

It is immaterial for the purposes of this Clause 15.6 that the amounts referred to in Clause 15.6(a) or Clause 15.6(b) may be zero. Where a notice is given under this Clause 15.6, the Company's obligation to pay the Notified Sum under Clause 15.5 applies only in respect of the sum specified pursuant to this Clause 15.6.

15.7. Notwithstanding Clauses 15.5 and 15.6, if the Contractor is subject to an event set out in Clause (d) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment.

15.8. The Order Price shall be fixed and inclusive of all expenses and disbursements and shall only be changed in accordance with the Contract Variation Procedure.

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

15.10. In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the Company and the Contractor:

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

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

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

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

15.12. All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor 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.

- 15.13. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of the Agreement and any Contract or otherwise.

## **16. Variations**

- 16.1. The Company may, at any time during the term of any Contract, request the Contractor to provide a quotation for the supply of a Variation in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Variation, the relevant parts of the Contract shall be amended accordingly.

- 16.2. Any other variation to the terms of the Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

## **17. Indemnity**

- 17.1. The Contractor shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Contractor under the Agreement and each Contract:

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and
- (d) arising under the Company's contracts with third parties,

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

- 17.2. The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 17.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

17.3. The Contractor's indemnity under Clause 17.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of the Agreement and each Contract and for the period of twelve (12) years after the Order Completion Certificate or earlier termination of each Contract.

17.4. The Company may withhold from any sum due or which may become due to the Contractor any sum due to the Company as a result of the operation of Clause 17.1.

17.5. Other than in respect of the Losses (i) described in Clauses 17.1 (a) and (d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

17.6. Not used.

## **18. Insurance**

18.1. The insurance requirements under the Agreement and any Contract shall not relieve the Contractor from or limit any of its other obligations and liabilities under the Agreement and any Contract.

18.2. The Contractor shall ensure that the following policy or policies shall, at its own cost, be effected with a reputable insurer for the duration of the Agreement and for a period of not less than twelve (12) years after expiry or termination of this Agreement or any Contract, whichever is the later. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed):

- i. employer's liability insurance in respect of the Contractor's liability for any person in the Contractor's employment in the sum of not less than ten million pounds (£10,000,000) per incident or such other minimum level as may from time to time be required by law;
- ii. public and product liability insurance in respect of the Contractor's liability in the sum of not less than ten million pounds (£10,000,000) per occurrence with financial loss extension and shall be endorsed to provide that no act or omission on the part of the Contractor shall prejudice the Company's rights under such policy as principal;
- iii. professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the services being provided under the Agreement and any Contract but not less than two million pounds (£2,000,000) in the aggregate per annum or such other sum as may be specified in the Order; and

- iv. insurance of all materials acquired by or delivered to the Contractor for the purposes of performing its obligations under this Agreement or any Contract (whether or not the property of the Contractor or of the Company) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the Company and/or the Services are completed.

(together the “**Insurances**”).

- 18.3. The Contractor shall provide satisfactory evidence to the Company prior to the Commencement Date and within one (1) month of renewal or when requested by the Company that the Insurances have been effected and are in full force and effect and if so required produce the insurance policies for inspection and receipts for payment of the current premiums.
- 18.4. The Contractor shall notify the Company immediately of its inability to obtain any of the Insurances, the cancellation of any of the Insurances, or its inability to renew any of the Insurances.
- 18.5. If the Contractor fails to maintain the insurance policies as provided in this Clause 18, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Contractor or recover the same as a debt due from the Contractor.
- 18.6. The Contractor must comply with the terms and conditions of the insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Contractor must bear the cost of all exclusions and limitations under the insurances.

## **19. Termination**

- 19.1. The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Contractor if:
  - (a) the Contractor commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Contractor and the Company, of the Company serving notice on the Contractor requiring such remedy;
  - (b) the Contractor or anyone employed by or acting on behalf of the Contractor (whether or not acting independently of the Contractor when committing any breach) commits a Safety Breach or Prohibited Act;

- (c) The Contractor commits a persistent breach of Clause 22.2 and/or Clause 22.3;
  - (d) the Contractor 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 Contractor under the Agreement and each Contract) or is deemed unable to pay its debts as they fall due in accordance with within the meaning of 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;
  - (e) the Contractor breaches its obligations under Clause 32 or
  - (f) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12 (Contractor Performance).
- 19.2. Without prejudice to Clause 19.1, the Company shall have the right:
- (a) to terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Contractor in writing; or
  - (b) at any time to require the Contractor to suspend the provision of the Works by giving notice in writing (a "**Suspension Notice**") to the Contractor.
- 19.3. In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 18.1, the Contractor shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law at the Company's option:
- (a) permit the Company to enter the Contractor's premises and take possession of any equipment, goods or Documentation which are the property of the Company; and
  - (b) permit the Company to place an order for the remaining Works with any other person or persons or complete the provision of such Works by its own workmen; and
  - (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Contractor or any of its subcontractors have possession.

