

**Dated: 19th July 2019**

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<b>London Underground Limited (LUL)</b>	<b>(1)</b>
<b>and</b>	
<b>CORYS</b>	<b>(2)</b>

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**CONTRACT: for the supply of Goods and Services in relation to the update of three Northern Line Train Cab Simulators to include the Northern Line Extension (NLE) and TBTC Legacy Updates.**

**CONTRACT REFERENCE NUMBER:**

**20560**

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**THIS CONTRACT** is made on 19<sup>th</sup> July 2019

**BETWEEN:**

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at 55 Broadway, London SW1H 0BD (the “**Company**” which expression shall include its successors and assigns); and
- (2) **CORYS** is a company duly organized under the laws of France, registered under the number 413 851 924 RCS Grenoble with its Registered Office and Head Office 44 rue des Berges – 38024 GRENOBLE (France) (the “**Supplier**”).

## **BACKGROUND**

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

**THIS DEED WITNESSES** that:

## **1 Definitions and Interpretation**

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

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

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

“**Applicable Laws and Standards**” means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract (including for clarity the standards referred to in Schedule 2 (if any), or the Goods and Services. The Supplier shall have the right to claim through the Contract Variation Procedure for any justifiable costs resulting in change to an Applicable Law/s and Standard/s that come into force post Contract signature.

“**Cessation in the Supply of Goods or Services**” means any cessation in the supply of the Goods or Services.

**“Commencement Date”** means the date specified as such in Schedule 1.

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

**“Company’s Representative”** means the person appointed by the Company and named as such in Schedule 1. In the event that the Company Representative is absent from work, the Company must inform the Supplier in writing of the nominated alternative Company Representative (prior to the absence in the case of a planned absence, and on the first day of absence in the case of an unplanned absence).

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

**“Confidential Information”** means any information given orally or in writing which is a trade or business secret or method; technical knowhow; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Parties; confidential financial information including but not limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

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

**“Contract Information”** means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 8.1 and 8.2 which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

**“Contract Price”** means the total price for the Goods and Services stated in Schedule 1.

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

**“Contract Variation Procedure”** means the procedure set out in Schedule 3.

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

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

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

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

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

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

**“Dispute”** has the meaning given to that term in Clause 35.1.

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

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

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

**“Environmental Law”** means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars,

guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

**“Excess Costs”** has the meaning given to that term in Clause 17.4.

**“Expected Delivery Date”** means the date set out in Schedule 1 and Schedule 5 upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

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

- (c) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (d) civil unrest;
- (e) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of LUL's network;
- (f) lightning, earthquake or subject to (h) below, extraordinary storm;
- (g) fire;
- (h) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (i) intentionally blank;
- (j) intentionally blank;
- (k) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(l) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and

(m) strikes, lock outs or other industrial action being in each case industry-wide.

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

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

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

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

**“Green Procurement Code”** means the programme entitled the “Mayor’s Green Procurement Code” launched in 2001 and as may be amended.

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

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

**“Invoice Milestone”** means an activity in column headed ‘Activity’ of Schedule 2, Section 2 of the Invoicing Profile.

**“Key Personnel”** means Supplier Personnel identified as such in Schedule 10 and any changes to the same that are made in accordance with Clause 22.

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



**“Losses”** means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Company, its employees or agents.

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

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

**“Milestone”** means a milestone (task name) as detailed in the Programme shown in Schedule 5.

**“Nominated Representatives”** has the meaning given to that term in Clause 35.2.

**“Notice to Proceed”** has the meaning given to that term in Clause 17.6(b).

**“Order”** means an order placed by the Company for the supply of the Goods and/or the performance of the Services pursuant to the Contract (as amended from time to time in accordance with the Contract).

**“Policies”** means the policies set out in Clause 25.3.

**“Programme”** means the programme of work set out in Schedule 5 for the provision of the Services which has been submitted by the Supplier and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the Contract or otherwise by agreement in writing between the Supplier and the Company.

**“Prohibited Act”** means:

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

such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or

(c) committing an offence:

(iii) under the Bribery Act 2010;

(iv) under legislation creating offences in respect of fraudulent acts; or

(v) at common law in respect of fraudulent acts,

in relation to the Contract or any other contract with LUL or TLL or the Company; or

(d) defrauding or attempting to defraud LUL or TLL or the Company.

**"Quality and Safety Plan"** means the Supplier's quality and safety plan set out in Schedule 4 as amended from time to time.

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

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

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

**"Required Date"** means subject to any extension of time granted by the Company to the Supplier in accordance with this Contract, the date or dates on or by which each Milestone is required to be completed, as set out in the Programme or, in the absence of any Milestones, the date or dates on or by which the Goods and/or the Services are required to be provided as set out in the Programme;

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

**"Safety Breach"** means a material breach of any obligation under the Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on

behalf of the Supplier) or any of its agents which has materially affected the safe operation of the LUL network or the safety of LUL's or TLL's or the Company's customers, staff or any other person.

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

**"Specification"** means the description of the Goods and Services set out in Schedule 2.

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

**"Supplier Personnel Information"** means the numbers of Supplier Personnel involved in providing the Goods and Services and their approximate full time equivalents; location; skill sets in each location; role definitions; information regarding overall annual remuneration including benefits; length of service; and details of terms and conditions of employment (including pension schemes).

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

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

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

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

**"TLL"** means Tube Lines Limited.

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

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

**“Variation Proposal”** means the written proposal put by the Company or the Supplier to vary the Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 3.

**“Warranty Period”** shall have the meaning given in paragraph 10 of Schedule 1.

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

**“Working Week”** means Monday to Friday inclusive in any week.

- 1.2 The headings in the Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Contract and references to the Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Contract or any other document shall be construed as references to the Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted through the Contract Variation Procedure.
- 1.7 References to the **“Company”** shall include its successors, transferees and assignees.
- 1.8 The following documents shall form and be read and construed as part of this Contract (and in the case of the Schedules are annexed hereto) and shall in the case of any ambiguity or discrepancy have the following order of priority:
  - (a) The terms and conditions set out in this Contract;
  - (b) The technical specifications set out in Schedule 2;
  - (c) The Supplier’s Proposal Document TRN 5642 Northern\_Line\_Extension\_rev4 (18 June 2018) and set out in Schedule 2;
  - (d) All other Schedules to this Contract.

## **2 Duration**

- 2.1 The Contract shall commence on the Commencement Date and shall be performed by the Supplier in accordance with the terms of the Contract (save in the event of earlier termination).

### **3 Supplier's Primary Obligations**

- 3.1 The Supplier shall supply the Goods and shall perform the Services in accordance with the terms of the Contract.
- 3.2 The Supplier shall ensure and warrants to the Company that the Goods will:
- (a) conform in all respects with the Specification and the provisions of the Contract including, without limitation, specifications as to quantity, quality and description;
  - (b) be of satisfactory quality and fit for the purpose for which they are intended as defined in the Specification;
  - (c) comply with all Applicable Laws and Standards (including but not limited to any law and regulations applicable to TLL or LUL or the LUL network);
  - (d) comply with all standards referred to in Schedule 2;
  - (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.
- 3.2A The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term (as defined in Schedule 1).
- 3.3 The Supplier shall ensure and warrants to the Company that the Services will:
- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
  - (b) be in accordance with the standards or methods (if any) detailed in Schedule 1 and where standards or methods are not detailed in Schedule 1, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
  - (c) be performed in accordance with the Programme;
  - (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable to TLL or LUL or the LUL network); and
  - (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.

- 3.4 The Supplier shall perform its obligations under the Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and provision of the Services or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.5 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.6 Unless otherwise stated in the Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under the Contract.

