

**Dated 10<sup>th</sup> July 2025**

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<b>LONDON UNDERGROUND LIMITED</b>	<b>(1)</b>
<b>and</b>	
<b>LH PLC</b>	<b>(2)</b>

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**CONTRACT**  
**for the supply of GOODS and SERVICES –**  
**LH PLC for the Cab HVAC Overhaul &**  
**Modification to support the 92TS JHOPL Central**  
**Line Program Lift**  
**CONTRACT REFERENCE NUMBER : CW74533**

## Contents

Clause	Page
1 Definitions and Interpretation .....	5
2 Duration <i>[and Option to Extend]</i> .....	17
3 Supplier's Primary Obligations .....	17
4 Records, Audit and Notification .....	19
5 Company's Obligations .....	22
6 <i>[Additional Goods and Services]</i> .....	22
7 Variation .....	22
8 Price and Payment .....	23
9 Delivery of Goods .....	26
10 Failure to Supply the Goods .....	27
11 Failure to Perform the Services .....	28
12 Access and Time for Performance of the Services .....	28
13 <i>[Supplier Performance]</i> .....	30
14 Work on Company's Sites .....	31
15 Free Issue Materials .....	32
16 Risk and Ownership .....	32
17 Inspection of the Goods .....	32
18 Warranty .....	33
19 Intellectual Property Rights .....	34
20 Termination and Suspension .....	37
21 Co-operation in Handover .....	40
22 Indemnity and Insurance .....	41
23 Force Majeure and Permitted Delay Events .....	43
24 <i>[Environmental Claims]</i> .....	44
25 Safety .....	45
26 Construction (Design and Management) Regulations 2015 .....	<b>Error! Bookmark not defined.</b>
27 Independent Supplier .....	46

28	Supplier Personnel .....	46
29	Confidentiality .....	51
30	London Living Wage.....	52
31	Responsible Procurement.....	54
32	Assignment and Subcontracting.....	55
33	Company's and Supplier's Representative .....	57
34	Costs .....	57
35	Severance .....	57
36	Publicity .....	57
37	Corrupt Gifts and Payments of Commission .....	57
38	No Waiver.....	58
39	Entire Contract.....	58
40	Notices and Service of Process .....	58
41	Dispute Resolution .....	59
42	Governing Law and Jurisdiction .....	60
43	Counterparts.....	60
44	Contracts (Rights of Third Parties) Act 1999.....	60
45	Partnerships and Joint Ventures .....	60
46	Bonds, Warranties and Guarantees.....	61
47	Change of Control .....	62
48	Interest.....	62
49	Freedom of Information .....	63
50	Data Transparency .....	64
51	Survival.....	64
52	Transport for London Group.....	64
53	CompeteFor.....	76
54	Criminal Record Declarations.....	76
	Schedule 1 Detailed Terms .....	79
	Schedule 2 Prices.....	80

Schedule 3 Specification .....	82
Schedule 4 Contract Variation Procedure .....	83
Schedule 5 Programme .....	85
Schedule 6 QUENSH <i>[and Quality and Safety Plan]</i> .....	86
Schedule 7 Corporate IPRs .....	92
Schedule 8 Deed of Novation .....	93
Schedule 9 Form of Parent Company Guarantee and Performance Bond .....	94
Schedule 10 Form of Collateral Warranty .....	95
Schedule 11 <i>[Supplier Performance]</i> .....	100
Schedule 12 <i>[Heavy Goods Vehicle Direct Vision Standard]</i> .....	105
Schedule 13 <i>[Ethical Sourcing and Modern Slavery Action Plan]</i> .....	106

**THIS [CONTRACT** dated on 10<sup>th</sup> July 2025

**BETWEEN:**

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the “**Company**” which expression shall include its successors and assigns); and
- (2) **LH – PLC** a company registered in England and Wales under number 2802249 and having its registered office at Unit 42 Weir Road, Durnsford Industrial Estate, London, SW16 8UG (“**the Supplier**”).

## **BACKGROUND**

- (A) The Supplier carries on the business of *[manufacturing and]*<sup>1</sup> selling the Goods and providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Contract.
- (C) This Contract may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Contract.

**THE PARTIES HEREBY AGREE** as follows:

## **1 Definitions and Interpretation**

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

*["**Additional Goods**" means any goods which the Company requests the Supplier to provide in accordance with the terms of the Contract in addition to those set out in the Specification.]*<sup>2</sup>

*["**Additional Services**" means any services which the Company requests the Supplier to provide in accordance with the terms of the Contract in addition to those set out in the Specification.]*<sup>3</sup>

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

**“Applicable Laws”** means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) assimilated or modified by or under the EUWA, at any time or from time to time in force in the whole or any part of the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract, or the Goods and Services.

**“Associated Person”** shall have the meaning given to it by section 26 of the Procurement Act 2023.

**“BAFO”** means ‘best and final offer’.

**“CCSL”** means the Centre for Civil Society Limited, a registered company in England (company number: 07333734) whose registered office is Jacquard Point, 1 and 3 Tapestry Way, London, E1 2FJ or any relevant replacement organisation as notified to the Supplier by the Company from time to time..

**“Cessation Plan”** means a plan agreed between the parties or determined by the Company in accordance with Clause 52.1 to give effect to a Set Aside Order or a Public Procurement Termination Event.

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

**“Company’s Representative”** means the person appointed by the Company and named as such in Schedule 1.

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

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

**“Connected Person”** shall have the meaning given to it in paragraph 45, Part 3, Schedule 6 of the Procurement Act 2023.

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

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

**"Contractual Documentation"** means all documentation and information agreed to be delivered by the Supplier in accordance with the Contract including without limitation records, reports, documents, papers, unpatented designs, drawings, data specifications, manufacturing or work processes, testing procedures, relevant computer data and all other technical business and similar information originated by or on behalf of the Supplier in accordance with the Contract.

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

**"Contract Price"** means the price stated in Schedule 1.

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

**"Contract Variation Procedure"** means the procedure set out in Schedule 4.

**"Data Protection Legislation"** means:

- (a) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (b) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**"Debarment List"** shall have the meaning given to it by section 57 of the Procurement Act 2023.

**"Defect"** means that the Goods or any part of them do not comply with the requirements of the Contract, or are not fit for their intended purpose, or are of unsatisfactory quality whether in consequence of faulty design, faulty materials, negligence, bad workmanship or in consequence

of any other reason attributable to the Supplier or any Supplier Personnel. For the avoidance of doubt, this shall include damage which occurs during transit from the Supplier to the Company.

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

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

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

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

**“Documentation”** means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Supplier in the performance of the Contract and whether in paper form or stored electronically.

**“EDI Policy”** means a written policy provided by the Supplier setting how it will promote equality, diversity and inclusion.

***“Electronic Invoicing Platform”** means the Company’s invoicing platform for the submission and receipt of electronic invoices.]<sup>4</sup>*

***“Electronic Procure-to-Pay (eP2P) Vendor Handbook”** means the handbook setting out the system, format, file requirements and steps for registering to use and using the Electronic Invoicing Platform as updated from time to time, a copy of which can be downloaded from the following link – <https://tfl.gov.uk/corporate/publications-and-reports/procurement-information#on-this-page-5>.]<sup>5</sup>*

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

- (a) any written claim, demand, suit or notice from a third party, including a Regulatory Authority (“**Regulatory Authority**” means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or*



- (b) *any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).*

**“Environmental Law”** means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.<sup>6</sup>

**“EUWA”** means the European Union (Withdrawal) Act 2018 as amended by the REUL Act.

**“Excepted Liabilities”** means the liability of the Supplier for:

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

**“Excess Costs”** has the meaning given to that term in Clause 20.7.

**“Excludable Supplier”** shall have the meaning given to it by section 57 of the Procurement Act 2023.

**“Excluded Supplier”** shall have the meaning given to it by section 57 of the Procurement Act 2023.

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

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

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6

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

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

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

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

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

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

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

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

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

*[“Interest Rate” means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.]<sup>7</sup>*

*[“Key Personnel” means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 28.]<sup>8</sup>*

**“Liquidated Damages”** means the sums identified and calculated in accordance with Schedule 1.

**“London Living Wage”** the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk)).

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

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

**“Nominated Representatives”** has the meaning given to that term in Clause 41.2.

**“Notice to Proceed”** has the meaning given to that term in Clause 20.8(b).

**“Notified Sum”** has the meaning given to that term in Clause 8.8.

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

**“Payment Application”** has the meaning given to that term in Clause 8.1.

*[“PDF Invoice” means an invoice in PDF (portable document format) format.]<sup>9</sup>*

*[“Period” means the Company’s accounting periods as notified from time to time by the Company to the Supplier, each such Period being of between 25 and 32 days and one of 13 periods during the Company’s Financial Year and “Periods” shall be construed accordingly]<sup>10</sup>.*

**“Personal Data”** has the meaning given to it in the Data Protection Legislation.

**“Prescribed Period”** has the meaning given to that term in Clause 8.9.

**“Processing”** or **“processing”** has the meaning given to it in the Data Protection Legislation.

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

**“Prohibited Act”** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Company; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Company; or
- (b) entering into the Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before the Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
  - (i) under the Bribery Act 2010;
  - (ii) under the Criminal Finances Act 2017;
  - (iii) under legislation creating offences in respect of fraudulent acts; or
  - (iv) at common law in respect of fraudulent acts,in relation to the Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

**“Public Procurement Termination Event”** means the Company considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 for the purposes of section 78(2)(a) of the Procurement Act 2023.

**“Quality and Safety Plan”** means the Supplier’s quality and safety plan set out in Schedule 6 as amended from time to time.

**“QUENSH”** has the meaning given to it in Schedule 6.

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

**“Rejected Goods”** has the meaning given to that term in Clause 17.2.

**“Rejection Notice”** has the meaning given to that term in Clause 17.2.

**“Relevant Subcontractor”** means a Subcontractor or subcontractor of any tier for the purposes of section 78(2)(c) of the Procurement Act 2023<sup>11</sup>.

*[“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).]12*

**“Responsible Procurement Policy”** means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2021, and as may be amended.

**“REUL Act”** means the Retained EU Law (Revocation and Reform) Act 2023.

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

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

**“Set Aside Order”** means an order setting aside the Contract, any part of the Contract or any modification of the Contract, in each case made by a court of competent jurisdiction in accordance with section 104 of the Procurement Act 2023.

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

**“Standards”** means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to supply the Goods and Services in accordance with good industry practice. A full set of current Standards is available for the Supplier’s use on-line at the LUL Standards e-library or as notified to the Supplier.

**“Subcontract”** means a contract between the Supplier and a Subcontractor.

**“Subcontractor”** means a subcontractor to the Supplier, being the counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Goods and/or Services (or any part of them)<sup>13</sup>.

**“Supplier Exclusion Ground”** means:

- (i) the Supplier has, since the award of the Contract, become an Excluded Supplier or Excludable Supplier (including by reference to an Associated Person) for the purposes of section 78(2)(b) of the Procurement Act 2023); and/or
- (ii) a Relevant Subcontractor, is or becomes an Excluded Supplier or Excludable Supplier for the purposes of section 78(2)(c) of the Procurement Act 2023.

**“Supplier Personnel”** means all persons, including (without limitation) employees, workers, officers, suppliers, sub-contractors and agents of the Supplier, who or which are engaged in any of the performance of the Supplier’s obligations under the Contract, performance of any of the Services and supply of any of the Goods and including the Key Personnel.

**“Supplier’s Representative”** means the person appointed by the Supplier and named as such in Schedule 1.

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

**“TfL Group”** means Transport for London and all of its subsidiaries and their subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time, and includes subsidiaries of any tier, and reference to any **“member of the TfL Group”** refers to TfL or any such subsidiary.

**“Transparency Commitment”** means TfL’s commitment (applying to TfL, the Company and the rest of the TfL Group) to publish contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL’s own published transparency commitments.

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

“**VAT**” means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any tax replacing, or adding to, the same or of a similar nature.