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

19.5. Following a termination in accordance with Clause 19.1 (but not a termination in accordance with Clause 1.1(a)) the Contractor shall be liable to the Company for

- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
- (b) where the Company exercises its rights under Clause 19.3(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Works under the Agreement and the relevant Contract by the Contractor ("**Excess Costs**"), such Excess Costs.

19.6. In the event that the Agreement and/or any Contract is suspended in accordance with Clause 19.2(b), the Contractor shall:

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

19.7. Not used

19.8. Not used

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

## 20. Disputes and Adjudication

20.1. Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 20.

20.2. The Parties shall use their reasonable endeavours to resolve any Dispute by a meeting between a suitably qualified and duly authorised representative of the Company and a suitably qualified and duly authorised representative of the Contractor (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.

- 20.3. 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 20.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one Party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts and Procurement Manager and the Contractor's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 20.4. If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Contracts and Procurement Manager and the Contractor's Managing Director or their deputies in accordance with Clause 20.3 either Party may refer the matter for resolution in accordance with the provisions of Clause 19.6..
- 20.5. Clauses 20.1 to 20.4 are subject to either party's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 19, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.
- 20.6. If a Dispute is not resolved in accordance with Clauses Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 20. to 20.4 either Party may serve notice referring any Dispute arising out of, under or in connection with the Agreement or any Contract to adjudication to be settled in accordance with the Adjudication Rules.

## 21. Legal Interpretation

### 21.1. Governing Law and Jurisdiction

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

### 21.2. Contracts (Rights of Third Parties) Act 1999

- (a) No person except any member of the TfL Group may enforce any term or terms of the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this shall not affect any other right or remedy of a third party arising at law.
- (b) Notwithstanding the rights referred to at Clause 21.2(a) above, the Company and the Contractor may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

## **22. Corrupt Gifts and Payments of Commission**

- 22.1. The Contractor undertakes that it shall not and procures that its subcontractors and agents 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.
- 22.2. The Contractor undertakes that it shall not, and shall use procure that its subcontractors and agents shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 22.3. The Company shall have the right to audit any and all such records necessary to confirm compliance with this Clause 22 at any time during the duration of the Agreement and each Contract and during the twelve (12) year period following expiry or termination of the Agreement and each Contract.

## **23. Criminal Record Declarations**

- 23.1. For the purposes of this Clause 23:

**"Relevant Individual"** means any servant, employee, officer, consultant or agent of either the Contractor or any subcontractor or supplier involved in the provision of , or intended to provision of, any aspect of the Works; and

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

- 23.2. The Contractor shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual providing the Works. The Contractor 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 Contractor shall procure that a Relevant Individual notifies the Contractor immediately if he commits a Relevant Conviction and the Contractor shall notify the Company in writing

immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

23.3. The Contractor shall not engage or allow to act on behalf of the Contractor or any subcontractor in the performance of any aspect of the Works any Relevant Individual who has disclosed a Relevant Conviction.

23.4. The Company shall have the right in accordance with the audit rights set out in Clause 0 to audit and inspect the records of the Contractor and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 23 at any time during performance of this Agreement and each Contract.

23.5. If the Contractor fails to comply with the requirements under Clauses 23.2 and/or 23.3 the Company may, without prejudice to its rights under Clause 19.1, serve notice on the Contractor requiring the Contractor to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Agreement and each Contract and/or Company's Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Works unless (in the case of non-compliance with Clause 23.2) within seven (7) days of receipt of the notice the Contractor confirms to the Company that he has procured all of the relevant Declarations required under Clause 23.2.

23.6. A persistent breach of Clause 23.2 and/or Clause 23.3 by the Contractor shall entitle the Company to terminate the Agreement and each Contract in whole or in part with immediate effect in accordance with Clause 19.1(c).

