

London Underground Limited (LUL)

Deep Tube Upgrade Programme (DTUP)

One Person Operation (OPO) CCTV System Contract

Section 1

General Terms incorporating Schedules 1-14

FOR EXECUTION

DATED 8th September

2020

(1) LONDON UNDERGROUND LIMITED

and

(2) PANASONIC MARKETING EUROPE GMBH

CONTRACT

relating to the supply of works and services in respect of
an OPO CCTV System for the Deep Tube Upgrade Programme

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- Schedule 3: Project Collaboration
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- Schedule 5: Non-Solicitation
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THIS CONTRACT is made on 8th September 2020

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales under company number 01900907 whose registered office is at 5 Endeavour Square, London E20 1JN (the "**Employer**"); and
- (2) **PANASONIC MARKETING EUROPE GMBH** a company registered in Germany with the commercial register (Handelsregister) of the Wiesbaden local court (Amtsgericht) under number HRB 13178 whose registered office is at Hagenauer Strasse 43, 65203, Wiesbaden, Germany (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) On 10 July 2018, the *Employer* advertised in the Official Journal of the European Union (reference 2018/S133-304071), subsequently inviting prospective suppliers to submit proposals for the provision of a new One Person Operation ("OPO") CCTV System for the Piccadilly Line, with an Option to provide an equivalent system for the Bakerloo Line both part of the London Underground Network.
- (B) The *Employer's* requirement under this Contract forms part of the Deep Tube Upgrade Programme ("**DTUP**"), which is sponsored by Transport for London (TfL Group).
- (C) The *Employer* selected the *Contractor* on the basis of the *Contractor's* response to the advertisement and a subsequent tender process in accordance with the Utilities Contracts Regulations and the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (D) The terms and conditions apply to the appointment of the *Contractor* to perform works and perform services in respect of the Piccadilly Line and (if the Bakerloo Line Option is exercised), the Bakerloo Line.
- (E) The Piccadilly Line services, comprising Implementation Works (including the design, manufacture, supply, integration, testing and commissioning of an OPO CCTV System) will be performed by the *Contractor* as the Piccadilly Line Order. Implementation Works for the Bakerloo Line will only be performed if the *Employer* exercises the Option for those works pursuant to this Contract. In addition, the *Contractor* will provide subsequent Operational Services (including regular maintenance, reactive maintenance, technical support and supply of spares).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these General Terms, unless the context indicates otherwise, the following words and expressions shall have the following meanings assigned to them:

"**Approval**" means the written approval of the *Employer* or the Employer's Representative and "Approved", "Approves" and "Approve" shall have the same meaning and shall, for the purposes of these General Terms, have the effect described in Clause 42;

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales under company number 01900907 whose registered office is at 5 Endeavour Square, London E20 1JN (the "**Employer**"); and
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IT IS AGREED as follows:

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- 1.1 In these General Terms, unless the context indicates otherwise, the following words and expressions shall have the following meanings assigned to them:

"**Approval**" means the written approval of the *Employer* or the Employer's Representative and "Approved", "Approves" and "Approve" shall have the same meaning and shall, for the purposes of these General Terms, have the effect described in Clause 42;

"Associated Company" means any division or subsidiary of the *Contractor* or any division or subsidiary of the *Contractor's* parent company or any other company in the same group as the *Contractor*;

"Audit Rights" means the access and audit rights referred to in Schedule 4 (Records, Reports and Audit Rights);

"Bakerloo Line" means those parts of the LUL Network described in the Bakerloo Line Option Works Information;

"Bakerloo Line Extension" means the TfL Group's proposals for extending the Bakerloo Line further into southeast London from its current end point at Elephant & Castle which may give rise to either or both a change to the Works Information under the Bakerloo Line Option Implementation Works Terms and a Variation to the Operational Service Terms;

"Bakerloo Line Option" means the Option for the Bakerloo Line;

"Bakerloo Line Option Bill of Quantities" means the Bill of Quantities in Section 2 Schedule 3B;

"Bakerloo Line Option Contract Data" means the Contract Data relevant to the Bakerloo Line Option, which is included in Section 2 Schedule 2B;

"Bakerloo Line Option Notice" means a written Notice substantially in the form set out in Section 1 Schedule 10 (Notices) signed and issued by the Employer for exercise of the Bakerloo Line Option identifying:

(a) the Option Price; and

(b) Option Dates;

"Bakerloo Line Option Operational Services" means the Operational Services for the Bakerloo Line Option to be provided by the *Contractor* pursuant to Operational Services Terms;

"Bakerloo Line Option Protocol" means the procedure and protocol for the exercise of the Option set out in Section 1 Schedule 1;

"Bakerloo Line Option Works Information" means the Common Works Information and the Bakerloo Line Works Information, which is included in Section 2 Schedule 4A and 4C respectively;

"Bank Holiday" means Christmas Day, Boxing Day, New Year's Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales;

"Base Date" means 30th May 2019;

"British Standards" means those standards produced by the British Standards Institution of 389 Chiswick High Road, London, United Kingdom;

"Change of Control" means a change of ownership of the *Contractor* (or parent company if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or parent company as the case may be).

"Claim" means any claim for an increase in the Prices or the Operational Services Charges or for any payment of money (including damages) or relief from performance:

- (a) under, arising out of, or in any way in connection with the Contract, including any direction or instruction of the *Employer*, Employer's Representative, *Project Manager* or Client Representative;
- (b) arising out of, or in any way in connection with the Contract and/or the works or services provided under the Contract and/or termination or purported termination of the Contract; or
- (c) arising otherwise at law including for breach of contract, in tort for negligence or otherwise, including misrepresentations or for restitution or compensation under any law or legal principle;

and "**Claimed**" shall be construed accordingly;

"Common Works Information" ("CWI") means Works Information common to the Piccadilly Line Order and the Bakerloo Line Option which is included in Section 2 Schedule 4A;

"compensation event" means any one or more of the events referred to in Clause 60.1 of the Implementation Works Terms;

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

"Completion" has the meaning given to that term in the Implementation Works Terms;

"Completion Date" has the meaning given to that term in the Implementation Works Terms;

"Connected Persons" means all and any of the *Contractor's* employees, directors, contractors, agents, subcontractors, contractors, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

"Consequential Loss" means:

- (a) loss of profit, loss of use, loss of contracts, loss of business, loss of customers, loss of good will; and
- (b) any indirect or consequential loss or damage;

"Contract" means these General Terms, each of the documents referred to in Clause 3.1 and includes any Order placed under these General Terms pursuant to the exercise by the *Employer* of any Option;

"Contract Commencement Date" means the date of this Contract as inserted on the first page of these General Terms;

"Contract Data" means the Contract Data for the Piccadilly Line Order and the Bakerloo Line Option as defined in the applicable Implementation Works Terms;

"Contract Information" means:

- (a) the Contract in its entirety (including from time to time agreed changes to the Contract); and
- (b) data extracted from the invoices submitted pursuant to the Implementation Works Terms or the Operational Services Terms which shall consist of the *Contractor's* name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

"Contractor's Bond" has the meaning given to that term in Clause 4.5;

"Contractor's Group" means *Contractor* and its Associated Companies and the Holding Company and its Associated Companies;

"Contractor's Representative" means such person as nominated in writing by the *Contractor* or such other person as may replace them as approved by the Employer's Representative in accordance with Clause 17.6;

"Declaration of Ineffectiveness"; has the meaning given to such term in the Utilities Contracts Regulations;

"Deep Tube Upgrade Programme" or **"DTUP"** means a co-ordinated series of line upgrades for the Piccadilly, Central, Bakerloo and Waterloo & City lines of the LUL Network;

"Default" has the meaning given in Clause 29.2;

"Defect" has the meaning given to it in the Implementation Works Terms;

"Design Authority" means the body with sufficient technical knowledge and capability responsible for, amongst other things, providing assurance to the *Employer* in relation to the OPO CCTV System as more particularly described in Clause 22.

"Dispute" means any dispute, controversy or claim arising out of or in connection with this Contract including the Implementation Works Terms and/or the Operational Services Terms;

"Dispute Notice" has the meaning given to that term in the Dispute Resolution Procedure;

"Dispute Resolution Procedure" means the procedure for resolving Disputes, a copy of which is included in Section 1 Schedule 11 (Dispute Resolution Procedure);

"Earliest Option Exercise Date" means 3rd August 2020, being the earliest date by which the *Employer* may exercise the Bakerloo Line Option;

"Emergency Exit" means any termination of this Contract which is:

- (a) a termination of this Contract for Default in accordance with Clause 29.1;
- (b) in consequence of a Declaration of Ineffectiveness in accordance with Clause 29.3(b);
- (c) in consequence a Public Procurement Termination Event in accordance with Clause 29.3(c); or
- (d) a wrongful termination or repudiation of this Agreement by either Party;

"Emergency Exit Plan" means an Exit Plan prepared pursuant to Section 1 Schedule 7 (Exit Management) setting out the mechanisms for Emergency Exit;

"Employer's Bond" has the meaning given to that term in Clause 4.11;

"Employer Personal Data" has the meaning given to that term in paragraph 1.2 of Section 1 Schedule 12 (Privacy and Data Protection);

"Employer's Representative" means such person as may be notified from time to time by the *Employer* in accordance with Clause 17 to fulfil such role for the purposes of this Contract;

"Entitlement" means the right to:

- (a) any adjustment to the Prices or Operational Services Charges including any payment to the *Contractor* by the *Employer*;
- (b) a compensation event under the Implementation Works Terms or a Variation under the Operational Services Terms;
- (c) a declaration to the effect that time is at large or that agreed damages are unenforceable;
- (d) recover any loss, cost, damages or expense of any kind arising:
 - (i) out of or in connection with the Contract (including by way of common law damages if applicable); or
 - (ii) out of or in connection with the works or services under the Contract (including quantum merit or equivalent); or
 - (iii) any variation or relaxation of any performance requirements under the Contract or any performance regime under the Contract or excuse from any obligation under the Contract.
- (e) out of or in connection with the Contract (including by way of common law damages if applicable); or
- (f) out of or in connection with the works or services under the Contract (including quantum merit or equivalent); or
- (g) any variation or relaxation of any performance requirements under the Contract or any performance regime under the Contract or excuse from any obligation under the Contract.

"European Standards" means those standards ratified by the European Committee for Standardization (CEN) or the European Committee for Electrotechnical Standardization (CENEL-C), both of Rue de la Science 23, B-1040 Brussels, Belgium, or the European Telecommunications Standards Institute (ETSI) of 06921, Sophia Antipolis Cedex, France;

"Exit Information" has the meaning given in paragraph 4 of Section 1 Schedule 7 (Exit Management);

"Exit Manager" means, as the context requires, the exit manager appointed by the *Employer* or appointed by the *Contractor* under paragraph 2 of Section 1 Schedule 7 (Exit Management), in each case as notified to the other Party, and any notified replacement of the same during the course of the Project;

"Exit Plan" means the plan produced and updated by the *Contractor* during the Term in accordance with paragraph 4 of Section 1 Schedule 7 (Exit Management);

"Final Completion" has the meaning given to that term in the Implementation Works Terms;

"Financial Year" means each year commencing on 1st April and ending on 31st March the following calendar year;

"General Terms" means the general terms in this Section 1;

"Holding Company" has the meaning given to such term in section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Holding Company of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Implementation Works" means the works described (or to be described) in the Contract Data for the Piccadilly Line Order or Bakerloo Line Option as may be varied from time to time in accordance with this Contract;

"Implementation Works Terms" means, in respect of each of the Piccadilly Line Order and the Bakerloo Line Option:

- (a) the Master Conditions of Contract set out in Section 2 Schedule 1A;
- (b) Schedules to Master Conditions of Contract set out in Section 2 Schedule 1B;
- (c) the Contract Data set out in Section 2 Schedules 2A and 2B applicable to the Piccadilly Line Order or Bakerloo Line Option
- (d) the Bill of Quantities;
- (e) the Accepted Programme;
- (f) the Common Works Information set out in Section 2 Schedule 4A; and
- (g) the Works Information set out in Section 2 Schedules 4B and 4C applicable to the Piccadilly Line Order or Bakerloo Line Option;
- (h) together in each case with all other documents referred to therein;

"Ineffective" and **"Ineffectiveness"** have the meanings given to such terms in the Utilities Contracts Regulations and shall be construed accordingly;

Initial Design Phase means the period from the Contract Commencement Date to 31st March 2021;

Initial Design Phase Cap means the total of the Initial Design Phase Payments;

Initial Design Phase End Date means 31st March 2021;

Initial Design Phase Payments means Defined Cost and Fee up to the amount payable for each assessment interval during the Initial Design Phase as set out on Table A attached hereto unless the *Project Manager* gives an instruction to the *Contractor* which changes the Works Information or a Key Date.

"Insolvency" means (in the case of a company or partnership): the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution

for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver or administrative receiver over the whole or a substantial part of its undertaking or assets, the making of a composition or an arrangement with its creditors, the making of a bankruptcy order against any of its partners, or it ceases to carry on business or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets, the making of a composition or an arrangement with his creditors or he ceases to carry on business;

"Insured Risks" means any risks or liabilities that are covered by the insurance required to be provided by the *Contractor* or the *Employer* under this Contract (or which would have been covered but for any breach or failure to maintain such insurance);

"Interface Control Documents" has the meaning given to that term in System Engineering, Integration and Interface Schedule;

"Interface Register" has the meaning given to that term in System Engineering, Integration and Interface Schedule;

"Interim Operational Services" means the services (including technical support services) provided or to be provided in respect of the relevant Line before Final Completion of the Line. For the avoidance of any doubt, Interim Operational Services are to be carried out under the Implementation Works Terms;

"International Standards" means those Standards produced by the International Standards Organisation (ISO) BIBC II, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva 20 Switzerland;

"Key Dates" has the meaning given to that term in the Implementation Works Terms;

"Key Person" means the *Contractor's* Project Manager, Engineering Manager and Health and Safety Manager appointed by the *Contractor* pursuant to the Implementation Works Terms and the Support Manager appointed by the *Contractor* pursuant to the Operational Services Terms;

"Line" any one or both of the Piccadilly Line and the Bakerloo Line;

"Longstop Date" means 30th September 2022 being the final date by which the Employer may exercise the Bakerloo Line Option;

"Losses" means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, regulatory proceedings, litigation (actual or potential, including seeking advice as to any action and including any adjudication, arbitration or expert award), settlement, judgment interest and penalties whether arising in contract, tort (including negligence or nuisance), breach of statutory duty or otherwise and including losses arising on termination of the whole or any part of the Contract;

"LUL Accounting Period" means the *Employer's* accounting periods as notified from time to time by the *Employer* to the *Contractor* each such period being of between twenty-five (25) and thirty-two (32) days and one (1) of thirteen (13) periods during the Financial Year;

"LUL Network" or "Underground Network" means the stations, depots (wherever situated), tunnels, assets, systems, track, and other buildings which are used from time to time in the maintenance and provision of the underground service, including the Bakerloo Line north of Queen's Park, known as "London Underground";

"LUL Standards" means the individual LUL standards as specified in section CWI 29 Standards and Guidance.

"Master Conditions of Contract" means the NEC3 Option D consolidated *conditions of contract* (with amendments) set out in Section 2 Schedule 1A;

"Minimum Acceptable Credit Rating" has the meaning given to that term in Clause 4.5 (Performance Security);

"Network Rail Standards" means any standards applicable to work on or near Network Rail assets not limited to those published by Rail Safety and Standards Board Limited or the Railway Group Standards Code.