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

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

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

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

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

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

- 1.2 The headings in the Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Contract and references to the Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Contract or any other document shall be construed as references to the Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted and references to Applicable Laws includes all subordinate legislation made under them, in each case from time to time.
- 1.7 References to the “**Company**” shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Contract, the order of priority for the purpose of construction in descending order shall be:



- (a) the Clauses of the Contract;
- (b) the Schedules to the Contract (equal priority but subject to Clause 1.10); and
- (c) any other document referred to in, or incorporated by reference into, the Contract.

1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the Clauses of the Contract and a provision of any other Schedule then the Clauses of the Contract shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Contract.

## **2 Duration and Option to Extend**

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

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

- 3.1 The Supplier shall supply the Goods and shall perform the Services in accordance with the terms of the Contract.
- 3.2 The Supplier shall ensure and warrants to the Company that the Goods will:
- (a) conform in all respects with the Specification and the provisions of the Contract including, without limitation, specifications as to quantity, quality and description;
  - (b) be of satisfactory quality and fit for the purpose for which they are intended;<sup>14</sup>
  - (c) comply with all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);

- (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
- (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company;
- (f) have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment.

3.2A *The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the duration of the Contract in accordance with the requirements set out in the Specification.*

3.3 The Supplier shall ensure and warrants to the Company that the Services will:

- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
- (b) be performed in accordance with the Programme;
- (c) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification; and
- (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.

3.4 The Supplier warrants to the Company that it has entered into and executed the Contract by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.

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

3.6 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery including, but not limited to, those required by any Applicable Laws and Standards.

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

- 3.8 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.
- 3.9 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.10 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-license) of all and any Intellectual Property Rights as contemplated in this Contract.
- 3.11 The Supplier warrants to the Company that, as at the date of this Contract, none of the Supplier, the Supplier's Associated Persons or any Relevant Subcontractor is an Excluded Supplier or Excludable Supplier (including in each case by reference to their Connected Persons).
- 3.12 *Not used*
- 3.13 *Not Used*
- 3.14 *Not used*
- 3.15 *Not used.*
- 3.16 The Supplier in designing and specifying the parts of the Goods which it is required to design and specify, warrants, undertakes and represents to the Company that the design:
- a) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Contract;
  - b) complies with all Applicable Laws and Standards, and
  - c) is fit for the purpose defined in the Specification.
- 3.17 The Supplier accepts entire responsibility for the design and specification of the Goods and Services which it is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between its design and specification of the Goods and Services and the documents which are part of the Contract.

#### **4 Records, Audit and Notification**

- 4.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Contract

and all transactions related to the Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

4.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under the Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain its records in an orderly and logical fashion.

4.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time during the period referred to in Clause 4.2.

4.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in performance of the Contract, whether the Supplier's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under the Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under the Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract; and
- (f) providing the Company with such assistance as the Company may require to discharge its obligations under section 60(4) of the Procurement Act 2023.

4.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy the Contract requirements.

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

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

4.8 The Supplier shall promptly notify the Company in writing:

- (a) if any of the Supplier, the Supplier's Associated Persons or any Relevant Subcontractor is or is placed on the Debarment List;

- (b) if any of the Supplier, the Supplier's Associated Persons or any Relevant Subcontractor is or becomes an Excluded Supplier or Excludable Supplier (including in each case by reference to their Connected Persons);

and shall provide any further information that the Company may reasonably require in this regard.

- 4.9 Without prejudice to Clause 47 (Change of Control), the Supplier shall notify the Company in writing as soon as reasonably practicable and in any event within 5 Working Days of any changes (excluding the date of the change itself) to the Supplier's Connected Persons together with information regarding any new Connected Persons.

## **5 Company's Obligations**

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

## **6 Additional Goods and Services**

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

## **7 Variation**

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

## 8 Price and Payment

- 8.1 The Supplier shall submit an application for payment to the Company's Representative according to the rates and prices set out in Schedule 2 for the relevant portion of the Contract Price (a "**Payment Application**") in respect of the Goods after the Delivery Date of such Goods. If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application for the relevant portion of the Contract Price to the Company's Representative after the Delivery Date of each instalment.
- 8.2 The Supplier shall submit a Payment Application for the relevant portion of the Contract Price in respect of the Services using the rates and prices set out in Schedule 2, to the Company's Representative
- 8.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.
- 8.4 *Not used*
- 8.5 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company shall notify the Supplier in writing not later than *[seven (7) days] [five (5) days]*<sup>15</sup> after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
  - (b) the basis on which the amount was calculated
- a "**Payment Certification**". It is immaterial for the purposes of this Clause 8.5 that the amounts referred to in Clause 8.5(a) or Clause 8.5(b) may be zero. Where the Company fails to comply with its obligations under this Clause 8.5 and there is an undue delay in assessing and verifying the Payment Application, the Payment Certification shall be regarded as issued for the purposes of Clause 8.8 after a reasonable time has passed.
- 8.6 Within six (6) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company. The Supplier [shall/may] submit any VAT invoice as [a PDF Invoice by email to the email address in Schedule 1.]. The Supplier shall ensure that each PDF Invoice has a unique file reference and be a separate PDF file.

- 8.7 The final date for payment (“**Final Date for Payment**”) [for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company’s Representative received the Payment Application except if the Supplier fails to issue a VAT invoice in accordance with the timescale set out in Clause 8.6 (and such failure is not due to any failure by the Company to comply with its obligations in Clause 8.5) then the Final Date for Payment shall be extended by the additional number of days taken by the Supplier to issue the VAT invoice] [shall be ten (10) days after the date on which the Company’s Representative received the applicable VAT invoice]
- 8.8 Subject to Clause 8.9 and Clause 8.10, the Company shall pay the Supplier the sum referred to in the Company’s Representative’s Payment Certification pursuant to Clause 8.5 (the “**Notified Sum**”) on or before the Final Date for Payment.
- 8.9 If the Company intends to pay less than the Notified Sum the Company or the Company’s Representative (as the case may be) should notify the Supplier in writing without undue delay (and not later than one (1) day prior (the “**Prescribed Period**”)) to the Final Date for Payment of:
- (a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or
  - (b) if there is more than one basis, each basis and the amount attributable to it.
- It is immaterial for the purposes of this Clause 8.9 that the amounts referred to in Clause 8.9(a) or Clause 8.9(b) may be zero. Where a notice is given under this Clause 8.9, the Company’s obligation to pay the Notified Sum under Clause 8.8 applies only in respect of the sum specified pursuant to this Clause 8.9.
- 8.10 Notwithstanding Clauses 8.8 and 8.9, if the Supplier is subject to an event set out in Clause 20.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Supplier the Notified Sum on or before the Final Date for Payment.
- 8.11 The Contract Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Contract Price for the Goods and Services shall only be changed in accordance with the Contract Variation Procedure.
- 8.12 The Contract Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all Payment Applications.
- 8.13 In addition to any other rights of the Company whether at law or equity under this Contract, whenever under or arising out of this Contract or any other contract between the Company and the Supplier



- (a) any sum of money is recoverable from or payable by the Supplier; or
- (b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the TfL Group

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

- 8.14 All Payment Applications shall clearly show the Contract Reference Number and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.
- 8.15 All sums payable to the Company by the Supplier under the Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 8.16 The Company shall be entitled to the Supplier's standard discount for prompt payment.
- 8.17 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Contract Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Contract Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 8.17, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 8.18 The Company calculates the Volume Discount annually by applying the relevant Volume Discount Percentage to the Aggregated Annual Spend. The Company issues an invoice to the Supplier for the Volume Discount. The Supplier pays the Volume Discount to the Company within 30 days of receipt of the invoice.
- 8.19 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or Services performed or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Contract or otherwise.

## 9 Delivery of Goods

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Delivery Date at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods. The Company shall be under no obligation to accept partial delivery of an order.
- 9.2 The time of delivery of the Goods shall be of the essence of the Contract.
- 9.3 If the Goods are not supplied on the Expected Delivery Date then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 *[up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods]*. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event, or (iii) a Permitted Delay Event.
- 9.4 The Supplier accepts that the amount of Liquidated Damages under the Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Delivery Date.
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of the Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Delivery Date in accordance with Clause 40.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 9.8 In the event that all or any of the obligations of the Supplier under the Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss

of savings. The damages payable by the Supplier in accordance with this Clause 9 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

- 9.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 16.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.
- 9.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate.
- 9.11 Notwithstanding Clause 9.6 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) day's notice of the revised Expected Delivery Date (the "Revised Delivery Note").

## **10 Failure to Supply the Goods**

- 10.1 Without prejudice to any other right or remedy of the Company under this Contract or general law and its rights under Clause 20, if the Supplier fails to supply the Goods or any part to the Company's satisfaction the Company may give the Supplier at least seven (7) days' notice in writing (except in an emergency when no notice need be given) requiring the Supplier to remedy such failure.
- 10.2 If the Supplier fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the supply of the Goods or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 10.1 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.

- 10.3 For the purposes of Clause 10.1 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 10.1 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 10.1.

## **11 Failure to Perform the Services**

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

## **12 Access and Time for Performance of the Services**

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

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

become a debt due from the Supplier to the Company and is deductible or recoverable by the Company from any monies due or which may become due to the Supplier under this Contract.

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

## **13 Supplier Performance**

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

13.2 The Company shall have the right to:

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

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

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

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

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

## **15 Free Issue Materials**

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

## **16 Risk and Ownership**

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

## **17 Inspection of the Goods**

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



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

## **18 Warranty**

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

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

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

## **19 Intellectual Property Rights**

### *Existing Contracts*

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

### *Vesting of Intellectual Property Rights created under this Contract*

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

### *Ownership of the Supplier's Intellectual Property Rights*

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

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

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

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

*Provision of Supporting Documentation and Other Materials*

19.5 The Supplier shall:

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

*Company's Rights of Retention*

19.6 If the Supplier has not complied with its obligations under Clause 19.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 19.5(a).

*Company's Rights to the Software*

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

the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

*Company's Rights in relation to Other Procurement Activities*

19.8 For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 19.5 above and anything in which the Intellectual Property Rights referred to in Clauses 19.2, 19.3 and 19.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods and/or Services for the carrying out of any activities in connection with the licence under Clause 19.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

19.9 *Supplier's Indemnity against Third Party Intellectual Property Rights Infringement*

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the Goods and/or method of providing the Services as may be necessary to ensure that the use and provision of the Goods and Services continues in spite of such claim.

*Ownership of the Company's Intellectual Property Rights*

19.10 Intellectual Property Rights in all documentation and in all other material and items supplied by the Company to the Supplier in connection with the Contract shall remain vested in the Company or the person owning such rights at the time the documentation, material or items were supplied. The Supplier shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Company the rights referred to in this Clause.

*[Company's Intellectual Property Rights]*

- 19.11 *The Supplier is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.]*

## **20 Termination and Suspension**

- 20.1 The Company may terminate the Contract immediately (or on such notice as the Company may determine) by notice in writing to the Supplier if:
- (a) the Supplier commits a breach of the Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
  - (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
  - (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded; or
  - (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Contract) or is deemed unable to pay its debts as they fall due *[in accordance with] [within the meaning of*<sup>16</sup> *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, monitor, 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] or the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986*
  - (e) a breach of the Supplier's obligations under Clause 4.8, Clause 4.9 (Records, Audit and Notification), Clause 30 (London Living Wage), Clause 47 (Change of Control) or Clause 52.9 (Work Related Road Risk); or
  - (f) if the circumstances under section 72(3) of the Procurement Act 2023 apply; or
  - (g) the Company becomes entitled to terminate under Clause 20.4; or

- (h) the Supplier fails to comply in the provision of the Goods and/or Services with legal obligations in the fields of environmental, social or labour law *[or,*
- (i) *the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 11*

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

- (a) to terminate the Contract at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a “**Suspension Notice**”) to the Supplier.

20.3 Without prejudice to the Company’s right to terminate the Contract under Clauses 20.1 or 20.2 or at common law, the Company may terminate the Contract at any time following a Set Aside Order or a Public Procurement Termination Event in accordance with the provisions of Clause 52.1.