23.7. In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Contractor shall remove or procure the removal (as the case may be) of such Relevant Individual from the Agreement and each Contract and/or the Company's Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Works.

23.8. Nothing in this Clause 23 shall in any way waive, limit or amend any obligation of the Contractor to the Company arising under the Agreement and each Contract and the Contractor's responsibilities in respect of the provision of the Works remain in full force and effect and the Contractor cannot claim any extra costs or time as a result of any actions under this Clause 23.

## **24. Freedom of Information**

24.1. For the purposes of this Clause 24:

**"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**"Information"** means information recorded in any form held by the Company or by the Contractor on behalf of the Company; and

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

24.2. The Contractor acknowledges that the Company:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

24.3. Without prejudice to the generality of Clause 24.2 the Contractor shall and shall procure that its subcontractors (if any) shall:

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

24.4. The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

## **25. Data Transparency**

- 25.1. The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 24 and Clause 26, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.
- 25.2. The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 25.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

## **26. Confidentiality**

- 26.1. The Contractor undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Contractor and shall use such information only for the purpose of the performance of his obligations under the Agreement and each Contract.
- 26.2. On the Company's request, the Contractor shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Contractor;
  - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
  - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 26.3. The Contractor shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 26.1 and 26.2 as if they were the Contractor, and the Contractor shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 26.4. The Contractor shall notify the Company promptly if the Contractor becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.

- 26.5. The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, publish any material relating to the Company, the Company's Representative, the Agreement, any Contract or the Works without the prior written consent of the Company.
- 26.6. The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, make any press, television, radio or other media announcement or give any interview in connection with the Agreement, any Contract or the Works without the prior written consent of the Company to such announcement or interview and its content.
- 26.7. The provisions of Clauses 26.1 to 26.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
  - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 26.8. The Contractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 26 by the Contractor and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 26.

## **27. Transport for London Group**

- 27.1. Declaration of Ineffectiveness
- (a) Without prejudice to the Company's right to terminate the employment of the Contractor under Clauses 19.1 and 19.2(a) or at common law, the Company may terminate the Contractor's employment at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 27.1.
  - (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Contractor. The Parties agree that the provisions of this Clause 27.1 shall apply as from the date of receipt by the Contractor of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 19.1 and this Clause 27.1 or the Cessation Plan, the provisions of this Clause 27.1 and the Cessation Plan prevail.

- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
  - i. an orderly and efficient cessation of the Works or (at the Company's request) a transition of the Works to the Company or such other entity as the Company may specify; and
  - ii. minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 27.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company, of the Cessation Plan the Parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Contractor's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and any Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Contractor for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and any Contract in accordance with this Clause 27.1.

#### 27.2. Crime and Disorder Act 1998

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

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

- (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
- (ii) the misuse of drugs, alcohol and other substances; and
- (iii) re-offending

and in the performance of the Agreement and each Contract, the Contractor 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.

#### 27.3. The Company's business

The Contractor acknowledges that it:

- (a) has sufficient information about the Company and the Works;
- (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 Works in accordance with the Contract;
- (d) is aware of the purposes for which the Works are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and each Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Works.

#### 27.4. Best value

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

#### 27.5. Data Protection

- (a) The Contractor 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 Contractor shall only carry out

such processing in order to carry out the Works and at all times in accordance with any instructions from the Company.

- (b) When the Contractor receives a written request from the Company for information about, or a copy of, Company Personal Data, the Contractor 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 Contractor 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 Contractor; and
  - ii. comply with the same data protection requirements that the Contractor is required to comply with under the Contract.

#### 27.6. Conflict of Interest

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

#### 27.7. Equality and Diversity

- (a) Without limiting the generality of any other provision of the Agreement and any Contract, the Contractor:

- i. shall not unlawfully discriminate;
- ii. shall procure that its employees and agents do not unlawfully discriminate; and
- iii. shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Works,

within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

- (b) The Contractor acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:
  - i. eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;
  - ii. advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
  - iii. foster good relations between persons who share a Protected Characteristic and persons who do not.

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

- (c) The Contractor shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and each Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.
- (d) To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Contractor shall assist and co-operate with the Company where possible.