"Notice" means a written communication identified as a Notice and issued in accordance with Clause 47 (Notices);

"Open Book Data" means the categories of information described as "Open Book Data" in paragraph 3.2 of Section 1 Schedule 4 (Records, Reports and Audit Rights);

"Operational Services" means the services (including technical support services) provided, or to be provided, under the Operational Services Terms with effect from Final Completion of the relevant Order as may be varied from time to time in accordance with this Contract but excluding Interim Operational Services;

"Operational Services Charges" has the meaning given to that term in the Operational Services Terms;

"Operational Services Commencement Date" has the meaning given to that term in the Operational Services Terms;

"Operational Services Terms" means, in respect of each of the Piccadilly Line Order and if exercised, the Bakerloo Line Option, the conditions of contract set out in Section 3:

"OPO CCTV System" means the One Person Operation CCTV System which has the meaning given to that term in the Implementation Works Terms and includes all hardware, Software, communications networks, on-train equipment and other equipment and materials comprised in such system;

"Option" means the Bakerloo Line Option exercisable under this Contract including Implementation Works and Operational Services and **"Optional"** shall be construed accordingly;

"Option Date" means either:

- (a) the *starting date*, Completion Dates and Key Dates under the Bakerloo Line Option Implementation Works Terms as identified in the Bakerloo Line Option Contract Data; or
- (b) the Operational Services Commencement Date under the Operational Services Terms for the Bakerloo Line Option as identified in Appendix 1 of the Operational Services Terms;

"Option Prices" means:

- (a) the agreed tendered total of the Prices and other rates and prices under the Implementation Works Terms for the Bakerloo Line Option as identified in the Bakerloo Line Option Contract Data at Section 2 Schedule 2B; and

- (b) the agreed Price for these purposes under the Operational Services Terms for the Bakerloo Line Option as identified in Section 3 Appendix 3 of the Operational Services Terms (*Standard Support Services Charges*);

in each case as may be adjusted on before exercise of the Option under Section 1 Schedule 2 (Adjustment for Indexation) or as amended and accompanying the Bakerloo Line Option Notice.

"Order" means as the context permits the Piccadilly Line Order, and / or the Bakerloo Line Option and includes all documents included in the Implementation Works Terms and Operational Services Terms for the relevant Order;

"Order Commencement Date" means:

- (a) in respect of the Piccadilly Line Order, the Contract Commencement Date; and
- (b) in respect of an Order pursuant to the exercise of the Bakerloo Line Option, the date of delivery of the Bakerloo Line Option Notice and Order to the *Contractor*;

"Ordinary Exit" means exit:

- (i) on termination for any reason other than an Emergency Exit; or
- (ii) as a result of the expiry of the Contract;

"Others" are people or organisations who are not the *Employer*, the Employer's Representative, the *Project Manager* as defined under the Implementation Works Terms and the Client Representative as defined under the Operational Services Terms, *Contractor*, or any employee, Subcontractor, consultant or supplier of the *Contractor*;

"Parent Company Guarantee" has the meaning given to that term in Clause 4 and includes any re-stated and re-executed Parent Company Guarantee required from time to time under Clause 4;

"Piccadilly Line" means those parts of the LUL Network described in the Piccadilly Line Works Information;

"Piccadilly Line Order" means the Implementation Works and Operational Services for the Piccadilly Line;

"Piccadilly Line Order Bill of Quantities" means the Bill of Quantities in Section 2 Schedule 3A;

"Piccadilly Line Order Contract Data" means the Contract Data relevant to the Piccadilly Line, which is included in Section 2 Schedule 2A;

"Piccadilly Line Order Works Information" means the Common Works Information and the Piccadilly Line Order Works Information, which is included in Section 2 Schedule 4B;

"Pre-Exercise Consultation Date" means for the Bakerloo Line Option: (i) the date occurring not later than 3 months before the Earliest Option Exercise Date; or (ii) such other (later or earlier) date occurring before the Longstop Date as the Employer's Representative may decide and Notify the *Contractor*;

"Prices" has the meaning given to that term in Clause 11.2(31) of the Implementation Works Terms;

"Project" means the design and delivery of an operational OPO CCTV System;

"Public Procurement Termination Event" means if a court determines that circumstances equivalent to one or more of the circumstances described in Regulation 89(1) of the Utilities Contracts Regulations has occurred;

"Relevant Prices" means in respect of a Financial Year, the aggregate total of:

- (a) the total of the Prices under the Implementation Works Terms for all Orders that have not reached the *defects date* at the Relevant Date;
- (b) the total of the Operational Services Charges for the Operational Services paid and/or payable for the Financial Year; and
- (c) any other amounts to which the *Contractor* has or will become entitled under the Implementation Works Terms and the Operational Services Terms in the Financial Year;

"Relevant Works" means, in respect of any works or services provided by the *Contractor* under this Contract, means any works or services provided under either Order or any other contract entered into by the *Contractor* or an Associated Company of the Contractor and the *Employer* or any member of the TfL Group.

"Replacement Contractor" means any third party provider of replacement *works* or services appointed by the *Employer* from time to time (or where the *Employer* or a member of the TfL Group is providing such *works* or services for its own account, the *Employer* or member of the TfL Group as applicable);

"Review" means review by the *Employer* or the Employer's Representative and "Reviewed" and "Reviews" shall, for the purposes of these General Terms, have the same meaning;

"Site Information" means the Site Information specific to the Piccadilly Line Order or the Bakerloo Line Option;

"Software" means system software, operating systems, applications, programmes and procedures, tools to recreate or recompile any of the foregoing (including build files, compiler files, test scripts and configurations) and all updates and upgrades to any of the foregoing that enable hardware or systems to perform tasks or operations or process data in each case in Object Code form unless expressly provided otherwise in this Contract and including all standalone software or software bundled with or embedded in equipment and materials;

"Specification" means the specification in Section 3, Appendix 2 of the Operational Services Terms;

"Standard" means an established norm or requirement published by an international, European or British Standards organisation, or an established norm or requirement published by or on behalf of the *Employer* or Network Rail;

"Standards" means the following standards listed in order of priority with a lower ranking standard only applicable where a higher ranking standard is not applicable:

- First: TfL Standards, LUL Standards or Network Rail Standards;
- Second: European Standards;
- Third: International Standards and associated codes of practice
- Fourth: British Standards.

"Standard Support Services Charges" means the standard support services charge for each Line as set out at Section 3, Appendix 3;

"System Engineering, Integration and Interface Schedule" means the document at Schedule 9 to the Master Conditions of Contract at Section 2, Schedule 1B;

"Term" means:

- (a) if the Bakerloo Line Option is not exercised, 12 years from Final Completion for the Implementation Works for the Piccadilly Line Order; or
- (b) if the Bakerloo Line Option is exercised, 12 years from Final Completion of the Implementation Works for the Bakerloo Line Option;

provided that such term may be extended on one or more occasions up to a maximum of 12 months under Clause 6.3;

"Term Expiry Date" means the last day of the Term;

"Termination Date" means the date set out in a Termination Notice on which this Contract is to terminate;

"Termination Notice" means a written Notice of termination given by one Party to the other under these General Terms, notifying the Party receiving the Notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

"TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999, and any of its subsidiaries (as defined in Section 1159 of the Companies Act 2006) and their subsidiaries;

"TfL Standards" means the individual TfL standards as specified in section CWI 29 Standards and Guidance;

"Transparency Commitment" means the *Employer's* commitment to comply with the Local Government Transparency Code February 2015 issued by the UK government (and any other applicable obligations relating to the proactive publication of Information held by a public agency or enterprise) in accordance with which the *Employer* is committed to publishing its contracts, tender documents and data from invoices received;

"Undesirable Transferee" means any person:

- (a) who is subject to Insolvency; or
- (b) who has been convicted of a criminal offence or a series of offences, or is the subject of ongoing investigation, inquiry or regulatory or judicial proceedings (including in relation to any breach of health and safety Laws) in the five years preceding the date of the notice issued by the Contractor pursuant to Clause 15;
- (c) whom it would be reasonable for a contracting authority to exclude from consideration on grounds of national security;
- (d) from a country which is, or who is otherwise, the subject of economic or security sanctions imposed by the United Kingdom (including sanctions which take the form of the prevention of the supply of goods or services to the country or restrictions on the freedom of movement of diplomats or consular personnel of that country) whether the sanctions are in full force or suspended; or

- (e) who has an Associated Company that falls within any of sub-clauses (a) to (d) above;

"Utilities Contracts Regulations" means the Utilities Contracts Regulations 2016 (SI 2016/274);

"Week" means seven consecutive calendar days;

"Working Day" means any day other than a Saturday, Sunday or Bank Holiday (or other public holiday) in England and Wales; and

"Works Information" as used in these General Terms, means the Common Works Information and the Works Information for the Piccadilly Line Order and Bakerloo Line Option as appropriate as may be changed in accordance with the conditions of contract included in the Implementation Works Terms for the relevant Order provided always that any change in the Works Information instructed pursuant to any Implementation Works Terms shall not change the Works Information for the purposes of the other Order.

1.2 Unless otherwise provided or the context otherwise requires, save where expressly stated otherwise:

- (a) any capitalised term used in these General Terms which is not defined in Clause 1.1 above is a reference to the appropriate definition in Clause 11.2 of the Implementation Works Terms or Clause 1.1 of the Operational Services Terms; and
- (b) any italicised term is a reference to the appropriate italicised term identified in the relevant Contract Data.

1.3 In this Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership, limited partnership, limited liability partnership or other legal entity or that person's legal personal representatives, successors and assigns, and references to a company shall include Transport for London;
- (d) a reference to the *Employer* or the *Contractor* includes their respective (and any subsequent) successor in title, and their respective permitted transferee or assignee;
- (e) a reference to a third party is a reference to any person who is not a Party;
- (f) a reference in these General Terms to any applicable law or Statutory Requirement includes
 - (i) that law or Statutory Requirement as from time to time amended, re-enacted or substituted; and
 - (ii) any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement;
- (g) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include

what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;

- (h) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- (i) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (j) the contents pages and headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- (k) if a period of time is specified as from or within a given day, or from or within the day of an act or event, it shall be calculated exclusive of that day;
- (l) unless otherwise provided:
 - (i) references to "**Sections**" are to Section 1 (General Terms), Section 2 (Implementation Works Terms) or Section 3 (Operational Services Terms) (as applicable);
 - (ii) references to "**Clauses**" and "**Schedules**" are to the Clauses and Schedules of these General Terms;
 - (iii) references to "**Appendices**" are to the appendices to the Implementation Works Terms or Operational Services Terms as applicable; and
 - (iv) references in any Schedule to paragraphs and parts are, unless otherwise provided, references to the paragraphs and parts of the Schedules and Appendices or the parts of the Schedules and Appendices in which the references appear;
- (m) references to this Contract or any part of it (including Sections 1-3) are references to this Contract or those parts as amended from time to time;
- (n) references to hardware shall include a reference to any embedded software; and
- (o) a reference to a Schedule that is comprised of a number of sub-schedules shall include a reference to all such sub-schedules.

1.4 Except as otherwise expressly provided, if there is any inconsistency between the terms included in this Contract, the Schedules, or any other document referred to in or incorporated into this Contract, the order of priority for the purposes of construction is:

- (a) these General Terms and Schedules in Section 1;
- (b) the Implementation Works Terms in Section 2 and the Operational Services Terms in Section 3 and Appendices;
- (c) other Schedules to the General Terms in Sections 2 and 3; and
- (d) any other document referred to in or incorporated by reference into this Contract.

1.5 The Schedules and their Annexes form part of this Contract.

2. RULES OF CONSTRUCTION

- 2.1 In relation to requirements in the Contract relating to performance requirements, quality, dimensions and drawings and Standards:
- (a) where requirements are inconsistent, the more exacting performance requirement shall apply;
 - (b) where inconsistent levels of quality are required, the higher level of quality shall apply;
 - (c) figured dimensions shall take precedence over scaled dimensions; and
 - (d) drawings made to larger scales shall take precedence over drawings made to smaller scales; and
 - (e) where the requirement is not expressly specified or depicted, the performance standards or quality shall be consistent with the intended purpose of the LUL Network, as defined in the Contract.
- 2.2 Any presumptions or rules of interpretation that require or indicate that an ambiguity is to be construed against a particular Party are excluded.

3. CONTRACT

- 3.1 The terms and conditions of this Contract have, for ease of contract administration, been sub-divided into three Sections:
- (a) Section 1, these General Terms;
 - (b) Section 2, the Implementation Works Terms; and
 - (c) Section 3, the Operational Services Terms.
- 3.2 The purpose of this Contract is to:
- (a) provide general and specific obligations which shall underpin the Piccadilly Line Order and any Order pursuant to the Bakerloo Line Option if exercised by the *Employer* under Clause 8 and the relationship between the Parties during the Term; and
 - (b) provide for the carrying out and completion by the *Contractor* of the Piccadilly Line Order and the Bakerloo Line Option and associated Operational Services if the Employer so instructs.
- 3.3 The Contract includes the Piccadilly Line Order.
- 3.4 Operational Services for the Piccadilly Line Order shall be provided under the Operational Services Terms with effect from Final Completion of the Implementation Works for the Piccadilly Line Order. The Operational Services may include services for subsequent Orders (if any) that may be exercised by the *Employer* pursuant to the Bakerloo Line Option and will take effect in relation to the Bakerloo Line following Final Completion of the Bakerloo Line Option Implementation Works if the Bakerloo Line Option is exercised by the Employer.
- 3.5 If the *Employer* at its sole and absolute discretion exercises the Bakerloo Line Option under Clause 8, the *Contractor* shall be required to perform:
- (a) the Bakerloo Line Option Implementation Works under the Implementation Works Terms; and

- (b) Operational Services for Orders placed pursuant to the Bakerloo Line Option under the Operational Services Terms.
- 3.6 If the *Employer* provides the Bakerloo Line Option Notice to the *Contractor* in respect of the Bakerloo Line Option before the Longstop Date, the *Contractor* shall provide the Bakerloo Line Option Implementation Works and perform the Bakerloo Line Option Operational Services at the Option Prices and in accordance with the Option Dates set out in the Bakerloo Line Option Notice.
- 3.7 Each Order for Implementation Works shall be governed by, and be subject to, separate Implementation Works Terms for the particular Order.
- 3.8 The Parties acknowledged and agree:
- (a) any changes to the Implementation Works Terms for an Order shall not affect or change the Implementation Works Terms for the other Order already instructed or to be instructed;
- (b) the *Contractor's* Entitlement in respect of an Order shall be determined solely in accordance with the Implementation Works Terms for that Order; and
- (c) any instruction issued by the relevant *Project Manager* in respect of an Order shall not amount to an instruction under another Order unless separately instructed by the relevant *Project Manager* under the Implementation Works Terms for that other Order. Notwithstanding any other rights of the *Employer* under this Contract, where the *Contractor* claims for compensation events under the Implementation Works Terms there shall be no change to the Prices, the Completion Date and/or any Key Dates if and to the extent the event or matter claimed arises from or is in relation to the *Contractor's* or an Associated Company's default under any Relevant Works, including work carried out under any Relevant Works in connection with the correction of any Defects. For the avoidance of doubt this shall not restrict or prevent the *Contractor* from claiming under the Implementation Works Terms for each Order (without double counting the same cost) for an event or matter which has affected both the works and one or more Relevant Works, save where such event or matter has been caused by the *Contractor's* or an Associated Company's default under the Implementation Works Terms or any Relevant Works or where the event or matter relates to work in connection with the correction of a Defect or Software Defect under the Implementation Works Terms or any Relevant Works.
- 3.9 The Operational Services shall be governed by, and be subject to, the Operational Services Terms.
- 3.10 The Parties acknowledge and agree that:
- (a) this Contract (including each Order issued under these General Terms) shall be deemed for all purposes to be a single Contract between the Parties; and
- (b) all Orders placed under this Contract shall form part of this Contract and shall be subject to these General Terms and the other provisions of this Contract.
- 3.11 The *Contractor* shall not under any circumstances be entitled to contend that any Order placed under these General Terms amounts to a separate contract between the Parties.
4. **PERFORMANCE SECURITY**
- 4.1 If the *Contractor* has a Holding Company and the *Employer* does not accept a performance bond in lieu thereof, the *Contractor* shall:

- (a) provide to the *Employer* a guarantee by the *Contractor's* ultimate Holding Company of the *Contractor's* performance substantially in the form attached at Schedule 8 (Parent Company Guarantee) to these General Terms with such amendments as may be agreed between the Parties (acting reasonably) (the "**Parent Company Guarantee**"); and
- (b) restate and re-execute the Parent Company Guarantee and provide the restated and re-executed Parent Company Guarantee to the *Employer* within four Weeks after the Order Commencement Date for the Bakerloo Line Option.

4.2 The provision of:

- (a) the Parent Company Guarantee in accordance with Clause 4.1 or any performance bond in lieu thereof;
- (b) the legal opinion referred to in Clause 4.4; and
- (c) where applicable, the re-stated and/or re-executed Parent Company Guarantee and legal opinion under Clause 4.1(a)

shall in each case be a condition precedent to the *Employer's* obligation to make any payment under the Contract. In relation to the re-statement and re-execution of the Parent Company Guarantee, without prejudice to the Employer's rights under Clause 29.1(g) below or elsewhere in the Contract, the *Employer* shall be entitled to withhold payment in accordance with Clause 50.3B of the Implementation Works Terms for all Orders until the re-stated and re-executed Parent Company Guarantee is provided.