## **4 Records and Audit**

- 4.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Contract and all transactions related to the Contract. For the avoidance of doubt, such records shall include but are not limited to:
- (a) all necessary information for the evaluation of claims or variations;
  - (b) management accounts, information from management information systems and any other management records;
  - (c) accounting records (in hard copy as well as computer readable data);
  - (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
  - (e) original estimates;
  - (f) estimating worksheets;
  - (g) correspondence;
  - (h) variation and claims files (including documentation covering negotiated settlements);
  - (i) general ledger entries detailing cash and trade discounts and rebates;
  - (j) commitments (agreements and leases) greater than £5,000; and
  - (k) detailed inspection records.

- 4.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under the Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.
- 4.3 The Company (and its authorised representatives), TLL (and its authorised representatives) and TfL Group (and its authorised representatives) and any party legally authorised to inspect any part of the LUL network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time, with prior notice, during the period referred to in Clause 4.2. Confidential information will be provided subject to a confidential mutual undertaking as defined in Clause 23 (Confidentiality) of this Contract.
- 4.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in performance of the Contract, whether the Supplier's own premises or otherwise;
  - (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under the Contract, wherever situated and whether the Supplier's own equipment or otherwise;
  - (c) making any contracts and other documents and records required to be maintained under the Contract available for inspection;
  - (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company and/or TLL's auditor and/or LUL's auditor and/or granting copying facilities to the Company and/or TLL's auditor and/or LUL's auditor for the purposes of making such copies; and
  - (e) complying with the Company's and/or TLL's and/or LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract.
- 4.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy the Contract requirements.
- 4.6 The Supplier shall permit the Company's authorised representatives and/or TLL and/or LUL, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company and/or TLL and/or LUL with a copy of any or all of the records listed in Clause 4.1,

free of charge within thirty (30) days of the Company's and/or TLL's and/or LUL's request for the same. Confidential information will be provided subject to a confidential mutual undertaking as defined in Clause 23 (Confidentiality) of this Contract.

## **5 Company's Obligations**

- 5.1 The Company shall pay the Supplier the Contract Price for the Goods and Services in accordance with the terms of the Contract. The Company shall pay the Supplier the Contract Price for the Goods and Services in accordance with the terms of the Contract. In the event that the Company unreasonably fails to pay the Supplier in line with the terms of this agreement, the Supplier shall be entitled to suspend its performance of the Contract and seek resolution through the dispute resolution procedure defined in Clause 35.
- 5.2 Payment of the Contract Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the Contract properly.

## **6 Additional Goods and Services**

The Company may, at any time during the term of the Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, Schedule 1, Schedule 2 and Schedule 5 shall be amended to include such Additional Goods and/or Services, the Expected Delivery Date and/or Date for Completion of the Services and the quoted price.

## **7 Variation**

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

## **8 Price and Payment**

- 8.1 The Contract Price shall be fixed and inclusive of all staff, facilities, equipment, materials and all other costs, expenses and disbursements whatsoever incurred by the Supplier in discharging his obligations under the Contract including, but not limited to, the costs incurred in performing the Services and delivering the Goods to the Delivery Address. The Contract Price for the Goods and Services shall only be changed in accordance with the Contract Variation Procedure.



- 8.2 The Supplier shall submit a Payment Application for the relevant portion of the Contract Price in respect of the Services using the rates and prices set out in **Error! Reference source not found.**, to the Company's Representative on the completion of milestones set out in **Error! Reference source not found.** and following the completion of the Services to the satisfaction of the Company
- 8.3 Unless otherwise stipulated in the Contract, all payments due under the Contract shall be made in Euro.
- 8.4 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.
- 8.5 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company shall notify the Supplier in writing not later than seven (7) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
  - (b) the basis on which the amount was calculated
- 8.6 Within six (6) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company.
- 8.7 The final date for payment shall be thirty (30) days after the date on which the Company's Representative received the applicable VAT invoice.
- 8.8 The Company is entitled to deduct from amounts due to the Supplier at any time in consideration of the performance of its obligations, in any amount for which the Supplier shall be made liable under the Contract, in application of the provisions of clauses 9 (Delivery of Goods and Time for Performance of Services) and 15 (Warranty), provided only that the Supplier has failed to remedy its default within a reasonable time upon the notification of its default by the Company.

- 8.9 Subject to the overall limitation of liability and exclusions of liability, all Losses which the Company may have paid, suffered or incurred, and for which the Supplier is directly liable under the Contract, may be set off against any other amounts payable under this Contract, provided that the Company's Representative informs the Supplier in writing of any deductions made, if possible, prior to and in any event no later than the date upon which any such deduction is made.
- 8.10 All sums payable to the Company by the Supplier under the Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

## **9 Delivery of Goods and Time for Performance of Services**

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Delivery Date at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods. The Company shall be under no obligation to accept partial delivery of an order.
- 9.2 The time of delivery of the Goods shall be of the essence of the Contract.
- 9.3 *NOT USED*
- 9.4 *NOT USED.*
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of the Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by email to the Company on the Delivery Date in accordance with Clause 34.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 9.8 The Company shall upon reasonable notice from the Supplier, provide access for the Supplier to the Company's premises and information records and other materials as the Supplier may reasonably require in order to provide the Services, provided that the Company shall only be

obliged to procure such access during the normal working hours applicable to the premises/location at which the Services are to be performed and provided that such access shall not cause undue commercial disruption to the Company.

- 9.9 In the event that access is required to the premises of any third party for the purpose of provision of the Services, the Company shall use its reasonable endeavours to secure such rights of access for the Supplier provided that the Supplier shall be responsible for arranging such access on a day to day basis with the third party.
- 9.10 The Supplier shall ensure that the Services are satisfactorily completed by the Date for Completion of the Services. The time of the performance of the Services shall be of the essence of the Contract.
- 9.11 The Supplier shall supply the Goods and provide the Services (including each Milestone) on or by (as the case may be) the Required Date.
- 9.12 Without prejudice to the Company's rights to terminate the Contract under Clause 17, when the overall cap of applicable liquidated damages for delay is reached, the Supplier shall pay, as sole and exclusive remedy for delay, to the Company on demand a liquidated damages calculated at €2,500 (Two thousand five hundred Euros) per Working Week's delay (apportioned on a pro rata basis per day). Each Working Week started gives rise to the demand of liquidated damages for the Working Week in question. The total and cumulative amount of applicable liquidated damages for delay shall not in any case exceed 5% of contract value, VAT excluded
- 9.13 All sums payable by the Supplier to the Company pursuant to Clause 9.12 shall be paid as liquidated damages for delay and not as a penalty and the Parties acknowledge that the sums defined in Clause 9.12 are a genuine pre-estimate of the loss that may be suffered by the Company in the event of any such failure of the Supplier.
- 9.14 For the avoidance of doubt (and without prejudice to the Company's rights of termination in case the cap of liquidated damages for delay is reached), any payment of liquidated damages by the Supplier to the Company pursuant to this clause 9 shall be the Company's sole remedy, and the Supplier's exclusive liability as limited by the cap in Clause 9.12, in respect of any delay and/or failure by the Supplier to meet the Required Date.

## **10 Work on Company's Sites**

- 10.1 During the term of the Contract, the Supplier shall:

- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
- (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
- (c) notwithstanding the terms of Clause 10.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of the Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Supplier including any of the Supplier's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, TLL, LUL or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and
- (g) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway.

10.2 Without prejudice to Clauses 10.1(a) to (g) the parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under the Contract.

## **11 Free Issue Materials**

11.1 In the event of the Company supplying Free Issue Materials to the Supplier where the cost of such materials have been included in calculating the Contract Price, the Contract Price shall be reduced by the amount included in the Contract Price for the materials which have been replaced by such Free Issue Materials.