## **28. Work Related Road Risk**

28.1. For the purposes of Clauses 28.2 to 28.9 (inclusive) of this Agreement, the following expressions shall have the following meanings:

|                        |                                                                                                                            |
|------------------------|----------------------------------------------------------------------------------------------------------------------------|
| "Bronze Accreditation" | the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: |
|------------------------|----------------------------------------------------------------------------------------------------------------------------|

[www.fors-online.org.uk](http://www.fors-online.org.uk)

|                                  |                                                                                                                                                                                                                                                                                                            |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Car-derived Vans"               | a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;                                                                                                                                                                 |
| "Collision Report"               | a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;                                                                                                                                                                                               |
| "Delivery and Servicing Vehicle" | a Lorry, a Van or a Car-derived Van;                                                                                                                                                                                                                                                                       |
| "Driver"                         | any employee of the Contractor (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Contractor while delivering the Works;                                                                                                                                          |
| "DVLA"                           | Driver and Vehicle Licensing Agency;                                                                                                                                                                                                                                                                       |
| "FORS"                           | the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance; |
| "FORS Standard"                  | the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:<br><br><a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>                                                                                              |
| "Gold Accreditation"             | the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:<br><br><a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>                                                                                                       |
| "Lorry"                          | a vehicle with an MAM exceeding 3,500 kilograms;                                                                                                                                                                                                                                                           |

|                        |                                                                                                                                                                                                           |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "MAM"                  | the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;                                                                         |
| "Side Guards"          | guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;                            |
| "Silver Accreditation" | the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:<br><br><a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a> |
| "Van"                  | a vehicle with a MAM not exceeding 3,500 kilograms.                                                                                                                                                       |

#### 28.2. Fleet Operator Recognition Scheme Accreditation

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

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

#### 28.3. Safety Equipment on Vehicles

- (a) The Contractor shall ensure that every Lorry, which it uses to provide the Works, shall:
- (b) have Side Guards, unless the Contractor can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;

- (c) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (d) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (e) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

#### 28.4. Driver Licence Checks

Where the Contractor operates Delivery and Servicing Vehicles to provide the Works, the Contractor shall ensure that:

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

#### 28.5. Driver Training

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

#### 28.6. Collision Reporting

Where the Contractor operates Delivery and Servicing Vehicles to provide the Works, the Contractor shall:

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

#### 28.7. Self Certification of Compliance

Where the Contractor operates Delivery and Servicing Vehicles to provide the Works, within 90 days of the Commencement Date, the Contractor shall make a written report to the Company detailing its compliance with Clauses 28.3, 28.4 and 28.5, (the "WRRR Self-certification Report"). The Contractor shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

#### 28.8. Obligations of the Contractor Regarding Subcontractors

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

- (a) comply with Clause 28.2; and
- (b) where its subcontractors operate the following vehicles to provide the Works shall comply with the corresponding provisions of this Agreement:
  - i. For Lorries – Clauses 28.3, 28.4, 28.5 and 28.6; and
  - ii. For Vans – Clauses 28.4, 28.5, and 28.6,as if those sub-contractors were a party to this Agreement.

#### 28.9. Failure to Comply with Work Related Road Risk Obligations

Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Contractor fails to comply with Clauses 28.2, 28.3, 28.4, 28.5, 28.6, 28.7 and 28.8:

- (c) the Contractor has committed a material breach of this Agreement and any Contract; and

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

## **29. Access**

- 29.1. The Company shall give the Contractor access to the parts of the Underground Network required for the provision of the Works in accordance with the provisions of this Clause 29, provided that the Contractor complies with the access requirements set out in Schedule 13 and otherwise subject to and in accordance with Schedule 13.
- 29.2. Subject to the provisions of this Clause 29, the Company shall use reasonable endeavours to give access to such parts of the Underground Network to the Contractor on the dates and times on which it has stated that it requires such access.
- 29.3. The Contractor acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Agreement and each Contract.
- 29.4. Where the Contractor requires access to the Underground Network to carry out the Works it shall:
  - (a) apply for access at the earliest available opportunity; and
  - (b) provide the Company without delay with such additional information as the Company may reasonably require in respect of the Contractor's access requests.
- 29.5. The Company shall confirm access bookings in accordance with this Clause 29. The Company does not warrant or guarantee to the Contractor that such access will be granted. If any request for access is rejected, the Company shall advise the Contractor and agree with the Contractor alternative dates for resubmission.
- 29.6. If the Contractor fails to apply for access in accordance with this Clause 29, the Company shall not be liable for any delays or costs arising and the Contractor shall be responsible for any failure to comply with the terms of the Agreement and any Contract.
- 29.7. The Contractor shall as soon as practicable, take all steps to avoid, overcome or minimise the cancellation or alteration of approved access. If the Contractor fails to use any booked access, for whatever reason, it shall within twenty-four (24) hours report each instance to the Company's Representative setting out all details including the part of the Underground Network affected, the duration of any delay and the reasons for the delay or cancellation so far as the Contractor is aware.