- 4.3 The *Contractor* acknowledges and agrees that the Parent Company Guarantee (and any Contractor's Bond) shall be provided as security for the performance of all of the *Contractor's* obligations under the Contract (including the Implementation Works Terms for each Order and the Operational Services Terms). If the Contractor is an incorporated joint venture the parent company of each shareholder in the Contractor gives to the Employer a guarantee of the Contractor's performance. If the Contractor comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such companies gives to the Employer a guarantee by its parent company of such company's performance.
- 4.4 If the ultimate Holding Company is domiciled outside England and Wales the *Contractor* shall also provide, with the Parent Company Guarantee, a legal opinion substantially in the form attached to the Parent Company Guarantee with such amendments as the *Employer* may agree (acting reasonably) by having it completed and signed by a qualified lawyer from the country in which the parent company is resident.
- 4.5 If the *Employer* accepts a performance bond in lieu of the Parent Company Guarantee or at any time the credit rating of the ultimate Holding Company of the *Contractor* falls below a Standard & Poor's credit rating of "BBB-" or a Moody's credit rating of "Baa3" or the credit rating published by an alternative provider previously deemed equivalent and relied upon by the *Employer* in accepting the ultimate Holding Company as guarantor of the *Contractor* (the "**Minimum Acceptable Credit Rating**") or if the *Contractor* does not have a parent company, the *Contractor*, if requested in writing to do so by the *Employer*, shall give the *Employer* a performance bond substantially in the form set out in Schedule 9 (Performance Bond) to these General Terms with such amendment as may be agreed between the Parties acting reasonably (the "**Contractor's Bond**") within four weeks of the *Employer's* request.
- 4.6 The Contractor's Bond shall be provided by either a United Kingdom based bank, insurer or a suitable financial institution whose long-term, unsecured, unsubordinated indebtedness has an 'A+' Standard & Poor's credit rating (or its equivalent from each of the ratings agencies which rate the bond provider).

- 4.7 The Contractor's Bond shall be provided and maintained for the period(s) referred to in Clause 4.9 for an amount equivalent to 10% of the Relevant Prices on the day of the request by the Employer referred to in Clause 4.5 (which shall be the "**Relevant Date**" referred to in the definition of Relevant Prices for the purpose of this Clause 4.7).
- 4.8 A reason for not accepting the bank, insurer or suitable financial institution is that the *Employer* considers that its commercial position or its creditworthiness or credit rating is not strong enough to carry the Contractor's Bond.
- 4.9 The *Contractor* shall provide and maintain the Contractor's Bond until the earlier of:
- (a) twelve months after:
 - (i) the Term Expiry Date or if earlier,
 - (ii) the date of termination of this Contract; or
 - (b) the date on which the credit rating of the *Contractor's* ultimate Holding Company (if applicable) has met or exceeded, for a continuous period of two months, the Minimum Acceptable Credit Rating (but without prejudice to the *Contractor's* obligation to provide a further Contractor's Bond if, on any subsequent occasion, such credit rating again falls below the Minimum Acceptable Credit Rating).
- 4.10 If the provider of the Contractor's Bond no longer holds a long-term, unsecured, unsubordinated indebtedness of at least 'A+' Standard & Poor's credit rating (or its equivalent from each of the ratings agencies which rate the bond provider) and if the *Employer* so requests, the *Contractor* shall provide to the *Employer* a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank, insurer or a suitable financial institution whose long-term, unsecured, unsubordinated indebtedness has a 'A+' (Standard & Poor's) (or its equivalent from each of the ratings agencies which rate the bond provider) (a "**Replacement Bond**").
- 4.11 The *Contractor's* cost of providing and maintaining any Contractor's Bond or Replacement Bond shall be borne solely by the *Contractor*. If the *Contractor* has not provided:
- (a) the Contractor's Bond in accordance with Clauses 4.5-4.9 within four Weeks of the *Employer's* request, and/or has not provided (where applicable);
 - (b) a Parent Company Guarantee under Clause 4.1;
 - (c) a re-stated and re-executed a Parent Company Guarantee under Clause 4.1(b); or
 - (d) a Replacement Bond under Clause 4.10 (where applicable) within thirty-five (35) days of the *Employer's request*,
- then without prejudice to its rights under Clause 4.2 of the General Terms or Clause 50.3C of the Implementation Works Terms, the *Employer* may procure a bond (the "**Employer's Bond**") for the amount referred to in Clause 4.7 and for the period referred to in Clause 4.9. Where the *Contractor* fails to provide to the *Employer* a Replacement Bond such failure shall alternatively constitute default under the Contract sufficient to enable the *Employer* to make a demand under the original Contractor's Bond or terminate the Contract.
- 4.12 The cost to the *Employer* of the Employer's Bond shall be paid or allowed as a debt payable by the *Contractor* to the *Employer*.

- 4.13 Where the requirements in this Clause 4 are satisfied and remain in place the requirements under Clauses X4 and X13 of the Implementation Works Terms and any further requirement for performance security under or pursuant to any other term of the Contract will be suspended by the *Employer*.

5. **BEHAVIOUR**

- 5.1 In order to work together in a co-operative and collaborative manner, in performing the Piccadilly Line Order, the Bakerloo Line Option (if exercised) and the Operational Services, the Parties shall encourage integrated team working and give to each other and shall welcome from the other, feedback on performance.
- 5.2 The Parties shall share information openly and highlight any difficulties at the earliest practicable time.
- 5.3 The Parties shall support collaborative behaviour and shall confront behaviour that shall not comply with the provisions of this Contract. The *Contractor* shall not enter into any contractual agreements or arrangements that conflict with the principles of this Contract.
- 5.4 Without limiting the obligations in Clauses 5.1-5.3 above, the *Contractor* shall comply with Section 1 Schedule 3 (Project Collaboration) in respect of collaboration with Others engaged on the Project and any sub-contractors of Others.

6. **TERM OF CONTRACT**

- 6.1 This Contract commences on the Contract Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Contract.
- 6.2 This Contract may be terminated in its entirety in accordance with the provisions of Clause 29. Some or all of the Orders for Implementation Works may be terminated in accordance with the Implementation Works Terms and some or the entirety of the Operational Services may be terminated in accordance with the Operational Services Terms.
- 6.3 The *Employer* may elect to extend the Term for one or more periods, up to an aggregate maximum extension of 12 months by giving the *Contractor* at least 3 months' Notice before the Term Expiry Date or the end of the previous extension period.

7. **PICCADILLY LINE**

- 7.1 With effect from the Contract Commencement Date, the *Contractor* shall provide the Implementation Works for the Piccadilly Line Order in accordance with the Piccadilly Line Order Implementation Works Terms.
- 7.2 With effect from Final Completion of the Piccadilly Line Order Implementation Works, the *Contractor* shall provide Operational Services for the Piccadilly Line Order in accordance with the Operational Services Terms.
- 7.3 The Standard Support Services Charge for Piccadilly Line Order will be adjusted for indexation pursuant to Section 1, Schedule 2 (Adjustment for Indexation) from the Base Date to the Piccadilly Line Operational Services Commencement Date.

8. **BAKERLOO LINE OPTION**

- 8.1 The *Contractor* grants to the *Employer* the Bakerloo Line Option. The Bakerloo Line Option may be exercised by the *Employer* by delivering the Bakerloo Line Option Notice in the period between the Earliest Option Exercise Date and the Longstop Date, to require that the *Contractor* provides to the *Employer* the Bakerloo Line Option Implementation Works and Bakerloo Line Option Operational Services.

- 8.2 If an Order is placed by the *Employer* exercising the Bakerloo Line Option before the Longstop Date, the *Contractor* shall provide the Implementation Works for the Bakerloo Line in accordance with the Bakerloo Line Option Implementation Works Terms.
- 8.3 Without prejudice to the *Contractor's* obligations under these General Terms, upon exercise of the Bakerloo Line Option the Bakerloo Line Option Implementation Works shall be governed by and provided in accordance with the Bakerloo Line Option Implementation Works Terms.
- 8.4 If the Bakerloo Line Option is exercised then, with effect from Final Completion of the Bakerloo Line Option Implementation Works, the *Contractor* shall also provide Operational Services in respect of the Bakerloo Line in accordance with the Operational Services Terms for the Operational Services Charges set out in Appendix 3 and 4 of the Operational Services Terms save that the Standard Support Services Charge will be adjusted for indexation pursuant to Section 1, Schedule 2 (Adjustment for Indexation) from the Base Date to the Bakerloo Line Operational Services Commencement Date.
- 8.5 The *Contractor* shall not proceed with the carrying out of any Implementation Works or Operational Services for the Bakerloo Line Option without the Bakerloo Line Option Notice stating that the *Employer* wishes the *Contractor* to exercise the Option. The Bakerloo Line Option Notice shall be a condition precedent to any Entitlement in respect of the Bakerloo Line Option.
- 8.6 If the Bakerloo Line Option is exercised the Employer may instruct works and services in relation to the Bakerloo Line Extension as a change to the Works Information under the Bakerloo Line Option Implementation Works Terms and a Variation to the Operational Service Terms.
9. **PRE-EXERCISE CONSULTATION**
- 9.1 The Employer's Representative may, not later than the Pre-Exercise Consultation Date, notify the *Contractor* that the *Employer* wishes to engage in a consultation in relation to whether or not it wishes to exercise the Bakerloo Line Option.
- 9.2 If the Employer's Representative gives Notice under Clause 9.1, the Parties shall hold a lessons learned review and the Contractor shall supply to the Employer's Representative, within twenty (20) Working Days of the request, such information as is reasonably required by the Employer's Representative to assist it in the process of consultation and ultimate determination by the *Employer*, at its sole and absolute discretion, as to whether or not it wishes to exercise the Option including:
- (a) all 'agreed actions', 'lessons learned' and other information gained from the Piccadilly Line Order, including information relating to any aspect of the Implementation Works;
 - (b) the *Contractor's* estimate of the amount of the Option Prices for the Option as adjusted by the indexation provisions set out in Section 1 Schedule 2 (Adjustment for Indexation) if the Option were exercised with effect from a date nominated by the Employer's Representative (such being not later than the Longstop Date); and
 - (c) any other information relating to the Option specified by the *Employer*.
- 9.3 The pre-exercise consultation shall not prevent the *Employer* from exercising the Bakerloo Line Option on the terms stated as at the date of this Contract.

10. **NO REPRESENTATION OR GUARANTEE OF FURTHER WORKS OR SERVICES**

10.1 With the sole exception of the Piccadilly Line Order and associated Operational Services, this Contract does not constitute any guarantee or representation that the *Employer* or any member of the TfL Group will:

- (a) exercise the Bakerloo Line Option; or
- (b) instruct works and services in relation to the Bakerloo Line Extension as a change to the Works Information under the Bakerloo Line Option Implementation Works Terms and a Variation to the Operational Service Terms; or
- (c) instruct or engage the *Contractor* to carry out any further works or perform any services.

11. **NO ENTITLEMENT IN CONNECTION WITH THE OPTION UNLESS THE OPTION IS EXERCISED**

11.1 This Clause 11 shall apply to the Bakerloo Line Option and shall not be waived by either Party under any circumstances.

11.2 The *Employer* shall be under no obligation to exercise the Bakerloo Line Option and provides no representation that any Option will be exercised. The exercise by the *Employer* of the Bakerloo Line Option shall be at the sole and absolute discretion of the *Employer*.

11.3 The *Contractor* warrants and undertakes to the *Employer* that:

- (a) any costs or amounts due under the Implementation Works Terms or Operational Services Terms shall only be applied for and/or Claimed under the Implementation Works Terms or Operational Services Terms;
- (b) whether or not the Bakerloo Line Option is exercised, any costs incurred in respect of the Bakerloo Line Option before the Order Commencement Date shall not be recoverable by the *Contractor*;
- (c) the exercise by the *Employer* of the Bakerloo Line Option shall not under any circumstances whatsoever:
 - (i) constitute a compensation event under the Implementation Works Terms or a Variation under the Operational Services Terms for the Piccadilly Line Order; or
 - (ii) give rise to any other Entitlement with the sole exception of the amounts properly due and payable to the *Contractor* for providing the Implementation Works and performing the Operational Services included within the Option after the Bakerloo Line Option Commencement Date.

11.4 If the *Employer* does not exercise the Bakerloo Line Option for any reason:

- (a) the *Contractor* shall not make any Claim and shall have no Entitlement including, for the avoidance of doubt, for any Consequential Loss in respect of the Bakerloo Line Option; and
- (b) the *Employer* shall be entitled in its sole and absolute discretion at any time (including during the Term) to engage, without reference to the *Contractor*, any other company or organization to provide works or services similar to or the same as the works and/or services included in the Bakerloo Line Option that has not been exercised by the Employer or for the Employer to provide such works, services itself.

- 11.5 The *Contractor* shall not make a Claim and shall have no Entitlement including, for the avoidance of doubt, for any Consequential Loss for the cancellation or failure to proceed with or exercise the Bakerloo Line Option that has not been the subject of the Bakerloo Line Option Notice or for any works or services carried out by him in advance of the issue of the Bakerloo Line Option Notice and any work done or orders placed by the *Contractor* prior to the Bakerloo Line Option Notice being issued are to be entirely at the *Contractor's* risk and cost.
- 11.6 The *Contractor* shall indemnify and hold the *Employer* and the TfL Group harmless against any losses, costs (including legal costs and expenses) incurred by the *Employer* or any member of the TfL Group as a result of the Contractor's failure to comply with the provisions of this Clause 11.
- 11.7 This Clause 11 is effective regardless of the active, passive or concurrent negligence or negligence of any member of the TfL Group or the *Contractor* or Others and regardless of whether liability without fault, or breach of express or implied warranty or breach of duty (whether statutory or otherwise), is imposed or sought to be imposed on one or more of the members of the TfL Group or the *Contractor*.
12. **PROVISIONS APPLICABLE TO THE EXERCISE OF THE BAKERLOO LINE OPTION**
- 12.1 The provisions in this Clause 12 shall apply to the exercise of the Bakerloo Line Option.
- 12.2 The procedure for exercising the Bakerloo Line Option is set out in the Bakerloo Line Option Protocol.
- 12.3 The Bakerloo Line Option shall only be exercised by the delivery of the Bakerloo Line Option Notice in accordance with paragraph 2 of the Bakerloo Line Option Protocol.
- 12.4 The Parties will do all things necessary to allow the objectives of the provisions in Clauses 8.2 – 8.5 and the Bakerloo Line Option Protocol to be achieved.
- 12.5 The *Contractor* shall not proceed with the carrying out of the Bakerloo Line Option without the Bakerloo Line Option Notice exercising the Bakerloo Line Option and Order issued in accordance with the Bakerloo Line Option Protocol.
- 12.6 For the avoidance of any doubt:
- (a) each Order for Implementation Works shall be performed under separate Implementation Works Terms for the Order;
 - (b) the Implementation Works Terms for the Bakerloo Line Option shall be of no effect and shall not give rise to any Entitlement unless the *Employer* has issued the Bakerloo Line Option Notice.
- 12.7 If the *Employer* does not exercise the Bakerloo Line Option by issuing the Bakerloo Line Option Notice on or before the Longstop Date, the Bakerloo Line Option shall lapse (unless the Parties agree otherwise).
13. **OPERATIONAL SERVICES**
- 13.1 Unless the Bakerloo Line Option Notice states that Operational Services are not required following Final Completion of the Bakerloo Line Option Implementation Works, the *Contractor* shall be obliged to perform the Bakerloo Line Option Operational Services.
- 13.2 Subject to Clause 13.1 above and Clause 23 of the Operational Services Terms (Variations), unless otherwise stated in this Contract, the *Contractor* shall only be obliged to perform Operational Services in respect of the Piccadilly Line Order.