20.4 The Company may, where it considers that a Supplier Exclusion Ground applies, terminate the Contract in accordance with the provisions of this Clause 20.4, as follows:

- (a) the Company shall serve notice on the Supplier of its intention to terminate which shall:
  - (i) specify which Supplier Exclusion Ground the Company considers applies; and the reasons for the Company deciding to terminate on this basis;
  - (ii) invite the Supplier to make representations to the Company about the existence of the Supplier Exclusion Ground and the Company’s decision to terminate;
  - (iii) specify the period<sup>17</sup> within which, the Supplier must make such representations;
  - (iv) if applicable, specify a reasonable period<sup>18</sup> (determined at the sole discretion of the Company) within which the Supplier is required to have (or procured that its Subcontractor or subcontractor of any tier has) ceased sub-contracting to the Excluded Supplier or Excludable Supplier, and, if the Company considers necessary, appoint an alternative supplier who is approved by the Company.
- (b) On expiry of the period referred to in Clause 20.4(a)(iii) (and, where applicable, (iv)) then, if after considering the Supplier’s representations, the Company is satisfied that

the termination ground applies, it shall be entitled to terminate the Contract immediately upon written notice or such period as the Company considers appropriate.

20.5 In the event that the Company terminates the Contract for any reason, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Contract or under general law, at the Company's option:

- (a) permit the Company to enter the Supplier'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 Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services 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 Supplier or any of its subcontractors have possession.

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

20.6 In the event that the Contract is terminated, the liability of the Company shall be limited to payment to the Supplier for those Goods and Services provided in accordance with the Contract up until the date of such termination.

20.7 Following a termination in accordance under Clause 20.1 the Supplier shall be liable to the Company for

- (a) any Losses of whatever nature arising out of or in connection with the relevant breach or circumstances; and
- (b) where the Company exercises its rights under Clause 20.5(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 Goods and Services under the Contract by the Supplier ("**Excess Costs**"), such Excess Costs.

20.8 In the event that the Contract is suspended in accordance with Clause 20.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of those Goods and Services provided to the Company in accordance with the Contract up until the date of such suspension; and

- (b) not carry out any further work in connection with the provision of the Goods and Services until such time as the Company issues a notice lifting the suspension (a “**Notice to Proceed**”).

- 20.9 Subject to Clause 20.10, in the event that the Contract is suspended in accordance with Clause 20.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 20.10 In the event that the Supplier has commenced an appeal under section 65 of the Procurement Act 2023 then the process in Clause 20.9 does not apply until the conclusion of any such appeal (and if the Supplier is successful in its appeal the process in Clause 20.9 shall apply from the date of the Company’s receipt of notification from the Supplier of the successful outcome of the appeal)<sup>19</sup>.
- 20.11 In the event that the parties are unable to agree upon the variation requested under Clause 20.9, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 41.
- 20.12 Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 20.13 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision of the Goods and Services at the Company’s absolute discretion.

## **21 Co-operation in Handover**

- 21.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Contract and in the three (3) months after the Completion Date (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Contract termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the provision of the Goods and Services and in such a manner so as not to unduly disrupt or hinder the Company’s business



- 21.2 Without prejudice to the generality of Clause 21.1 above, the Supplier shall on or prior to the Completion Date transfer to the Company such Documentation relating to the Goods and Services or full copies thereof as the Company may request.

## **22 Indemnity and Insurance**

- 22.1 The Supplier 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 any relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Supplier under the 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 Supplier or any Supplier Personnel; 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.

- 22.2 The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 22.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.
- 22.3 The Supplier's indemnity under Clause 22.1 and all other indemnities under the Contract shall remain in force for the duration of the Contract and for the period of [twelve (12)] years after the Delivery Date and/or Completion Date or earlier termination of the Contract.
- 22.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 22.1, provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 22.5 Other than in respect of the Losses (i) described in Clauses 22.1(a) and 22.1(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 this Contract or arising in connection with the Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

22.6 Without prejudice to the obligation to indemnify the Company set out in Clause 22.1, the Supplier undertakes to<sup>20</sup>:

- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
- (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;
- (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence<sup>21</sup>;
- (d) maintain at its own cost an adequate level of "goods in transit" insurance commensurate with the risk and, where appropriate, being not less than £25,000 per occurrence, in respect of the Supplier's liability for theft, loss or damage to property and Goods while in transit from one place to another or being stored during a journey;
- (e) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person, or loss or damage to any property arising out of its performance of the Contract in an amount not less than £10,000,000, for any one occurrence;
- (f) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than six (6) years after the delivery of the Goods and completion of the Services (whichever is the later
- (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any Services or the provision of any of the Goods by the Supplier under the Contract satisfactory evidence confirming the existence of insurance in accordance with the terms of this Clause 22.6.

- 22.7 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 22.6.
- 22.8 If the Supplier fails to maintain the insurance policies as provided in Clause 22.6, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.
- 22.9 Not used.

## **23 Force Majeure and Permitted Delay Events**

### **23.1 Force Majeure**

Neither party shall be in breach of its obligations under the Contract if there is any total or partial failure of performance by it of its duties and obligations under the Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Supplier to perform its obligations under the Contract, the Company shall have the right to terminate the Contract immediately upon giving written notice of such termination to the Supplier.

### **23.2 Permitted Delay Events**

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Expected Delivery Date or Completion Date, within seven (7) days after the cause of any delay has arisen.
- (b) For the purposes of the Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
  - (i) any act of prevention, omission, default or neglect or breach by the Company of an express obligation under this Contract; or

- (ii) any variation of the Contract under Clause 7;
  - (iii) any denial of access under Clause 12.13; or
  - (iv) the suspension of the Contract in accordance with Clause 20 (other than where the suspension is necessary by reason of default by the Supplier).
- (c) Where any delay in achieving the Expected Delivery Date or Completion Date arises, the Supplier shall be entitled to an extension to such Expected Delivery Date or Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to provide the Goods by the Expected Delivery Date or Completion Date and provided that the Supplier:
- (i) notifies the Company of the Permitted Delay Event in accordance with Clause 23.2 and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
  - (ii) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
  - (iii) uses its reasonable endeavours to mitigate the delay to the relevant Expected Delivery Date or Completion Date; and
  - (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Contract by the Supplier or any Supplier Personnel.

## **24 Environmental Claims**

- 24.1 The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non performance or part performance of the Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier or any Supplier Personnel.
- 24.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.
- 24.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any

Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

- 24.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 24.5 The Supplier shall provide to the Company's Representative:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to provide the Goods and Services (for the purposes of this Clause 24.5, the "**authorisations**");
  - (b) copies of any amendments to the authorisations;
  - (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
  - (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.]

## **25 Safety**

- 25.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 25.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the Company Contract QUENSH Conditions that are indicated as being applicable to the Contract in the QUENSH menu set out in the Specification ("**QUENSH**") as amended from time to time; and
  - (b) the Company's drug and alcohol principles as amended from time to time.
- 25.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to the Contract as if the term "LU Premises" means any of the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.

25.4 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier Personnel for drugs or alcohol which the Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

**26 Not Used**

**27 Independent Supplier**

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

**28 Supplier Personnel**

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28.1 For the purposes of this Clause 28:

**“Current Service Provider”** means any person, company or other legal entity which on or before the Commencement Date employed or engaged any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company.

**“Relevant Claims and Liabilities”** means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;

**“Replacement Employer”** means any person to whom a Subsequent Transferring Employee may or does transfer under the Transfer Regulations on expiry or termination of the Contract (or part of it);

**“Staff List”** has the meaning set out in Clause 28.3;

**“Subsequent Transfer Date”** means the time and date on which a Subsequent Transferring Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;

**“Subsequent Transferring Employee”** means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods and/or Services who would transfer (in whole or part) to a Replacement Employer by virtue of the Transfer Regulations on the expiry or termination of the Contract (or part of it);

**“Transfer Regulations”** means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and

**“Transferring Employees”** means those employees or workers of the Current Service Provider who transfer (in whole or part) or have the right to transfer (in whole or part) to the Supplier under the Transfer Regulations

- 28.2 The Supplier will comply and procure that its subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the Expected Delivery Date and/or Completion Date or earlier termination of the Contract.
- 28.3 When requested by the Company (but not more than twice in any 12 month period) and at any time during the last twelve (12) months of the Contract and/or during any period of notice terminating the Contract, the Company may require the Supplier to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:
- (a) an anonymised or pseudonymised list employees or workers (of the Supplier and its subcontractors) engaged in supplying the Goods and/or Services, their salaries, benefits (including pension entitlements) and other conditions of employment or engagement, ages and length of service (the **“Staff List”**);
  - (b) the method of organisation of the employees or workers (of the Supplier and its subcontractors) engaged in supplying the Goods and/or Services and documentary evidence relating to such organisation;
  - (c) the proposals for informing and consulting with affected employees or workers;
  - (d) details of collective agreements and union recognition agreements; and
  - (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier’s employees or workers or

their representatives relating to the effect on such employees or workers of the expiry or termination of the Contract.

- 28.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 28 may be addressed. The Supplier will warrant that any information provided under Clause 28.3 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.
- 28.5 The Supplier will if requested notify the Company as soon as practicable and in any event within 5 days of the Supplier becoming aware of any additional or new information and any changes to any information already provided under Clause 28.
- 28.6 The Supplier agrees that the Company will be permitted to disclose any information provided to it under this Clause 28 in anonymised or pseudonymised form to any person who has been invited to tender for the provision of the Goods and/ or Services (or similar goods and/or services) and to any third party engaged by the Company to review the provision of the Goods and/ or Services and to any Replacement Supplier.
- 28.7 The Supplier will not and will procure that its subcontractors will not in the [ ]<sup>22</sup> prior to the expiry or termination of the Contract (or, where notice of termination is given of less than [ ]<sup>23</sup>, during any such period of notice) without the Company's prior written consent:
- (a) re-organise or substantially alter the number or method of organisation (including proportion of working time spent) or identity of the employees or workers engaged in supplying the Goods and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees or workers engaged in providing the Goods and/or Services or to the expected expiry or termination of the Contract, or
  - (b) make any increase to the salaries or any change to the terms and conditions of employment or engagement of the employees or workers engaged in the provision of the Goods and/or Services, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant subcontractor's business and are not related to the expiry or termination of the Contract (either because they are applied to all of the Supplier's or the relevant subcontractor's employees or workers, whether or not engaged in supplying the Goods and/or Services (or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which



is not related or confined to the employees or workers engaged in the provision of the Goods and/or Services or to the expiry or termination of the Contract.

- 28.8 The Supplier will and will procure that any subcontractor will co-operate with the Company and any Replacement Employer in the orderly management of the transfer of employment or engagement of any Subsequent Transferring Employees.
- 28.9 The Supplier will and will procure that any subcontractor will provide the Company and any Replacement Employer with a final Staff List (the “Final Staff List”) and staffing information relating to persons on that list not less than 28 days before any Subsequent Transfer Date, or if the Contract is terminated by the Company in accordance with Clause 20.1, 20.2, or 20.3, then the Final Staff List will be provided by the Supplier to the Company as soon as reasonably practicable and in any event no later than 14 days after the termination of the Contract.
- 28.10 The Supplier shall indemnify the Company [and any Current Service Provider]<sup>24</sup> against all Relevant Claims and Liabilities arising from or related to:
- (a) any failure by the Supplier (or its subcontractors) to comply with the Transfer Regulations in relation to any Transferring Employee;
  - (b) the employment or engagement or termination thereof by the Supplier (or its subcontractors) of any Transferring Employee or any person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier or its subcontractors;
  - (c) any actual or proposed changes by the Supplier (or its subcontractors) to the terms and conditions or working conditions of any Transferring Employee which are alleged to be to their detriment;
  - (d) the employment or engagement or termination thereof of any Supplier Personnel by the Supplier or its subcontractors.
- 28.11 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:
- (a) any claim by a Subsequent Transferring Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment or engagement before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations;

- (b) any claim by any former or existing employee or worker of the Supplier or relevant Subcontractor (other than a Subsequent Transferring Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (c) any claim or demand or other action taken against the Company or any Replacement Employer by any Subsequent Transferring Employee who continues to be employed or engaged in part by the Supplier after the Subsequent Transfer Date and which arises directly or indirectly out of or in connection with that retained employment or engagement or its termination.
- (d) For the avoidance of doubt, the Supplier shall continue to have full liability for the matters set out in (a) – (c) above if it is held or alleged that: (i) the contract of employment or engagement of any of the Subsequent Transferring Employees does not transfer in its entirety to the Company and/or any Replacement Employer (and/or its/their Sub-Contractors) and/or (ii) liability for any such contract of employment or engagement of any such Subsequent Transferring Employees does not transfer in its entirety to the Company and/or any Replacement Employer (and/or its/their subcontractors).
- (e) In this Clause 28.11 “Relevant Claims and Liabilities” include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity to the Replacement Supplier on the same terms set out in sub-clauses (a) - (c) above.