- 11.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 11.3 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession or in the possession of any subcontractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

## **12 Environmental Claims**

- 12.1 The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non-performance or part performance of the Contract to the extent that such Losses and Remediation costs are directly due to any gross negligence, breach of contract, or wilful misconduct by the Supplier, its employees, subcontractors or agents.
- 12.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.
- 12.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 12.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company, TLL and LUL can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 12.5 The Supplier shall provide to the Company's Representative:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the provision of the Goods and Services (for the purposes of this Clause 12.5, the **"authorisations"**);
  - (b) copies of any amendments to the authorisations;

- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

## **13 Risk and Ownership**

- 13.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a rejection notice pursuant to Clause 14, risk of damage to and loss of the Goods shall pass to the Supplier on the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 0) which shall arise 7 (Seven) days from the notification.
- 13.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Delivery Date.

## **14 Acceptance and Rejection**

- 14.1 Intentionally blank.
- 14.2 The Company shall not be deemed to have accepted any Goods or Services until the Supplier;
- 14.2.1 has installed and commissioned any Goods or Services in accordance with the Specification (proposal and programme / plan) in Schedule 2, section 2;
- 14.2.2 or has visited the site/s to carry out the maintenance as per Schedule 2 and has provided the relevant maintenance report in accordance with the maintenance schedule in Schedule 1;
- 14.2.3 and the Company has formally accepted the Goods or Services in 14.2.1 and 14.2.2. The Company shall have to have formally accepted all or part of the Goods or Service by the issue of a formal notice to the Key Personnel detailed in Schedule 10 within 30 days of the agreed delivery date in programme in Schedule 2. Failing to issue such formal notice within said period, the Goods and/or Services shall be deemed accepted by the Company. The Company cannot unreasonably withhold acceptance or withhold acceptance for minor defects which do not affect the safe operational use of the Goods and/or Services.
- 14.3 The Company shall when giving notice of rejection specify the reason therefor and the Supplier shall if directed by the Company remove the Goods concerned at the Supplier's risk and expense. In such case the Supplier shall replace / modify / repair, in a timely manner, such

rejected Goods with goods which are in all respects in accordance with the Contract or reperform such rejected Services (as the case may be).

## **15 Warranty**

- 15.1 The Supplier shall without delay, upon a request by the Company to do so, replace or modify or repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period and no longer than 6 months post the Warranty Period. Any replacement / modification / repair of Goods shall comply in all respects with the terms of the Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.
- 15.2 For the avoidance of doubt, where Goods are replaced or repaired or modified in accordance with this Clause 15, such repaired Goods or replacement Goods or modified Goods shall be re-delivered to the Company in accordance with the terms of the Contract and the provisions of any Warranty Period, Clauses 9, 13 and 14 shall apply to such re-delivered Goods. . The obligations of this sub-Clause will be limited to the Completion of Services date as given in Schedule 1.
- 15.3 Intentionally blank
- 15.4 If the Supplier has not performed the Services in accordance with the terms of the Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period to be agreed between the Parties.
- 15.5 The provisions of this Clause 15 shall survive the termination of the Contract for whatever reason.
- 15.6 The operation of the Supplier under the warranty shall not have the effect of prolonging the Warranty Period past the Completion of Services date as given in Schedule 1.
- 15.7 The warranties and remedies set forth under this Clause 15 are the Supplier's sole liability and the Company's sole and exclusive remedy in respect thereof and are exclusive and are in lieu of any other guarantee, warranty or remedy of any kind whatsoever, whether statutory, written, oral, express or implied, including, without limitation, warranties for performance, merchantability and fitness for a particular purpose, or arising from any cause of dealing or usage of trade. The obligations of this sub-Clause will be limited to the Completion of Services date as given in Schedule 1.

## **16 Intellectual Property Rights**

- 16.1 Intellectual Property Rights owned by the Supplier at the date of the Contract shall continue to vest in and remain the sole property of the Supplier. Intellectual Property Rights owned by the Company at the date of the Contract shall continue to vest in and remain the sole property of the Company. Intellectual Property Rights created by or on behalf of either party in respect of the Contract at any time after the date of the Contract shall vest in and shall continue to vest in and remain the sole property of the relevant party.
- 16.2 Any specification (which term shall include but is not limited to the Specification, any documents, drawings, items, designs, software and processes) supplied by the Company or its agents to the Supplier together with the Intellectual Property Rights in such specification, shall be the exclusive property of the Company. The Supplier shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 16.3 Without prejudice to any other rights which each party may have against the other, if, notwithstanding Clause 16.1, a party acquires any proprietary rights in or to any Intellectual Property Rights referred to in Clause 16.1 as belonging to the other party, that party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other party, or to its nominee, and to deliver to the other party, or to its nominee, such materials as it may reasonably require in this regard.
- 16.4 All royalties or other sums payable to any third party in respect of the use of any Intellectual Property Rights necessary for the performance of the Contract shall be paid by the Supplier.
- 16.5 The Supplier shall grant to the Company and to TLL and/or LUL and / or TfL Group and shall procure that its subcontractors and suppliers grant to the Company and TLL and/or LUL and / or TfL Group a, revocable, non-transferable and non-assignable without the Supplier's prior written consent, it being understood that the Supplier grants the right to the Company to sublicense under the same terms to TLL and/or LUL, royalty-free, non-exclusive license (with, if and when authorised in writing by the Supplier, rights to transfer, assign and sub-license on the same terms) to use on the United Kingdom territory all Intellectual Property Rights owned, controlled or used by the Supplier for Goods supplied by the Supplier in connection with the Contract, the use and operation of the London Underground Northern Line ('NL'), the provision of infrastructure and related services to TLL, TfL Group and/or LUL on the NL, and TLL's and/or LUL's passenger carrying operations on the NL generally.
- 16.6 The Supplier shall grant to the Company and shall procure that its subcontractors and suppliers grant to the Company an irrevocable, non-exclusive, non-transferable licence for the software & equipment provided under this Contract. The licences granted to the Company under this



Contract are non-assignable without the Supplier's prior written consent. Furthermore it is agreed that the Supplier grants the right to the Company to sublicense under the same terms to TLL, LUL & TFL Group a royalty-free, non-exclusive license (with, if and when authorised in writing by the Supplier, rights to transfer, assign and sub-license on the same terms) to use on the United Kingdom territory all Intellectual Property Rights owned, controlled or used by the Supplier for Goods supplied by the Supplier in connection with the Contract, the use and operation of the London Underground Northern Line ('NL'), the provision of infrastructure and related services to TLL, TfL Group and/or LUL on the NL, and TLL's and/or LUL's passenger carrying operations on the NL generally.

- 16.7 The Supplier shall grant to the Company and to TLL and shall procure that its subcontractors and suppliers grant to the Company and TLL the rights to use, modify, adapt and enhance all Intellectual Property Rights owned, controlled or used by the Supplier or its subcontractors or suppliers in connection with the Contract provided that these rights may only be exercised in the event of a release event under the escrow agreement referred to in Clause **16.10**.
- 16.8 The Company shall grant to the Supplier a royalty free, non-exclusive license (without a right to assign or sub-license save in respect of a sub-license to any subcontractor for the purposes of the Contract) to use all Intellectual Property Rights it owns and has the rights to sub-license, for the sole purpose of performing its obligations under the Contract. In the case of Intellectual Property Rights which are licensed to the Company and which the Company has the right to sub-license, any sub-licenses granted under this Clause 16.8 shall be granted subject to all the terms, conditions, restrictions and limitations contained in the license to the Company.
- 16.9 The Supplier shall indemnify the Company from and against all Losses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights directly arising out of the performance of the Contract by the Supplier including (but not limited to) any claim that the Goods and/or Services infringe, or their importation, use or resale, infringes the Intellectual Property Rights of any other person, provided however that the Supplier will not be liable for any Intellectual Property Rights provided by the Company. The Company shall (at the cost of the supplier) have regard to any reasonable request of the supplier in defending such claim and the parties shall:
- (i) meet to discuss the merits of the claim and agree a strategy to defend the claim;
  - (ii) where possible identify any relevant documentation to support the defence; and
  - (iii) thereafter meet on a regular basis to discuss developments and any ongoing requirements.
- 16.10 The Supplier shall enter into a software escrow agreement in the form set out in Schedule 7 with a third party acceptable to the Parties by no later than four (4) weeks or such other period as may be agreed between the parties after the date of the Contract and shall procure that any subcontractor or supplier providing software for incorporation or operation of the Goods and/or as

part of the Services enters into a software escrow agreement on similar terms.