14. **GENERAL WARRANTIES**

14.1 Without prejudice to any other warranties expressed elsewhere in this Contract or implied by law, the *Contractor* warrants, represents and undertakes to the *Employer* that:

- (a) the Contractor:
 - (i) has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Contract; and
 - (ii) is entering into this Contract as principal and not as agent for any person and that it acts as an independent *Contractor* in carrying out its obligations under this Contract;
 - (iii) the Contract is duly executed by the *Contractor*;
- (b) he has thoroughly checked this Contract including the Works Information included in the Implementation Works Terms and the Specification included in the Operational Services Terms for divergences and discrepancies within and between such documents;
- (c) he has allowed within the Prices and the pricing included within the Bill of Quantities for the Piccadilly Line Order and the Bakerloo Line Option and in the Operational Services Charges for the resolution of any such divergences and discrepancies and the full consequences thereof;
- (d) he has assessed the level of completeness of all design material and other information within the Works Information and the Specification included in the Operational Services Terms and that he has allowed within the Prices and the pricing included within the Bill of Quantities for the Piccadilly Line Order and the Bakerloo Line Option and in the service charges and other prices in Appendix 3 and 4 of the Operational Services Terms for the completion of any omissions within such design;
- (e) he shall use his best endeavours in the resolution of any such divergences and discrepancies and in the completion of such omissions, in each case in accordance with the requirements of the Works Information and the Specification included in the Operational Services Terms and any other requirements communicated to the *Contractor* by the *Employer* in every case in such a way as to avoid any programming delays or other delay or disruption that would or might affect the Completion of the Piccadilly Line Order, the Bakerloo Line Option by the relevant Completion Date for the Piccadilly Line Order, the Bakerloo Line Option or achieving a condition by the relevant Key Date;
- (f) he will make available all necessary organisation, management and labour resources to ensure that the Implementation Works and the Operational Services are carried out and completed in accordance with all requirements of the Contract and that programming dates are met and achieved and that delay and disruption is avoided; and
- (g) he will be proactive in resolving any relevant programming difficulties and issues of specification and quality as a result of events affecting the execution and completion of the Implementation Works and the Operational Services.

14.2 The warranties set out in this Clause 14 shall be deemed to be repeated by the *Contractor*, by reference to the facts then existing on:

- (a) the Contract Commencement Date;
 - (b) the *starting date* of the Piccadilly Line Order;
 - (c) the Order Commencement Date for each Order placed pursuant to the Bakerloo Line Option; and
 - (d) on an ongoing basis for the duration of the Term.
- 14.3 Each warranty, obligation and/or in indemnity in this Clause 14 shall be construed as a separate warranty, obligation, and/or indemnity (as the case may be) and is not limited or restricted by reference to, or reference from, the terms of any other such warranty, obligation and/or indemnity or any other term of this Contract.
- 14.4 If at any time the *Contractor* becomes aware that a representation or warranty given by it under this Clause 14 has been breached, is untrue or is misleading, it shall immediately notify the Employer's Representative of the relevant occurrence in sufficient detail to enable the Employer's Representative to make an accurate assessment of the situation.
- 14.5 The fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the *Employer* may have in respect of breach of that provision by the *Contractor*.
15. **CHANGE OF CONTROL**
- 15.1 Subject to Clause 15.2, no Change of Control shall be permitted to occur in respect of the *Contractor* without the prior written consent of the *Employer* to such Change of Control (such consent not to be unreasonably withheld or delayed).
- 15.2 The provisions of Clause 15.1 shall not apply to any Change of Control of the *Contractor* if following the Change of Control the *Contractor* continues to be part of the Contractor's Group and the Holding Company does not change.
- 15.3 In the event that a Change of Control which requires the *Employer's* prior written consent in accordance with Clause 15.1, the *Contractor* shall (unless prevented from doing so by any law, legislation or securities regulation applicable to the *Contractor* or any member of the Contractor's Group) give the *Employer* not less than 60 days written Notice of the proposed Change of Control together with all such information about the proposed Change of Control as may be reasonable for the *Employer* to determine whether it ought to consent to such Change of Control.
- 15.4 If the *Employer* does not consent to the proposed Change of Control and that Change of Control is implemented the *Employer* may terminate the Contract with immediate effect in accordance with Clause 29.2.
- 15.5 For the purposes of Clause 15.3, where the *Contractor* is not permitted by law, legislation or securities regulation to give the *Employer* at least 60 days prior Notice of a proposed Change of Control, the *Contractor* shall give the *Employer* Notice of the Change of Control as soon as it is permitted to do so in accordance with such law, legislation or securities regulation.
- 15.6 Without limitation to the *Employer's* right to withhold its consent to a Change of Control which requires the *Employer's* prior written consent in accordance with Clause 15.1, the *Contractor* acknowledges and agrees that, it shall be reasonable for the *Employer* to withhold its consent to a proposed Change of Control where:
- (a) the transfer of either or both equity securities or securities convertible into equity securities does not comply with the requirements of this Clause 15;

- (b) the proposed new holder of either or both equity securities or securities convertible into equity securities is an Undesirable Transferee;
- (c) the Change of Control would result in a breach of the terms of any relevant approval from a Competent Authority; or
- (d) the *Employer* reasonably considers that as a result of the proposed Change of Control the *Contractor* would:
 - (i) be unable to perform, or would be materially prejudiced in its ability to perform, its obligations under this Contract;
 - (ii) cease to be able to satisfy the relevant Competent Authority as to its ability to continue to satisfy the requirements of the ROGS;
 - (iii) cease to have the appropriate management skills, resources, technical competence and financial standing (or the technical and financial resources available) to enable it to perform its obligations under this Contract;
 - (iv) cease to have the requisite capacity, power, and authority (including any necessary authorisations and consents) to perform its obligations under this Contract; or
 - (v) cease to be able to provide the requisite stability of service delivery to enable it to perform its obligations under this Contract.

16. **CYBER SECURITY**

- 16.1 The *Contractor* shall comply with the requirements of Schedule 13 (Cyber Security) in relation to Cyber Security.

17. **CONTRACTUAL MANAGEMENT**

- 17.1 The *Employer* authorises the Employer's Representative to act on its behalf as its representative for all purposes of these General Terms and, unless otherwise stated, the *Contractor* shall deal with the Employer's Representative (or his or her nominated representative) in respect of all matters arising under these General Terms.
- 17.2 Unless stated otherwise in this Contract or authorised by Notice issued by the *Employer*:
- (a) the authority of the Employer's Representative shall relate to the administration of these General Terms only; and
 - (b) the Employer's Representative is not authorised or empowered to:
 - (i) amend the Contract;
 - (ii) relieve either Party of any duty, obligation or responsibility under or in connection with the Contract;
 - (iii) perform any of the roles or functions of the *Project Manager* under the Implementation Works Terms for the Piccadilly Line Order or the Bakerloo Line Option or the Client Representative under the Operational Services Terms; or
 - (iv) issue instructions, communications, assessments or certificates under the Implementation Works Terms or the Operational Services Terms.

- 17.3 Wherever the Employer's Representative exercises a specific authority for which the *Employer's* consent is required, then, for the purposes of the Contract, such consent shall be deemed to have been given.
- 17.4 Any acceptance, approval, comment, consent, instruction, Notice, non-objection or similar act (including the absence of any such act) by the Employer's Representative shall not relieve the *Contractor* from any duty, obligation or responsibility the *Contractor* has under or in connection with the Contract.
- 17.5 The Contractor's Representative shall act as the Contractor's Representative in respect of all matters arising under these General Terms. The Contractor's Representative shall:
- (a) attend all meetings required by the *Employer* or the Employer's Representative (the location, frequency and time of which are specified by the Employer's Representative from time to time) at no additional cost (save where such cost is specified in the Implementation Works Terms or Operational Services Terms);
 - (b) have the authority to act on behalf of the *Contractor* in all respects anticipated by this Contract and have the power to delegate such authority as may be agreed with the *Employer*; and
 - (c) be available to the *Employer* on reasonable notice to discuss any issues arising in connection with this Contract at no additional cost (save where such cost is specified in the Implementation Works Terms or Operational Services Terms).
- 17.6 The *Contractor* shall only make any changes to the Contractor's Representative (except in the event of sickness, incapacity, resignation or dismissal) with the prior written consent of the Employer's Representative (which is not to be unreasonably withheld).

18. **CONFLICT OF INTEREST**

- 18.1 The *Contractor* warrants that it does not and will not have at the Contract Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the performance of this Contract or with any other member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.
- 18.2 The *Contractor* shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the *Employer* immediately upon becoming aware of any actual or potential conflict of interest with the performance of this Contract or with any other member of the TfL Group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working on, and data relating to, the performance of this Contract from the matter in question) to manage such conflict to the *Employer's* satisfaction, provided that, where the *Employer* is not so satisfied, it may terminate the Contract under Clause 29.2.

19. **COMPLIANCE**

19.1 **Official Secrets Act and Finance Act**

The *Contractor* shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

19.2 **Crime and Disorder Act**

The *Contractor* acknowledges that the TfL Group is under a duty in accordance with section 17 of the Crime and Disorder Act 1998 to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of the TfL Group'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 *Employer*, 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 this Contract, the *Contractor* shall assist and co-operate with the *Employer* and relevant members of the TfL Group and shall use reasonable endeavours to procure that its Subcontractors assist and co-operate with the *Employer* and relevant members of the TfL Group to enable the TfL Group to satisfy this duty.

19.3 **Best Value**

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

20. **EXCLUSIVE REMEDIES**

The *Contractor* acknowledges that:

- (a) the rights and remedies provided for in the express terms of this Contract (including the right to compensation events pursuant to the Implementation Works Terms and Variations pursuant to the Operational Services Terms) are the *Contractor's* sole and exclusive remedy for any breach, failure, default, act, error, omission or act of prevention on the part of the *Employer* under or in connection with this Contract, to the exclusion of other remedy the *Contractor* may have against the *Employer* arising in contract, tort (including negligence or nuisance), breach of statutory duty or otherwise; and
- (b) the *Contractor* shall not make a Claim and shall have no Entitlement and the *Employer* shall have no liability to the *Contractor* in respect of the Implementation Works and/or Operational Services other than amounts expressly claimable and recoverable pursuant to the express terms of:
 - (i) the Implementation Works Terms (and, in respect of the Bakerloo Line Option, subject always to the receipt of the Bakerloo Line Option Notice in respect of that Option) and/or;
 - (ii) the Operational Services Terms,

20.2 whether by way of an adjustment to the aggregate total of the Prices under the Implementation Works Terms or service charges or other amounts payable pursuant to

the Operational Services Terms, an extension to any Completion Date or Key Date or otherwise.

21. INDEMNITIES AND LIMITATION OF LIABILITY

21.1 The *Contractor* shall, subject to Clause 21.2, be responsible for and shall release and indemnify the *Employer* and the TfL Group from and against all Losses whatsoever suffered or incurred by the *Employer* as a result of:

- (a) an Option Default;
- (b) personal injury to or death of any person whomsoever arising out of or caused by the carrying out of any works or services by the *Contractor*;
- (c) loss of or damage to property real or personal (including the property of the *Employer* and the TfL Group which includes those parts of the LUL Network that do not form part of the *works* and/or Operational Services) arising out of or caused by the carrying out of any works or services by the *Contractor*;
- (d) the negligence or wilful misconduct of the Contractor or the Contractor's Group;
- (e) for any liability or Losses to the extent that the relevant liability or Loss is of such nature as is intended to be compensated by the payment of liquidated damages pursuant to this Contract; and
- (f) any other default, non-compliance or breach of these General Terms by the *Contractor*.

21.2 The *Contractor* shall not be responsible or be obliged to indemnify the *Employer* and the TfL Group:

- (a) for any liability or Losses caused by the negligence or wilful misconduct of the *Employer* or the TfL Group or by the breach by the *Employer* of its obligations under this Contract; and
- (b) for any Consequential Loss (unless treated as direct Loss in accordance with Clause 21.10 below).

21.3 The *Contractor* shall take all prudent and commercial steps necessary to mitigate and minimise any actual or potential Losses (including costs on or relating to termination of these General Terms). The powers, rights and remedies conferred on the Parties in this Clause 21 shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties under this Contract (including the General Terms, Implementation Works Terms for any Order or the Operational Services Terms) or by law.

21.4 The powers, rights and remedies conferred on the parties in this Clause 21 shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties under this Contract (including the Implementation Works Terms for any Order or the Operational Services Terms) or by law.

21.5 The *Contractor's* indemnity under Clause 21.1 remains in force until whichever is the earlier of: (i) the Expiry Date; or (ii) twelve (12) years after any termination of the Contract and continues to survive expiry or termination of the Contract along with any other clauses or schedules of the General Terms necessary to give effect to them.

21.6 Subject to Clauses 21.7 and 21.10 below (which for the avoidance of doubt shall be excluded from the cap on liability under this Clause 21.6), in any given Financial Year, the *Contractor's* total aggregate liability under or in connection with the General Terms (including breach of contract, tort and breach of statutory duty) shall not exceed an amount equal to:

- (a) 100% of the aggregate total of:
 - (i) the Relevant Prices to which the *Contractor* has or will become entitled to payment in the same Financial Year; and
 - (ii) the Relevant Prices to which the *Contractor* would have become entitled to payment in the same Financial Year but for:
 - (A) the *Contractor's* breach or failure to comply with the terms of the Contract; or
 - (B) any termination of the Contract in whole or in part by either Party.

21.7 Notwithstanding any other provision of this Contract:

- (a) nothing in this Clause 21 shall limit or exclude the Contractor's liability under or in connection with the Implementation Works Terms for each Order (which are subject to separate limitations under secondary option X18) or under or in connection with the Operational Services Terms (which are subject to a separate limitation under Clause 28 of the Operational Services Terms); and
- (b) the *Contractor's* liability for the following shall not be excluded or restricted and no liability for the same shall be taken into account in determining whether the limits of liability for each Financial Year referred to in Clause 21.6 above have been reached or exceeded:
 - (i) liability for death or bodily injury;
 - (ii) Losses caused by fraudulent acts or acts of a criminal nature including any criminal act which amounts to a Safety Breach (as defined in the Implementation Works Terms and the Operational Services Terms);
 - (iii) any liability which arises from a breach of this Contract if such breach has been caused knowingly and intentionally by the *Contractor*;
 - (iv) wilful default or abandonment;
 - (v) loss of or damage to the Employer's property or the works under the Piccadilly Line Order and/or the Bakerloo Line Option if exercised by the Employer; and
 - (vi) the *Contractor's* liability for Losses in respect of Insured Risks.

21.8 The Contractor's liability for Losses in respect of Insured Risks shall, subject to clause 21.7(b), be dealt with as follows:

- (a) Losses required to be covered by insurances are treated as excluded from, and shall not count towards, the limitation in clause 21.6 and shall be recoverable up to an amount equal to the maximum limit of indemnity required for the relevant insurance; and
- (b) For the avoidance of doubt, liability for all and any excesses or deductibles is, for the purposes of this Clause 21.8, treated as being borne by the *Contractor* and does not count towards or reduce the amount of any limitation.

21.9 Subject to Clause 21.10, neither Party shall be liable to the other Party under the Contract for Consequential Loss.

21.10 The Parties acknowledge and agree that the following categories of loss will be treated for all purposes as direct Losses which are recoverable by the *Employer* subject to any

applicable limitations of liability in the General Terms, Implementation Works Terms and Operational Services Terms:

- (a) liability for death or bodily injury;
- (b) loss of or damage to the *Employer's* property or the works under the Piccadilly Line Order and/or the Bakerloo Line Option if exercised by the *Employer*;
- (c) delay damages under X7 of the Implementation Works Terms;
- (d) liquidated damages (for disruption to the LUL Network) payable under this Contract including pursuant to Clause Z1.32.1 of the Implementation Works Terms and/or Clause 10.2 of the Operational Services Terms;
- (e) amounts due under the indemnities in Clause Z2.7.4 of the Implementation Works Terms and/or Clause 17.8 of the Operational Services Terms (intellectual property rights); and
- (f) amounts due on termination or expiry under Clause 29 of the General Terms, Clause 93 of the Implementation Works Terms and/or Clause 31 of the Operational Services Terms;
- (g) Losses caused by an Option Default;
- (h) Liabilities to Others, to the extent that such Liabilities to Others are due to any negligence, breach of contract, breach of statutory duty, error, act, omission or default by the *Contractor*; and
- (i) liability for pain share under Clause 53 of the Implementation Works Terms.

22. DESIGN AUTHORITY

22.1 The *Contractor* warrants and acknowledges that it:

- (a) is and shall act and continue to act at all times during the Term as the Design Authority in respect of the OPO CCTV System in accordance with all applicable laws and Standards, the Implementation Works Terms and the Operational Services Terms (unless otherwise agreed in writing with the *Employer's* Representative);
- (b) it has and will continue to have sufficient technical knowledge and capability to assess, the implementation of the OPO CCTV System, and the later modification and update of the OPO CCTV System; and
- (c) it shall comply with its other obligations in its capacity as the Design Authority included in the Implementation Works Terms for each Order and the Operational Services Terms.

23. COSTS AND EXPENSES

23.1 Without prejudice to the *Employer's* rights and remedies under this Contract or at law, except as otherwise expressly set out in the Implementation Works Terms and the Operational Services Terms, each Party shall each bear its own costs and expenses incurred in complying with this Contract.

