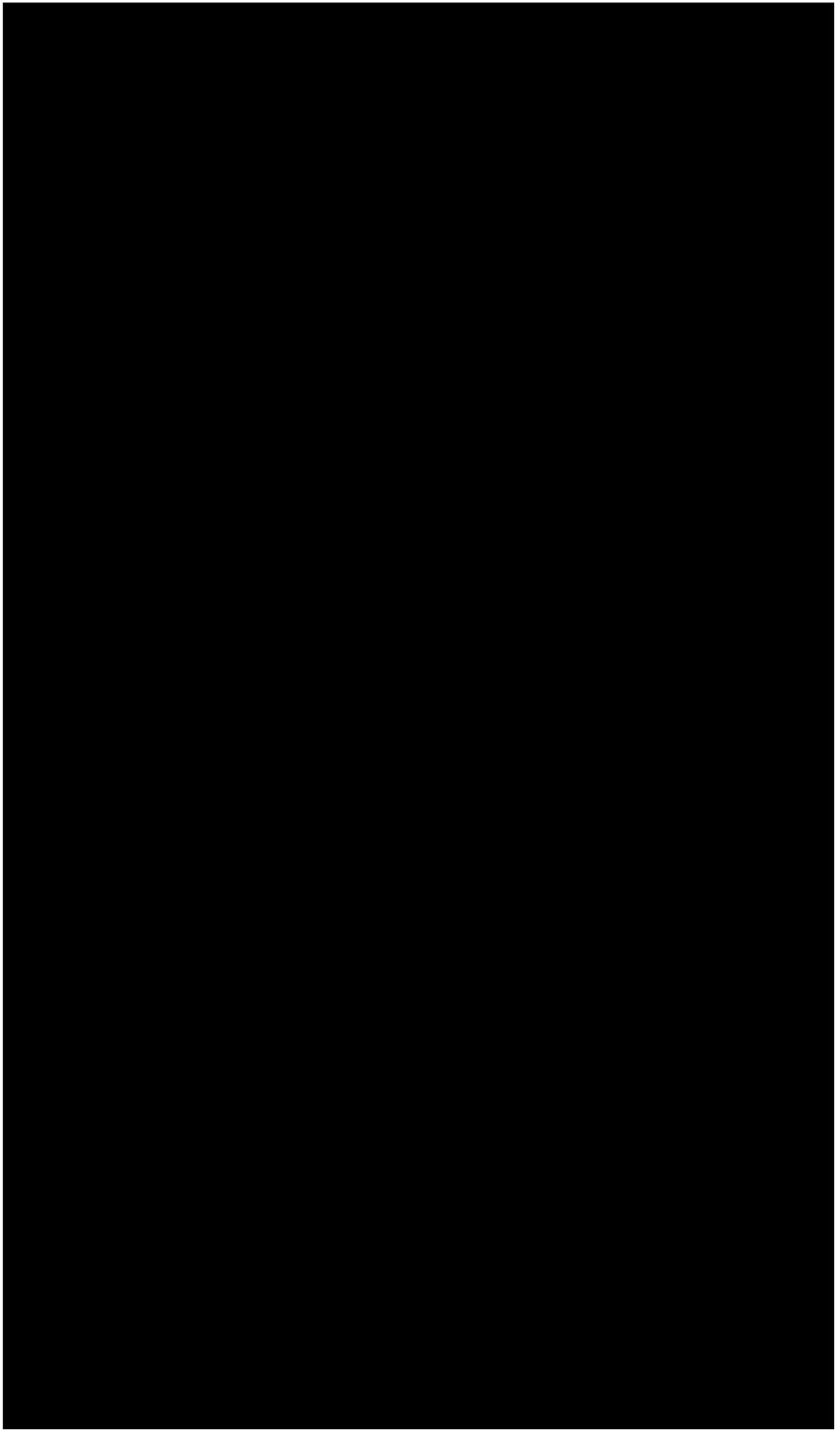
- Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;
- Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and
- Older people (aged 60 or over), young people (aged 24 or under) (age)

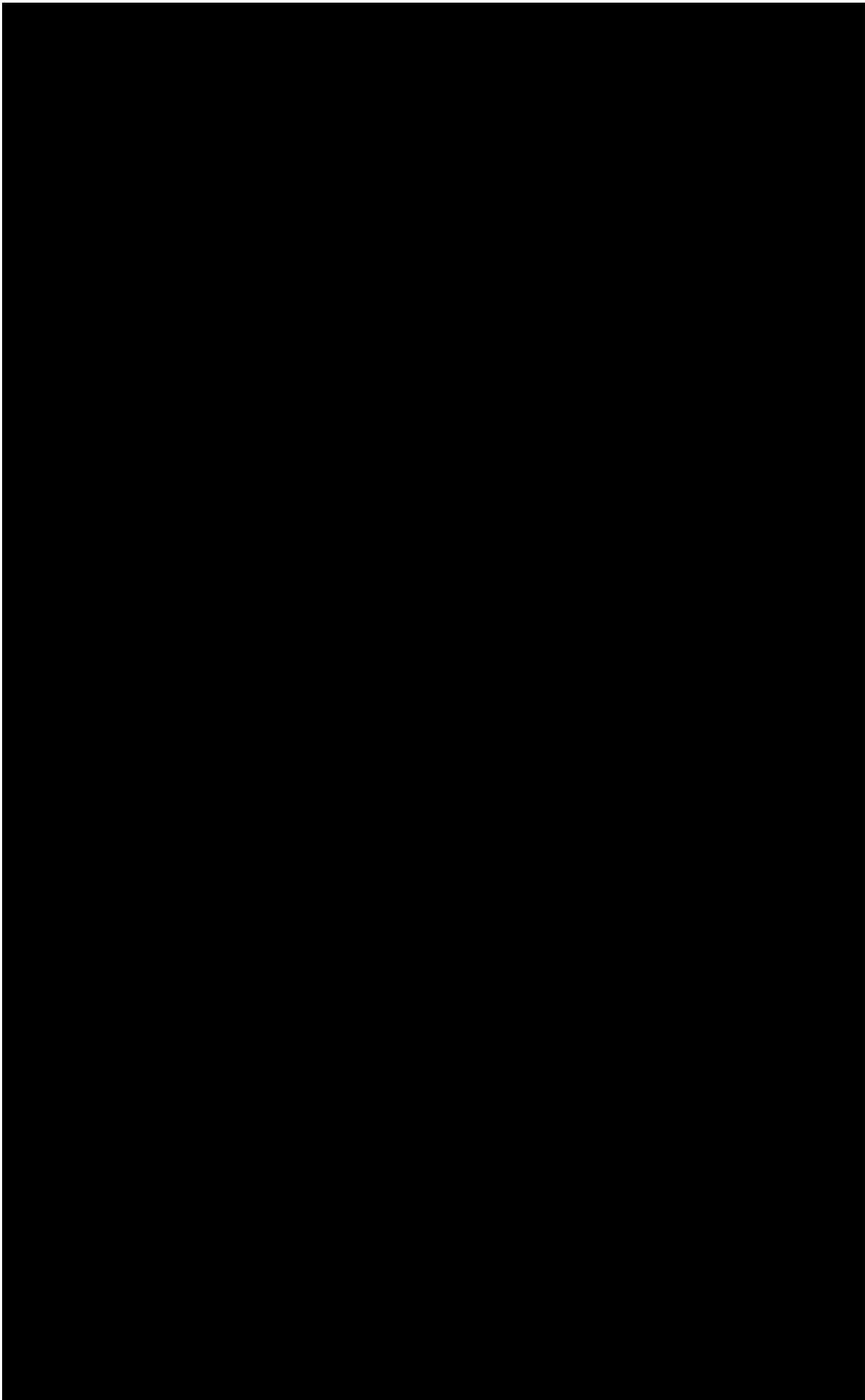
A supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