16.11 If the Supplier or any subcontractor or supplier providing software for incorporation into or operation of the Goods and/or as part of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause **17.1(d)** (including their equivalent in any jurisdiction to which the Supplier, any subcontractor or supplier is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Contract then the Supplier, at no charge to the Company, shall use his best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

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

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

16.13 The Company may provide an instruction to obviate any infringement referred to in Clause 16.12 and in such circumstances the Supplier, and the Company, shall by mutual agreement decide to:

- (a) modify or replace or repair the Goods and/or modify or re-perform the Services or any infringing parts to avoid the infringement; or
- (b) remove the infringing part of the Goods and/or not perform the infringing Services, and the Contract Price shall be reduced accordingly.

16.14 The Supplier shall not be entitled to any addition to the Contract Price or extension to the Expected Delivery Date or Date for Completion of the Services as a result of any instruction in respect of an infringement of the Intellectual Property Rights of others.

16.15 Save for the licence granted in accordance with Clause 16.8, no Intellectual Property Rights shall pass from the Company to the Supplier.

16.16 Intentionally blank.

16.17 The Supplier shall not use and shall procure that its subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trademarks, trade names and other Intellectual Property Rights without the Company's, TLL's and LUL's prior written consent.

16.18 On written request from the Company and/or TLL and/or LUL, the Supplier shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company and/or TLL and/or LUL reasonably determines that any use

of the Corporate IPRs falls below the quality standards notified to it in accordance with Clause

16.16, the Company shall give the Supplier written notice of that fact and the Supplier shall correct the use so as to comply with such quality standards taking into account the Company's and/or TLL's and/or LUL's instructions.

16.19 The provisions of this Clause 16 shall survive the termination of the Contract for whatever reason.

## **17 Termination and Suspension**

17.1 The Company may terminate the Contract immediately by notice in writing to the Supplier if:

- (a) the Supplier commits a material breach of the Contract which in the case of a material breach capable of remedy has not been remedied within ten (10) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay liquidated damages is reached or exceeded; or
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or any similar or analogous procedure or step is taken in any jurisdiction.

17.2 Without prejudice to Clause 17.1, the Company shall have the right:

- (a) to terminate the Contract at any time by giving notice of not less than one calendar month to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

17.3 In the event that the Company terminates the Contract for any reason under this Clause 17, the Supplier shall, without prejudice to any other rights or remedies which the Company may have

under the Contract or under general law, permit the Company, subject to any limitation of liability defined under the contract, and at the Company's option, to:

- (a) enter the Supplier's premises and take possession of any equipment or goods which are the property of the Company and have been paid for to the Supplier, the Specification and any applicable Company Documents; and
- (b) place, at the Company's risks, an order for the remaining Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services by its own workmen.

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

17.4 In the event that the Company terminates the Contract in accordance with clause 17.2(a) only, then the liability of the Company to the Supplier shall be limited to making payment for the following:-

- 17.4.1 all finished Goods and Services relating to completed Milestones up to the termination date; and
- 17.4.2 in respect of unfinished Goods and Services, all materials, components, work-in-progress relating to those Good & Services owned by the Supplier as at the termination date; and
- 17.4.3 direct losses and/or costs incurred and irrevocably committed at the termination date; and
- 17.4.4 30% of the price of the remaining part of the work not yet performed excluding maintenance element.

The total liability of the Company shall in no event exceed the Contract Price and the Supplier shall use its best endeavours to mitigate any loss arising from such termination.

17.5 Where the Company exercises its rights under Clause 17.3(b), following a termination in accordance with Clause 17.1 (but not a termination in accordance with Clause 17.2(a)) and in so doing and securing the full provision of the Goods (or equivalent goods) and Services incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Contract ("**Excess Costs**"), the Supplier shall be liable to the Company for such Excess Costs in addition to being liable to the Company for any Losses of whatever nature arising directly out of or in connection with the relevant breach to the maximum extent of the overall limitation of liability of the Supplier.

17.6 In the event that the Contract is suspended in accordance with Clause 17.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of those Goods and Services provided to the Company and/or in progress in accordance with the Contract up until the date of such suspension as well as for any reasonable direct losses and/or costs incurred and irrevocably committed at the suspension date; and
- (b) not carry out any further work in connection with the provision of the Goods and Services until such time as the Company issues a notice lifting the suspension (a “**Notice to Proceed**”). The contractual time schedule shall be automatically extended of a period at least equal to that of the suspension duration.

17.7 In the event that the Contract is suspended in accordance with Clause 17.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to;

17.7.1 approach the Company with a request for a variation, in accordance with the Contract Variation Procedure, or;

17.7.2 in the event that the Parties fail to reach an agreement up to and the Suspension period is greater than 12 months, terminate the Contract without incurring any liability whatsoever. In such a case, the Supplier shall be indemnified as per Clause 17.4 hereinabove.

17.8 In the event that the parties are unable to agree upon the variation requested under Clause 17.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 35.

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

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

## 18 Indemnity and Insurance

### 18.1 Indemnity

The Supplier shall be liable for:

- (i) any material breach of its substantial obligations under the Contract (including any breach of warranties, damage to the Company's property) which is directly ascribable to the Supplier, the Supplier's personnel, subcontractors or agents;
- (ii) any claim made by the Supplier or the Supplier's personnel in respect of relevant legislation concerning tax, worker's compensation, annual leave.

Notwithstanding anything else to the contrary, the Supplier's total and cumulative liability to the Company, on all claims of any kind, including claims based on tort (including negligence), contract, strict liability or otherwise for any loss or damage arising out of, connected with, or resulting from this Contract, or from the performance or breach thereof, shall be limited to 50% of the Contract Price VAT excluded in aggregate.

Notwithstanding anything else to the contrary, neither party shall have any liability, whether based on contract, tort, strict liability or otherwise, to the other for any indirect, special, incidental or consequential loss or damage, such as but not limited to any loss or damage caused by reason of unavailability of the simulator, loss of profits or revenues (or anticipated), loss of use of equipment, loss of production or costs caused by interruption of production, costs of capital, loss of business opportunities, arising out of the performance of its obligations under or in connection with the Contract.

The limitations and exclusions of liability described in this Clause 18.1, will not apply and the liability of the parties will be unlimited in respect of:

- (i) any fraudulent act or omission or criminal conduct of a party;
- (ii) willful misconduct or gross negligence of a party;
- (iii) death or bodily injury; or
- (iv) any liability that cannot be limited at law.

The provisions of this Clause 18.1 shall survive the expiration or earlier termination of this Contract for any reason whatsoever.

## **18.2 Insurance**

Without prejudice to the obligation to indemnify the Company set out in Clauses 18.1, the Supplier undertakes to:

- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;

- (b) maintain at its own cost public liability insurance in respect of the Supplier's liability for death or bodily injury to any person in an amount not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
- (c) maintain at its own cost public liability insurance in respect of the Supplier's liability for loss or damage to any property arising out of its performance of the Contract in an amount of not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
- (d) maintain at its own cost professional indemnity insurance to ensure that its activities under the Contract are insured and remain insured in an amount not less than that set out in Schedule 1, for any one occurrence or series of occurrences consequent on one event or original cause;
- (e) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than six (6) years after the delivery of the Goods and completion of the Services (whichever is the later);
- (f) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (g) produce at the Contract signature by both parties and then once a year satisfactory evidence confirming the existence of insurance in accordance with the terms of this Clause 18.2.