23.2 For the avoidance of any doubt:

- (a) no amounts shall be paid by the *Employer* under these General Terms; and

- (b) all payments applicable to the Implementation Works or Operational Services shall be made under the Implementation Works Terms or Operational Services Terms applicable to the Piccadilly Line Order, or the Bakerloo Line Option if exercised by the *Employer* under Clause 8.

24. SET-OFF AND WITHHOLDING

Without prejudice to Clause 56 of the Implementation Works Terms and Clause 21.11 of the Operational Services Terms, in addition to any other rights of the *Employer* whether at law or equity or under this Contract, whenever:

- (a) under this Contract any sum of money is recoverable from or payable by the *Contractor*; or
- (b) any damages, costs, charges, expenses, debts, sums or other amounts are owed to, or incurred by, the *Employer* or any member of the TfL Group arising out of or attributable to this Contract or any other contract or at law;

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

25. RECORDS, REPORTS AND AUDIT RIGHTS

The *Contractor* shall comply with:

- (a) the provisions of Section 1 Schedule 4 (Records, Reports and Audit Rights);
- (b) any other provision of this Contract that sets out detail as to the form and content of documents required to be retained or provided by the *Contractor* in relation to the maintenance of Open Book Data; and
- (c) in relation to the exercise of the Audit Rights by the *Employer* or any audit agents.

26. CONFIDENTIALITY

26.1 The *Contractor* acknowledges that during the course of this Contract it may receive, obtain, prepare or create confidential information.

26.2 The *Contractor*:

- (a) receives and/or maintains the confidential information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature;
- (b) shall not use the confidential information for any purposes whatsoever (and in particular shall not use the confidential information to the detriment of the *Employer* or the TfL Group) other than for the purpose of this Contract;
- (c) shall not disclose the confidential information (which shall include any information obtained by the *Contractor* concerning the *Employer*) to any third party without the prior written consent of the *Employer* except that the *Contractor* is entitled to the extent strictly necessary to disclose the confidential information:
 - (i) to Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision and provided that the *Contractor* is responsible for any breach of its obligations occasioned by any act or omission of such Connected Persons; or
 - (ii) to any other person or body having a legal right or duty to know the confidential information in connection with the *Contractor's* business

provided that prior to such disclosure the *Contractor* consults with the *Employer* as to the proposed form of such disclosure;

- (iii) informs each of the persons referred to in limbs (i) and (ii) above to whom confidential information is disclosed of the restrictions as to use and disclosure of the confidential information and uses its best endeavours to ensure that each of them observe such restrictions;
- (d) at the *Employer's* request and in any event upon the termination or expiry of the Contract, promptly delivers to the *Employer* or destroys as the *Employer* directs all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, removes all electronically held confidential information, including (without limitation) the purging of all disk-based confidential information and the reformatting of all disks; and
- (e) shall not, except where provided in Clauses 26.2(c) or 26.3 or with the prior written consent of the *Employer*, disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the confidential information.

26.3 The obligations set out in this Clause 26 do not apply to any confidential information which:

- (a) the *Contractor* shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the *Contractor* by the *Employer*; or
- (b) is lawfully disclosed to the *Contractor* without any obligations of confidence, by a third party who has not derived it directly or indirectly from the *Employer*; or
- (c) is or has come into the public domain through no fault of the *Contractor* or its personnel; or
- (d) is required by law or by order of a court of competent jurisdiction to be disclosed.

26.4 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause 26 and that (without prejudice to all other remedies which the *Employer* may be entitled to as a matter of law) the *Employer* is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause and no proof of special damages is necessary for the enforcement of the provisions of this Clause.

26.5 The *Contractor* shall not advertise or announce this Contract or any *works* or services carried out pursuant to this Contract without the prior written consent of the *Employer* and the *Employer* shall have the right to approve any advertisement or announcement before it is made.

26.6 Neither the *Contractor* nor anyone employed by him or acting on his behalf shall give information concerning this Contract or any *works* or services carried out pursuant to this Contract for publication in the press or on radio, television, screen or any other media without the prior written consent of the *Employer* and, if such consent is given, shall provide to the *Employer* a full copy of the information to be released and shall not release any such information until the *Contractor* has received the *Employer's* prior written consent as to the content of the information to be released. The *Contractor* shall not, without the prior written approval of the *Employer*, take or permit to be taken any photographs of anything relating to this Contract for use in any publicity or advertising.

26.7 The *Contractor* shall procure that the Connected Persons comply with the provisions of this Clause 26 and shall be responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligation.

26.8 The *Contractor* shall notify the *Employer* promptly if the *Contractor* becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

27. **FREEDOM OF INFORMATION AND TRANSPARENCY**

27.1 The *Contractor* acknowledges that the entities which together comprise the *Employer* are subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) (the "**FOI Legislation**") in relation to such legislation and agrees to assist and co-operate and procure that its Subcontractors assist and co-operate with the *Employer* to enable each entity which together comprise the *Employer* to comply with their obligations under such legislation including providing to the *Employer* such information as the *Employer* may reasonably request concerning this contract within five (5) Working Days of a request from the *Employer*.

27.2 The *Contractor* further acknowledges that the *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Contractor*. Without prejudice to the generality of the foregoing the *Contractor* shall transfer to the *Employer* any request for information under the FOI Legislation that it receives as soon as reasonably practicable. The *Contractor* shall not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the *Employer*. This Clause 27 shall survive the expiry or termination of this Contract.

27.3 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding Clauses 26 (Confidentiality) and Section 1 Schedule 12 (Privacy and Data Protection), the *Contractor* hereby gives its consent for the *Employer* to publish the Contract Information to the general public.

27.4 The *Employer* 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 *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in its absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to Section 1 Schedule 12 (Privacy and Data Protection). The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

28. **PRIVACY AND DATA PROTECTION**

28.1 The Parties shall comply with their respective obligations under Section 1 Schedule 12 (Privacy and Data Protection).

29. **TERMINATION OF THE CONTRACT**

29.1 The *Employer* may terminate this Contract in its entirety immediately upon giving a Termination Notice to the *Contractor* if:

- (a) the *Contractor* has committed any material or persistent breach of this Contract (including, for the avoidance of doubt, a material and/or persistent breach of the

Implementation Works Terms or the Operational Services Terms) and in the case of such a breach that is capable of remedy fails to remedy that breach within ten (10) Working Days (or such other timeframe as specified in writing by the *Employer*) from the date of Notice to the *Contractor* giving details of the breach and requiring it to be remedied; or

- (b) the *Contractor* or the Holding Company is subject to Insolvency;
- (c) the *Contractor* has failed to comply with Clause 15 (Change of Control) including where a Change of Control occurs without the written approval of the *Employer* being given under Clause 15;
- (d) the *Contractor* is in breach of Clause 39 (Prevention of Fraud and Bribery);
- (e) the *Employer* is not satisfied on the issue of any conflict of interest in accordance with Clause 18;
- (f) at any time the *Contractor* is liable to the *Employer* or is forecast by the *Employer* (acting reasonably) to be liable to the *Employer* for an amount exceeding the total aggregate liability to the *Employer* to in the limitation in Clause 21.6 (other than matters referred to in Clauses 21.7 and 21.8 as expressly excluded from the limitation) exceeds an amount equal to the limitation applicable to the relevant Financial Year in Clause 21;
- (g) the *Contractor* has not provided, re-executed, restated or maintained a Parent Company Guarantee or Contractor's Bond as required by Clause 4;
- (h) the *Contractor* without reasonable excuse fails to:
 - (i) proceed with the works under any Order;
 - (ii) proceed with the Operational Services under the Operational Services Terms; or
 - (iii) comply with any Notice issued under these General Terms (including the Bakerloo Line Option Notice under Clause 12)
- (i) the *Contractor* fails to effect and maintain the insurances required by the Contract;
- (j) if any Contractor's Bond required under Clause 4 of these General Terms becomes (i) wholly or partly invalid or unenforceable or (ii) any bond provider providing the Contractor's Bond suffers an event, in each case, the *Contractor* fails to provide a replacement Contractor's Bond in accordance with the Contract within 20 days of the Contractor's Bond becoming invalid or unenforceable or (iii) the *Contractor* (where applicable) fails to procure a Replacement Bond in accordance with Clause 4.11(d);
- (k) if the guarantor's obligations under the Parent Company Guarantee become wholly or partly invalid or unenforceable; or
- (l) if any provider of a Contractor's Bond or Parent Company Guarantee fails or refuses to comply with any performance or payment obligations assumed under the Contractor's Bond or Parent Company Guarantee.

29.2 If the *Employer* is terminating this Contract under this Clause 29.2 due to the occurrence of any one or more of limbs (a) to (l) set out in Clause 29.1 above (in each case a "Default"), it may rely on a single Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default. The *Employer's*

election to terminate the Contract for Default shall not prejudice any other rights of the Employer under the Contract or otherwise.

29.3 Without prejudice to the *Employer's* other rights to terminate this Contract including under Clause 32.1, the *Employer* may terminate this Contract:

- (a) prior to the Initial Design Phase End Date subject to giving the *Contractor* twenty (20) Working Days' Notice;
- (b) for convenience at any time after the Initial Design Phase End Date without cause subject to giving the Contractor one hundred and twenty (120) Working Days' Notice;
- (c) if there is a Declaration of Ineffectiveness; or
- (d) if a Public Procurement Termination Event occurs

29.4 The rights referred to in Clauses 29.1 to 29.2 are without prejudice to the rights to terminate particular Orders pursuant to Clauses 90 or 91 of the Implementation Works Terms or Clause 30 of the Operational Services Terms and/or the Employer's other rights and remedies including its rights at common law.

29.5 Upon termination of this Contract under Clause 29.1 or 29.3 (b), (c) or (d):

- (a) the Implementation Works Terms for the Piccadilly Line Order and the Bakerloo Line Option if instructed by the *Employer* at the date of termination shall terminate automatically as a "reason other than the reasons listed in the Termination Table" under Clause 90.2 (Reasons for termination) of the conditions of contract in the relevant Implementation Works Terms;
- (b) the procedures for termination of the relevant Implementation Works Terms and the payments on termination of those terms shall be as set out in the Termination Table in Clause 90.2, Clause 92 (Procedures on termination) and 93 (Payment on termination) of the conditions of contract in the relevant Implementation Works Terms;
- (c) the Operational Services Terms shall terminate automatically under Clause 30.1 (Termination Events) of the terms and conditions in the Operational Services Terms; and
- (d) the procedures for termination of the Operational Services Terms and the payments on termination of those terms shall be as set out in Clause 31 (Procedure on Termination and its Consequences) of the terms and conditions in the Operational Services Terms in Section 3.

29.5A If this Contract is terminated by the *Employer* under Clause 29.3 (a) the Implementation Works Terms for the Piccadilly Line Order shall terminate automatically for a "reason other than the reasons listed in the Termination Table" under Clause 90.2 (Reasons for termination) of the conditions of contract in the Piccadilly Line Implementation Works Terms save that the *Contractor* will only be entitled to be paid Initial Design Phase Payments incurred or accrued by the *Contractor* up to the date of termination plus other Defined Cost reasonably incurred in expectation of completing the whole of the *works*. The Initial Design Phase Payments and other Defined Cost reasonably incurred in expectation of completing the whole of the *works* will be the *Contractor's* sole remedy for termination of the Contract and for the avoidance of doubt the *Contractor* shall not be entitled to be paid the Fee percentage in relation to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date under the Piccadilly Line Implementation Works Terms, any *Contractor's* share nor the "Compensation Payment" under the Piccadilly Line Operational Services Terms.

- 29.6 For the avoidance of any doubt, no payments shall be made to the *Contractor* under these General Terms and the amounts due between the Parties (including amounts due as a result of termination of this Contract) shall be determined solely and exclusively under the applicable Implementation Works Terms and the Operational Services Terms.
- 29.7 The Implementation Works Terms for an Order may be terminated pursuant to Clause 91 (Reasons for termination) of the Master Conditions of Contract included in the relevant Implementation Works Terms and the Operational Services Terms may be terminated pursuant to Clause 30 of the terms and conditions included within the Operational Services Terms. Termination of an Order under Clause 91 of the Implementation Works Terms or the Operational Services Terms under Clause 30 shall not relieve the *Contractor* of its obligation to perform any other part of the Contract that has not been terminated. The termination or expiry of this Contract shall not (subject to Clause 29.11 below) prejudice or affect any right, power or remedy which has accrued or accrues to either Party prior to or after such termination or expiry.
- 29.8 Wherever the *Employer* chooses to put out to tender for a Replacement Contractor some or all of the supply, works or services *works* within the Implementation Works or the Operational Services, the *Contractor* shall disclose to tenderers such information concerning the Implementation Works and/or the Operational Services as the *Employer* requires for the purposes of such tender.
- 29.9 Upon expiry or termination of this Contract (howsoever caused) the *Contractor*, at no further cost to the *Employer* on receipt of the *Employer's* written instructions to do so (but not otherwise), shall arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 29.10 On termination of this Contract the *Employer* may enter into any agreement with any third party or parties as the *Employer* thinks fit to provide any, or all, or any part of the Implementation Works and/or Operational Services.
- 29.11 Where the termination is pursuant to Clause 29.1 the *Contractor* shall be liable for all additional expenditure reasonably incurred by the *Employer* in having such supply and/or *works* carried out and all other costs and damages reasonably incurred by the *Employer* in consequence of such termination and the *Employer* may deduct such costs from sums due to the *Contractor* pursuant to the Implementation Works Terms and/or the Operational Services Terms or otherwise the *Employer* may recover such costs from the *Contractor* as a debt.

30. **EXIT MANAGEMENT**

The Parties shall comply with the provisions of Section 1 Schedule 7 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the *works* and/or services provided under this Contract from the *Contractor* to the *Employer* or any Replacement Contractor.

31. **DECLARATION OF INEFFECTIVENESS**

- 31.1 In the event that a court makes a Declaration of Ineffectiveness, the *Employer* shall promptly Notify the *Contractor*. The Parties agree that the provisions of Clauses 32.1 to 32.5 (inclusive) shall apply as from the date of receipt by the *Contractor* of the notification of the Declaration of Ineffectiveness.
- 31.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.

31.3 As from the date of receipt by the *Contractor* of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Employer's Representative shall reasonably determine an appropriate Emergency Exit Plan with the object of achieving:

- (a) an orderly and efficient cessation of the works and services under the Contract or (at the *Employer's* request) a transition of those works and services to the *Employer* or such other entity as the *Employer* may specify, including a Replacement Contractor; and
- (b) minimal disruption or inconvenience to the *Employer* or to public passenger transport services or facilities,

in accordance with the provisions of Clauses 32.1 to 32.5 (inclusive) and to give effect to the terms of the Declaration of Ineffectiveness.

31.4 Upon agreement, or determination by the *Employer*, of the Emergency Exit Plan, the Parties will comply with their respective obligations under the Emergency Exit Plan.

31.5 The *Employer* shall pay the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Emergency Exit Plan as Defined Cost (excluding Fee) pursuant to the Implementation Works Terms for any Orders that have been terminated by reason of the Declaration of Ineffectiveness or Clause 30.1 of the Operational Services Terms (as applicable), provided that the *Employer* shall not be liable to the *Contractor* for any losses that arise in consequence of the early termination of this Contract as a result of the Declaration of Ineffectiveness.

32. PUBLIC PROCUREMENT TERMINATION EVENT

32.1 Without prejudice to the *Employer's* other rights of termination under this Contract or at law, in the event of a Public Procurement Termination Event, the *Employer* shall promptly give Notice to the *Contractor* and the Parties agree that the provisions of Clauses 32.1 to 32.5 below shall apply as from the date of receipt by the *Contractor* of the notification of the Public Procurement Termination Event.

32.2 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event.

32.3 As from the date of receipt by the *Contractor* of the Notice of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Employer's Representative shall reasonably determine an appropriate Emergency Exit Plan with the object of achieving:

- (a) an orderly and efficient cessation works and services under the Contract or (at the *Employer's* election) a transition of the works and services under the Contract to the *Employer* or such other entity as the *Employer* may specify including a Replacement Contractor; and
- (b) minimal disruption or inconvenience to the *Employer* or to public passenger transport services or facilities,

in accordance with the provisions of Clauses 32.1 to 32.4 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

32.4 Upon agreement, or determination by the *Employer* of the Emergency Exit Plan, the Parties shall comply with their respective obligations under the Emergency Exit Plan.