29.8. The Contractor shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network. The Contractor shall make good any such damage at its own cost at the earliest opportunity and to the reasonable satisfaction of the Company.

29.9. The Contractor shall indemnify and keep indemnified the Company in respect of any claims by third parties relating to the disruption, delay or cancellation of their access due to the actions or omissions of the Contractor.

29.10. Prior to returning any part of the Underground Network to the Company at the end of any period of booked access, the Contractor shall clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and shall leave that part of the Underground Network in a clean and workmanlike condition to the satisfaction of the Company's Representative.

29.11. If the Contractor fails to comply with the requirements of Clause 29.10 within such reasonable time as may be allowed by the Company's Representative, then the Company may dispose of those items as the Company sees fit and at the Contractor's cost, which cost if met by the Company shall become a debt due from the Contractor to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Contractor under this Agreement and any Contract.

### **30. Contractor Performance**

30.1. On the date that the Company receives the first Payment Application and every 4 weeks after that date, the Company will assess the Contractor's performance under the Agreement and each Contract in accordance with Schedule 12.

30.2. The Company shall have the right to:

- (a) abate the Contractor for failure to meet the key performance indicators stated in Schedule 12; and
- (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Contractor in its performance of the Agreement and any Contract or any failure by the Contractor to meet the performance standards set out in Schedule 12

### **31. Interest**

31.1. If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 31.1 shall be immediately payable by the paying party on demand.

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

### **32. Change of Control**

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

### **33. Not used**

### **34. Bonds, Warranties and Guarantees**

34.1. Where required by the Company, the Contractor shall at its own expense provide within seven (7) days of the Order Commencement Date:

- (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 Contractor (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.

34.2. The Contractor shall ensure that any bond required under Clause 34.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Order Price (or such other amount as may be stated in the Order) at all times until the expiry of the Defects Liability Period; and
- (b) is renewed every twelve (12) months until the expiry of the Defects Liability Period.

34.3. If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 34.1 and 34.2 then the Contractor shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

34.4. If requested by the Company, the Contractor shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 34.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

34.5. If any performance bond and/or parent company guarantee required by any Contract is not procured by the Contractor and delivered to the Company in accordance with Clause

34.1, one quarter of the aggregate of the Order Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Contractor until such documents have been delivered.

34.6. If required by the Company, the Contractor 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 Form of Collateral Warranty
- (b) in favour of the Company and if requested by the Company, the Contractor shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and
- (c) 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 34.6.

34.7. If any warranty (including any accompanying parent company guarantee) required under Clause 34.6 is not delivered to the Company in accordance with Clause 34.6 one quarter of the aggregate of the Order Price relative to the Works provided by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

### **35. Title**

35.1. Without prejudice to any rights of rejection the Company may have, property in and title to any Plant and Materials shall pass to the Company upon the earlier of their delivery to the Site and the time when the Company makes payment (partial or otherwise) for them. The Contractor shall ensure that such Plant and Materials are clearly identified as belonging to the Company and are set aside for the Company.

35.2. If requested by the Company, the Contractor shall provide proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under any Contract.

### **36. Counterparts**

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

### **37. Costs**

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

### **38. Severance**

38.1. If any provision of the Agreement or any Contract is, or becomes, invalid, illegal or unenforceable in whole or in part then the validity, legality and enforceability of all other provisions and the remainder of the affected provisions of the Agreement or any Contract shall not be affected or impaired, provided that the operation of this Clause 8 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

38.2. Where a tribunal determines that any provision of the Agreement or any Contract is in any way unenforceable the relevant provision shall be amended or modified to the extent necessary to give the provision a valid legal and enforceable provision which is as similar as possible to that unenforceable provision and is reasonably consistent with the purpose and intent of the Agreement or Contract.