#### Key Personnel

- 28.12 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to fulfilment of the Supplier’s obligations under the Contract and/ or the provision of the Goods and Services as applicable. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company’s prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 28.13 The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing their duties for a period of or periods aggregating

thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.

- 28.14 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the supply of the Goods or Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform their role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform their role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with their replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.
- 28.15 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 28.16 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 28.17 Not Used

## **29 Confidentiality**

- 29.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of its obligations under the Contract.
- 29.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;

- (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.

29.3 The Supplier shall ensure that all Supplier Personnel perform its obligations in Clauses 29.1 and 29.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by Supplier Personnel in breach of such obligations.

29.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by any Supplier Personnel 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 any such Supplier Personnel for such breach of confidence.

29.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, the Contract or the Goods and Services without the prior written consent of the Company.

29.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with the Contract or the Goods and Services, or any Dispute arising under or in connection with the Contract.

29.7 The provisions of Clauses 29.1 to 29.6 shall not apply:

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

29.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 29 by the Supplier 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 29.

## **30 London Living Wage**

30.1 For the purposes of this Clause 30, "Sub-contractor" means a sub-contractor (of any tier) of the Supplier.

30.2 The Supplier acknowledges and agrees that the Mayor pursuant to section 155 of the Greater London Authority Act has directed that members of the TfL Group ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Company's estate in the circumstances set out in Clause 30.3(a).

30.3 Without prejudice to any other provision of this Contract, the Supplier shall:

(a) ensure that its employees and workers and procure that the employees and workers of its Sub-contractors engaged in the provision of the Goods and Services or performance of this Contract:

(i) for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and

(ii) on the Company's estate including (without limitation) premises and land owned or occupied by the Company,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

(b) ensure that none of:

(i) its employees and workers; nor

(ii) the employees and workers of its Sub-contractors,

engaged in the provision of the Goods and Services or performance of this Contract be paid less than the amount to which they are entitled in their respective contracts of employment;

(c) provide to the Company such information concerning the London Living Wage as the Company or its nominees may reasonably require from time to time, including (without limitation):

(i) all information necessary for the Company to confirm that the Supplier is complying with its obligations under Clause 30; and

(ii) reasonable evidence that Clause 30 has been implemented;

(d) disseminate on behalf of the Company to:

(i) its employees and workers; and

(ii) the employees and workers of its Sub-contractors,

engaged in the provision of the Goods and Services or performance of this Contract such perception questionnaires as the Company may reasonably require from time to time and promptly collate and return to the Company responses to such questionnaires; and

(e) cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):

(i) allowing the CCSL to contact and meet with the Supplier's employees and workers and any trade unions representing the Supplier's employees and workers;

(ii) procuring that the Supplier's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and workers and any trade unions representing the Sub-contractors' employees and workers,

in order to establish that the obligations in Clause 30.3(a) have been complied with.

30.4 For the avoidance of doubt the Supplier shall:

(a) implement the annual increase in the rate of the London Living Wage; and

(b) procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 July in the year following the publication of the increased rate of the London Living Wage.

30.5 The Company reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Supplier's staff and the staff of its Sub-contractors.

30.6 Without limiting the Company's rights under any other termination provision in this Contract, the Supplier shall remedy any breach of the provisions of this Clause 30 within four (4) weeks' notice of the same from the Company (the "**Notice Period**"). If the Supplier remains in breach of the provisions of this Clause 30 following the Notice Period, the Company may by written notice to the Supplier immediately terminate this Contract.

## **31 Responsible Procurement**

31.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

- 31.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with, the Responsible Procurement Policy.
- 31.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Supplier shall and shall procure that all of its subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 31.4 Where applicable to the Supplier, the Supplier shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it. *[The Supplier shall implement an Ethical Sourcing and Modern Slavery Action Plan in accordance with Schedule 13 to this Contract].*<sup>25</sup>
- 31.5 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 31.6 The Supplier shall not be entitled to any addition to the Contract Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 31.7 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 31 and the provisions of this Clause 31 are included in any subcontract (of any tier).
- 31.8 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 31.

## **32 Assignment and Subcontracting**

- 32.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Contract or any part thereof without the prior written consent of the Company (and on such conditions as the Company in its sole discretion determines).
- 32.2 The subcontracting of all or any part of the Goods and/or Services to a subcontractor shall not relieve the Supplier of its obligations to supply the Goods and/or Services under the Contract. The

Supplier shall be responsible for the acts and omissions of subcontractors.

- 32.3 The Company may novate, assign, transfer or subcontract the Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 32.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 8 in favour of any person to whom the Contract is being novated.
- 32.5 Without prejudice to Clause 32.1, where the Supplier subcontracts any or all of the Goods and/or Services, the Supplier shall include in each Subcontract (and procure that its Subcontractors (and any of their subcontractors of any tier) include in each of their subcontracts of any tier):
- (a) payment terms substantially similar to those set out in Clause 8 which comply with terms implied into the Subcontract by section 73 of the Procurement Act 2023;
  - (b) notification obligations similar to those set out in Clause 4.8; and
  - (c) terms entitling the Supplier or (in respect of a subcontract below the first tier) the payer under the relevant subcontract to terminate that subcontract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law.
- 32.6 On or before the Commencement Date, the Supplier shall notify the Company in writing of the name, contact details and details of the legal representatives of any Subcontractor, to the extent that such information has not already been provided by the Supplier to the Company. The Supplier shall also immediately provide to the Company in writing the name, contact details and details of the legal representatives of each new Subcontractor which the Supplier subsequently involves in the Goods and/or Services after the Commencement Date.
- 32.7 The Company reserves the right to verify whether any subcontractor of any tier is an Excluded Supplier or an Excludable Supplier (and the Supplier shall provide any information requested by the Company with regards to such verification). The Company may require that the Supplier replace or procure the replacement of any subcontractor of any tier that is or becomes an Excluded Supplier or an Excludable Supplier.
- 32.8 The Supplier shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a subcontractor of any tier pursuant to Clause 32.7.
- 32.9 The Company shall have no obligation to make any termination or compensation payment in respect of any termination of any subcontractor of any tier pursuant to Clause 32.7.



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

Each party shall appoint one or more representatives to act on its behalf under the Contract. Each party shall advise the other party, in writing, of the names and contact details of its representatives and these shall be recorded in Schedule 1. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

### **34 Costs**

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

### **35 Severance**

If a provision of the Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Contract, provided that the operation of this Clause 35 would not negate the commercial interest and purpose of the parties under the Contract.

### **36 Publicity**

The text of any press release or other communication to be published by or in the media concerning the subject matter of the Contract shall require the prior written approval of the Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

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

- 37.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 37.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.

- 37.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 37 at any time during performance of this Contract and during the twelve (12) year period following completion of performance.

## **38 No Waiver**

- 38.1 No failure or delay on the part of either party to exercise any right or remedy under the Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 38.2 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods and/or Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Contract or otherwise.

## **39 Entire Contract**

The Contract embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of the Contract. Except in the case of fraud neither party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in the Contract.

## **40 Notices and Service of Process**

- 40.1 Any notice or other document given under, or in connection with, the Contract must be in English and in writing and sent by letter or delivered by hand (save for [PDF Invoices sent by email][invoices submitted via the Electronic Invoicing Platform in accordance with the eP2P Vendor Handbook] [invoices submitted as an electronic invoice] [invoices submitted using an electronic contract management system])<sup>26</sup> to the other party's representatives in each case to the address below. The notice or other document will be effective as follows:

- (a) if the notice or other document is sent by letter, it will be effective when it is delivered;
- (b) if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered; and
- (c) In the case of an invoice submitted via the Electronic Invoicing Platform, it shall be deemed to have been received in accordance with the eP2P Vendor Handbook] [In the case of a PDF Invoice sent by email, it shall be deemed to be received five (5) working

hours (where “working hours” are 09:00 to 17:00 in a Working Day) following the time when the sender’s email system dispatches the email provided that the correct email addresses are used, and the onus shall be on the sender to prove the time that the email was dispatched and the address it was sent to. The place of delivery of email will be deemed to be the postal address of the recipient set out in Schedule 1

40.2 The addresses of the Company and the Supplier are set out in Schedule 1.

40.3 If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Contract may be served in accordance with this Clause 40.

## **41 Dispute Resolution**

41.1 Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause 41.

41.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company’s Representative and a suitably qualified and duly authorised representative of the Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.

41.3 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 41.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to *[the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director]* or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.

41.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to *[the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director]* or their deputies in accordance with Clause 41.3 either party may refer the matter for resolution in accordance with the provisions of Clause 42.

41.5 Clauses 41.1 to 41.4 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company’s Adjudication Rules. For the purposes of this Clause 41.5, “**Adjudication Rules**” means the most recent edition of the Company’s adjudication rules on the date of the notice referring adjudication.

## **42 Governing Law and Jurisdiction**

- 42.1 This 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.
- 42.2 Without prejudice to Clause 41 (Dispute Resolution), the courts of England and Wales will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract.
- 42.3 Either party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 42.4 Subject to Clause 42.3, each party waives any objection to, and submits to, the jurisdiction of the Courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of England and Wales or any other jurisdiction.

## **43 Counterparts**

This Contract 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.

## **44 Contracts (Rights of Third Parties) Act 1999**

- 44.1 Subject to the Replacement Employer's rights under Clause 28, no person except any member of the TfL Group may enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 44.2 Notwithstanding those rights referred to above in Clause 44.1, the Company and the Supplier may agree to vary or rescind the Contract without the consent of any third party.

## **45 Partnerships and Joint Ventures**

- 45.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Contract are joint and several. The Contract and the liabilities of the partners under the 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 their acceptance of the rights, obligations and liabilities of the Supplier under the Contract.
- 45.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Contract are joint and several.

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

## **46 Bonds, Warranties and Guarantees**

- 46.1 Where stated in Schedule 1, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:
- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 9 in favour of the Company;
  - (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 9 in favour of the Company.
- 46.2 The Supplier shall ensure that any bond required under Clause 46.1:
- (a) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1<sup>27</sup>; and
  - (b) is renewed every twelve (12) months until the earlier of (i) expiry of the Warranty Period applicable to the final Delivery Date or (ii) twelve (12) months after termination.<sup>28</sup>
- 46.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 46.1 and 46.2 then the Supplier 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.
- 46.4 If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 46.1 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.
- 46.5 If any performance bond and/or parent company guarantee required by the Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 46.1, one quarter of the

Contract Price shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.

- 46.6 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:
- (a) a collateral warranty in the form set out in Schedule 10 in favour of the Company and if requested by the Company, the Supplier 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
  - (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 46.6.
- 46.7 If any warranty (including any accompanying parent company guarantee) required under Clause 46.6 is not delivered to the Company in accordance with Clause 46.6 one quarter of the Contract Price relative to the Goods and Services provided by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

## **47 Change of Control**

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

## **48 Interest**

- 48.1 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 48.1 shall be immediately payable by the paying party on demand.
- 48.1 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 48.1 shall be immediately payable by the paying party on demand.

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

## **49 Freedom of Information**

- 49.1 For the purposes of this Clause 49.1:

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

**“Information”** means information recorded in any form held by the Company or by the Supplier on behalf of the Company; and

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

- 49.2 The Supplier 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 Supplier.