- 32.5 The *Employer* shall pay the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Emergency Exit Plan as Defined Cost (excluding Fee) pursuant to the Implementation Works Terms for any Orders that have been terminated by reason of the Declaration of Ineffectiveness or Clause 29.1 of the Operational Services Terms (as applicable), provided that the *Employer* shall not be liable to the *Contractor* for any losses that arise in consequence of the early termination of this Contract as a result of the Public Procurement Termination Event.

33. **SURVIVAL OF CLAUSES IN THESE GENERAL TERMS**

In these General Terms the provisions of Clauses 1, 2, 3, 4, 10, 11, 14, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42.3, 43, 45, 46, 50, 52 and 54 and any other clauses or Schedules that are necessary to give effect to those clauses survive termination or expiry of this Contract and/or the *Contractor's* employment under the Implementation Works Terms and/or the Operational Services Terms. In addition the clauses of the Operational Services Terms and Implementation Works Terms survive expiry or termination as expressly referenced or by implication in those terms. In addition, any other provision of this Contract which by its nature or implication is required to survive the termination or expiry of this Contract does so.

34. **MITIGATION**

Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

35. **NO DOUBLE RECOVERY**

- 35.1 An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract provided that nothing in this Contract shall give either Party the right to any double recovery.

- 35.2 The *Contractor* undertakes and agrees that:

- (a) it will not Claim or apply:
 - (i) under the Implementation Works Terms for an Order for payment for works or services undertaken or items provided pursuant to the Implementation Works Terms for another Order; or
 - (ii) under the Operational Services Terms for payment for items, works or services undertaken or items provided pursuant to the Implementation Works Terms for any Order, and vice versa; and
- (b) the *Contractor* shall have no Entitlement under the Implementation Works Terms or Operational Services Terms for any claim in respect of any matter (including delay, failure in performance by the *Employer* or otherwise), to the extent that the *Contractor* has already received such amount from the *Employer* in respect of the same such matter.

36. **RELATIONSHIP OF THE PARTIES**

Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, unincorporated association, co-operative agency, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

37. **STAFF TRANSFER**

The Parties agree that Section 1 Schedule 6 (Staff Transfer) shall apply in relation to the staff transfer matters described therein.

38. **NON-SOLICITATION**

The Parties shall comply with their respective obligations in Section 1 Schedule 5 (Non-Solicitation) in relation to their respective personnel.

39. **PREVENTION OF FRAUD AND BRIBERY**

39.1 The *Contractor* shall not during the Term of this Contract, and ensures that its employees, agents and subcontractors do not:

- (a) pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of the *Employer* or any member of the TfL Group;
- (b) favour any employee, servant, officer or agent of the *Employer* or any member of the TfL Group with gifts or entertainment of significant cost or value;
- (c) enter into any business arrangement with employees, servants, officers or agents of the *Employer* or any member of the TfL Group other than as a representative of the *Employer*, without the Employer's Representative's prior written approval;
- (d) offer or agree to give to any servant, employee, officer or agent of the *Employer* or any member of the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the *Employer* or any call-off employer or any member of the TfL Group; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the *Employer* or any other member of the TfL Group;
- (e) commit any offence:
 - (i) under the Bribery Act 2010,
 - (ii) under the Prevention of Corruption Acts 1889-1916,
 - (iii) under any law or legislation creating offences in respect of fraudulent acts, or
 - (iv) at common law in respect of fraudulent actsin relation to this Contract or any other contract with the *Employer* or any other member of the TfL Group; or
- (f) defraud or attempt to defraud the *Employer* or any member of the TfL Group.

39.2 Without prejudice to its rights under Clause 25, the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this Clause 39 at any time during the Term of this Contract and during the twelve years thereafter.

- 39.3 If any fraudulent activity comes to the attention of the *Contractor* in relation to this Contract the *Contractor* shall notify the *Employer* by the most expeditious means available. The *Contractor* shall cooperate with the *Employer* in the investigation of any fraudulent activity and shall implement any changes in the procedures or working practices employed under this Contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Contractor* shall ensure that no fraudulent activity is committed by the *Contractor*, its agents, employees or subcontractors.
- 39.4 If the Contractor, any of its shareholders or any subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any breach of this Clause 39, this constitutes a material breach of this Contract and shall entitle the *Employer* to terminate the Contract in existence, in accordance with Clause 29.1(a).
- 39.5 If a breach of this Clause 39 is committed by an employee of the *Contractor* or by any subcontractor (or employee or agent of such subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within twenty (20) Working Days of receipt of such warning notice, the *Contractor* terminates, or procures the termination of, the employee's employment or subcontractor's appointment (as the case may be) and (if necessary) procures the provision of the affected work or services by another person, this constitutes a material breach of this Contract and entitles the *Employer* to terminate the Contract, with immediate effect in accordance with Clause 29.1(a).
- 39.6 In the event of any breach of this Clause 39 by the *Contractor* the *Employer* shall recover from the *Contractor* any loss liability or damage incurred or suffered as a result of the breach of this Clause by the *Contractor*.

40. **ASSIGNMENT AND NOVATION**

- 40.1 Subject to Clause 40.2, neither Party shall assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the other Party.
- 40.2 The *Employer* may at its sole discretion assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations and liabilities under this Contract or any associated licences to:
- (a) any other member of the TfL Group or their successors;
 - (b) to a body other than a member of the TfL Group (including any private sector body) which performs any of the functions that previously had been performed by the *Employer*;
 - (c) a Minister of the Crown;
 - (d) the Mayor or the Greater London Authority or any statutory successor thereto; or
 - (e) any public or statutory corporation or limited liability company which is owned and controlled directly or indirectly by any of the persons referred to in Clause 40.2(c), or (d) above,

and the *Contractor* shall, at the *Employer's* request, enter into a novation agreement in such form as the *Employer* shall reasonably specify in order to enable the *Employer* to exercise its rights pursuant to this Clause 40.

- 40.3 A change in the legal status of the *Employer* such that it ceases to be a subsidiary of a statutory corporation shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the *Employer*.

41. **NON-WAIVER**

- 41.1 The rights and remedies under this Contract may be waived only by Notice in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 41.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

42. **REVIEW, APPROVAL OR ACCEPTANCE**

- 42.1 While the *Employer's* personnel includes design, engineering or software professionals, the *Employer* is not acting as a design, engineering or software professional during the performance of this Contract, or for any Review or Approval or Acceptance.
- 42.2 The *Contractor* is required to exercise his own judgment in performing the works and services under the Contract and, in the event of any Dispute, the *Employer* shall be deemed not to have acted in the capacity of a design, engineering or software professional for the purposes of any assertion that such Review or Approval or Acceptance waives, modifies or amends the *Contractor's* contractual responsibilities under this Contract.
- 42.3 The Review, Approval, Acceptance or failure to Review by the *Employer's* personnel (including the Employer's Representative) shall not waive, modify or amend any of the *Contractor's* responsibilities, obligations or liabilities under this Contract, except as expressly stated in this Contract.

43. **ILLEGALITY AND SEVERABILITY**

If any clause or part of this Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this Contract and is ineffective without, as far as is possible, modifying any other clause or part of this Contract and this shall not affect any other provisions of this Contract which remain in full force and effect. In the event that in the *Employer's* opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Contract, the *Employer* and the *Contractor* immediately shall commence good faith negotiations to remedy such invalidity.

44. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

45. **ENTIRE AGREEMENT**

- 45.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

45.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract (including pursuant to Clause 14).

45.3 Nothing in this Clause 45 shall exclude any liability in respect of misrepresentations made fraudulently.

46. **THIRD PARTY RIGHTS**

46.1 Subject to Clause 46.2, the Parties do not intend that any of the terms of this Contract is enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**") by any person not a party to it.

46.2 Any member of the TfL Group has the right to enforce the terms of this Contract as if they were party to this Contract in the place of the *Employer* in accordance with the Third Party Act.

46.3 Notwithstanding Clause 46.2, the Parties are entitled to vary or rescind this Contract without the consent of any member of the TfL Group.

47. **NOTICES**

47.1 Without prejudice to the notification requirements in the Implementation Works Terms and the Operational Services Terms, whenever these General Terms provide for the giving of a Notice (which for the avoidance of doubt shall include obligations on a Party to "notify" the other), the Notice:

(a) shall be in writing and shall be identified as a Notice; and

(b) shall satisfy the conditions and requirements (including as to method of service and address for service) set out in Section 1 Schedule 10 (Notices).

47.2 The provisions in Section 1 Schedule 10 (Notices) shall apply in relation to all Notices expressly required under these General Terms.

47.3 This Clause 47 does not apply to notices required under the Implementation Works Terms or the Operational Services Terms or to the service of any proceedings or other documents in any legal proceedings or other method of dispute resolution (other than the service of a Dispute Notice under Section 1 Schedule 11 (Dispute Resolution Procedure)).

48. **COUNTERPARTS**

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

49. **CONTRACT VARIATION**

Subject to any changes which are made pursuant to the compensation events provisions in Clause 60 of the Implementation Works Terms or the Variation provisions in Clause 23 of the Operational Services Terms this Contract may only be varied or amended with the written agreement of the *Employer* and the *Contractor* signed by or on behalf of each of the parties to this Contract. The expressions "amendment" and "variation" includes any variation, supplement, deletion or replacement, however effected.

50. **DISPUTES**

The Parties shall resolve Disputes arising out of or in connection with this Contract, including any Disputes arising under the Implementation Works Terms or the Operational Services Terms, in accordance with the Dispute Resolution Procedure.

51. **ANTI SLAVERY AND HUMAN TRAFFICKING**

- 51.1 The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the Modern Slavery Act 2015.
- 51.2 The *Contractor* complies with all applicable anti-slavery and human trafficking law from time to time in force including but not limited to the Modern Slavery Act 2015 and has and will maintain throughout the currency of this Contract its own policies and procedures to ensure compliance with the Modern Slavery Act.
- 51.3 The *Contractor* warrants that it does not and shall not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct was carried out in the United Kingdom.
- 51.4 The *Contractor* notifies the *Employer* as soon as it becomes aware of any breach or potential breach of the Modern Slavery Act 2015 or any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 51.5 If the *Contractor*, any of its shareholders or anyone employed by or acting on behalf of the *Contractor* or any of its agents commits any breach of the Modern Slavery Act 2015 this constitutes a material breach of this Contract and shall entitle the *Employer* to terminate this Contract in whole or in part with immediate effect in accordance with Clause 29.1(a).

52. **JOINT AND SEVERAL LIABILITY**

- 52.1 If the Contractor is a joint venture:
- (a) each of the parties comprising the joint venture are jointly and severally liable to the *Employer* for the performance of this Contract and all liabilities, acts and omissions of the *Contractor* and of each other party comprising the joint venture or in connection with this Contract;
 - (b) without limiting or prejudicing any other provision of this Contract if any of the parties comprising the joint venture ceases to be a member of the joint venture or is subject to Insolvency the other parties or party carry out and complete the obligations of this Contract;
 - (c) the *Contractor* gives notice to the *Employer* as to which of the parties comprising the joint venture has the authority to bind the *Contractor* for all the purposes of this Contract; and
 - (d) the *Contractor* keeps the *Employer* informed promptly of any changes in the joint venture whether in relation to any incorporated entity or its constituent entities or the entities forming any unincorporated joint venture including changes in legal status, the occurrence of any Insolvency, amalgamation, demerger, merger, deterioration in financial condition, de-ratings, major legal claims and any other matter or circumstance that could reasonably be deemed to be of concern to the *Employer*.

53. EQUALITY, DIVERSITY AND HUMAN RIGHTS

- 53.1 The *Contractor* follows all applicable equality legislation in the performance of the obligations under this Contract including:
- (a) protections against discrimination on the grounds of race, sex, gender re-assignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - (b) any other requirements and instructions which the *Employer* reasonably imposes relating to equality legislation.
- 53.2 The *Contractor* takes all necessary steps and informs the *Employer* of the steps taken to prevent anything that is considered to be unlawful discrimination by any court or tribunal or the Equality and Human Rights Commission (or any successor organisation) when performing the obligations under this Contract.

54. GOVERNING LAW AND JURISDICTION

- 54.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 54.2 Subject to Clause 50 (Disputes) and Section 1 Schedule 11 (Dispute Resolution Procedure), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

This Contract has been executed and delivered as a deed on the date shown above.

The common seal of)

LONDON UNDERGROUND LIMITED)

Was hereunto affixed in the presence of:)

Signature of authorised signatory **REDACTED**

Name of authorised signatory **REDACTED**

Executed as a deed by **PANASONIC**)
MARKETING EUROPE GMBH)

acting by two directors or authorised)
signatories:)

Signature of director / authorised signatory **REDACTED**

Name of director / authorised signatory **REDACTED**

Signature of director / authorised signatory **REDACTED**

Name of director / authorised signatory **REDACTED**

Schedule 1

Bakerloo Line Option Protocol

1. **GENERAL**

1.1 This Schedule describes the procedure and protocol for the exercise of the Bakerloo Line Option.

2. **OPTIONS PROTOCOL AND PROCEDURE**

2.1 The following procedure shall apply to the exercise of the Bakerloo Line Option (the "**Option**");

- a) If the *Employer* determines to exercise the Option it shall do so by delivery of the Bakerloo Line Option Notice (Schedule 10 (Notices) refers);
- b) The Bakerloo Line Option Notice shall be in the form set out in Appendix 1 (Pro Forma Notices) to Schedule 10 (Notices);
- c) The Bakerloo Line Option Notice shall attach the Bakerloo Line Option Order comprising the documents to be included in the Contract (Schedule 10, Appendix 1);
- d) The Bakerloo Line Option Notice shall:
 - a. Be in writing and comply with the other requirements for a Notice under Clause 12 of the General Terms and Schedule 10 (Notices);
 - b. Refer to the Clause of the General Terms under which it is issued;
 - c. Be delivered to the address of the *Contractor* stated in Schedule 10 (Notices) or such other address as may be notified under paragraph 5 (Change of Details) of that Schedule;
- e) The Bakerloo Line Option Notice shall be deemed to have been received by the *Contractor* at the applicable date referred to in paragraph 3 (Method and Time of Service) of Schedule 10 (Notices);
- f) Unless otherwise agreed, the *starting date* for an Order exercised under the Option shall be three months after delivery of the Bakerloo Line Option Notice;
- g) The Order shall take effect on the date of delivery of the Bakerloo Line Option Notice ("**Order Commencement Date**");
- h) On and from the Order Commencement Date:
 - a. the terms of the Contract shall apply to the Option and the Order shall be deemed to form part of the Contract;
 - b. the *Contractor* shall be obliged to comply with the Order including the Bakerloo Line Option Implementation Works Terms;
 - c. the warranties and undertakings included in Clause 14 of the General Terms (General Warranties) shall be deemed to be repeated by the Contractor at the Order Commencement Date together with all warranties, undertakings and representations referred to in the Bakerloo Line Option Implementation Works Terms;
- i) The *Contractor* shall provide a restated and re-executed Parent Company Guarantee for the Contract as a whole (Clause 4.1(b) of the General Terms refers) within four (4) Weeks of the Order Commencement Date.

- j) Any Option Dates relevant to the Bakerloo Line Option Implementation Works Terms for the Order (e.g. *starting date*, *completion dates*, *key dates*) currently expressed as periods of time from the Order Commencement Date shall be automatically adjusted to identify the corresponding dates;
- 2.2 The *Employer* may only exercise the Bakerloo Line Option on or after the Earliest Option Exercise Date (unless the Parties agree otherwise).
- 2.3 If the *Employer* does not exercise the Bakerloo Line Option on or before the Long Stop Date, it shall lapse (unless the Parties agree otherwise).
- 2.4 If the *Contractor* wrongfully fails to comply with the Bakerloo Line Option this shall constitute a Contractor Default in accordance with Clause 29.2 and/or a material breach of Order under Clause 91 of the relevant Implementation Works Terms.