## **19 Force Majeure**

Neither party shall be in breach of its obligations under the Contract if there is any total or partial failure of performance by it of its duties and obligations under the Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact and the affected Party shall resume its performance of the Contract. Time for performance of the Contract shall be extended of a period at least equal to overcome the effects of the Force Majeure Event and no less than the duration of the Force Majeure Event. If the Force Majeure Event continues for a period of more than sixty (60) days and substantially affects the abilities of the Supplier to perform its obligations under the Contract, each Party shall have the right to terminate the Contract

immediately upon giving written notice of such termination to the other, without incurring any liability whatsoever.

## **20 Safety**

- 20.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 20.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the LUL category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to the Contract in the QUENSH menu set out in the Specification ("**QUENSH**") as amended from time to time; and
  - (b) the Company's drug and alcohol principles as amended from time to time.
- 20.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to the Contract as if the term "LU Premises" means any of LUL's and/or TLL's and/or the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.
- 20.4 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, subcontractors or agents for drugs or alcohol which the Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

## **21 Independent Supplier**

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



## **22 Intentionally Blank**

## **23 Confidentiality**

- 23.1 The Parties undertake to keep confidential and not to disclose to any third party, with the exception of TLL, LUL or the TfL Group, (without the prior written consent of the disclosing Party) any Confidential Information supplied by either Party to use such information only for the purpose of the performance of his obligations under the Contract.
- 23.2 On request, the Parties shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the requesting Party any Confidential Information in its possession or control supplied by the requesting Party;
  - (b) return all copies (whether hard copy or other media) of such Confidential Information; and
  - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 23.3 The Parties shall ensure that all their respective subcontractors, suppliers, employees, agents and Parties' representatives perform the Parties' obligations in Clauses 23.1 and 23.2 as if they were a Party under this Contract, and the Parties shall be responsible to the other for any act or omission by their subcontractors, suppliers, employees, agents and Parties' representatives in breach of such obligations.
- 23.4 The Parties shall notify each other promptly if either Party becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the other Party all assistance reasonably required in connection with any proceedings either Party brings, or other steps the Party takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 23.5 The Parties shall not, either alone or jointly with others, publish any material relating to the Company / Supplier, the Company's / Supplier's Representative, TLL, LUL, TfL Group, the Contract or the Goods and Services without the prior written consent of the other Party.
- 23.6 The Parties shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with the Contract or the Goods and Services, or any Dispute arising under or in connection with the Contract.
- 23.7 The provisions of Clauses 23.1 to 23.6 shall not apply:

- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of the Contract; or
- (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

23.8 The obligations of the parties under this Clause 23 shall survive the expiry or the termination of the Contract for whatever reason.

## **24 London Living Wage**

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

- (a) ensure that none of its employees engaged in the provision of Goods and Services under the Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 24 and the provisions of this Clause 24 are included in any subcontract (of any tier).

24.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 24.

## **25 Responsible Procurement**

25.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the has directed TfL and its subsidiaries (including LUL) to do all things

reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities, the TfL Supplier Diversity Policy and the Green Procurement Code and that LUL is under a duty to comply with that direction and that TLL and the Company are similarly under a duty to comply under the Tube Lines Contract.

25.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company, TLL and LUL to comply with, the Responsible Procurement Policy, the TfL Supplier Diversity Policy and the Green Procurement Code.

25.3 The Supplier acknowledges and agrees that TLL is required to develop the following policies (the "**Policies**") which shall, in each case, reflect and be consistent with the relevant principles of the Responsible Procurement Policy, the TfL Supplier Diversity Policy and the Green Procurement Code:

- (a) a policy relating to the promotion of diversity in the Company's and the Supplier's supply chain which reflects and is consistent with the principles of the TfL Supplier Diversity Policy (the "**Supplier Diversity Policy**");
- (b) a policy relating to the promotion of fair employment practices and ensuring minimum standards for employees which shall expressly describe the manner by which the Company and the Supplier shall comply with its requirement to pay and ensure that its subcontractors pay the London Living Wage (the "**Fair Employment Practices Policy**");
- (c) a policy relating to the promotion of environmental sustainability which shall reflect and be consistent with the principles of the Green Procurement Code (the "**Environmental Sustainability Policy**");
- (d) a policy relating to the promotion of community benefits (the "**Community Benefits Policy**");
- (e) a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "**Ethical Sourcing Policy**");
- (f) a policy relating to the meeting of strategic labour needs including the provision of training opportunities (the "**Strategic Labour Needs and Training Policy**"); and
- (g) a policy relating to the promotion of the welfare of the workforce (the "**Workforce Welfare Policy**"),

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

- 25.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code (and any adjustment or amendment to the Policies as a result of such amendment or adjustment to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).
- 25.5 The Supplier shall submit reasonable costs to the Contract Price in the event of any change to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code (and any change to the Policies as a result of such change to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).
- 25.6 The Supplier shall procure that any of its subcontractors is required to comply with the provisions of this Clause 25 and the provisions of this Clause 25 are included in any subcontract concluded by the Supplier.
- 25.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without TLL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 25.

## **26 Assignment and Subcontracting**

- 26.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Contract or any part thereof without the prior written consent of the Company which shall not be unreasonably withheld.
- 26.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under the Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 26.3 The Company may novate, assign, transfer or subcontract the Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier and that the person to whom the Contract is assigned, transferred or subcontracted is not a competitor of the Supplier.
- 26.4 NOT USED
- 26.5 NOT USED
- 26.6 NOT USED.
- 26.7 NOT USED

- 26.8 NOT USED
- 26.9 NOT USED
- 26.10 NOT USED
- 26.11 NOT USED
- 26.12 NOT USED

## **27 Company's and Supplier's Representative**

Each party shall appoint one or more representatives to act on its behalf under the Contract. Each party shall advise the other party, in writing, of the names and contact details of its representatives and these shall be recorded in Schedule 1.

Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company, which shall not be unreasonably withheld.

The Company may object to the appointment of the Supplier's representative, and/or its replacement, if it proves that the said representative lacks the skills required.

Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

## **28 Costs**

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

## **29 Severance**

If a provision of the Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Contract, provided that the operation of this Clause 29 would not negate the commercial interest and purpose of the parties under the Contract.

## **30 Publicity**

The text of any press release or other communication to be published by or in the media concerning the subject matter of the Contract shall require the prior written approval of the

Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

### **31 Corrupt Gifts and Payments of Commission**

- 31.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 31.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 31.3 Subject to Clause 23, the Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 31 at any time during performance of this Contract and during the twelve (12) year period following completion of performance.

#### **31A Criminal Record Declarations**

- 31A.1 For the purposes of this Clause 31A:

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

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

- 31A.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 31A.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.

- 31A.4 The Company and/or TLL shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 31A at any time during performance of this Contract.
- 31A.5 If the Supplier fails to comply with the requirements under Clause 31A.2 and/or Clause 31A.3 the Company may, without prejudice to its rights under Clause 17.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Contract and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 31A.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 31A.2.
- 31A.6 A persistent breach of Clause 31A.2 and/or Clause 31A.3 by the Supplier shall entitle the Company to terminate the Contract in whole or in part with immediate effect in accordance with Clause 17.1(a).
- 31A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 31A.8 Nothing in this Clause 31A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 31A.

## **32 No Waiver**

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

## **33 Entire Contract**

The Contract embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the

subject matter of the Contract. Except in the case of fraud neither party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in the Contract.

### **34 Notices and Service of Process**

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

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

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

Supplier: CORYS  
44 rue des Berges  
38024 GRENOBLE  
FRANCE

Attn: REDACTED, Account Manager

Facsimile:

Email: REDACTED Company:

London Underground Limited

55 Broadway  
London  
SW1H 0BD  
United Kingdom

Attn: REDACTED, Assistant Commercial Manager

Facsimile:

Email: REDACTED

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Contract may be served in accordance with this Clause **34.1**.