### **39. Partnerships and Joint Ventures**

39.1. If the Contractor is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement and any Contract are joint and several. The Agreement and any Contract and the liabilities of the partners under the Agreement and any Contract shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under the Agreement and any Contract.

39.2. If the Contractor comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement and any Contract are joint and several.

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

### **40. Survival**

40.1. The provisions of Clauses 2.1 (Instructions and Notices), 2.2 (Entire Agreement), 2.3 (No Waiver), 3.2 (Contractor Liability), 0 (Records and Audit), 9 (Intellectual Property Rights), 10 (Environmental Claims) 12 (Responsible Procurement), 13 (Defects), 15.10 (Set-off), 15.13

(Sums Payable by Contractor), 17 (Indemnity), 18 (Insurance), 18.1 (Termination), 20 (Disputes and Adjudication), 21.1 (Governing Law and Jurisdiction), 21.2 (Contract (Rights of Third Parties) Act 1999), 22 (Corrupt Gifts and Payments of Commission), 24 (Freedom of Information), 25 (Data Transparency), 26 (Confidentiality), 27.1 (Declaration of Ineffectiveness), 27.5 (Data Protection), 29.9 and 29.11 (Access), 35 (Title), 38 (Severance), 39 (Partnerships and Joint Ventures), 40 (Survival) and 41 (Free Issue Materials) will survive the termination or expiry of this Agreement and each Contract and continue in full force and effect, along with any other clauses, appendices or Schedules of this Agreement and each Contract necessary to give effect to them. In addition, any other provision of this Agreement and each Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

#### **41. Free Issue Materials**

- 41.1. In the event of the Company supplying Free Issue Materials to the Contractor under any Contract the cost of which has been included in calculating the Order Price, the Order Price shall be reduced by the amount included in the Order Price for the materials which have been replaced by such Free Issue Materials.
- 41.2. Any Free Issue Materials supplied by the Company to the Contractor shall remain the property of the Company and the Contractor 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 Contractor or with any materials supplied to it by third parties.
- 41.3. The Contractor shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Contractor'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 Contractor 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 Contractor's possession or in the possession of any subcontractor of the Contractor except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

#### **42. Company's and Contractor's Representative**

- 42.1. The Company and the Contractor shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract as the Company's Representative and the Contractor's Representative, respectively. Each party shall advise the other party, in writing, of the names and contact details of its representatives and these shall be recorded in each Order. The Contractor shall not appoint a Contractor's Representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any

party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Contractor may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.



## Schedule 1

### Framework Specification

#### 1. DESCRIPTION OF THE WORKS

- 1.1 The Contractor shall provide track labour operatives and supporting resources to deliver Lump Sum Works Package in accordance with the Contractors proposal as accepted by the Company.
- 1.2 The Contractor's labour operatives undertaking the works shall have the specified track competencies and training in accordance with the scope of works set out under each individual Lump Sum Works Package.
- 1.3 The Contractor shall deliver the works against a fixed price and programme in accordance with the Contractors proposal as accepted by the Company.
- 1.4 Each party shall be responsible for the activities where relevant to the works as set out in Appendix 1 "Additional Works information for Lot 2 Lump Sum Packages" of this Specification.
- 1.5 Where additional works are identified and instructed by the Company the Variation Procedure set out in the framework shall be applied. The pricing of any variation shall be priced using rates that do not exceed those set out in the Schedule of Rates in Schedule 4

#### 2. SCOPE OF SERVICES

- 2.1 The works shall consist of delivering works relating to maintenance, rectification and renewal of track, track drainage and track bed formation to include but not be limited to: -

|    |                                                                                |
|----|--------------------------------------------------------------------------------|
| 1  | Rail maintenance                                                               |
| 2  | Rail replacement                                                               |
| 3  | Spot sleepering                                                                |
| 4  | Reconditioning works                                                           |
| 5  | Fettling & packing                                                             |
| 6  | Rail stressing                                                                 |
| 7  | Conductor rail maintenance & replacement                                       |
| 8  | Topological surveys                                                            |
| 9  | Points and crossings maintenance                                               |
| 10 | Rectification of wet beds                                                      |
| 11 | Replacement of geotextile membrane                                             |
| 12 | Removal of scrap materials                                                     |
| 13 | Track drainage and treatments to deal with wet track                           |
| 14 | Compacting new ballast, checking and resetting the track line, level and cant. |

The specify requirement, deliverables and programme to be delivered will be defined within the individual scope of each Lump Sum Works Package

- 2.3 In providing track labour, the Contractor shall undertake all tasks carried out in

relation to delivering the requirements of the Scope Lump Sum Works Package including but not limited to performing the relevant safety critical roles.