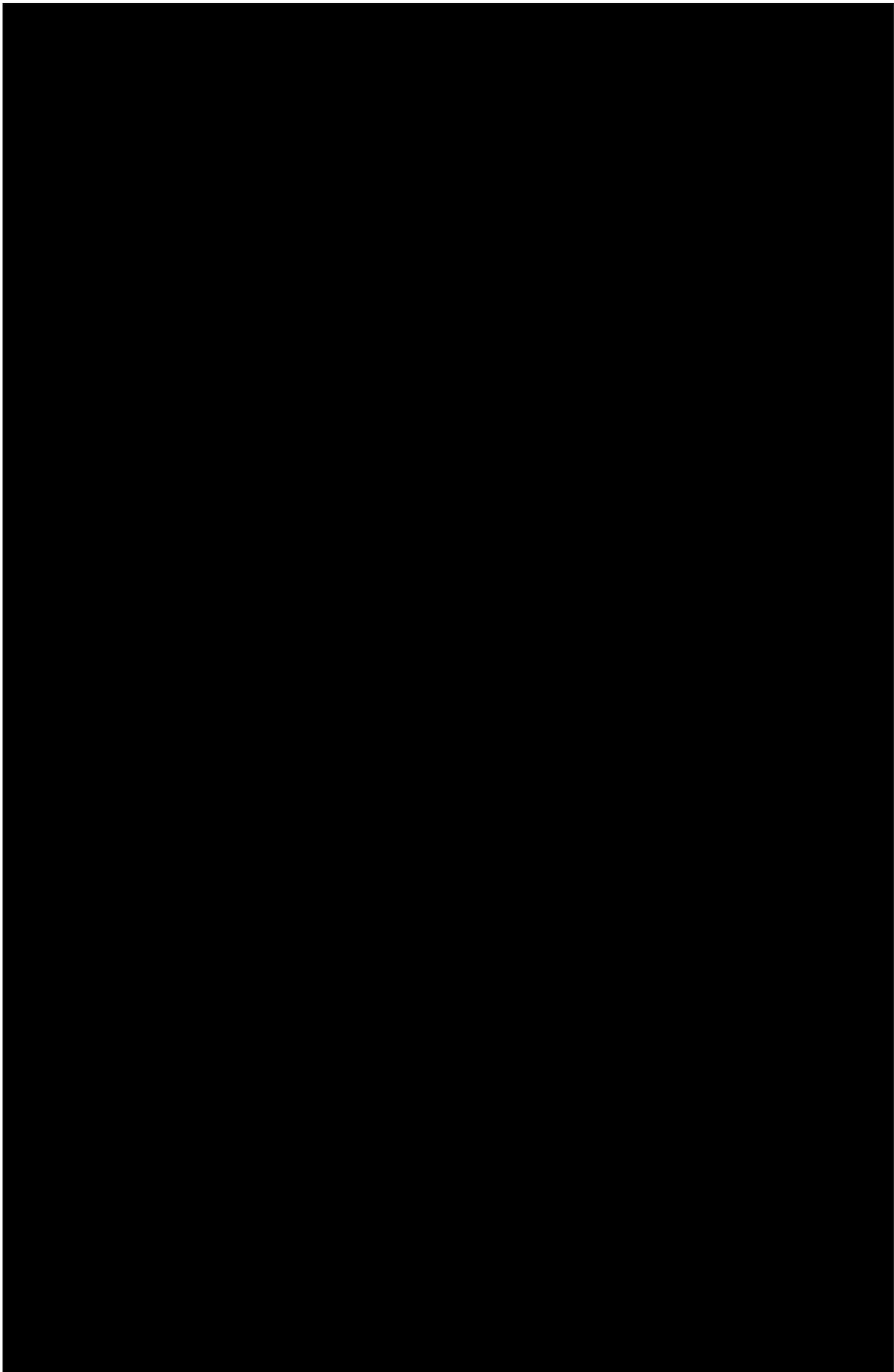
Suppliers Demonstrating A Diverse Workforce Composition

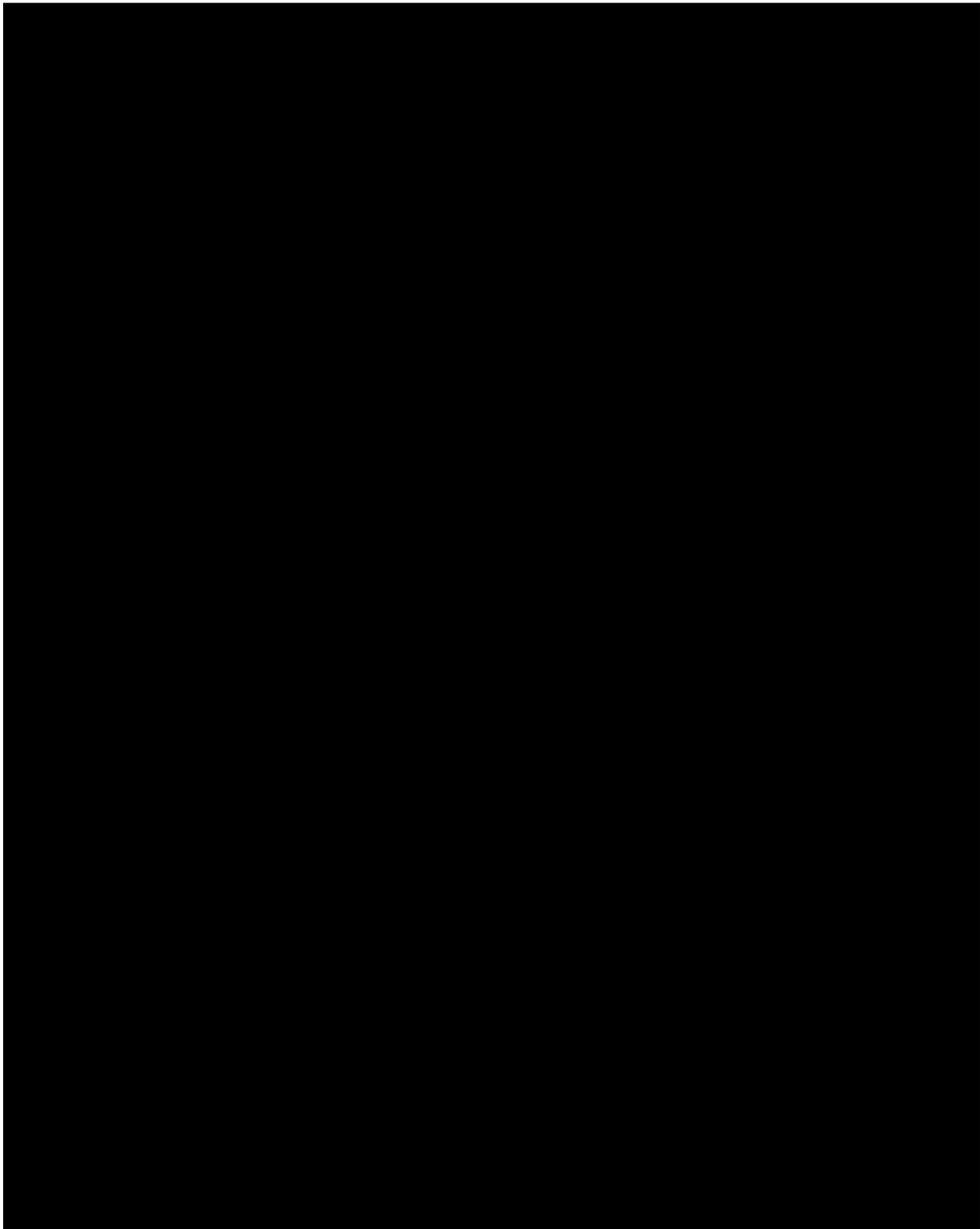
This relates to Full Time Equivalent employees in the Supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in paragraphs 1.3 and 1.4 of Schedule 17 Part A.