## 35 Dispute Resolution

- 35.1 Any question, dispute, difference or claim (a “Dispute”) shall be resolved in accordance with this Clause 35.
- 35.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company’s Representative and a suitably qualified and duly authorised representative of the Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.
- 35.3 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 35.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company’s Purchasing Manager and the Supplier’s Managing Director (“**Senior Personnel**”) or in the absence or unavailability of the Senior Personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 35.4 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party (“**Notice**”) that a structured mediation or negotiation be entered into with the assistance of a mediator under the International Chamber of Commerce Alternative Dispute Resolution (“ADR”) Rules for mediation. The place of mediation shall be Brussels, Belgium and the language of mediation shall be English. .
- 35.5 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 35.6 Where a Dispute is referred to mediation under Clause 35.4, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by the ICC ADR Rules or such other procedures as the mediator may recommend.
- If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties’ authorised representatives, shall be final and binding on the Parties.
- 35.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 36.

35.8 For the avoidance of doubt, the Supplier shall continue to provide the Goods and the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 35.

35.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 35 and Clause 35 shall not apply in respect of any circumstances where such remedies are sought.

## **36 Governing Law and Jurisdiction**

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

The Contract and any non-contractual obligations connected with the Contract shall be governed by and interpreted in accordance with the laws of England. In the event the Dispute is not settled amicably in accordance with Clauses 34.2 and 34.3, or in the event such Dispute is not resolved through the mediation under Clause 35.4 to Clause 35.7, then such Dispute shall be submitted to arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels, Belgium and the language of the arbitration proceedings and arbitration award shall be English. and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **37 Intentionally blank.**

## **38 Bonds, Warranties and Guarantees**

38.1 Where stated in Schedule 1, the Supplier shall provide within seven (7) days of the Company's request any or all of the following:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations

are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

38.2 The Supplier shall ensure that any bond required under Clause 38.1 provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Contract Price at all times until the Expected Delivery Date or Date for Completion of the Services and thereafter for 5% of the Contract Price until the expiry of the Warranty Period.

38.3 If at any time the existing bond and/or parent company guarantee cease to meet the requirements of Clauses 38.1 and 38.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee that meet the requirements within seven (7) days.

38.4 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

(a) a collateral warranty in the form set out in Schedule 9 in favour of:

(i) the Company;

(ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Contract;

(iii) any persons who have acquired or may acquire an interest in or over the Contract or any part of the Goods and/or Services or in relation to any infrastructure or works to which the Goods and/or Services relate; and

(b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 38.4.

38.5 In addition to the obligation to procure warranties as set out in Clause 38.4(a), the Supplier shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Goods and Services in favour of any of the parties referred to in Clause 38.4(a)(ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request.

## **39 Default Interest**

39.1 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default

Interest Rate. Any interest accruing under this Clause 39.1 shall be immediately payable by the paying party on demand.

39.2 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

39.3 The Late Payment of Commercial Debts (Interest) Act 1998 and related Regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under the Contract.

## **40 NOT USED**

## **40A NOT USED**

## **41 Miscellaneous**

### **41.1 Crime and Disorder Act 1998**

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

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

### **41.2 The Company's business**

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the supply of Goods and Services];
- (b) is aware of the Company's processes and business;
- (c) has made all appropriate and necessary enquiries to enable it to carry out the supply of Goods and Services in accordance with the Contract;

- (d) is aware of the purposes for which the supply of Goods and Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by it of any fact relating to the supply of Goods and Services.

#### 41.3 **Data Protection**

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

#### 41.4 **Conflict of Interest**

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the supply of Goods and Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake on-going and regular checks for any conflict of interest throughout the duration of the Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the supply of Goods and Services under the Contract or with any member of the TfL Group and shall work with the

Company to do whatever is necessary (including the separation of staff working on, and data relating to, the supply of Goods and Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Contract.

**41.5 Intentionally blank**

**41.6 Equality and Diversity**

(a) Without limiting the generality of any other provision of the Contract, the Supplier:

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

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

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

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

- (i) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;
- (ii) eliminate unlawful discrimination; and
- (iii) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

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

- (d) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.
- (e) The Supplier acknowledges that the Company is under a duty under Section 49A of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) to have due regard to the need to:
  - (i) eliminate discrimination that is unlawful under the Disability Discrimination Acts;
  - (ii) eliminate harassment of disabled persons related to their disabilities and promote equality of opportunity between disabled persons and other persons;
  - (iii) take steps to take account of disabled persons' disabilities (even when that involves treating disabled persons more favourably than other persons); and
  - (iv) promote positive attitudes towards disabled persons and encourage participation by disabled persons in public life,

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

## Schedule 1

### Detailed Terms

Contract Reference Number: 20536

Supplier Reference: 20536

- 1 Commencement Date: 19<sup>th</sup> July 2019
- 2 Expected Delivery Date(s): As per Schedule 5 and Invoicing Profile below.
- 3 Date for Completion of the Services: 5<sup>th</sup> February 2021.
- 4 Delivery Address:

**London Underground Ltd–Edgware Site:**

Edgware Tube Station - Simulator Block  
Station Road  
Barnet  
London, HA8 7AW

**London Underground Ltd–Morden Site:**

Morden Tube Station - Simulator Block  
London Road  
Morden  
Surrey  
London, SM4 5AZ

- 5 Supplier's Representative: REDACTED  
Tel: REDACTED  
Email: REDACTED
- 6 Company's Representative: REDACTED  
Tel: REDACTED  
Email: [REDACTED](#)
- 7 Quantity: Updating of three simulators to include Northern Line Extension and TBTC legacy Updates
- 8 Contract Price: Northern Line Extension - 274,355 Euros  
TBTC Legacy – 393,900 Euros  
**Grand Total: 668,255 Euros**  
Inclusive of any Software Licensing costs. Yes



- 9 Payment dates: As per Schedule 2 Invoicing Profile.
- 10 Warranty Period: 12 months
- 11 Term means the period: As per Schedule 5.
- 12 Standards under Clause **3.2(d)** and Clause **3.3(b)**  
As per Schedule 2.
- 13 Insurance (certificates to be provided prior to Contract award and at every subsequent anniversary of the Commencement Date) :  
  
Employees Liability under Clause 18.8 (a)  
  
Public / Products liability insurance under Clause **18.2 (d)** and Clause **18.2 (c)**. Limit of Liability:-  
Public:£ 10,000,000 any one occurrence  
Products:£ 10,000,000 in aggregate.  
  
Professional indemnity insurance under Clause **18.2 (d)**.  
Limit of Liability:- £5,000,000 in aggregate.
- 14 Warranties and Performance Security Required: No
- 15 Initial Period is: 19 months

16 Obsolescence Management

The Supplier shall use any appropriate and updated technique to reduce obsolescence risk from the design stage (e.g transparent technology, preferred part list, multi-sourcing) for the Goods and Additional Goods.