The Contractor shall attend the Company's pre-planning and possession briefings, submit site diaries (or upload electronically where electronic sites diaries are used), incident and performance report to TfL, and possession plans and arrangements review when required by TfL

- 2.4 Where the Contractor's Personnel transfer between night shift and day shift in order to fulfil the requirements of the scope of the Lump Sum Works Package, any cost incurred to ensure even and regular shift payment to the Contractors Personnel shall be at the expense of the Contractor and the Company will only pay for shifts worked to the value of the Lump Sum Works Package.

2.5. Timings and Record of Attendance

All Contractor's Personnel shall sign a record of attendance at a time and place specified by the TfL, before starting work on any shift. The Contractor shall ensure that site diaries are completed for all staff undertaking the works in accordance with the provisions of the Contract.

3. Location of Packaged Works

- 3.1 The Company may order and request resources detailed above to work on all areas of TfL rail infrastructure, including stations, depots and premises. This may also include areas where Network Rail rules apply and any resources supplied shall be trained and assessed in the relevant Network Rail disciplines. The specific location of works to be delivered shall be as defined within the scope of the Lump Sum Works Package.

4. Hours of Work and Access

- 4.1 Access will be obtained in accordance with the arrangements set out in the Framework. Compliance with these arrangements is mandatory.
- 4.2 The Contractor shall provide the full compliment of the listed personnel to the allotted shift in accordance with the Contractors proposal as accepted by the Company
- 4.4 The Contractor shall provide the Company with details of any failed, delayed or cancelled access shifts.
- 4.5 The Contractor shall provide the Company with details of actual attendance on all shifts highlighting instances where:-
- a) the Contractors allocated labour failed to attend or
  - b) where the shift was aborted or foreshortened due to the Company.

## **APPENDIX 1**

### **Additional Works Information for Lot 2 Lump Sum Works Packages**

| Activity                      | TFL                                                                                                                                   | Contractor                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Design                        |                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| Surveys                       | TFL will carry out asbestos and power surveys.                                                                                        | The contractor is to notify TFL of any additional surveys they deem required. Suitable notification should be allowed within the delivery programme.                                                                                                                                                                                                |
| Core testing                  | TFL will undertake any core testing as required and the results will be made available to the contractor.                             |                                                                                                                                                                                                                                                                                                                                                     |
| Assurance                     | The compliance submission will be undertaken by TFL                                                                                   | Contractors to note absent compliance submissions and for the bid proceed on the assumption that compliances are available.                                                                                                                                                                                                                         |
| Licences / Permits            | The following licenses will be made available by TFL;<br>Storage License, Hot Works, MOM, OAN, Hydrant Permit, BB224, Fire Isolations | The contractor is to notify TFL of any additional licences or permits that it deems necessary to complete the works. 35 calendar weeks notice from when they are required is required from the contractor                                                                                                                                           |
| Permits to Dig                | TFL will arrange for the CAT scanning of the site, and will in turn issue a permit to dig for the site.                               | Once the contractor accepts site information revealed by the CAT scan the contractor is responsible for avoidance or disruption of the service/ utilities thereby indicated                                                                                                                                                                         |
| Signals liaison / programming | TFL will arrange all signals resources for these works.                                                                               | At tender stage the contractor will be required to provide an indication of required signal resource as part of the programme. The contractor will be expected to provide no less than two (2) weeks notice of signal resource requirement. TFL will confirm availability seven (7) days prior to requirement                                       |
| Welding liaison / programming | TFL will be responsible for the approval of proposed welding sub-contractors                                                          | The contractor is to make allowances within their price for the provision of their own welding gangs. Details of proposed welding companies must be issued along with the bid response, for acceptance by TFL. All weld records and inspection sheets are to be submitted to the TFL Construction Engineer at the end of the shift they were taken. |
| Define / arrange storage      | TFL shall define and arrange all storage for this scheme.                                                                             | The contractor will be responsible for the management of all storage sites in accordance with the storage licences.                                                                                                                                                                                                                                 |