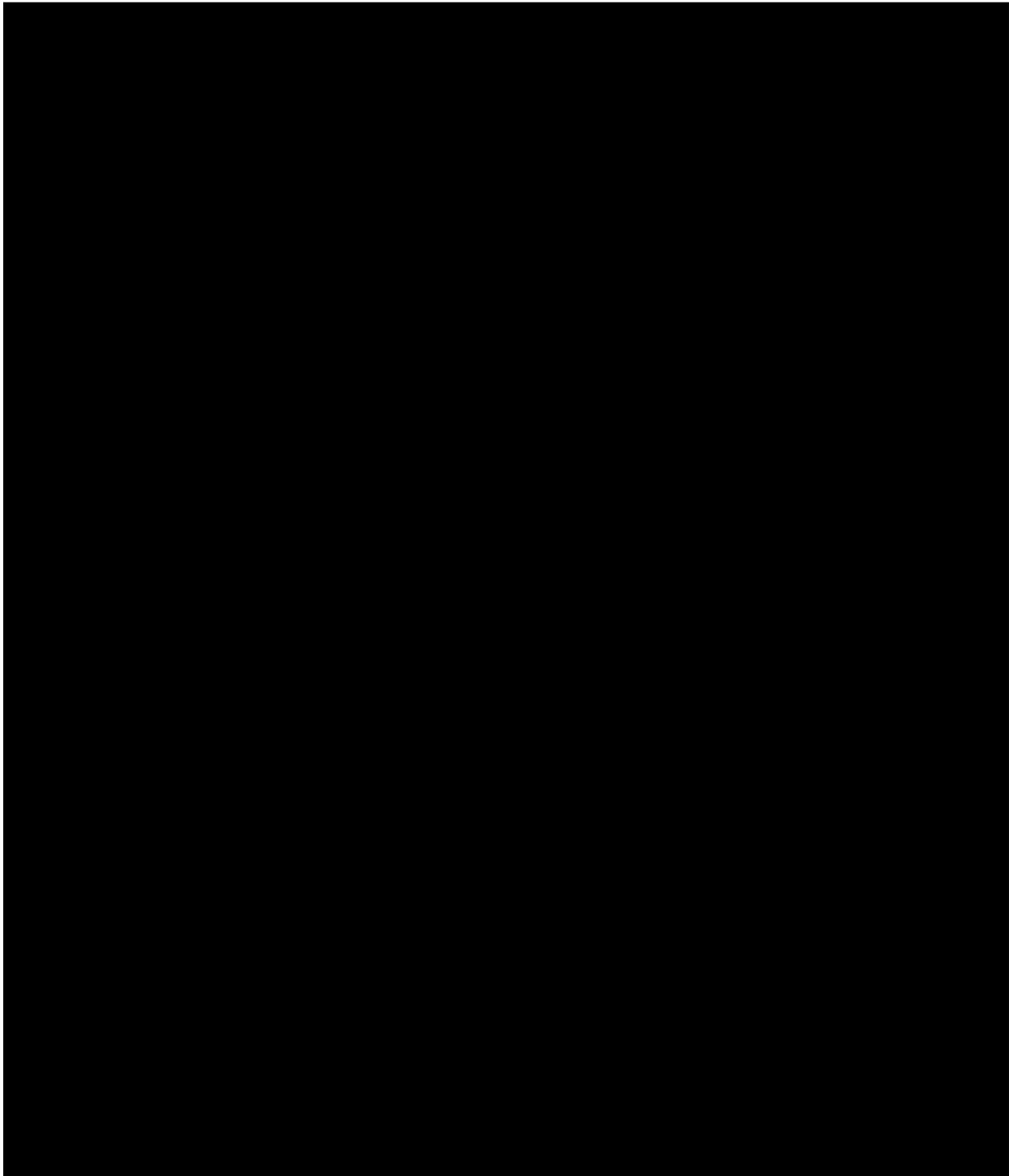




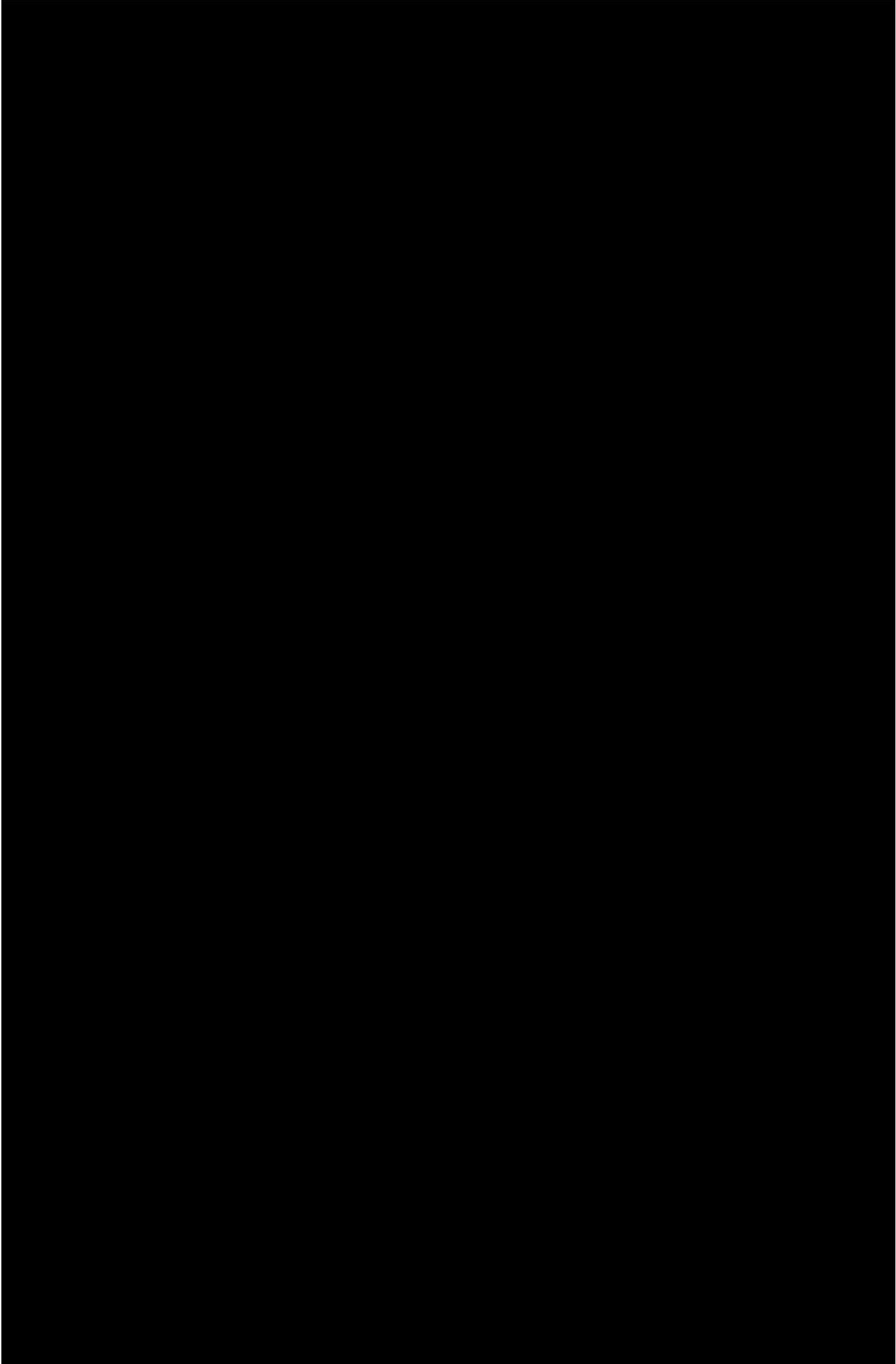


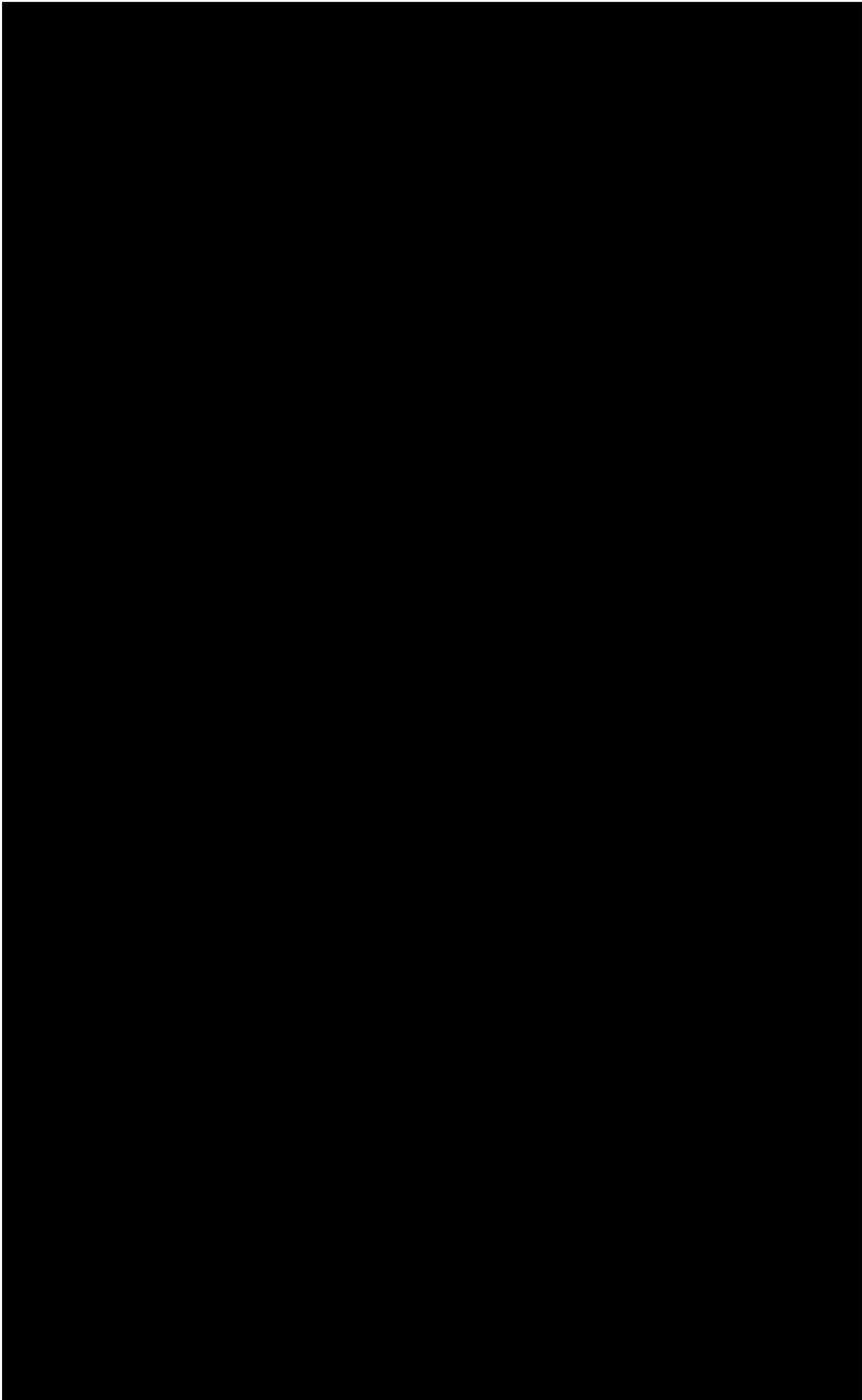


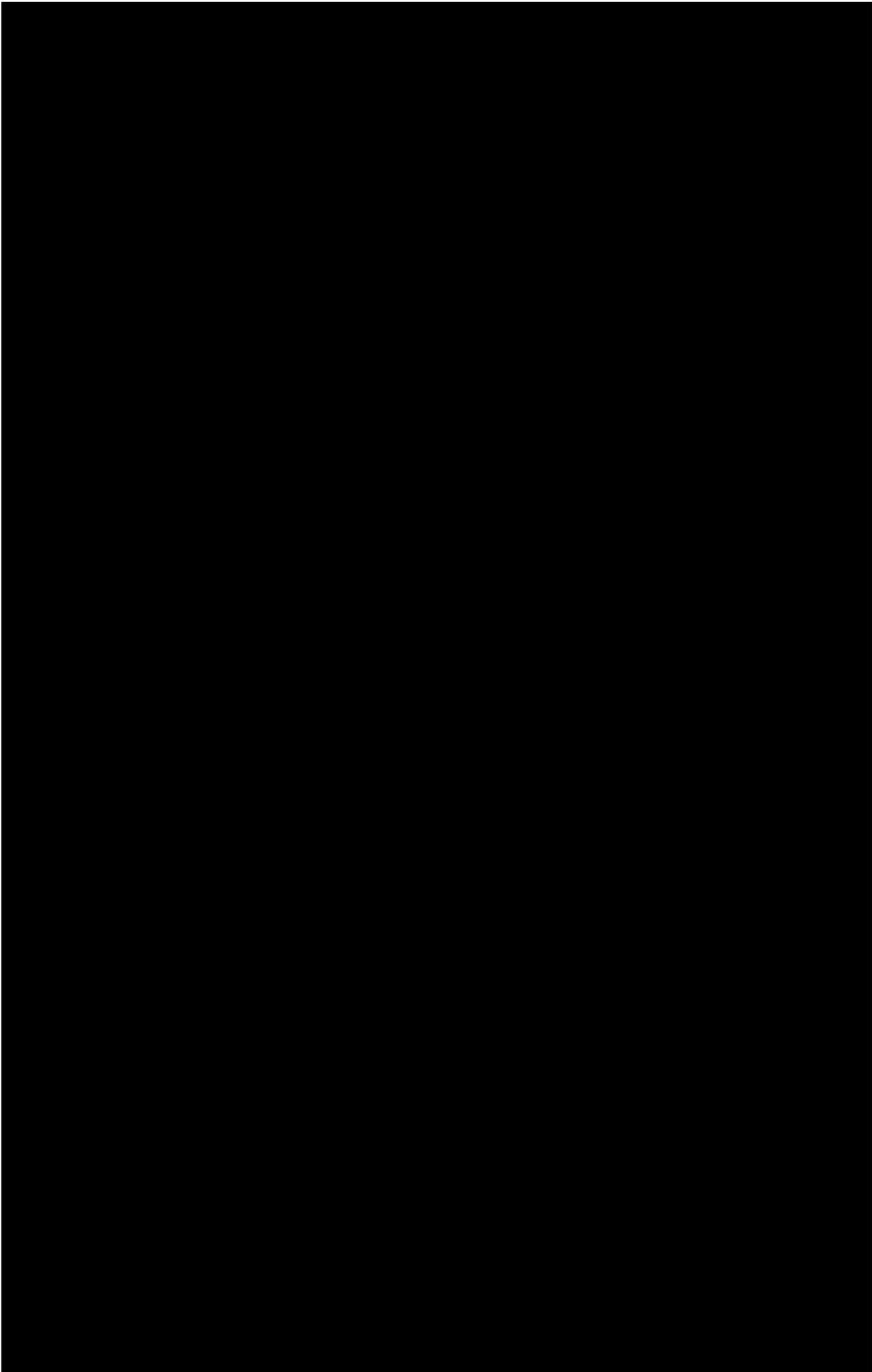


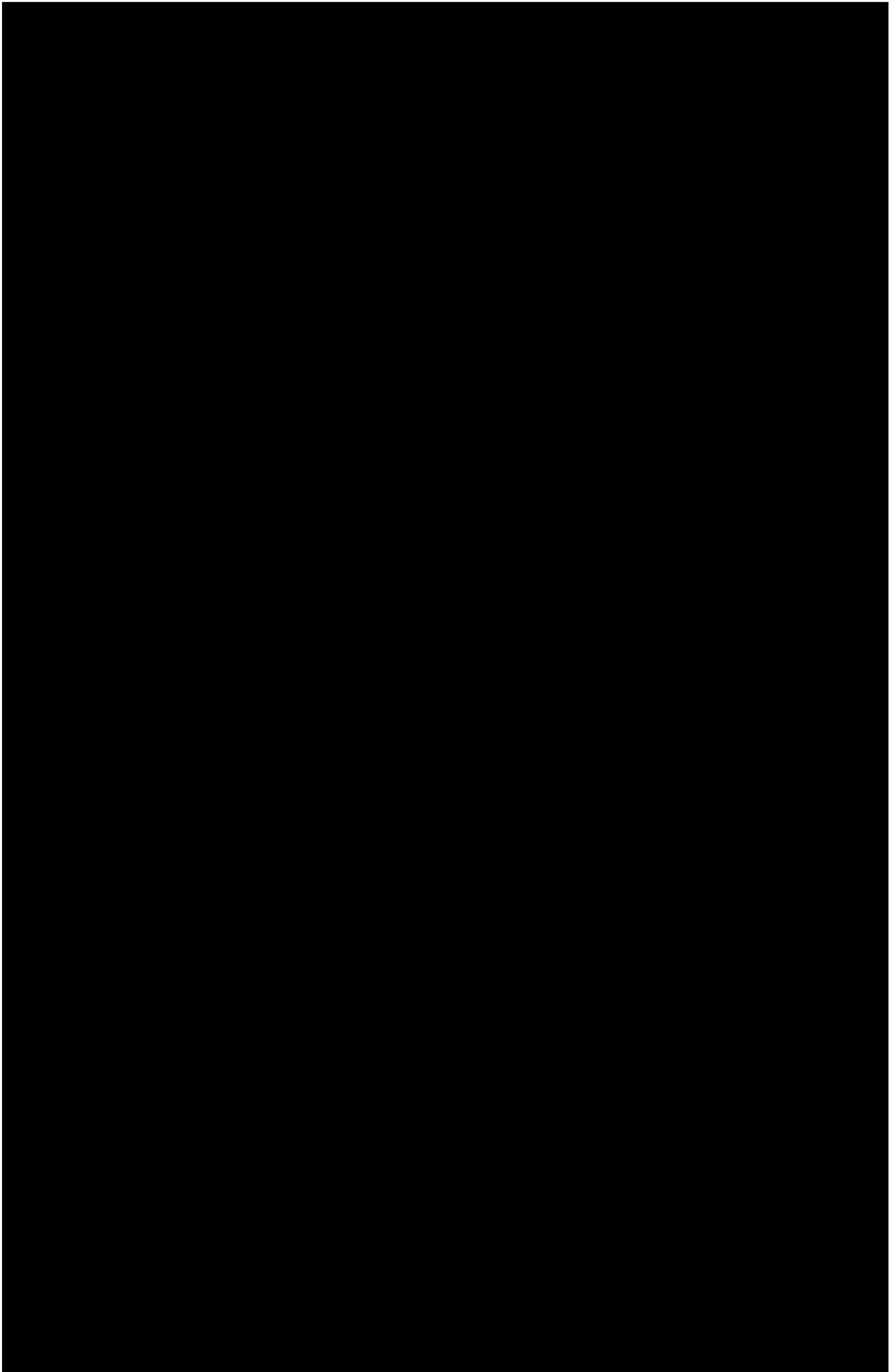


Appendix 4











PART B: ETHICAL SOURCING

1. The Purchaser is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Supplier shall comply with and shall procure that its Subcontractors (as applicable) comply with those principles of the ethical trading initiative base code (the "**ETI Base Code**") as are detailed in Appendix A to this Schedule 17 Part B, or an equivalent code of conduct (the "**Ethical Sourcing Principles**") in relation to the provision of the Goods and/or Services under this Agreement.
2. As soon as practicable following the Commencement Date the Supplier shall be registered with an ethical supplier database, such as the supplier ethical data exchange ("**SEDEX**"). The Supplier agrees that for the duration of this Agreement, it shall permit and enable the Purchaser to have access to the information relating to the Supplier that subsists in such ethical supplier database.
3. During the course of this Agreement, if the Purchaser has reasonable cause to believe that the Supplier is not complying with any of the Ethical Sourcing Principles, then the Purchaser shall notify the Supplier and the Parties shall agree an action plan in writing with appropriate timeframes for compliance by the Supplier (the "**Action Plan**") by no later than 60 Working Days from the date of the Purchaser notifying the Supplier that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Supplier.