- 49.3 Without prejudice to the generality of Clause 49.2 the Supplier 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 Supplier) each Information Request relevant to the Contract, the supply of Goods and Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (b) in relation to Information held by the Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

- 49.4 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 Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

## **50 Data Transparency**

- 50.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 29 and Clause 49, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 50.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 50.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

## **51 Survival**

The provisions of Clauses 4 (Records and Audit), 8.13 (Set-Off), 10 (Failure to Supply), Clause 18 (Warranty), 19 (Intellectual Property Rights), 20 (Termination), 22 (Indemnity and Insurance), [24 (Environmental Claims)]<sup>29</sup> 28 (Supplier Personnel), 29 (Confidentiality), 31 (Responsible Procurement), 35 (Severance), 36 (Publicity), 37 (Corrupt Gifts and Payments of Commission), 38 (No Waiver), 39 (Entire Contract), 40 (Notices and Service of Process), 41 (Dispute Resolution), 42 (Governing Law and Jurisdiction), 44 (Contracts (Rights of Third Parties) Act 1999), 49 (Freedom of Information), 50 (Data Transparency), 51 (Survival), 52.1 (Set Aside Order and Public Procurement Termination Event), 52.5 (Data Protection and Cyber Security) and 52.7 (Procurement Legislation Disclosure) will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this 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.

## **52 Transport for London Group**

- 52.1 **Set Aside Order and Public Procurement Termination Event**



- (a) Without prejudice to the Company's right to terminate the Contract under Clause 20.1, Clause 20.2(a) or at common law, the Company may terminate the Contract at any time in accordance with the provisions of this Clause 52.1 in the event that:
  - (i) a court makes a Set Aside Order; or
  - (ii) there is a Public Procurement Termination Event (subject to Clause 52.1(b)).
- (b) In the event of a Public Procurement Termination Event, the Company shall serve a notice on the Supplier of its intention to terminate which shall:
  - (i) provide the Company's reasons for considering that a Public Procurement Termination Event has occurred and the reasons for the Company deciding to terminate on this basis; and
  - (ii) invite the Supplier to make representations to the Company about the occurrence of the Public Procurement Termination Event and the Company's decision to terminate; and
  - (iii) specify the period within which the Supplier must make such representations<sup>30</sup>;

and on expiry of the period referred to in Clause 52.1(b)(iii) above, if after considering the Supplier's representations, the Company is satisfied that a Public Procurement Termination Event applies the Company may terminate the Contract in accordance with Clause 52.1(c).
- (c) In the event that a court makes a Set Aside Order or the circumstances set out in Clause 52.1(b) apply, the Company shall notify the Supplier of the Set Aside Order or termination as a result of the Public Procurement Termination Event (such termination to take effect immediately or on such notice as the Company considers appropriate). Where there is any conflict or discrepancy between the provisions of Clause 20.1 and this Clause 52.1 or the Cessation Plan, the provisions of Clause 52.1 and the Cessation Plan prevail.
- (d) The Set Aside Order or termination as a result of the Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after the Set Aside Order or termination.

- (e) Following receipt by the Supplier of notification under Clause 52.1(c), 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:
  - (i) achieving an orderly and efficient cessation of or (at the Company's request) a transition to the Company or such other entity as the Company may specify of either (at the Company's election):
    - (A) supply of Goods and Services; or
    - (B) if applicable, any part of the supply of Goods and Services which are affected by the Set Aside Order or the Public Procurement Termination Event;
  - (ii) achieving minimal disruption or inconvenience to the Company or to public passenger transport services or facilities; and
  - (iii) giving effect to the terms of the Set Aside Order (if applicable).
- (f) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (g) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Contract in accordance with this Clause 52.1.

## **52.2 Crime and Disorder Act 1998**

The Supplier acknowledges that Transport for London is under a duty under section 17 of the Crime and Disorder Act 1998 (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 Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

### 52.3 **The Company's business**

The Supplier acknowledges that it:

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

### 52.4 **Best value**

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

### 52.5 **Data Protection and Cyber Security**

- (a) The Supplier shall comply with all of its obligations under the Data Protection Legislation.

- (b) The Supplier shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time)

#### 52.6 **Conflict of Interest**

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the supply of Goods and Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall complete an assessment for any conflict of interest throughout the duration of the Contract at regular intervals (not less than once in every six (6) months) and on further occasions as reasonably required by the Company.
- (c) The Supplier shall provide the Company with any information requested by the Company (including without limitation declarations provided by Supplier Personnel) in relation to each assessment completed.
- (d) The Supplier shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the supply of Goods and Services under the Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the supply of Goods and Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Contract.
- (e) The Supplier acknowledges and agrees that for the purpose of this Clause 52.6, an "interest" includes an interest as defined in section 81(4) of the Procurement Act 2023.

#### 52.7 **Procurement Legislation Disclosure**

- (a) For the purposes of this Clause 52.7:

**"Appropriate Authority"** means an appropriate authority for the purpose of the Procurement Legislation;

**"Disclosure Obligation"** means:

- (i) any obligation to publish information arising under Procurement Legislation which the Company considers applicable to the Contract, including without limitation obligations to publish copies of the Contract and information relating to the Supplier's performance under the Contract; and

- (ii) any obligation to provide information to an Appropriate Authority;

**“Procurement Legislation”** means the Procurement Act 2023, all regulations made under it and any amendment or re-enactment of any of them and any relevant guidance or recommendations issued by the Cabinet Office or an Appropriate Authority (including in each case their successors or assigns).

- (b) The Supplier acknowledges that the Company:

- (i) is subject to the Procurement Legislation and agrees to assist and cooperate with the Company to enable the Company to comply with the Disclosure Obligations; and
- (ii) without prejudice to the Company’s other rights, powers or remedies, may disclose information as the Company considers appropriate (in its absolute discretion) to comply with the Disclosure Obligations. The Company shall be responsible for determining whether any information is exempt from disclosure under the Procurement Legislation.

- (c) Without limiting the generality of Clause 52.7(b), the Supplier shall, and shall procure that its sub-contractors shall:

- (i) provide the Company with such information that the Company requests within [five (5)] Working Days of a request from the Company (or such longer period as the Company may reasonably specify), and in such forms as the Company may reasonably specify; and

- (ii) make available the Supplier’s Personnel as reasonably requested by the Company, to comply with the Company’s Disclosure Obligations.

- (d) The Company may in its absolute discretion consult with the Supplier regarding any proposed information to be disclosed pursuant to the Disclosure Obligations. The Company shall make the final decision regarding disclosure, publication and any redaction of such information.

## 52.8 Equality and Diversity

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

- (i) shall not unlawfully discriminate;

- (ii) shall procure that its employees, workers, officers and agents do not unlawfully discriminate; and

(iii) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the supply of the Goods and/or Services,

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 Supplier acknowledges that the Company is under duties under section 149 and section 40A of the Equality Act 2010:

(i) to have due regard to the need to 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) to have due regard to the need to advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it;

(iii) to have due regard to the need to foster good relations between persons who share a Protected Characteristic and persons who do not; and

(iv) to take reasonable steps to prevent sexual harassment of its employees in the course of their employment,

and in performing the Contract the Supplier shall assist and cooperate with the Company where possible in satisfying these duties.

(c) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Contract comply with the Company's policies in relation to equal opportunities and diversity, discrimination, workplace harassment (including sexual 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 Supplier shall assist and co-operate with the Company where possible.

(e) Within 3 Working Days after the commencement date of the Contract, the Supplier shall provide to the Company a copy of its EDI Policy (in the form submitted to the Company before the parties entered into the Contract). The Supplier shall keep its EDI Policy under review for the duration of the Contract and shall promptly provide the Company with any such revised EDI Policy.

## 52.9 Work Related Road Risk

- (a) For the purposes of Clauses 52.9(b) to 52.9(j) (inclusive) of this Contract, the following expressions shall have the following meanings:

<b>“Alternative Scheme”</b>	has the meaning given to it in Clause 52.9(b)(i);
<b>“Approved Progressive Driver Training”</b>	an ongoing programme of Drivers’ training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment consistent with the FORS Standard accreditation level required by Clause 52.9(b)(iii) with reference to the value of the Contract;
<b>“Category M Vehicle”</b>	a power-driven vehicle having at least four wheels and designed for the carriage of passengers;
<b>“Category N1 Vehicle”</b>	a vehicle with a MAM not exceeding 3,500 kilograms but not including Category M Vehicles;
<b>“Category N2 HGV”</b>	a vehicle with a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms and not including Category M Vehicles;
<b>“Category N3 HGV”</b>	a vehicle with a MAM exceeding 12,000 kilograms but not including Category M Vehicles;
<b>“CLOCS Standard”</b>	means the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: <a href="http://www.clocs.org.uk">www.clocs.org.uk</a>
<b>“Collision Report”</b>	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
<b>“Delivery and Servicing Vehicle”</b>	an HGV or a Category N1 Vehicle;
<b>“Direct Vision Standard” or “DVS”</b>	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 HGV

cab in relation to other road users. Further information can be found at: [www.tfl.gov.uk](http://www.tfl.gov.uk)

**“Driver”**

any individual member of Supplier Personnel including an agency or contracted driver, who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Goods and Services;

**“DVLA”**

Driver and Vehicle Licensing Agency;

**“FORS”**

the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating commercial vehicles including vans, HGV, coaches and powered two wheelers. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

**“FORS Standard”**

the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:

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

**“Gold Accreditation”**

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

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

**“HGV”**

a vehicle with a MAM exceeding 3,500 kilograms but not including Category M Vehicles;

**“MAM”**

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

**“Silver Accreditation”**

the second highest 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)



**“Supply Chain”**

any-subcontractors or sub-consultants of whatever tier beneath the Supplier and appointed in relation to the provision of the Goods and/or Services; and

**“WRRR Report”**

**Self-Certification** has the meaning given to it in Clause 52.9(h).

**Fleet Operator Recognition Scheme Accreditation**

(b) Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and/or Services, it shall within 90 days of the Commencement Date:

(i) (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

(ii) (unless already accredited to the required accreditation within the FORS Standard for the value of the contract as set out in Clause 52.9(b)(iii) below) have attained the accreditation in relation to the corresponding contract value shown at Clause 52.9(b)(iii) below.

(iii) The required FORS Standard accreditation corresponding to the relevant contract value:

Value of contract with the Company (or reasonably estimated value of the contract where it is not fixed price)	Required standard	
Contract Price or estimated Contract Price of one million pounds sterling or less (≤ £1,000,000)	For the Supplier	Silver Accreditation (or higher) or the equivalent standard within the Alternative Scheme
	For the Supply Chain	Silver Accreditation (or higher) or the equivalent standard (or higher) within the Alternative Scheme
Contract Price or estimated Contract Price of over one million pounds sterling (>£1,000,000)	For the Supplier	Gold Accreditation or the equivalent standard within the Alternative Scheme
	For the Supply Chain	Silver Accreditation (or higher) or the equivalent standard (or higher) within the Alternative Scheme

(iv) The Supplier shall maintain the relevant standard set out at Clause 52.9(b)(iii) above (or the equivalent standard within the Alternative Scheme) by way of an annual independent audit in accordance with the relevant accreditation within the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme.

(v) The Supplier shall procure that its Supply Chain maintain the relevant standard set out at Clause 52.9(b)(iii) above (or the equivalent standard within the Alternative Scheme) by way of an annual independent audit in accordance with the relevant accreditation within the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme.

### **Safety Features on HGVs**

- (c) The Supplier shall ensure that every HGV, which it uses to provide the Goods and Services, shall be fitted with safety features consistent with the Silver Accreditation.

### **Construction Logistics and Community Safety (CLOCS)**

- (d) Where applicable<sup>31</sup> (for contracts where the value of relevant Services to be provided exceeds or is estimated to exceed one million pounds sterling (>£1,000,000)):

(i) the Supplier shall comply with the CLOCS Standard

(ii) the Supplier shall ensure that the conditions at all sites and locations where:

(A) (the Services are being delivered, or

(B) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Delivery and Servicing Vehicle being used in the provision of the Services.

### **Direct Vision Standard (DVS)**

- (e) Where applicable (for contracts exceeding or estimated to exceed a value of one million pounds sterling (>£1,000,000)) where the duration will exceed 12 months and a significant amount of the work will be conducted within the GLA boundaries:

(i) the Supplier shall comply with the DVS Schedule attached to this Contract; and

(ii) the Supplier shall ensure that all Category N3 HGVs used in the provision of the Goods and Services achieve a minimum of a three (3) star Direct Vision Standard rating.

#### **Driver Training**

- (f) Where the Supplier operates Delivery and Servicing Vehicles to supply the Goods and Services the Supplier shall ensure that each of its Drivers attend the Approved Progressive Driver Training throughout the duration of the Contract.