## Schedule 2

### Specification

The specification consists of the following 3 documents

- NLE Specification:  
CPD-N001-2361006-COM-SCO-00002 Specification for NLE Upgrade of Cab Sim v2.3



[CPD-N001-2361006-COM-SCO-00002 Specification for NLE Upgrade of Cab Sim v2.3](#)

- TBTC Update Specification  
NL 95TS Cab Simulator TBTC Update Specification-WCC-R280-SSL-SPC-00004  
issue 03-Signed



[TBTC Update Specification-WCC-R280-SSL-SPC-00004 Issue 03-Signed](#)

- Corys Proposal  
TRN 5642 Northern\_Line\_Extension\_rev4



[TRN 5642 Northern\\_Line\\_Extension\\_rev4](#)

### **Invoicing Profile**

Update programme for Northern Line Extension and TBTC Legacy Updates is **668,255 Euros** relating to the following payment milestones:

<b>Payment Term</b>	<b>Payment Percentage</b>	<b>Payment Value</b>
Upon contract award	20%	133.651 Euro
At TfL Approval of Phase 1 design	20%	133.651 Euro
At successful Factory Acceptance Tests for Phase 1 Deliverables in Grenoble	15%	100.238 Euro
At successful Site Acceptance Tests for Phase 1 Deliverables in London	15%	100.238 Euro
At successful Factory Acceptance Tests for Phase 2 Deliverables in Grenoble	15%	100,238 Euro
At successful Site Acceptance Tests for Phase 2 Deliverables in London	15%	100,239 Euro

## Schedule 3

### Contract Variation Procedure

- 1           The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2           The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (10) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a “**Variation Order**”) and supplying such Variation Order to the Supplier. The relevant part(s) of the Contract shall thereupon be varied accordingly.
- 3           The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a “**Variation Order**”) and supplying such Variation Order to the Supplier. The relevant part(s) of the Contract shall thereupon be varied accordingly.
- 4           The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5           The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods to be supplied and extent of Services to be carried out
- 6           In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure. However, no Variation shall be implemented and no additional work shall be performed unless it has been executed by both Parties.

- 7       The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.
- 8       The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Contract, including, but not limited to the Specification.
- 9       Strict adherence to the procedure described in this Schedule 3 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 3 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

**Appendix 1**  
**Form of Variation Proposal/Variation Order**

<b>To:</b>	<b>From:</b>
------------	--------------

**Contract Reference:**  
**Variation Number:**  
**Variation Title:**

<b>PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)</b>
---

**Description of change:**

**Reason for changes and impact (if any) on Contract:**

**Variation Proposal Authorised by:**

**Proposal Date:**

<b>PART B (TO BE COMPLETED BY THE SUPPLIER)</b>
---

**Price Breakdown**

Note: If a further breakdown  
is needed please append  
details as a separate sheet.