4. Following the agreement of the Action Plan, the Purchaser reserves the right to conduct, or require to be conducted, one or more audits, (either itself or via a third-party auditor approved by the Purchaser) in relation to compliance by the Supplier with the Action Plan.
5. For the avoidance of doubt, the right of audit contained in paragraph 4 of this Schedule 17 Part B shall include without limitation the right of the Purchaser (or a approved auditor by the Purchaser) acting reasonably to undertake physical inspections of relevant sites/factories, to conduct interviews with relevant personnel and to inspect relevant documents. The Supplier shall co-operate and shall procure that its Subcontractors (as applicable) co-operate with the Purchaser in relation to all aspects of any audit.

Appendix A: The ETI Base Code

1.1 EMPLOYMENT IS FREELY CHOSEN

- 1.1.1 There is no forced, bonded or involuntary prison labour.
- 1.1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

1.2 FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING ARE RESPECTED.

- 1.2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- 1.2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.
- 1.2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- 1.2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

1.3 WORKING CONDITIONS ARE SAFE AND HYGIENIC

- 1.3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 1.3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- 1.3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- 1.3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- 1.3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

1.4 CHILD LABOUR SHALL NOT BE USED

- 1.4.1 There shall be no new recruitment of child labour.
- 1.4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.

1.4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

1.4.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

1.5 LIVING WAGES ARE PAID

1.5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

1.5.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.

1.5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

1.6 WORKING HOURS ARE NOT EXCESSIVE

1.6.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.

1.6.2 In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven (7) day period on average. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

1.7 NO DISCRIMINATION IS PRACTISED

1.7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

1.8 REGULAR EMPLOYMENT IS PROVIDED

1.8.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

1.8.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

1.9 NO HARSH OR INHUMANE TREATMENT IS ALLOWED

- 1.9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

Note on the Provisions of this Code

The provisions of this code constitute minimum and not maximum standards, and this code should not be used to prevent companies from exceeding these standards. Companies applying this code are expected to comply with national and other applicable law and, where the provisions of law and this base code address the same subject, to apply that provision which affords the greater protection.