#### **Collision Reporting**

- (g) Where the Supplier operates Delivery and Servicing Vehicles to deliver the Contract, the Supplier shall:
- (i) within 15 days of the Commencement Date, provide to the Company a Collision Report; and
  - (ii) provide to the Company an updated Collision Report within five Working Days of a written request from the Company at any time.

#### **Self Certification of Compliance**

- (h) Where the Supplier operates Delivery and Servicing Vehicles to supply the Goods and Services, within 90 days of the Commencement Date, the Supplier shall provide a written report to the Company detailing its compliance with Clauses 52.9(b), 52.9(c), 52.9(d), 52.9(e), 52.9(f) and 52.9(g) (as applicable) of this Contract (the "WRRR Self-Certification Report"). The Supplier shall provide updates of the WRRR Self-Certification Report to the Company on each six month anniversary of its submission of the initial WRRR Self-Certification Report.

#### **Obligations of the Supplier regarding subcontractors**

- (i) In addition to compliance with Clause 52.9(b)(v), the Supplier shall procure that those members of the Supply Chain who operate Category 1 Vehicles, Category N2 HGVs and/or Category N3 HGVs to supply the Goods and Services shall comply with the corresponding provisions of the Contract:
- (A) for all Delivery and Servicing Vehicles, Clauses 52.9(d), 52.9(f), 52.9(g), 52.9(h); and
  - (B) for Category N2 HGVs – Clause 52.9(c); and
  - (C) for Category N3 HGVs – Clauses 52.9(c), and, where applicable 52.9(e);

as if those members of the Supply Chain were a party to this Contract.

#### **Failure to Comply with Work Related Road Risk Obligations**

- (j) Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with any of Clauses 52.9(b), 52.9(c) (where applicable), 52.9(d) (where applicable), 52.9(e) (where applicable), 52.9(f), 52.9(g) and 52.9(h):

(i) the Supplier has committed a material breach of this Contract; and

(ii) the Company may refuse the Supplier, Supplier Personnel and its and their 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).

### **53 CompeteFor**

- 53.1 Without prejudice to Clause 32, the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Contract, to supply goods, works or services to the Supplier.
- 53.2 The Supplier will use all reasonable endeavours to ensure that its subcontractors (for the purposes of this Clause, the "**Supplier's Subcontractors**") use CompeteFor, on a non-exclusive basis, to make available to other subcontractors all appropriate opportunities, arising in connection with the Contract, to supply goods, works and services to the Supplier's Subcontractors.
- 53.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier's Subcontractors, as required by this Clause 53.3, and will report this information on a quarterly basis by way of email to the Company's Representative.

### **54 Criminal Record Declarations**

- 54.1 For the purposes of this Clause 54:

"**Relevant Individual**" means any individual who is a member of Supplier Personnel involved in the provision of, or intended to be involved in provision of, any aspect of the Goods and Services; and

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

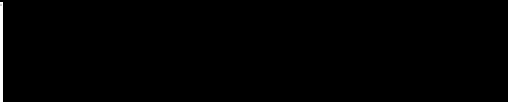
- 54.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual providing any of the Goods and Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 54.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Goods and Services any Relevant Individual who has disclosed a Relevant Conviction.
- 54.4 The Company shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and Supplier Personnel in order to confirm and monitor compliance with this Clause 54 at any time during performance of this Contract.
- 54.5 If the Supplier fails to comply with the requirements under Clauses 54.2 and/or 54.3 the Company may, without prejudice to its rights under Clause 20.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Contract and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods and Services unless (in the case of non-compliance with Clause 54.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 54.2.
- 54.6 A persistent breach of Clause 54.2 and/or Clause 54.3 by the Supplier shall entitle the Company to terminate the Contract in whole or in part with immediate effect in accordance with Clause 20.1(a).
- 54.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods and Services.
- 54.8 Nothing in this Clause 54 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Contract and the Supplier's responsibilities in respect of the provision of the Goods and Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 54.



## Schedule 1

### Detailed Terms

Commencement Date Options to extend	10 <sup>th</sup> July 2025 12 months
<i>Expected Delivery Date(s)</i>	Please refer to Schedule 5
<i>Completion Date</i>	Please refer to Schedule 5 End of July 2027
<i>Delivery Address</i>	Central Line REW Depot , Acton Works Depot, 130 Bollo Lane, REW Stores, London , W3 8BZ
<i>Supplier's Representative: Address for service of notices: Telephone: [Email address:</i>	
<i>Company's Representative: Address for service of notices: Telephone: [Email address:]<sup>32</sup></i>	
<i>Volume Discount Percentage</i>	N/A
<i>Quantity</i>	Please refer to Schedule 2
<i>Contract Price</i>	Please refer to Schedule 2
<i>Warranty Period</i>	24-month warranty commencing on the Order Delivery Date
<i>Initial Period</i>	24 months
<i>Specification</i>	Please refer to Schedule 3
<i>Programme</i>	Please refer to Schedule 5
<i>[Additional applicable standards under Clause 3.2(d) and 3.3(d)]</i>	N/A
<i>Security required pursuant to Clause 46: Bond</i>	No
<i>Parent company guarantee</i>	No
The Liquidated Damages for delay for the purpose of Clause 9.3 payable for such Goods are:  The period of delay over which the Liquidated Damages shall be calculated for the purpose of 9.3 is every	Rates as stated in Schedule 11. Maximum of 10% of the value of the Services delayed Failure to meet delivery times will attract the abatements stated in Schedule 11 against the delivery value stated in schedule 2 of all the delayed Services due to be delivered on the applicable day(s)

<p>2 weeks delay after agreed delivery times</p> <p><i>[The maximum amount of Liquidated Damages payable under Clause 9.3 expressed as a percentage of the price payable for such Goods is 5% against the full order value of all parts due to be delivered in the measured period. This will be measured each Accounting Period.]</i></p>	
<p><i>[The Liquidated Damages for delay for the purpose of Clause 12.15 payable for such Services are:</i></p> <p><i>The period of delay over which the Liquidated Damages shall be calculated for the purpose of Clause 12.15 is every 2 weeks delay after agreed delivery times</i></p> <p><i>[The maximum amount of Liquidated Damages payable under Clause 12.15 expressed as a percentage of the price payable for such Services</i></p>	<p><i>Rates as stated in Schedule 11.</i></p> <p><i>Maximum of 10% of the value of the Services delayed</i></p> <p><i>Failure to meet delivery times will attract the abatements stated in Schedule 11 against the delivery value stated in schedule 2 of all the delayed Services due to be delivered on the applicable day(s)</i></p>
<p><i>[The Supplier's total liability for the purposes of Clause 22.9 is:</i></p>	
<p><i>The following Supplier Personnel are Key Personnel</i></p>	

## Schedule 2

### Prices

Manufacture Total Summary:

Description	Value
-------------	-------



Overhaul Services ( Labour)	
Goods/Components	
Transport	
Supplier Documentation	-
Other Costs	-
<b>Total Cost</b>	£404,460

Below the breakdown prices:

**Overhaul Services (Labour):**

**Goods/Components:**

**Transport:**

The above prices are fixed over a 2 years period.

## **Schedule 3 Specification**

### **Scope**

Any changes in the below scope of works/specification can be raised by either the Supplier or the Company and will be raised to the commercial manager and project manager and will be jointly agreed through the variation process.

Title: 92TS Cab HVAC System Overhaul Specification



## Schedule 4

### Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods and range of Services to be provided.
- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.
- 8 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with any applicable rates set out in Schedule 2.
9. The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Contract, including, but not limited to the Specification and the Programme.
- 10 Strict adherence to the procedure described in this Schedule 4 shall be a condition precedent to any addition to the Contract Price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 4 then the Supplier shall not be entitled to any addition to the Contract Price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

## Appendix 1 Form of Variation Proposal/Variation Order

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

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

<b>PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VARIATION ORDER)</b>	
Description of change:	
Reason for changes and impact (if any) on Contract:	
Variation Proposal Authorised by:	Proposal Date:
<b>PART B (TO BE COMPLETED BY THE SUPPLIER)</b>	
<b>Price Breakdown</b>  Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Delivery Date and/or Completion Date:	
Supplier's Representative:	
Print Name: .....      Signature: .....      Date: .....	
Completed document to be returned to the Company's Representative	
<b>PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)</b>	
Comment on Parts A and B:	
Variation Authorisation	
Company's Representative:	
Print Name: .....      Signature: .....      Date: .....	

Schedule 5  
Programme

HVAC overhaul delivery demand is as below:



Programme / Delivery Forecast

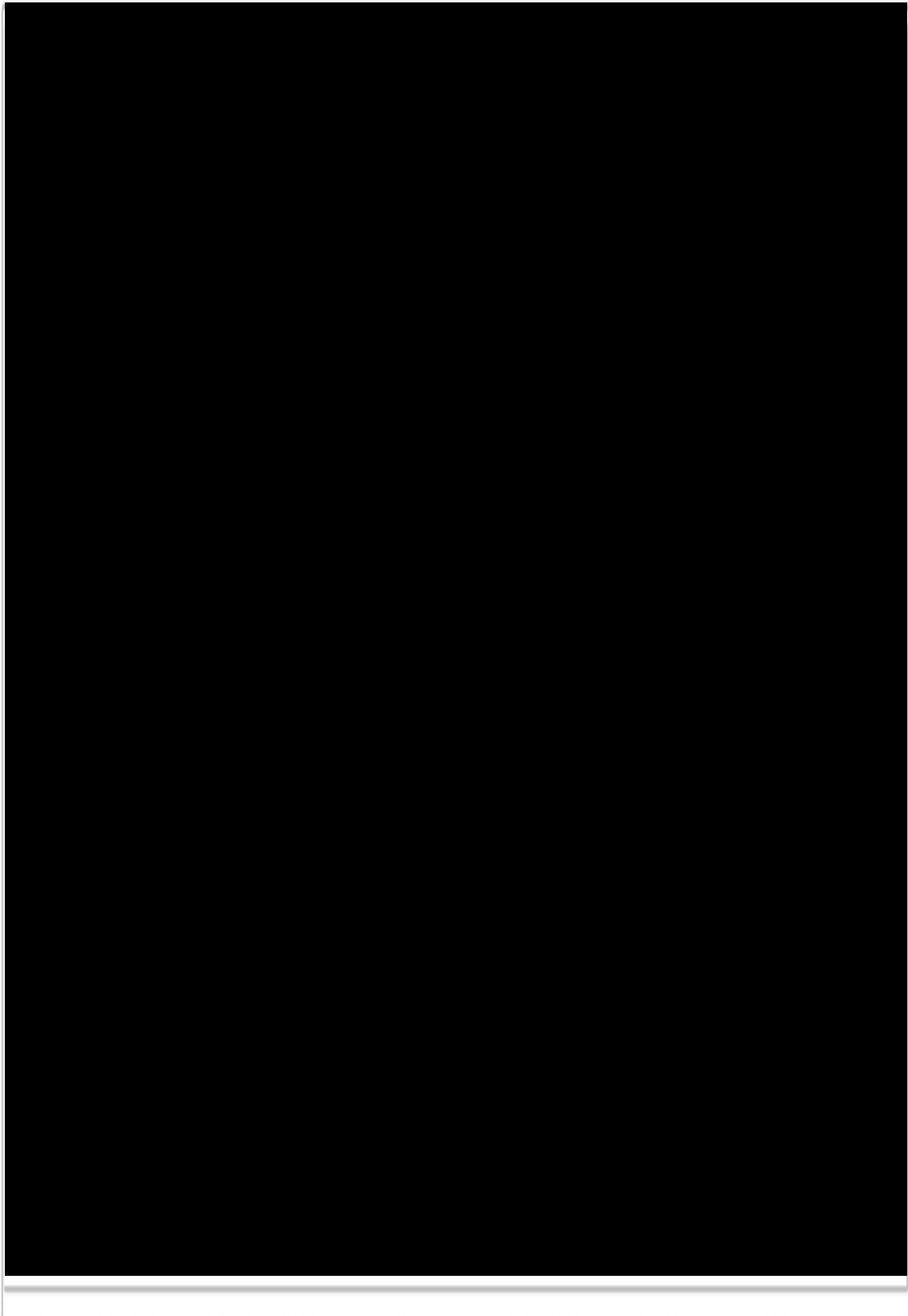


**Schedule 6**  
**QUENSH [*and Quality and Safety Plan*]**

# F0780 A18 Contract Menu

This Contract Menu must be used in conjunction with  
Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

## Contract Menu



## Guidance

The menu is a tool which is used by the Client to identify conditions that apply to specific contracts and communicate these conditions to the Supplier.