Schedule 2

Adjustment for Indexation

1. The Indexation Adjustment

- (A) The tendered total of the Prices for the Bakerloo Line Option Implementation Works shall be adjusted for inflation from (and including) the Base Date up to (and excluding) the Order Commencement Date of the Bakerloo Line Option Order in accordance with the formula set out in Paragraph 2 below.
- (B) No adjustment shall be made to the tendered total of the Prices for the Bakerloo Line Option for inflation or fluctuations in prices or resource costs from (and including) the Order Commencement Date of that Order save as provided for in Paragraph 2 or by Option X1 of the Implementation Works Terms. The tendered total of the Prices for the Bakerloo Line Option Order shall thereafter be fixed for the duration of the Implementation Works for that Order (subject to the Implementation Works Terms) and subject to Option X1 all quoted rates, prices or percentages comprised in the Bakerloo Line Option tendered total of the Prices are deemed to include all inflation or fluctuations in prices or resource costs from (and including) the Order Commencement Date of that Order and to include all elements (expressed or implied) of the Implementation Works required to deliver the *Contractor's* obligations under the Implementation Works Terms in relation to that Order.
- (C) The Standard Support Services Charges set out at Section 3, Appendix 3 for the Piccadilly Line Order, and the Additional Support Services Charges set out at Section 3, Appendix 4, shall be adjusted for indexation from the Base Date to the Operational Services Commencement Date for the Piccadilly Line Order.
- (D) If exercised by the *Employer* Standard Support Services Charges for the Bakerloo Line Option set out at Section 3, Appendix 3 shall be adjusted for indexation from the Base Date to the Operational Services Commencement Date for the Bakerloo Line Order.
- (E) The *Contractor* shall calculate and set out any adjustment for indexation to be made for acceptance by the *Employer*.

2. Formula for Adjustment for Indexation

- (A) Where Paragraph 1 above applies Prices and Operational Support Charges shall be multiplied by the Indexation Adjustment.
- (B) The "Indexation Adjustment" shall be calculated in accordance with the following formula:

$$IA = (L-B)/B*100$$

Where:

- **IA** means the Indexation Adjustment;
- **L** (for the tendered total of the Prices for the Bakerloo Line Option Implementation Works) means the latest available index at the Order Commencement Date;
- **L** (for the Standard Support Services Charges and the Additional Support Services Charges set out respectively at Section 3, Appendix 3 and 4) means the latest available index at the relevant Operational Services Commencement Date.
- **B** mean the latest available index before the Base Date

The **IA** shall be rounded up to four (4) decimal places.

- (C) The indices are the BCIS M and E Cost Index, prepared by the Building Cost Information Service (BCIS).

Non-adjustable (10%);

- (D) The adjustment for indexation pursuant to the formula set out in Paragraph (B) above may result in either an increase or decrease to the tendered total of the Prices.

Worked Example:

Say Order Commencement Date for the Bakerloo Line Option is 20 January 2022

Base (B)	May-19	309.6
Latest (L)	Jan-22	328.8

Indexation

Formula	$(L-B)/B \times 100$	$\frac{(328.8-309.6)}{309.6} \times 100$	or	$\frac{19.2}{309.6} \times 100$	=	6.2016 %
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Adjustment %	6.2016
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Say Bakerloo Line Option Total of the Prices	£10,000,000.00
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Adjustment for Indexation	£620,160.00
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Revised Total of the Prices	£10,620,160.00
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3. Changes to the Indices

- (A) If any of the indices specified above ceases to be published, then such other appropriate index that may be published in place of it shall apply or, in the absence of an appropriate replacement index, such index shall apply as the Parties may agree, or failing such agreement after 28 days as may be determined by the Employer's Representative (acting reasonably). Where this Sub-Paragraph (A) applies, there shall be no adjustment to amounts previously paid by either Party.

- (B) Where an index is published as "provisional" or "forecast" and is subsequently amended:

- the calculation of any applicable adjustment may be undertaken using the published provisional or forecast index and applications for payment may be rendered accordingly;
- any subsequent published amendment to the provisional or forecast index shall result in recalculation of any applicable adjustment; and
- such recalculation shall be applied retrospectively to previous periods,
- and an adjustment equal to the difference between the indexation adjustment calculated on the basis of the provisional index and the indexation adjustment calculated on the basis of the amended index in respect (in each case) of the relevant prior periods shall be included in the next application for payment.

Schedule 3

Project Collaboration

1. General and definitions

- 1.1 In delivering the Deep Tube Upgrade Programme (DTUP) the *Employer* needs to work with the *Contractor* and Others to deliver an integrated railway for the Piccadilly Line, Bakerloo Line, Central Line and Waterloo & City Line.
- 1.2 It is the *Employer's* intention to develop and embed the approach across the whole of the DTUP with the *Contractor*, Others and the wider supply chain however it is acknowledged this will take time and effort and therefore the *Employer's* intention is to commence the journey through this Contract, actively involving the *Contractor* and guiding and shaping the approach.
- 1.3 The *Employer* is therefore aiming to enter into a collaborative relationship with the *Contractor* (and its supply chain) based on collaborative team working within a performance driven environment that will provide sustained improvements in quality and efficiency, and support the delivery of the DTUP Objectives.
- 1.4 The *Contractor* will be required to participate in collaborative initiatives with Others and members of the DTUP supply chain and the *Contractor's* supply chain during the Term.
- 1.5 This Schedule outlines the *Employer's* requirements for collaboration and the implementation of collaborative working relationships and:
 - a) sets out the framework for collaborative working based upon the principles contained within ISO44001 "Collaborative Business Relationships Management System";
 - b) defines the process for the preparation and implementation of the Relationship Management Plan; and
 - c) establishes a structure of collaboration meetings.
- 1.6 It is intended that principles of collaboration will be practised throughout the Term through the development, demonstration and application of the following:
 - a) integrated teams and processes;
 - b) openness and honesty between the Parties;
 - c) non-adversarial relationships;
 - d) collaborative team working;
 - e) operating in a culture of 'no blame';
 - f) focussing on a path of continuous improvement; and
 - g) sharing of information & knowledge.
- 1.7 In this Schedule, unless the context indicates otherwise, the following words and expressions shall have the following meanings assigned to them:

"Collaboration Benefits Report" has the meaning given in paragraph 10 of this Schedule;

"Collaboration Interest Group" means the ad hoc collaboration groups more particularly described in paragraph 7.1 below;

"Collaboration Group Meetings" have the meaning given in paragraph 7.1 of this Schedule;

"Collaboration Groups" means, collectively the Joint Collaboration Group and the Collaboration Interest Group;

"Collaboration Manager" means, as the context requires, the collaboration manager appointed by the *Employer* under paragraph 2.1 of this Schedule or the collaboration manager appointed by the *Contractor* under paragraph 2.2 of this Schedule, in each case as notified to the other Party, and any notified replacement of the same during the course of the Project;

"DTUP Objectives" mean the objectives set out in Appendix 1 of this Schedule;

"Initiatives" means a single or collective group of ideas, opportunities, goals, or strategies developed and agreed at the Joint Collaboration Group Meeting to promote continuing improvement;

"Joint Collaboration Group" has the meaning given in paragraph 7 below;

"Joint Strategic Objectives" means the objectives agreed in accordance with paragraph 3 of this Schedule;

"Relationship Management Plan" means has plan agreed in accordance with paragraph 4 of this Schedule and **"RMP"** shall be construed accordingly.

2. The Collaboration Managers

2.1 The *Employer* shall appoint a Collaboration Manager. The role of the *Employer's* Collaboration Manager shall be to:

- a) facilitate and co-ordinate Collaboration Group Meetings;
- b) review action plans of Initiatives; and
- c) publicise the benefits of Initiatives and development of Collaboration Benefits Reports.

2.2 The *Contractor* shall also appoint a Collaboration Manager. The role of the *Contractor's* Collaboration Manager shall be to:

- a) attend Collaboration Group Meetings;
- b) identify resources within the *Contractor* to support Collaboration Group Meetings and the development and implementation of Initiatives;
- c) publicise the benefits of Initiatives within the *Contractor* and its Subcontractors;
- d) input into the Collaboration Benefits Report.

3. Strategic Objectives

3.1 Within 40 Working Days of the Contract Date the *Contractor* shall attend a workshop with the *Employer* to establish agreed goals ("**Joint Strategic Objectives**") for the relationship.

3.2 The Joint Strategic Objectives shall support the *Employer's* DTUP Objectives set out in Appendix 1 to this Schedule as these are amended from time to time and take account of the specific needs of the *Employer* and *Contractor*.

3.3 The workshop shall be attended by:

- a) the Employer's Representative;
- b) the *Employer's* Collaboration Manager;
- c) the *Contractor's* Representative;

- d) the *Contractor's* Collaboration Manager; and
 - e) those invited by mutual agreement of the *Employer* and the *Contractor*.
- 3.4 The Joint Strategic Objectives shall be jointly agreed by the *Employer* and *Contractor*.
- 3.5 The Joint Strategic Objectives shall be incorporated into the Relationship Management Plan.

4. Relationship Management Plan

- 4.1 Within 60 Working Days of the Contract Date, the *Contractor* shall prepare and submit a draft of the Relationship Management Plan to the *Employer*.
- 4.2 The *Contractor* shall prepare the draft RMP to:
- a) be constructed in line with ISO 44001 "Collaborative Business Relationships";
 - b) incorporate the Joint Strategic Objectives;
 - c) set out the approach to regularly assessing the health and maturity of the relationship including any collaboration KPIs which may be agreed as applicable to the outputs of the RMP and the achievement of the Joint Strategic Objectives under this Schedule;
 - d) be consistent with the requirements of this Schedule; and
 - e) set out how the relationship will be managed over the Term of the Contract, across the Implementation Works and the Operational Services for the Piccadilly Line Order and the Bakerloo Line Option (if instructed by the *Employer*).
- 4.3 The *Employer* and *Contractor* shall meet to discuss the draft RMP within 20 Working Days of its submission to the *Employer*. Any amendments to the draft RMP shall be updated by the *Contractor*.
- 4.4 The revised draft RMP shall be submitted to the first Joint Collaboration Group Meeting where the *Contractor* and the *Employer* shall discuss and agree the final version of the RMP. The agreed RMP shall then be confirmed by the *Employer* as being Reviewed and Approved.

5. Updates to and management of the Relationship Management Plan

- 5.1 Following the Approval of the first RMP the Parties shall jointly review the RMP:
- a) every twelve months through the Joint Collaboration Group Meeting process;
 - b) during pre-exercise consultation pursuant to Clause 9 (Pre-exercise Consultation) of the General Terms; and
 - c) six months before the planned commencement of Operational Services in relation to any Order other than the Piccadilly Line Order,
- and the revised RMP shall be agreed by the Parties (acting reasonably) through the Joint Collaboration Group Meeting process;
- 5.2 Any proposed amendments to the RMP shall not come into force until they have been agreed by the Parties at a Joint Collaboration Group Meeting or other specially convened collaboration meeting and confirmed by the *Employer* as Approved.

6. Accreditation of the Collaborative Relationship

- 6.1 The *Employer* and *Contractor* shall work together to seek accreditation of the collaborative relationship in line with ISO 44001 or relevant successor standard.

7. Collaboration Group Meetings

- 7.1 The Collaboration Groups shall hold regular meetings ("**Collaboration Group Meetings**" and "Joint Collaboration Group Meetings" and "Collaboration Group Meetings" shall be construed accordingly) which shall operate by consensus and the Collaboration Groups shall adhere to the collaborative principles set out in this Schedule.
- 7.2 The *Employer* shall seek to schedule Collaboration Group Meetings with other governance meetings in order to efficiently utilise the time of all parties involved.
- 7.3 Following the Collaboration Group Meetings, the Parties may reasonably agree to recommend to the *Project Manager(s)* (under the Implementation Works Terms) and/or to the Client Representative (under the Operational Services Terms) that any Initiatives be implemented in relation to the provision of the works and/or services to be provided pursuant to the Implementation Works Terms and the Operational Services Terms. The final decision regarding the implementation or non-implementation of such Initiatives rests with the *Project Manager(s)* (under the Implementation Works Terms) and/or the Client Representative (under the Operational Services Terms).
- 7.4 Collaboration Group Meetings shall be held, unless otherwise agreed, at the *Employer's* offices in London. If a Party requests that a Collaboration Group Meeting takes place via conference call, skype, video conference or other means of instant communication, the other Party shall not unreasonably withhold consent to such request.
- 7.5 Collaboration Group Meetings may include representation of Subcontractors and Others where agreed by the Parties. The *Project Manager* (under the Implementation Works Terms) and/or the Client Representative (under the Operational Services Terms) may also be invited to attend as the Parties consider appropriate.

8. Joint Collaboration Group Meetings

- 8.1 Each Joint Collaboration Group Meeting shall be held twice each year. The first Joint Collaboration Group Meeting shall be held within six months after the Contract Date.
- 8.2 The Joint Collaboration Group Meeting attendees shall be made up of:
- a) Director grade (or equivalent) from the *Employer*;
 - b) Director grade (signatory of the Contract or equivalent) from the *Contractor*;
 - c) the *Employer's* Head of Engineering;
 - d) the *Employer's* Collaboration Manager;
 - e) the *Contractor's* Collaboration Manager; and
 - f) those invited by mutual agreement of the *Employer* and the *Contractor*.
- 8.3 The objectives of the Joint Collaboration Group shall be to:
- a) review the RMP;
 - b) agree Initiatives and give strategic recommendations;
 - c) review the health of the relationships and monitor collaboration KPIs;
 - d) establish Collaboration Interest Groups where appropriate, set objectives and monitor their achievement of goals;
 - e) provide leadership, commitment and motivation for a successful collaborative approach and to create and maintain a proactive knowledge-sharing culture between

- f) the Parties, their representatives, Subcontractors, Others and relevant third parties; discuss matters relating to any area of the Contract which would benefit from greater collaboration between the Parties;
- g) promote innovative thinking and continuous improvement, including by considering development, application and management and monitoring of the collaborative tools, methodologies and behaviours being employed by both Parties so as to protect and enhance the relationship for the period the relationship is required to last; and
- h) monitor good practice and initiatives from other projects and programmes from within the rail industry and across other industries and assess the applicability and context to the Implementation Works and Operational Services.

9. Collaboration Interest Groups

9.1 Collaboration Interest Groups Meetings shall be held on an ad-hoc basis.

9.2 Collaboration Interest Groups may be made up of any combination of the following:

- a) the *Employer's* Collaboration Manager;
- b) the *Contractor's* Collaboration Manager;
- c) the *Contractor's* Representative;
- d) the *Employer's* Representative;
- e) those invited by mutual agreement of the *Employer* and the *Contractor*.

9.3 The objectives of Collaboration Interest Groups shall be to:

- a) develop the opportunities and goals set at the Joint Collaboration Group Meeting into agreed Initiatives;
- b) create action plans for implementing specific Initiatives;
- c) agree criteria for success and measurement of expected benefits for the Initiatives;
- d) share knowledge and best practice in response to the targets, strategic goals set at the Joint Collaboration Group Meeting;
- e) increase collaboration and innovation between the Parties, Subcontractors and Others; and
- f) understand and communicate progress for reporting to the Joint Collaboration Group Meeting against long-term strategic goals and targets.

10. Reporting on Collaboration Benefits

10.1 A report shall be produced by the *Employer's* Collaboration Manager based on the outcomes following the Collaboration Interest Group meetings no later than 10 (ten) Working Days prior to the next Joint Collaboration Meeting.

10.2 The Collaboration Benefits Report shall include mutual benefits generated by Initiatives.

APPENDIX 1 – DTUP Objectives

Our DTUP vision

The Deep Tube Upgrade programme aims to provide extra capacity through the renewal of ageing assets by delivering a coordinated series of line modernisations for the Piccadilly, Waterloo & City, Bakerloo and Central lines. This programme supports the priorities of improving reliability and safety; increasing capacity from the current network and improving customer services through the following:

Comprehensive line modernisation strategy

Delivering asset renewals in a more comprehensive, consistent and systematic manner than previously achieved

Technology and asset renewal

Transforming the operating and maintenance model through asset renewals and technology-enabled change: adopting resilient models of service delivery through higher levels of automation

Capacity

Catering for London's growth by significantly increasing customer capacity whilst improving energy efficiency to achieve a sustainable line upgrade solution

Customer experience

Introducing a new generation of energy efficient, air-cooled, high capacity Tube trains and adopting highly reliable management and control systems to deliver an improved service experience



End of Schedule

Schedule 4

Records, Reports and Audit Rights

1. DTUP Programme Progress Reports

1.1 General Requirements – Implementation Works and Operational Services

- (a) The "DTUP Programme Progress Report" is an annual report covering the progress of all Implementation Works and Operational Services across the Piccadilly Line and the Bakerloo Line Option (if exercised).
- (b) The *Contractor* shall issue a DTUP Programme Progress Report to the *Employer* 15 Working Days prior to each anniversary of the Contract Date. The report shall be in electronic format summarising the progress of the Implementation Works and Operational Services and the *Contractor's* performance of its obligations under this Contract, including its performance against each Accepted Programme and each Operational Services Provision Plan.
- (c) The DTUP Programme Progress Report will reflect the most recently produced Project Progress Reports (as further detailed in CWI 23) (Management and Administration of the Contract) and the Period Review Reports (as further detailed in Appendix 2 of Section 3 the Operational Services Terms) for each Order.
- (d) Each Programme Progress Report shall include, as a minimum:
 - (i) financial and commercial performance matters;
 - (ii) technology, service and other produce roadmap developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
 - (iii) issues arising in the performance of this Contract;
 - (iv) key programme risks and opportunities;
 - (v) current Disputes or potential Disputes;
 - (vi) organisational resources and the prioritising of resources; and
 - (vii) potential changes to a Key Person (as defined in CWI. 23 and/or as defined in the Specification).