Appendix B: Definitions

Child

Any person less than 15 years of age unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply. If however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention No. 11, the lower will apply.

Young person

Any worker over the age of a child as defined above and under the age of 18.

Child labour

Any work by a child or young person younger than the age(s) specified in the above definitions, which does not comply with the provisions of the relevant ILO standards, and any work that is likely to be hazardous or to interfere with the child's or young person's education, or to be harmful to the child's or young person's health or physical, mental, spiritual, moral or social development.

PART C: SUSTAINABLE TIMBER

1. Definitions

1.1 "Legal Timber"

Means Timber in respect of which the organisation that felled the trees and/or provided the timber from which the wood supplied under the Agreement derived:

- (A) had legal rights to use the forest;
- (B) holds a register of all local and national laws and codes of practice relevant to forest operations; and
- (C) complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.

1.2 "Recycled Timber" and "Reclaimed Timber"

Means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms 'recycled' and 'reclaimed' are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. Recycled or Reclaimed Timber must be capable of being evidenced as such to the Purchaser's satisfaction in order to satisfy this definition.

1.3 Not Used.

1.4 "Sustainable Timber"

Means Timber, which in order to meet the Purchaser's criteria for sustainable timber, must be:

- (a) Recycled Timber; or
- (b) Sustainably Sourced Timber; or
- (c) a combination of (a) and (b).

1.5 "Sustainably Sourced Timber"

Means Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council ("**FSC**"), Programme for the Endorsement of Forest Certification ("**PEFC**"), or an equivalent. Where it is not practicable to use FSC or PEFC accredited Timber, the Purchaser will accept Timber accredited through other schemes approved by the Central Point of Expertise on Timber ("**CPET**"), as listed below:

- (a) Canadian Standards Association ("**CSA**");
- (b) Sustainable Forestry Initiative ("**SFI**"),

or such other source as the Supplier may demonstrate to the Purchaser's satisfaction is equivalent.

1.6 "Timber"

Means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element, (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber.

1.7 "Purchaser"

Means London Underground Limited.

1.8 "Virgin Timber"

Timber supplied or used in performance of the Agreement that is not Recycled Timber.

1.9 "Independent Report"

Means an independent report by an individual or body:

(A) whose organisation, systems and procedures conform to:

(i) ISO Guide 65:1996 (EN 45011:1998); and

(ii) general requirements for bodies operating product certification systems; and

(B) who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.

2. Supplier's Obligations and the Purchaser's Rights

2.1 The Supplier shall ensure that all Timber supplied or used in the performance of the Agreement shall be Sustainable Timber. If it is not practicable for the Agreement to meet this condition the Supplier must inform the Purchaser in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The Purchaser reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Where the Purchaser exercises its right to reject any Timber, the provisions of paragraph 2.4 of this Schedule 17 Part C shall apply.

2.2 Without prejudice to paragraphs 2.1 and 4.2 of this Schedule 17 Part C, all Virgin Timber procured by the Supplier for supply or use in performance of the Agreement shall be Legal Timber.

2.3 The Supplier shall ensure that Virgin Timber it procures for supply or use in performance of the Agreement shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("**CITES**") unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under CITES.

2.4 The Purchaser reserves the right to reject at any time any Timber that does not comply with the conditions of this Agreement or the Specification. Where the

Purchaser exercises its right to reject any Timber, the Supplier shall supply contractually compliant alternative Timber, at no additional cost to the Purchaser and without causing delay to the performance of the Agreement.

- 2.5 The Supplier shall maintain records of all Timber supplied and used in the performance of the Agreement. Such information shall be made available to the Purchaser promptly if requested at any time.

3. Purchaser's Reporting Requirements

- 3.1 Unless the Purchaser has given its written approval in accordance with paragraph 2.1 of this Schedule 17 Part C that Timber that is not Sustainable Timber may be used, then, if requested, the Supplier shall promptly provide evidence to the Purchaser's satisfaction that the Timber is Sustainable Timber.

- 3.2 Upon a request by the Purchaser referred to in paragraph 3.1 of this Schedule 17 Part C, in the event that the Supplier does not promptly provide such evidence, or the evidence provided does not satisfy the Purchaser's requirements, then (and without prejudice to paragraph 4.1 of this Schedule 17 Part C), the Purchaser reserves the right to retain 25% of any monies payable to the Supplier under the Agreement until such date as the Purchaser is in receipt of such evidence and the Purchaser is satisfied that the evidence establishes that the Timber is Sustainable Timber.

- 3.2 The Supplier shall report quarterly on its use of Sustainable Timber in the performance of the Agreement, in accordance with Appendix A of this Schedule 17 Part C.

- 3.3 The Supplier shall report on the amount of Timber that has been supplied to the Purchaser in accordance with paragraph 2.1 of this Schedule 17 Part C which is not Sustainable Timber.

4. Verification

4.1 Evidence of Sustainable Timber

The Purchaser reserves the right to determine whether the evidence supplied by the Supplier is sufficient to satisfy it that the Specification and other terms and conditions of this Agreement have been fully complied with. In the event that the Purchaser is not so satisfied, the Supplier shall, on written request by the Purchaser, commission and meet the costs of an Independent Report to:

- (a) verify the source of the Timber; and
- (b) assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

4.2 Evidence of Legal Timber

- 4.2.1 The Supplier shall, before delivering any Virgin Timber under this Agreement, obtain documentary evidence to the Purchaser's satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the Purchaser, the Supplier shall submit such documentary evidence to the Purchaser either prior to delivery or at such other times as the Purchaser may require. For the avoidance of doubt, the Supplier shall identify, as

part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

- 4.2.2 The Purchaser reserves the right at any time during the execution of the Agreement and for a period of six (6) years from final delivery of any Timber under the Agreement to require the Supplier to produce the evidence required for the Purchaser's inspection within 14 days of the Purchaser's written request.

Appendix A

Aim of KPI:

Implement the Purchaser's Sustainable Timber Policy

Implement the Purchaser's environmental objective: Reduce resource consumption & improve green procurement

Reporting period	
Date	
Completed by	
Title	

Desired Outcome	Service Performance Indicator	Quantity (KG)	Value (£)	% of good represented	Reporting Frequency	objective	Year 1	Year 2	Year 3	Year 4	Year 5
Reduce resource consumption and improve green procurement (TfL Env' KPI)	Timber complies with Sustainable Timber definition and obligations as per the Agreement.				Quarterly, with Annual report.	Increase/maintain % of sustainable timber supplied					
Reduce resource consumption and improve green procurement (TfL Env' KPI)	Timber does NOT comply with Sustainable Timber definition and obligations as per the Agreement				Quarterly, with Annual report.	Reduce amount of Non Sustainable Timber procured.					