### How to complete the menu

- 1) The Client evaluates the scope of work and enters 'Y' or 'N' in the 'Identified by the Client' column of the menu against each condition selected as applicable or not applicable to the Contract. In the 'Other documents / comments' column the Client can make references to other documents which are supplementary information which is available although not contained within the QUENSH manual but should be considered by the Supplier when they review the conditions. Copies of any additional documents identified in the menu shall be made available to the Supplier. All documents referenced in the Menu shall be current issue, unless otherwise advised. This column can also be used to communicate information (comments) to the Supplier which may be of use to the Supplier when reviewing the conditions.
- 2) The Client fills in 'Client menu (Invitation to Tender)' section on the last page of the menu and issues the menu as part of the ITT.
  - a) The Supplier receives the ITT, evaluates the scope of work and, as a requirement of the tendering process, inserts 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable. These selections may be different from those identified by the Client. Where the Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the Supplier. A reference to these explanations shall be put in the 'Reference to explanation' column on the menu.
  - b) The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.
  - c) Differences in the Client and Supplier menu selections will be discussed and resolved with the Client at subsequent tender review meetings. The agreed final version of the menu selections shall form a mandatory part of the Contract and shall be complied with by all Suppliers and their sub-contractors.
  - d) The menu shall be subject to project version and document control.

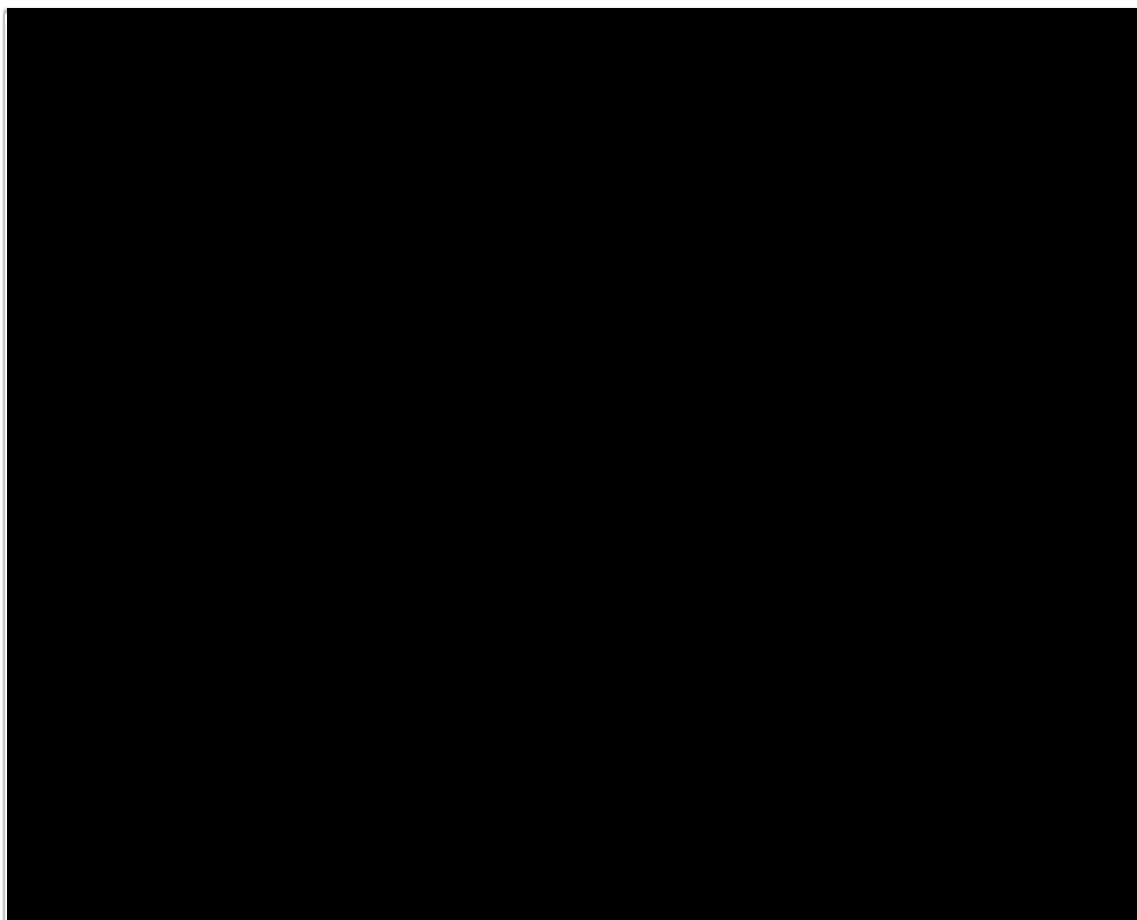
### Queries on the menu

Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative, see contact details/address on last page of the menu.



## Contract menu

### Requirements in QUENSH

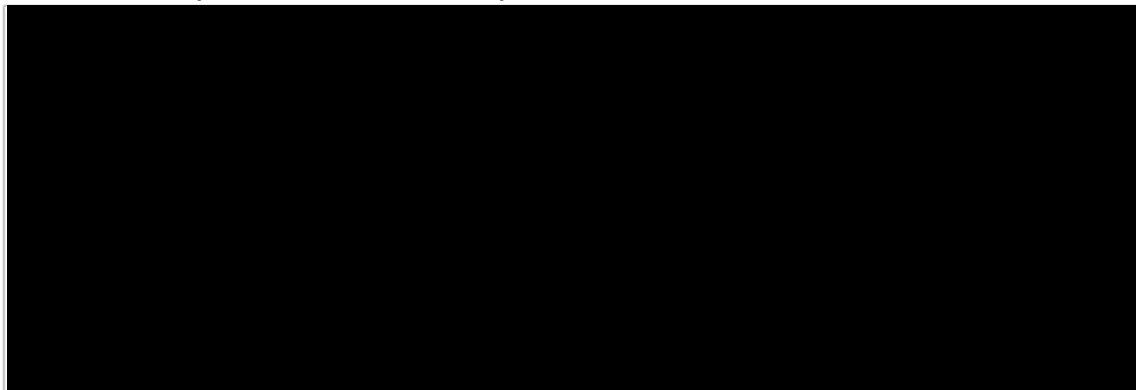


**Other requirements / comments**

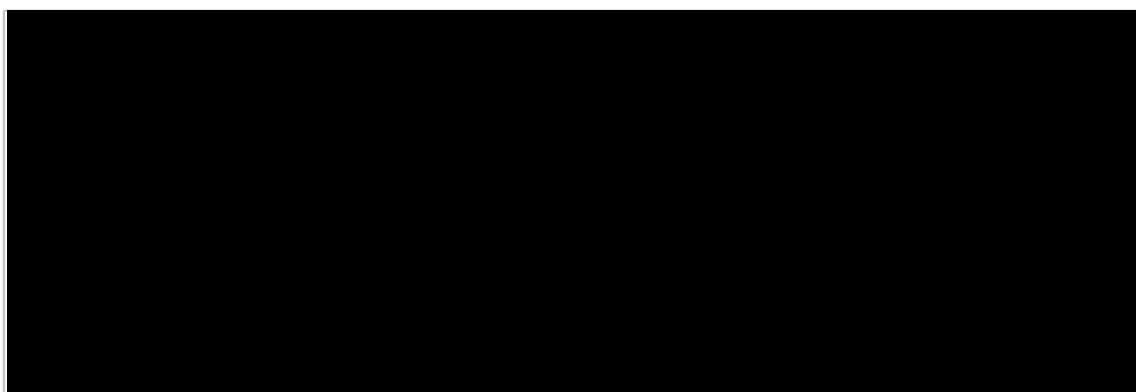
--

## Client/Supplier approval

### Client Menu (Invitation to Tender)

A large rectangular area that has been completely redacted with a solid black fill.

### Supplier Menu (Tender)

A large rectangular area that has been completely redacted with a solid black fill.

### Contract Menu (Final Approval of Menu)

Evidence shall be recorded of any amendments to the Client's menu which were agreed in establishing the Contract Menu.

Client's  
representative  
approval:

---

Signature:

---

Supplier's  
representative  
acceptance:

---

Signature:

---

## **Schedule 7**

### **Corporate IPRs**

Not Used

**Schedule 8**  
**Deed of Novation**

**Not Used**

**Schedule 9**  
**Form of Parent Company Guarantee and Performance Bond<sup>33</sup>**

Not Used

## Schedule 10

### Form of Collateral Warranty

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

**BETWEEN: -**

- (1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the "**Company**");
- (2) [ ] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Sub-Contractor**"); and
- (3) [ ] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Supplier**").

**WHEREAS:-**

- (A) The Company has entered into a contract with the Supplier (the "**Main Contract**") pursuant to which the Supplier is to undertake and complete the following supply: [ ] (the "**Supply**").
- (B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the "**Sub-Contract Supply**") of the Supply referred to above as more particularly described in the tender.

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Company to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows:

1. The Sub-Contractor warrants to the Company that:
  - (a) the Sub-Contract Supply have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Supply;
  - (b) reasonable skill and care has been and will continue to be exercised in connection with:
    - (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
    - (ii) the selection of all goods and materials comprised in the Sub-Contract Supply (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
    - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Supply (the "**Sub-Contract**");
    - (iv) the execution and completion of the Sub-Contract Supply;
    - (v) the Sub-Contract Supply will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
  - (c) the Sub-Contract Supply will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and

in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and

- (d) it has the right to grant to the Company all licences (including without limitation all rights to sub-license) of all intellectual property rights as contemplated in this Agreement.

For the purposes of construing the warranties in this Clause 1 references to the Sub-Contract Supply shall include any part of the Sub-Contract Supply. Each warranty shall be construed as a separate warranty and shall not be limited by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Supply:
  - (a) Execute and complete the Sub-Contract Supply in accordance with the provisions of the Sub-Contract; and
  - (b) ensure that the Supplier shall not become entitled to any extension of time for completion of the Supply or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.
3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.
4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:
  - (a) understanding the Supply;
  - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Supply;
  - (c) extending, interfacing with, integrating with, connecting into and adjusting the Supply;
  - (d) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the Underground Network (as such capitalised terms are defined in the Main Contract);
  - (e) executing and completing the Supply; and
  - (f) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the Underground Network (as such capitalised terms are defined in the Main Contract)

provided always that the Supplier shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Sub-Contractor.

For the purposes of this Clause, the term “**Documents**” shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The Sub-Contractor agrees:



- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and
  - (b) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Supply.
- 6. The parties hereby agree that:
  - (a) this Agreement shall be personal to the Sub-Contractor;
  - (b) the Company may assign the benefit of this Agreement to any third party;
  - (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.
- 7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Supply, he has professional indemnity insurance with a limit of indemnity of not less than *[two million pounds (£2,000,000)]*<sup>34</sup> in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Supply. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Supply provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.<sup>35</sup>
- 8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Supply which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Supply to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.
- 9.
  - (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
  - (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "**Step-in**")

**Notice")** that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.

- (c) With effect from the date of the service of any Step-in Notice:
    - (i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
    - (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;
    - (iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and
    - (iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:
      - (1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and
      - (2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
  - (d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.
10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
  11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.
  12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.
  13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Supply.
  14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.

15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## **Schedule 11**

### ***Supplier Performance***

This Schedule 11 (Supplier Performance) details the performance regime applicable to the Goods and/or Services from the Commencement Date.

#### **1 Performance Management**

- 1.1 The Supplier shall co-operate with the Company and provide such information as the Company may request, in relation to the Company's measurement of the Supplier's performance, including to enable TfL to comply with its obligations under the Procurement Act 2023 and the Procurement Regulations 2024. The Supplier agrees that such information shall include reports of performance data relating to KPIs, in the frequency required by the Company.
- 1.2 The parties shall, if the Company requires, meet to discuss the Supplier's performance and any related performance data or reports. The frequency and agenda for such meetings shall be as determined by the Company. The Supplier shall ensure the attendees to such meetings include the Supplier's Representative and such other attendees as required by the Company.