**Expected Delivery Date:**

**Supplier's Representative:**

**Print Name:** ..... **Signature:** ..... **Date:** .....

Completed document to be returned to the Company's Representative

<b>PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)</b>
---

**Comment on Parts A and B:**

Variation Authorisation

**Company's Representative:**

**Print Name:** ..... **Signature:** ..... **Date:** .....

**Print Name:** ..... **Signature:** .....

**Date:** .....

**Schedule 4**  
**Quality and Safety Plan**

*Not Used*

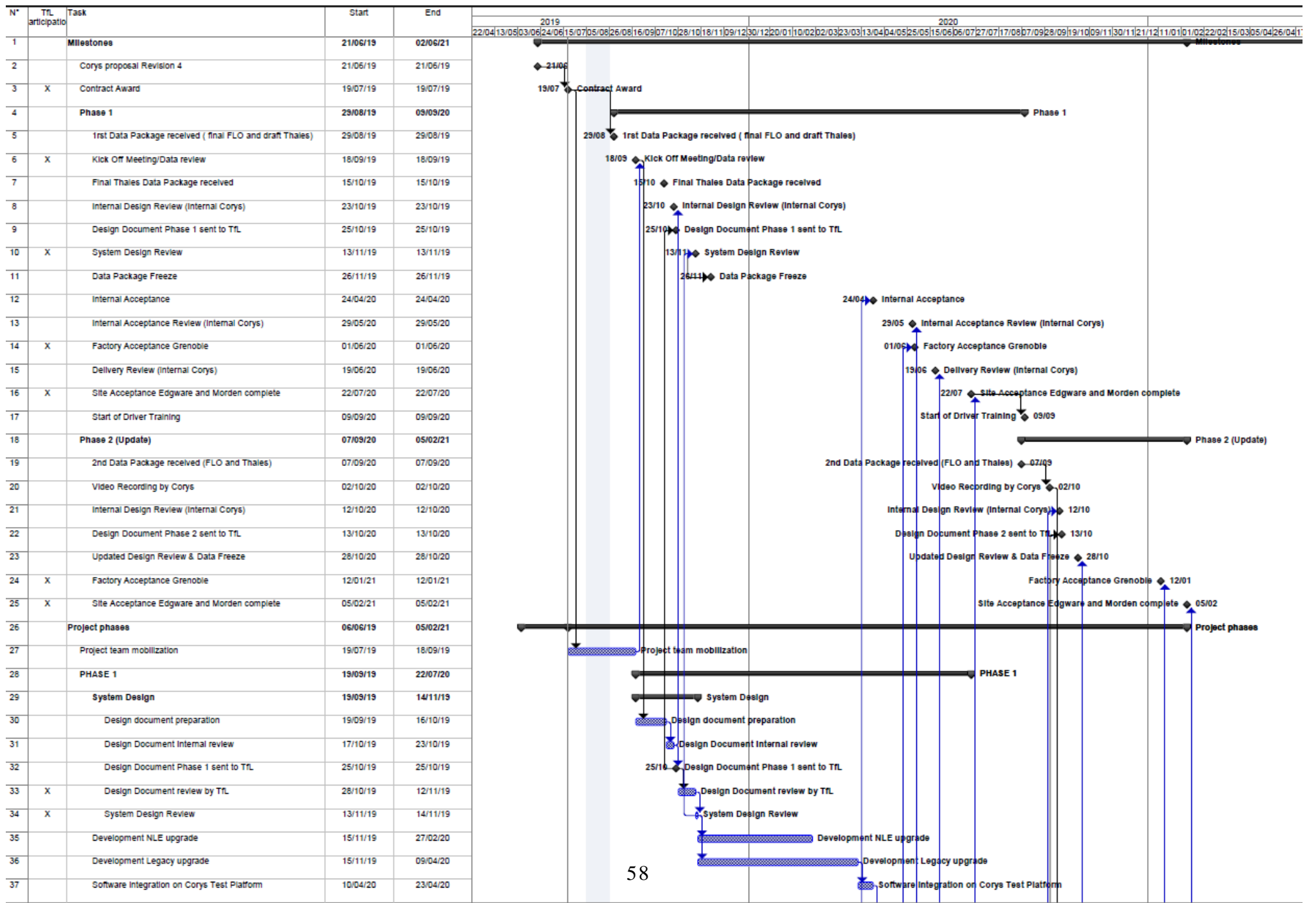
## **Schedule 5**

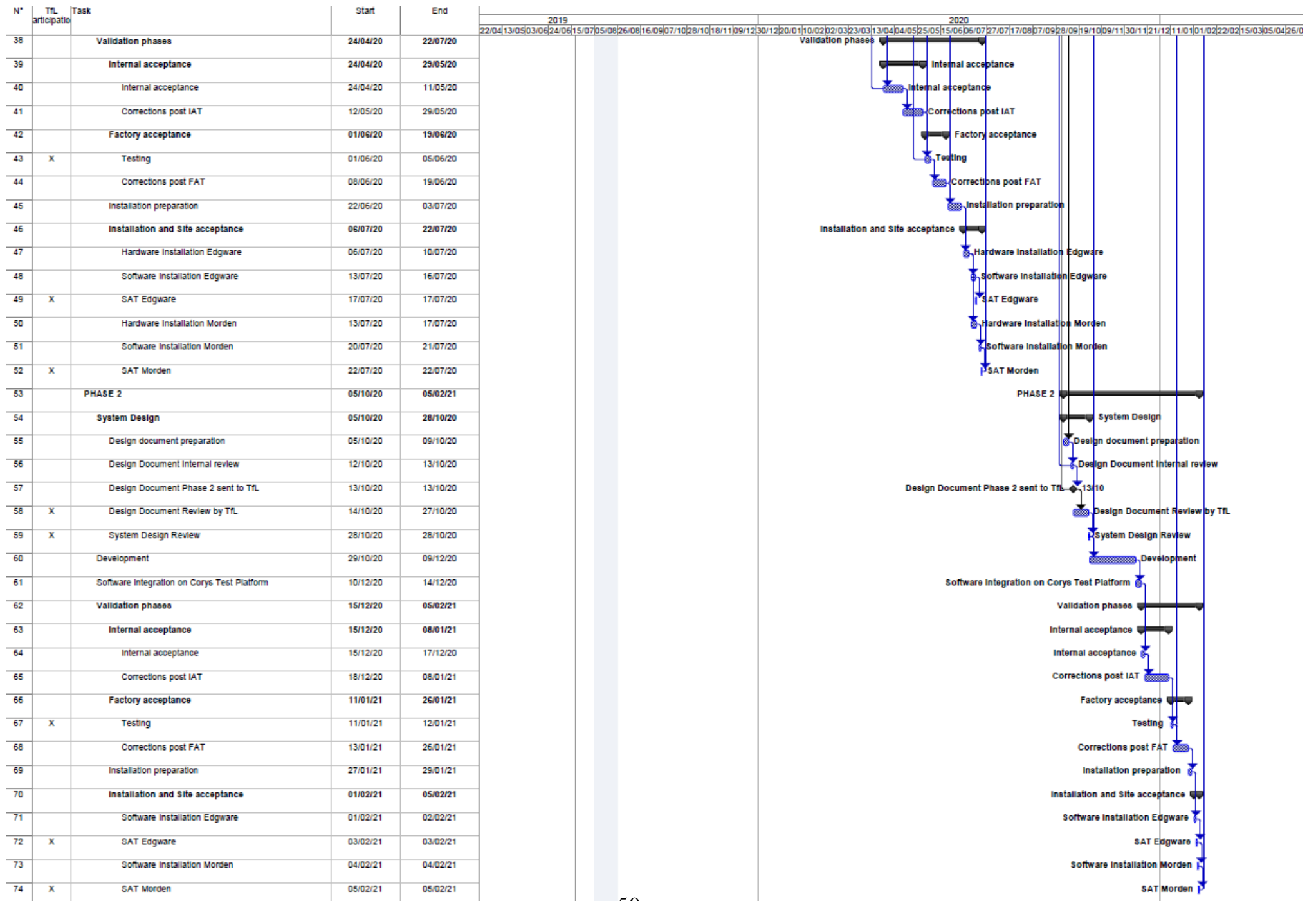
### **Programme**

Assuming a Commencement Date of 19th of July 2019 the Programme shall be as shown below as per TRN 5642 Northern\_Line\_Extension\_rev4 "NLE\_Corys\_Schedule\_rev19072019".

Date for Completion of the Services shall be: 5<sup>th</sup> February 2021.







## **Schedule 6**

### **Deed of Novation**

***Not Used***

## Schedule 7

### ***Form of Software Escrow Agreement***



## Schedule 8

*Not Used*

## **Schedule 9**

### **Form of Collateral Warranty**

***Not Used***

## **Schedule 10 Key Personnel**

*The following Supplier Personnel are Key Personnel:*

REDACTED

REDACTED

## **Schedule 11**

### ***Risks identified by the contractor***

The following risks are identified by the contractor and costed within the contract accordingly. Only occurrences outside this will constitute a variation.

1. Legacy upgrade, requirement 3.2: Update of VCC boundaries on the existing line (VCC3 and VCC6). Provision has been included to test regressions due to this change.
2. Legacy upgrade, requirement 3.2: update of the signage of the whole of the line. Provision has been included as it was not possible to anticipate exactly the number of changes.



## **Schedule 12**

### **Work Related Road Risk (WRRR) Self Certification**



WORK RELATED  
ROAD RISK

# Self-Certification Form

Supplier Name:	CORYS		
Contact details:	44, rue des Berges, 38024 Grenoble Cedex 1, France, +33 4 76 28 82 00		
Contract name:	Update of the three Northern line driving Simulators	Contract Ref. No. :	20560

## WRRR compliance status - Tier 1 supplier (please tick):

- ☐ Fully compliant with the WRRR Requirements as indicated below
- ☐ Partially compliant with the WRRR Requirements as indicated below
- ☐ Not compliant with the WRRR Requirements as indicated below
- ☐ Not applicable ☒ Not applicable at tier 1 - applicable to sub contractors

**IMPORTANT:** The WRRR Requirements apply to all direct suppliers of TfL and to all subcontracted fleet/freight operations – see Notes (overleaf)

## Part 1: WRRR Requirements - Tier 1 supplier

FORS ID number:		FORS expiry date:	
FORS status:	Registered <input type="checkbox"/>	Bronze <input type="checkbox"/>	Silver <input type="checkbox"/>
	Gold <input type="checkbox"/>	None <input type="checkbox"/>	

### Number of drivers serving TfL contracts:

All drivers have received Vulnerable Road User (VRU) training during the previous five years that includes on-road experience from a cyclist's perspective, such as the Safe Urban Driving or Van Smart Courses

Number of drivers trained:

All drivers have completed a FORS e-learning module, or other TfL-approved training, in the previous 12 months

Number of drivers trained:

An appropriate system is in place for collision reporting, such as FORS Collision Manager

Name of system:

All drivers have licence checks at regular intervals through DVLA

Name of service provider:

Number of trucks <sup>1</sup> serving TfL contracts:		Number of vans <sup>2</sup> serving TfL contracts:	
--	--	--	--

Equipment for eliminating/minimising blindspots, to be fitted to trucks (cameras & side sensors)

Number of trucks fitted:

Audible equipment fitted that warns other road users of truck's left manoeuvre

Number of trucks fitted:

Sideguards fitted to exempt trucks

Number of trucks fitted:

Prominent blindspot warning signage on back of trucks

Number of trucks fitted:

1: > 3.5 tonnes gross vehicle weight 2: Including car derived vans

continued overleaf...

## Direct Vision Standard for HGV's (DVS)

DVS applies: Yes ☐ No ☐

Minimum DVS rating of vehicles used on relevant contracts:

### Part 2: Subcontractor(s) details

Name	FORS Status	FORS ID	Full/Part/Non Compliant
UPS Ltd	Bronze	008182	Full

### Comments/ Continuation:

### Declaration

I confirm that the information contained within this supplier checklist is accurate to the best of my knowledge.  
I understand that any vehicle or driver found non-compliant with the TfL WRRR Requirements may be refused access to site, which will be recorded as a failed delivery, or that other action may be taken as deemed fit.

Name:  Job Title:   
Signed:  Date:

### Notes

Part one of this form is used for the supplier to respond to questions regarding its own fleet.

Part two of this form is used for the supplier to respond on the compliance of their sub contractors. They shall provide the name of the company, FORS ID, FORS accreditation, and their assessment of the compliance of relevant operators.

Where the supplier does not operate its own vehicles, but subcontracts its freight/fleet operations, they are to mark their compliance status as 'not applicable at tier 1' and complete part two as described above.

The supplier shall ensure that each of its subcontractors who operate fleet/freight vehicles on contracts to which the WRRR requirements apply shall comply with the TfL WRRR requirements as if those subcontractors were a party to the contract.

EXECUTION PAGE:

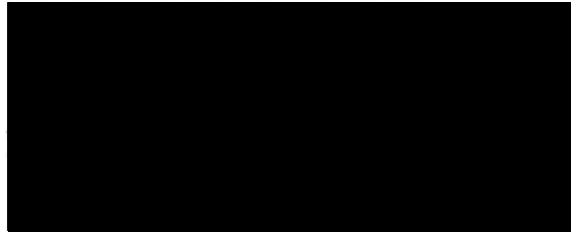
IN WITNESS of which this document has been executed on the date set out above,

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

Signed by

for and on behalf of

London Underground Limited



Signed by

for and on behalf of

Corys

CEO