SCHEDULE 18: TRAINING

1. GENERAL REQUIREMENTS FOR TRAINING

- 1.1 The Supplier shall provide, or procure the provision of, training in accordance with this Schedule 18 to the breadth and depth required to enable:
 - 1.1.1 the Purchaser's trainers to acquire all relevant knowledge and skills to carry out training of the Purchaser's staff to:
 - (A) enable operation and maintenance of the Goods as well as equipment used to carry out Tests for the Goods;
 - (B) conduct fault finding; and
 - (C) remove, replace and subsequently test all components of the Goods; and
 - (D) conduct the installation of the Goods; and
 - (E) enable Testing of the Goods; and
 - (F) operate and maintain the equipment used to carry out Testing for the Goods; and
 - 1.1.2 provide any required information to enable the Purchaser to train its train drivers and other operational staff as required.
- 1.2 The introduction of technical enhancements in the Goods or any other changes, such as those arising from the rectification of Defects, shall be analysed by the Supplier, in consultation with the Purchaser, to determine whether further training is required. Any such training identified shall fall within the provisions of this Agreement and shall be provided by the Supplier at no additional cost to the Purchaser.
- 1.3 For the avoidance of doubt, the Supplier shall comply with its obligations under this Schedule 18 at its own cost and shall not be entitled to any adjustment to the Contract Price, unless expressly stated otherwise in this Schedule 18.
- 1.4 The Supplier shall be responsible for the modification of the training approach, materials and resources in consultation with the Purchaser, taking account of training pass/fail rates and in-service operations and maintenance experience.
- 1.5 The Supplier shall, as part of the Training Programme (as defined below), and for the Purchaser's subsequent use for training, provide all tools and equipment associated with the Goods for which Training is being provided.
- 1.6 Training shall be provided on the set-up, use and maintenance of all:
 - 1.6.1 tools provided to support training; and
 - 1.6.2 e-learning and equipment, including diagnostic equipment and off-Train equipment testing and analysis tools.
- 1.7 The training provided by the Supplier shall cover the operation and maintenance of the Goods under normal, abnormal, degraded and emergency conditions and shall address all normal modes of operation, the symptoms of failure modes, corrective actions to be taken, safety precautions, the level of intervention that is permissible by the Purchaser and the events that would necessitate the Supplier's involvement. Such training shall include, but shall not be limited to:
 - 1.7.1 the location, purpose and function of all systems and components relevant for the following activities associated with the Goods;
 - 1.7.2 the operation and maintenance (including all instructions and processes for installation, operation and maintenance, fault diagnosis, rectification and testing) of the Goods;
 - 1.7.3 system interfaces and associated failure modes and effects;
 - 1.7.4 the Goods Design, performance limits and capability (to ensure that the Purchaser has the capability to undertake specialist engineers' investigations); and

- 1.7.5 such other content that the Supplier shall propose and the Purchaser shall agree.
- 1.8 All training shall be accompanied by a full suite of documentation approved by the Purchaser including but not limited to:
 - 1.8.1 installation, operator and maintainer manuals (including detailed instructions for the installation, operation and maintenance of the Goods, including training tools and equipment);
 - 1.8.2 the documentation necessary to provide specialist engineers with all necessary information to enable them to carry out incident investigations on the Goods being supplied;
 - 1.8.3 an emergency breakdown manual; and
 - 1.8.4 Training Materials (as defined below) including Training Plans (as defined below), detailed trainers' notes, presentation materials (which may include slides, models, and other relevant materials.), formative and summative assessments and trainee material (including for example, handbooks).
- 1.9 The Supplier shall be responsible for the provision of an adequate number of appropriately skilled trainers to complete all aspects of the analysis, design, development, delivery and evaluation of training (including, when required by the Purchaser, competency assessments) to meet the provision of the Training Programme.
- 1.10 Training delivery venues shall be at a nominated venue of the Purchaser.
- 1.11 In order to facilitate the development of technology based training (such as simulation or computer based training) by the Purchaser, the Supplier shall provide all required technical information, including documentation such as illustrations, schematics, display screen captures, training manuals and design information relating to the design parameters, installation, operation and maintenance of the Goods.

2. **GENERAL REQUIREMENTS FOR TRAINING OF THE INSTALLER:**

- 2.1 For Installation of the Goods, the required method of Training is “train-the-trainer” approach. The Supplier must provide sufficient Training to all of the Installer’s designated Training personnel (such personnel to be nominated by the Purchaser) to ensure that such personnel acquire the required knowledge and skills to enable them to Train all personnel who are involved in the installation of the Goods.
- 2.2 The Supplier shall provide appropriate training in advance of the commencement of installation which shall be sufficient to ensure the Installer is trained and supported fully in:
 - 2.2.1 its operation of the Test Rig;
 - 2.2.2 its testing of the Goods on the Test Rig;
 - 2.2.3 its installation of the Goods onto the Trains (including “On-Train” system testing) .
- 2.3 The Supplier shall provide ongoing support throughout the testing and installation process in accordance with Schedule 3A (*Continuing Support*).
- 2.4 The number of times each individual Training course is delivered shall be dependent upon:
 - 2.4.1 the maximum number of attendees, being three personnel per “train-the-trainer” course, up to a maximum of five employees; and
 - 2.4.2 The actual number of personnel that the Purchaser elects to attend.

3. **GENERAL REQUIREMENTS FOR ON-GOING MAINTENANCE:**

- 3.1 For ongoing maintenance and operation of the Goods, the required method training is a “train-the-trainer” approach. The Supplier shall provide training and materials sufficient to ensure that:
 - 3.1.1 those personnel nominated by the Purchaser to attend training acquire all relevant knowledge and skill in relation to the operation of the Goods, including facets relating to the function, malfunction (including the range and ramification of potential failure conditions), operation and use of the Goods that are relevant to the appropriate staff;

- 3.1.2 those personnel nominated by the Purchaser to attend training acquire knowledge and skills in relation to the maintenance of the Goods, including all maintenance activity over the life of the Goods that are relevant to the appropriate staff. Such activities shall include (without limitation) inspection maintenance, casualty maintenance, diagnostic and monitoring activities, fault diagnosis, fault rectification; and
- 3.1.3 those personnel nominated by the Purchaser to attend training acquire knowledge and skills such that they are able to train the appropriate staff as per the requirements of paragraphs 3.1.1 and 3.1.2.
- 3.2 The number of times each individual training course is delivered shall be dependent upon:
 - 3.2.1 the maximum number of attendees, being 3 personnel per "train-the-trainer" course, up to a maximum of 5 employees; and
 - 3.2.2 the actual number of personnel that the Purchaser elects to attend.

4. **TRAINING PROGRAMME**

- 4.1 The Supplier shall provide a training programme in accordance with the requirements of this Schedule 18. Once such a training programme has been approved by the Purchaser, it shall be the "Training Programme" for the purposes of this Schedule 18.
- 4.2 The Supplier shall ensure that the Training Programme sets out the training that shall be provided by the Supplier to enable the Purchaser and Installer to train their employees (or those of the Purchaser's nominees) to install, operate and maintain (as applicable) the Goods in accordance with the requirements of the Specification.
- 4.3 The Supplier shall ensure that the Training Programme is provided in accordance with the timescales required by this Agreement including; Training Programme preparation; submission to Purchaser; Purchaser review; update and resubmission to Purchaser (if required); Purchaser approval; regular review..
- 4.4 The Supplier shall ensure that the Training Programme details all training timescales associated with the:
 - 4.4.1 production of all Training Materials;
 - 4.4.2 delivery of all training courses and associated assessments to be provided by the Supplier; and
 - 4.4.3 delivery of all deliverables under this Schedule 18.
- 4.5 At a minimum, in the Training Programme, the Supplier shall make programme provision in relation to training as follows:
 - 4.5.1 for each training course:
 - (A) completion and assurance of training needs analysis
 - (B) production of a Training Plan, including (but not limited to): preparation (incorporating Supplier validation/assurance); submission to Purchaser; Purchaser review; update and resubmission to Purchaser (if required); Purchaser approval.
 - (C) production of technical support documentation, including: installation, preparation of operation and maintenance manuals as well as any other manuals required (incorporating Supplier validation/assurance submission to Purchaser; Purchaser review; update and resubmission to Purchaser (if required)); Purchaser approval.
 - (D) production of Training Materials, including: preparation (incorporating Supplier validation/assurance); submission to Purchaser; Purchaser review; update and resubmission to Purchaser (if required); Purchaser approval.
 - (E) revision of all Training tools and equipment required for the Training course concerned.