#### **2 KPIs**

- 2.1 The Company will measure the Supplier's performance each Period against the KPIs listed in Appendix 1 to this Schedule 11, indicating whether such KPIs are graded achieved or not achieved<sup>36</sup> in the relevant Period.

#### **3 Abatements**

- 3.1 Payments due to the Supplier from the Company are subject to the Company's right to levy abatements in accordance with this Schedule 11 in the circumstance that the Supplier's performance in respect of any one or more KPI is graded as not achieved in any Period.
- 3.2 Abatements shall be calculated by the Company as follows:

#### **4 Escalation Process**

- 4.1 Where the Company considers the Supplier has failed to perform any obligation under the Contract, the Company may notify the Supplier that it is required to rectify such failure to perform, at the Supplier's cost, within a time period specified by the Company (the Non-Conformance Notice).

#### 4.2 Where the Supplier fails to comply with a Non-Conformance Notice, the Company may:

- (a) issue one or more further Non-Conformance Notices; and/or
- (b) terminate the Contract in accordance with clause 20.1(i).
- c) For the avoidance of doubt, the Company may at any time procure, from an alternative supplier, the performance of any obligations which the Supplier has failed to perform. The Company shall be entitled to deduct the cost of such performance from any payment due to the Supplier and/or recover such cost as a debt due. In the event of unsatisfactory performance standards, including (but not limited to) failure to reach the targets set by the Service Delivery Indicators, failure to reach the targets set by the key performance indicators faults open beyond the rectification time and any other deficiencies in performance, the escalation process shall be invoked by the Purchaser in their absolute discretion.
- d) The purpose of the escalation process is to provide a structured framework within which the Parties can address unsatisfactory performance standards against timescales and deliverable targets. For the purposes of this process notified levels of poor performance will be termed “Non-Conformances”.  
This procedure operates with four levels; the lowest level Non-Conformance being Level 1. Should Non-Conformances escalate they will receive an appropriate level of management intervention from the Purchaser and the Supplier. Level 3 gives final review and opportunity for remedial actions to resolve issues before the Non-Conformance reaches Level 4, which will entitle the Purchaser to terminate in accordance with Clause 39.1.10 of the Conditions of Contract.  
In the event that a performance issue is not resolved between the Purchaser and the Supplier then the Non-Conformance may be raised formally to a Level 1 or Level 2 Non-Conformance, depending upon the severity of the performance failure. It is possible for a number of Level 1 and/or Level 2 issues to be in hand at any one time.

#### 4.3 Summary of Escalation Process

TRIGGER	LEVEL	ACTION	BY	RESULT
Failure to rectify identified non-conformance issued as part of KPIs and/ or SDIs	LEVEL 1	Improvement plan with precise end date required. On going review dates specified.	Supplier	Satisfactory - Stop Unsatisfactory - Level 2
Level 1 re-occurrence Consistent failure to meet required requirement Safety Condition infringements.	LEVEL 2	Improvement plan with precise end date required. Ongoing review dates specified.	C Supplier	Satisfactory - Stop Unsatisfactory - Level 3
Level 2 re-occurrence	LEVEL 3	Final review. Final opportunity for remedial action. Precise end date required.	Supplier	Satisfactory - Stop Unsatisfactory - Level 4
Level 3 re-occurrence	LEVEL 4	POSSIBLE TERMINATION		

Issues shall be resolved locally on a day-to-day basis to the mutual satisfaction of all Parties and shall not be raised to Level 1 without prior endeavours to resolve. At this stage of the process, the Supplier may be required to supply a Root Cause Analysis and a Recovery Plan

### **Level 1**

The Level 1 Non-Conformance will be recorded by the Company and a notice submitted to the Supplier. The Supplier shall in response (such response to be within 10 Business Days of service of the notice by the Company) prepare and submit to the Company, a Level 1 Non-Conformance Report. Such report will contain:

- Confirmation of the date and details of the Level 1 Non-Conformance
- The steps to be taken by the Supplier to ensure there is no repetition of such Level 1 Non-Conformance (the “Level 1 Required Action”)
- The time within which such Level 1 Required Action is to be completed (which shall be a reasonable period and no longer than the “Level 1 Rectification Period”).

The Supplier and the Company will use all reasonable endeavours to agree the Level 1 Rectification Period and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out within the agreed Level 1 Rectification Period then the Non-Conformance will be classed as closed.

### **Level 2**

If the Company determines, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or the Supplier fails to provide the Company with a Level 1 Non-Conformance Report within 10 Business Days; or the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period, then this shall be a “Level 2 Non-Conformance” and the Company will submit a notice to the Supplier.

The Supplier shall in response (such response to be within 10 Business Days of service of the notice by the Company) prepare and submit to the Company a Level 1 Non-Conformance Report. Such report will contain:

- The date and details of the Level 2 Non-Conformance.
- The Level 2 Required Action.
- The Level 2 Rectification Period.

The Supplier and the Company will use all reasonable endeavours to agree the Level 2 Rectification Period and the Level 2 Required Action.

If the Level 2 Required Action is taken within the agreed Level 2 Rectification Period then the Non-Conformance will be considered resolved. However, a record of the Non-Conformance will be made and Level 2 trends monitored

### **Level 3**

If The Company determines, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or the Supplier fails to provide the Company with a Level 2 Non-Conformance Report within 10 Business Days; or the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period, then this shall be a “Level 3 Non-Conformance” and the Company will submit a notice to the Supplier.

The Supplier will provide the Company a report (a “Level 3 Non-Conformance Report”), setting out the steps which the Supplier has taken, or will take, to ensure that no further Non-Conformances of this type shall arise (the “Level 3 Required Action”) ; and the period (being no greater than 2 months from the time of occurrence of the Level 3 Non-Conformance for the Supplier to put in place steps to ensure that no further Non-Conformances of the same type occur (the “Level 3 Rectification Period”).

### **Level 4**

The Supplier fails to provide the Company by the agreed deadline, a Level 3 Non-Conformance Report; or the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period.

## Appendix 1 KPIs

### KEY PERFORMANCE INDICATORS

1.1. DELIVERY – The target is 100% on time in full delivery, to the agreed times included in the Material Contract Data Sheets. Failure to meet delivery times will attract the following abatements against the full order value of all parts due to be delivered in the measured period. This will be measured each Accounting Period.

Delivery Performance by Value	Abatement Attracted on Full Value of all orders
>= 99.00%	0%
97.00% - 98.99%	1%
95.00% - 96.99%	2%
90.00% - 94.99%	3%
80.00% - 89.99%	4%
<80.00%	5%

### 1.2 SDI PERFORMANCE CRITERIA / SERVICE DELIVERY INDICATORS (SDI's)

1.2.1 QUALITY – The Supplier will supply Materials with 0% defects. When defects are found the escalation process will begin in the following circumstances:

1.2.1.1 Non-Safety Critical Parts Defects found in 3 or more Accounting Periods over a rolling six Accounting Periods.

Defects found in over 2% of Materials Delivered in an Accounting Period.

1.2.1.2 Safety Critical Parts  
Any single defect.

1.2.2 USAGE/ STOCK LEVELS – The Supplier will monitor Materials usage and stock levels with 0% nil stocks. When nil stocks are found the escalation process will begin.

1.2.3 HEALTH & SAFETY - The Supplier will report all incidents (incl. accidents and near misses) occurring or observed and any RIDDOR reportable accidents and dangerous occurrences. The target is nil incidents. When incidents are reported the escalation process will begin.

1.3 MATERIAL EFFICIENCY - The Supplier will report what percentage of the total material

value that comes from re-used material and material with recycled content. The target is at least 20% of the total material value to come from re-used material and material with recycled content. When this requirement is not met the escalation process will begin



## **Schedule 12**

### *Heavy Goods Vehicle Direct Vision Standard*

Not Used

## Schedule 13

### ***Ethical Sourcing and Modern Slavery Action Plan***

1. The Supplier shall implement an *Ethical Sourcing and Modern Slavery Action Plan* (“*Action Plan*”) designed to protect workers from labour exploitations and human rights abuses and ensure compliance with the Modern Slavery Act 2015 and the Responsible Procurement Policy in accordance with Appendix 1 to this Schedule 13.
2. The Supplier will, within 90 days of the Commencement Date produce to the Company an *Action Plan* identifying the main risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain, highlighting the main products and countries involved and the steps to be taken by the Supplier to mitigate the risks in the short, medium and long term.
3. The costs of the creation and implementation of the *Action Plan* shall be borne by the Supplier.
4. The Supplier will update and provide to the Company the *Action Plan* annually (within 5 Working Days of the anniversary of the Commencement Date) for the duration of the Contract. More regular updates will be provided when risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain are assessed as imminent either the Supplier or the Company.
5. The Supplier shall, where relevant, train Supplier Personnel to ensure compliance with this Schedule 13]. The Supplier shall keep a record of all training completed by i all Supplier Personnel and shall make a copy of the record available to the Company on request.
6. During the course of the Contract, if the Company has reasonable cause to believe that the Supplier is not complying with any provision of this Schedule 13 or Clause 31 of the Contract:
  - a) the Company shall notify the Supplier; and
  - b) the parties shall agree a remediation plan (“*Remediation Plan*”) with appropriate timeframes for compliance by the Supplier, such *Remediation Plan* to be agreed by the parties by no later than 30 days from the date of the Company’s notification to the Supplier that remedial action is required or such other period as the parties may otherwise agree in writing (and where the parties fail to agree the plan within such time, the Company shall determine the *Remediation Plan*).
7. The costs of the creation and implementation of the *Remediation Plan* shall be borne by the Supplier.
8. Following the agreement or determination of the *Remediation Plan*, the Company reserves the right to conduct, or require to be conducted, one or more audits, (either itself or via a third party auditor approved by the Company) in relation to compliance by the Supplier with the *Remediation Plan*.
9. For the avoidance of doubt, the right of audit referred to in paragraph 8 above shall include, without limitation the right of the Company (or an auditor appointed by the Company) acting reasonably to:
  - a) undertake physical inspections of relevant sites/factories;
  - b) conduct interviews with relevant personnel; and
  - c) inspect relevant documents.
10. The Supplier shall co-operate with the Company and/or the Company’s auditor in relation to all aspects of any audit undertaken pursuant to paragraph 8 above.
11. The Supplier shall make the audit reports required pursuant to paragraph 9 available to the Company through the Supplier’s *Ethical Data Exchange* (“*Sedex*”), or an equivalent process.

## Appendix 1

1. *The Supplier must prepare its Action Plan using the guidance information and template below. The Supplier's Action Plan should be no longer than ten (10) pages in length (excluding relevant policies or similar documents that may be included as appendices) and include:*

*(a) the Supplier's ethical sourcing policy, highlighting its key ethical sourcing objectives and the means by which the objectives will be achieved over the duration of the Contract;*

*(b) the Supplier's processes in place to comply with, and any additional processes to be put in place in order to adhere to the principles of the Ethical Trading Initiative (ETI) Base Code, or an equivalent code of conduct;*

*(c) identification of the main risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in the Supplier's supply chain, highlighting the main products and source countries involved and the steps the Supplier is taking/will take to mitigate the risks in the short, medium and long term (including appropriate ethical sourcing training for the Supplier's buying staff and other relevant personnel);*

*(d) the steps the Supplier will take to ensure that its subcontractors implement ethical sourcing policies similar to its own.*

*(e) the methods by which the Supplier proposes to monitor and report on the steps it has taken to mitigate risks and their effectiveness; and*

*(f) the Supplier's plan may include commissioning on social audit on sites of supply, which may be shared with the Company through Sedex.*

<b>ETI Base Code Item (Examples)</b>	<b>Modern Slavery or Other Risk of Human Rights Abuse (Examples)</b>	<b>Mitigating or Capacity Building Action</b>	<b>When</b>	<b>Person Responsible</b>	<b>Resource Implications</b>	<b>Measure of Success</b>

**EXECUTION PAGE:**

Executed by the parties and delivered on the date of this Contract:

**London Underground Limited;**

signed by:

[REDACTED]  
[REDACTED]

**LH-PLC**

signed by:

[REDACTED]