|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Verification Survey                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | The Contractor is to complete a verification survey in order to confirm agreement of existing track position, and accuracy of the construction gauge. Any variations must be escalated to TFL immediately. Calibrated track gauges used must be dedicated to this site only, and must be used for install and handback. |
| Cost and Programme                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                         |
| Development of Programme                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | The contractor will develop a detailed programme and propose initiatives that will deliver efficiencies in time and cost.                                                                                                                                                                                               |
|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | The contractor is required to present a forecast spend profile of the package value with this tender and an updated version accompanying the periodic application.                                                                                                                                                      |
| Resources                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                         |
| Gang Composition                                  | TFL reserve the right to dictate the skill sets required to form the gang and to instruct the removal of individuals from the works if their competence does not meet agreed levels. A skills and competency matrix (template provided) must be completed for Lot 2 Lump Sum bid response, Any changes to the gang composition must be "like for like" on the skills and competency matrix and with the agreement of TFL. The contractor may not change more than one (1) member of the Site Person in Charge/ Protection, Handback or Site Engineering capability on a nightly basis, without prior agreement of TFL, otherwise TFL reserves the right to abort the shift, with no costs incurred. The contractor may not change more than two (2) members of the gang on a nightly basis without prior agreement of TFL; otherwise TFL reserves the right to abort the shift, with no costs incurred. |                                                                                                                                                                                                                                                                                                                         |
| Transfer of Operatives without agreement.         | Without the employers absolute agreement the Contractor should not transfer any Site Person in Charge PWT (any grade), T002/3 Handbacks or Site Engineers working elsewhere within the Tfl Group to fulfil the requirements of new resource booking through the framework.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                         |
| Site Person in Charge with Protection competences | TFL reserves the right to interview contractors Site Persons in Charge PWT EH etc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | The Contractor is required to provide competent PWT-EH etc for this work. They will provide copies of the relevant certificates to TFL for approval. The Contractor may be required to provide a CV for the PWT-EH etc.                                                                                                 |
| Handback                                          | TFL will be responsible for the approval of proposed Handbacks.TFL reserves the right to interview contractors                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | The contractor is required to provide competent staff to undertake handback of the site. The names, licenses and                                                                                                                                                                                                        |

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|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                         | Handbacks.                                                                                                                                                                                                               | portfolios shall be forwarded to TFL for acceptance. The Contractor may be required provide a CV for the Handback.                                                                                                                                                                    |
| Site Engineer                                                           |                                                                                                                                                                                                                          | The contractor is to provide adequate protection for all work by supplying Site Person in Charge with protection licences.                                                                                                                                                            |
| Work site protection;<br>Protecting Workers on the Track (PWT – EH) etc |                                                                                                                                                                                                                          | The contractor is to provide adequate protection for all work.                                                                                                                                                                                                                        |
| Operatives for manual handling on Lifts And Escalators                  |                                                                                                                                                                                                                          | The contractor is to provide one operative with manual handling training on Lifts and escalators in each gang by default unless otherwise specified in the package particulars..                                                                                                      |
| Production                                                              |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                       |
| Method Statements                                                       |                                                                                                                                                                                                                          | The contractor shall be responsible for the production of a standardised method statement for the works. It will be approved by TFL before work will be allowed to commence. The Contractor is to include a rail diagram and rail installation methodology on a shift by shift basis. |
| Nightly Programme                                                       |                                                                                                                                                                                                                          | Detailed nightly programmes, showing hold points and shift activities are to be provided at weekly meetings, and are to be incorporated into daily briefing packs. Mitigation for any deviations will be discussed, agreed and minuted at this meeting.                               |
| Control of Productivity                                                 | TFL reserves the right to stop works where there is risk of overrunning. Decisions will be made based upon the nightly programme as provided by the contractor. TFL will not incur any commercial penalties as a result. | The contractor will be responsible for productivity and will provide evidence as to how they intend to meet the agreed programme. A joint weekly progress/planning meeting will be held at which the contractor will present this information in an agreed format.                    |
| Interim As Built diagrams etc                                           | TFL is to provide the as built data of each shift, on a daily basis.                                                                                                                                                     | The Contractor is to provide Handback forms at the end of each shift, on a daily basis. Progress on as built drawings shall make up part of the end of                                                                                                                                |