(F) delivery, evaluation and certification of the relevant training (and licensing if required) and any required competence development and assessment activities;

4.6 The Training Programme shall be reviewed in conjunction with the Purchaser and shall be maintained and updated as and when necessary or as requested by the Purchaser until Fleet Acceptance, or if later, until the provision of the last training, and re-submitted for approval to the Purchaser as required.

5. **TRAINING NEEDS ANALYSIS**

Training needs analysis shall be conducted in accordance with the requirements of the Specification.

6. **TRAINING MATERIALS**

6.1 For each training course, the Supplier shall submit to the Purchaser, training materials for approval (the "**Training Materials**"). Such materials shall include:

- 6.1.1 Installer, operator and maintainer documentation, including manuals and training manuals;
- 6.1.2 output of training needs analysis;
- 6.1.3 Training Plans;
- 6.1.4 presentation materials;
- 6.1.5 detailed trainer notes;
- 6.1.6 trainee materials, including handbooks, fault guides, handouts and other such materials;
- 6.1.7 tools and equipment;
- 6.1.8 formative and summative assessments including, for the summative assessments, a matrix that cross-references each learning objective with all related assessment questions.

6.2 The Purchaser shall be entitled, without further charge, to duplicate either for the Supplier or the Installer as many copies of the Training Materials and other materials provided as it requires.

6.3 The Training Materials shall be reviewed in conjunction with the Purchaser and re-submitted for approval to the Purchaser as required.

6.4 The Training Materials shall be maintained and updated by the Supplier as and when necessary or when requested by the Purchaser, until Fleet Acceptance, or if later, until the provision of the last item of training.

6.5 The Training Materials provided by the Supplier for the Purchaser shall be of sufficient quality and quantity as are reasonably necessary or desirable to permit the Purchaser's nominated trainers to undertake further training of the Purchaser's employees or those of any nominee.

7. **TRAINING PLANS**

7.1 When developing the Training Plans, the Supplier shall:

- 7.1.1 identify the time, location and attendee numbers for training courses, along with any prerequisites or dependencies for attendance;
- 7.1.2 identify each training course where recommended attendance is linked to the prior completion of another training course;
- 7.1.3 limit the number of such dependencies in so far as it is reasonably practical; and
- 7.1.4 provide joining instructions specifying exact details regarding timings, location, direction, pre-course information and other requirements for each course delegate.

8. **TRAINING ACCREDITATION / VALIDATION**

8.1 The Supplier shall provide to the Purchaser for the Purchaser's acceptance details of the training accreditation/validation process to accompany the Training Programme and Training Materials provided.

9. **TRAINING DELIVERY, COST, EVALUATION AND ACCEPTANCE**

9.1 The Supplier shall at no additional cost to the Purchaser meet the requirements detailed within this Schedule 18.

9.2 Unless otherwise agreed with the Purchaser, all training provided by the Supplier shall contain formative and summative immediate outcome level assessments ("Competence Assessments"). The Supplier shall provide Competence Assessments for each of the following activities in the Replacements to be supplied:

9.2.1 Test Rig Operation

9.2.2 planned preventative maintenance;

9.2.3 corrective maintenance; and

9.2.4 Fault and failure diagnosis and rectification maintenance.

9.3 The Supplier shall provide Competence Assessments for all staff members who have been provided with Training by the Supplier pursuant to this Schedule.

9.4 The Supplier shall provide to the Purchaser's nominees with all support required in order to achieve competence, including task coaching, task shadowing and supervised practice.

9.5 Once a staff member has passed the relevant Competence Assessments, the Supplier shall provide a licence to that staff member that proves that the staff member is competently able to train the appropriate staff as required.

9.6 All training shall be subject to approval by the Purchaser, once the Purchaser confirms its satisfaction with the:

9.6.1 final version of the Training Materials (approved by the Purchaser pursuant to the approval process as detailed within Schedule 1A); and

9.6.2 delivery of the training concerned (to the Purchaser's nominees), including the delivery of training evaluation and the delivery of Competence Assessments.

9.7 Following approval of the training by the Purchaser, should any alteration be required to the Training Materials in light of in-service operations and maintenance experience, the Supplier shall complete any necessary analysis and provide updated Training Materials for the approval of the Purchaser. All necessary support shall be provided by the Supplier to ensure that the Purchaser's nominees acquire all required knowledge and skills associated with the changes concerned.

10. **ADDITIONAL TRAINING**

10.1 At the Purchaser's request the Supplier shall provide further ongoing maintenance courses in accordance with paragraph 3 of this Schedule 18.

10.2 The cost per delegate of additional "train the trainer" Training courses shall be as per Part XX of this Schedule 18.

SCHEDULE 19 - HEAVY GOODS VEHICLE DIRECT VISION STANDARD SCHEDULE

1 Introduction

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

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

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

“Category N2 Lorry” means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 3,500 kilograms, but not exceeding 12,000 kilograms;

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

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

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

- (a) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Goods achieve a minimum of a one (1) star Direct Vision Standard rating;
- (b) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Goods achieve a minimum of three (3) star Direct Vision Standard rating; and
- (c) so far as reasonably practicable, the conditions at all sites and locations within the control of the Supplier where:
 - (i) the Goods are being delivered, or
 - (ii) in connection with the performance of the Goods, any waste is being disposed of or supplies are being delivered to or from, are appropriate for each Category N2 Lorry

and Category N3 Lorry being used in the provision of the Goods. The Supplier shall not incur any costs or make any changes to the site(s) without the prior written consent of the Purchaser;

“MAM” means the Maximum Authorised Mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road.

2 HGV DVS Plan

2.1 The Supplier shall comply with the Initial HGV DVS Plan from the Commencement Date. Within fifteen (15) Business Days of the Commencement Date the Purchaser shall either;

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

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

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

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

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

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

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

2.3.2 not approved and provide its further comments and/or amendments to the Supplier and the Supplier shall revise and re-submit the updated Initial HGV DVS Plan for approval in accordance with paragraph 2.3.

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

2.4 Where the Purchaser, acting reasonably, has not approved the updated Initial HGV DVS Plan, the Supplier may refer that decision to the dispute resolution process set out in the Agreement.

2.5 Without limiting any other provision of this Agreement, the Supplier shall, at no additional cost to the Purchaser, and as part of the Goods:

2.5.1 implement, observe and comply with the Agreed HGV DVS Plan; and

2.5.2 review and amend the Agreed HGV DVS Plan (as necessary) on each 12 month anniversary of the Commencement Date or earlier if requested by the Purchaser, to reflect:

2.5.2.1 any changes to the nature of the Goods; and

2.5.2.2 any comments and/or amendments made or proposed by the Purchaser.

3 HGV DVS Co-ordinator

3.1 The Supplier shall nominate a Key Personnel with the necessary experience, competency and authority to:

3.1.1 be responsible for implementation and compliance with the Agreed HGV DVS Plan; and

3.1.2 act as the Supplier's authorised representative on all matters concerning the Agreed HGV DVS Plan ("**HGV DVS Co-ordinator**").

3.2 The Supplier shall add the HGV DVS Co-ordinator's details to the list of Key Personnel set out in Schedule 5 (Key Personnel).

4 Self Certification and Reporting

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

5 DVS Infractions

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

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

5.1.2 The Purchaser may refuse the Supplier, its employees, agents/Supplier staff and each Category N3 Lorry and Category N2 Lorry entry onto any property that is owned, occupied or managed by or on behalf of the Purchaser for any purpose (including but not limited to deliveries).

APPENDIX 1 TO SCHEDULE 19

Appendix 1 will be the Initial HGV DVS Plan submitted to the Purchaser for approval by the Supplier within four (4) weeks of the Commencement Date and will be developed to form the Agreed HGV DVS Plan.