2. DTUP Programme Financial Reports

2.1 Provision of Financial Reports

- (a) The *Contractor* shall provide the following financial reports to the *Employer*, in the frequency specified below:

Each report shall be provided on a per Line basis and if there is more than one Order being concurrently performed for a Line, those Orders shall be reported together.

Financial Report	When to be provided
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates.
Final Reconciliation Report	Within 6 months after the end of the Term.

- (b) The *Contractor* shall provide to the *Employer* the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the *Employer* to the *Contractor* on or before the Start Date for the purposes of this

Contract. The *Employer* shall be entitled to modify the template for any Financial Report by giving written notice to the *Contractor*, including a copy of the updated template.

- (c) A copy of each Financial Report shall be held by both the *Employer* and the *Contractor*. If there is a Dispute regarding a Financial Report, the *Employer's* copy of the relevant Financial Report shall be authoritative.
- (d) Each Financial Report shall, for the LUL Accounting Period to which it relates:
 - (i) be completed by the *Contractor* using reasonable skill and care;
 - (ii) incorporate and use the same defined terms as are used in this Contract;
 - (iii) identify all monetary values that are and that are not in pounds sterling;
 - (iv) quote all costs as exclusive of any VAT;
 - (v) quote all Defined Costs and Charges based on current prices;
 - (vi) include a summary of significant cost variances and trends.
- (e) Each Annual Contract Report and the Final Reconciliation Report shall be certified by the *Contractor's* Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the *Contractor* in advance of issue of the relevant Financial Report), acting with express authority, as:
 - (i) being accurate and not misleading;
 - (ii) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (iii) being a true and fair reflection of the information included within the *Contractor's* management and statutory accounts; and
 - (iv) being compliant with the requirements of the following paragraph.
- (f) The *Contractor* shall:
 - (i) ensure that each Annual Contract Report is a true and fair reflection of:
 - (i) in respect of the Implementation Works for each Order, the Defined Cost spent or accrued by the *Contractor* against the Implementation Works Prices; and
 - (ii) in respect of the Operational Services, the Charges spent or accrued by the *Contractor* over the past year; and
 - (ii) ensure the Final Reconciliation Report is a true and fair reflection of all costs and Charges.
- (g) During the Term, and for a period of 18 months following the Term Expiry Date or termination of this Contract, the *Contractor* shall make available the *Employer* at reasonable times and on reasonable notice to answer any queries that the *Employer* may have on any Application for Payment, Open Book Data or audit required by the *Employer*.
- (h) If the *Contractor* becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on either or both of the following:
 - (ii) the Defined Cost incurred (or those forecast to be incurred) by the *Contractor*, or
 - (iii) the forecast Charges for the remainder of the Term,the *Contractor* shall, as soon as practicable, notify the *Employer* in writing of the event in question detailing the actual or anticipated effect.

2.2 Subcontractors

- (f) The *Contractor* shall, if requested by the *Employer*, provide (or procure the provision of) a report or reports including the level of information set out in the Open Book Data in relation to the costs and expenses to be incurred by any of its Subcontractors.
- (g) The *Contractor* shall:
 - (ii) be responsible for auditing the reports of its Subcontractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (iii) on written request by the *Employer*, provide the *Employer* or procure that the *Employer* is provided with:
 - (i) full copies of audit reports for subcontractors. The *Employer* shall be entitled to rely on such audit reports; and
 - (ii) such further explanation of, and supporting information in relation to, any audit reports provided as the *Employer* may reasonably require.

3. Financial Reports

3.1 Financial Transparency Objectives

This paragraph 3 shall apply across all Implementation Works and Operational Services.

The *Contractor* acknowledges that the provisions of this paragraph 3 are designed (inter alia) to facilitate, and the *Contractor* shall co-operate with the *Employer* in order to achieve, the following objectives:

- (f) **Understanding the Charges**
 - (ii) for the *Employer* to understand any payment sought from it by the *Contractor* including an analysis of all amounts due pursuant to the Implementation Works Terms and the Operational Services Terms;
 - (iii) for both Parties to be able to understand cost forecasts under this Contract (including estimates of Defined Cost and quotations for compensation events under the Implementation Works Terms; and estimates relating to Additional Support Services and Variations under the Operational Services Terms), and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (g) **Continuous improvement**
 - (ii) for the Parties to challenge each other with ideas for efficiency and improvements; and
 - (iii) to enable the *Employer* to demonstrate that it is achieving value for money,
(together the "**Financial Transparency Objectives**").

3.2 Open Book Data

- (f) For the purposes of this paragraph 3.2 "**Open Book Data**" means:
 - (ii) complete and accurate financial and non-financial information in relation to each Order and, in relation to the Operational Services, between each Line, which the *Employer* (acting reasonably) requires in order to verify the amounts already paid or payable and amounts forecast to be paid during the remainder of the Term to which the relevant information relates, including details and all assumptions relating to:
 - (iii) the *Contractor's* Defined Cost and Operational Services Charge broken down against each element of the Implementation Works and/or Operational Services (as applicable) including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;

- (iv) operating expenditure relating to the provision of the Implementation Works and/or Operational Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Contractor Personnel (as defined in Schedule 6 of the General Terms) (Staff Transfer) (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of costs underpinning any agreed rates;
 - (iv) overheads;
 - (v) all interest, expenses and any other third party financing costs;
 - (vi) the *Contractor's* profit achieved over the Term and on an annual basis;
 - (vii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the *Contractor*;
 - (viii) an explanation of the type and value of risk and contingencies associated with the provision of the Implementation Works and Operational Services and how such risk and contingencies have been calculated and modelled, including the amount of money attributed to each risk or contingency; and
 - (ix) a breakdown of the costs incurred by the *Contractor* in relation to the Implementation Works and the Operational Services on an LUL Accounting Period by LUL Accounting Period basis.
- (g) The *Contractor* acknowledges the importance to the *Employer* of the Financial Transparency Objectives and the *Employer's* need for complete transparency in the way in which the Defined Cost and the Operational Services Charge for each Order and Line (as applicable) are calculated.
- (h) From the Contract Date until 12 years following:
 - (i) Final Completion of the relevant Order (in respect of Open Book Data relating to the Order);
 - (ii) the end of the Term (in respect of Open Book Data relating to the Operational Services for the Line)
 the *Contractor* shall:
 - (ii) maintain and retain the Open Book Data; and
 - (iii) disclose and allow the *Employer* and their auditors access to the Open Book Data.

4. Other Reports

- (f) Without prejudice to the requirements of the Period Progress Reports (as further detailed in Appendix 2 of the Operational Services Terms) and any engineering information required pursuant to CWI. 06 (Engineering Management) or the requirements of the Operational Services Reports, the *Employer* shall have the right, acting reasonably, to request additional management reports from the *Contractor* setting out specific details in relation to the Implementation Works and Operational Services. The *Contractor* shall provide any such additional report to the *Employer* as soon as reasonably practicable.
- (g) In addition to any other reports or records required by the schedules to this Contract, the *Employer* may require any or all of the following reports:
 - (ii) Programme delay reports;

- (iii) reports relating to testing and tests carried out under CWI.07 (Testing, Inspection and Commissioning);
 - (iv) reports which the *Contractor* is required to supply as part of the management information;
 - (v) annual reports on the insurances to be maintained pursuant to this Contract;
 - (vi) security reports;
 - (vii) responsible procurement reports; and
 - (viii) prevention event reports.
- (h) The *Contractor* shall retain and maintain the following minimum records (including superseded records) (the "**Minimum Records**"):
- (ii) all necessary information for the evaluation of claims or compensation events or Variations, whether or not relating to the *Contractor* or to any Subcontractors (or sub-sub-contractors of any tier);
 - (iii) management accounts, information from management information systems and any other management records;
 - (iv) accounting records (in hard copy as well as computer readable data);
 - (v) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
 - (vi) original estimates;
 - (vii) estimating worksheets;
 - (viii) correspondence;
 - (ix) compensation event files (including documentation covering negotiated settlements);
 - (x) schedules including capital works costs, timetable and progress towards Completion;
 - (xi) general ledger entries detailing cash and trade discounts and rebates;
 - (xii) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
 - (xiii) detailed inspection records;
 - (xiv) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the Employer;
 - (xv) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this Contract;
 - (xvi) test and commissioning results;
 - (xvii) the records referred to at CWI. 28 (Accounts and Records);
 - (xviii) the engineering information required pursuant to CWI.06 (Engineering Management);
 - (xix) the Technical Information (as defined in the Implementation Works Terms and Operational Services Terms).
- (i) The Minimum Records shall be retained and maintained in accordance with the requirements of the National Archives and Good Industry Practice:
- (ii) in chronological order;

- (iii) in a form that is capable of audit; and
- (iv) at the *Contractor's* own expense.
- (j) The *Contractor* shall make the Minimum Records available for inspection to the *Employer* on request, subject to the *Employer* giving reasonable notice.
- (k) Where the Minimum Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the *Employer*.
- (l) The Minimum Records shall be maintained and retained from the Contract Date until 12 years following:
 - (i) Final Completion of the relevant Order (in respect of Minimum Records relating to the Order);
 - (ii) the end of the Term (in respect of Minimum Records relating to the Operational Services for the Line).

5. Audits

5.1 Audit Rights

- (f) The *Employer* and the *Project Manager*, acting by itself or through its appointment of audit agents, shall have the right during the relevant periods referred to in paragraph 4(g), to assess compliance by the *Contractor* and its Subcontractors of the *Contractor's* obligations under this Contract, including for any one or more of the following purposes:
 - (ii) to verify the integrity and content of any element of Defined Cost and/or the Operational Services Charge;
 - (iii) to verify the accuracy of Defined Cost and the Operational Services Charge and any other amounts payable by the *Employer*;
 - (iv) to verify Defined Cost, the Operational Services Charge and any other costs (including all amounts paid to Subcontractors and any third party contractors);
 - (v) to verify the Open Book Data;
 - (vi) to verify the *Contractor's* and each Subcontractor's compliance with the Implementation Works Terms, the Operational Services Terms and applicable law;
 - (vii) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Employer* shall have no obligation to inform the *Contractor* of the purpose or objective of its investigations;
 - (viii) to identify or investigate any circumstances which may impact upon the financial stability of any one or more of the *Contractor*, its ultimate parent company or any Subcontractors or their ability to perform the Implementation Works and/or the Operational Services;
 - (ix) to obtain such information as is necessary to fulfil the *Employer's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (x) to review any books of account and the internal contract management accounts kept by the *Contractor* in connection with this Contract;
 - (xi) to carry out the *Employer's* internal and statutory audits and to prepare, examine or certify the *Employer's* annual and interim reports and accounts;
 - (xii) to enable the National Audit Office to carry out an examination pursuant to Section 7ZA of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources;

- (xiii) to verify the accuracy and completeness of any management information delivered or required by this Contract;
 - (xiv) to review any performance monitoring reports or other records relating to the *Contractor's* performance of the Implementation Works and Operational Services and to verify that these reflect the *Contractor's* own internal reports and records;
 - (xv) to inspect the IT environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (xvi) to review the accuracy and completeness of the registers;
 - (xvii) to review any records created during the design and development of the OPO CCTV System and pre-operational environment such as information relating to testing and the *Contractor's* compliance with any design requirements;
 - (xviii) to review the *Contractor's* Quality Management Systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (xix) to review the *Contractor's* compliance with the Standards;
 - (xx) to inspect the *Employer's* assets, equipment and facilities, for the purposes of ensuring that the *Employer's* assets are secure and that any register of assets is up to date;
 - (xxi) to review the integrity, confidentiality and security of the Employer Data;
 - (xxii) to review the *Contractor's* compliance with the provisions for responsible procurement, strategic workforce planning and work related road risk;
 - (xxiii) to review the *Contractor's* compliance in relation to cyber security;
 - (xxiv) to review the *Contractor's* compliance with any health and safety related requirements;
 - (xxv) to review the *Contractor's* compliance with criminal records declarations (inclusive); or
 - (xxvi) to test the Implementation Works and the Operational Services and ascertain the conformance of the Implementation Works and Operational Services with this Contract.
- (g) Except where an audit is imposed on the *Employer* by a regulatory body or where the *Employer* has reasonable grounds for believing that the *Contractor* has not complied with its obligations under this Contract, the *Employer* may not conduct an audit, of the same type, of the *Contractor* or of the same Subcontractor more than twice in any Financial Year.
- (h) Nothing in this Contract shall prevent or restrict the rights of the Comptroller and Auditor General or their representatives from carrying out an audit, examination or investigation of either or both the *Contractor* or any of their Subcontractors for the purposes of and pursuant to applicable law.
- (i) Any audit, inspection or testing by the *Employer* pursuant to this Schedule shall not relieve the *Contractor* (or any of its Subcontractors) from any obligation under this Contract or prejudice any of the *Employer's* rights, powers or remedies against the *Contractor*.

5.2 Conduct of Audits

- (f) The *Project Manager* shall, during each audit, comply with those security, sites, systems and facilities operating procedures of the *Contractor* that the *Employer* deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* or delay the provision of the Implementation Works or the Operational Services.
- (g) Subject to the *Employer's* obligations of confidentiality, the *Contractor* shall on demand provide the *Employer* and the audit agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Subcontractors) in relation to each audit, including:

- (A) all information and records requested by the *Employer* within the permitted scope of the audit including computer stored data and systems;
 - (B) reasonable access to any *Contractor's* premises and procuring reasonable access to the premises of Others and to any equipment used (whether exclusively or non-exclusively) in the performance of the Implementation Works and Operational Services; and
 - (C) access to Contractor Personnel (as defined in Schedule 6 (Staff Transfer) of the General Terms).
- (h) The *Contractor* shall implement all measurement and monitoring tools and procedures necessary to measure and report on the *Contractor's* performance of the Implementation Works and Operational Services against the applicable performance indicators at a level of detail sufficient to verify compliance with the performance indicators.
- (i) The *Employer* shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

5.3 Response to Audits

- (f) If an audit undertaken identifies that:
- (A) the *Contractor* has committed a default, the *Employer* may (without prejudice to any rights and remedies the *Employer* may have), require the *Contractor* to correct such default as soon as reasonably practicable;
 - (B) there is an error in an application for payment or any financial record provided to the *Employer*, the *Contractor* shall promptly rectify the error;
 - (C) the *Employer* has overpaid any Defined Cost or Operational Services Charge, the *Contractor* shall pay to the *Employer* the amount overpaid and the *Employer* may exercise its right to deduct such amount from Defined Cost or Operational Services Charge (as applicable) if it prefers; and
 - (D) the *Employer* has underpaid any Defined Cost or Operational Services Charge, the *Employer* shall pay to the *Contractor* the difference between the amount that was due and the amount that was paid.

Schedule 5

Non-Solicitation

1. GENERAL

Non-solicitation – Contractor Personnel

- 1.1 During the currency of any Order for Implementation Works and for 12 months thereafter, the *Employer* shall not whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:
- (a) solicit, induce or entice away or endeavour to solicit, induce or entice away or cause to be solicited, induced or enticed away from the *Contractor*; or
 - (b) employ, engage or appoint,
- any person employed by or contracted to the *Contractor* in a senior capacity, whether or not such person would breach his or her contract of employment or engagement by leaving the *Contractor*.
- 1.2 The restriction not to solicit, induce or entice-away or employ, engage or appoint such individual shall not apply:
- (a) if an individual is employed, engaged or appointed by the *Employer* or the TfL Group as a result of a response by the individual to a public advertisement;
 - (b) if an individual is employed, engaged or appointed by the *Employer* or the TfL Group as a result of the operation of the Employment Regulations (as defined in Schedule 6 of the General Terms) (Staff Transfer);
 - (c) where an event of Insolvency has occurred in relation to the *Contractor* or the Associated Company or Subcontractor who has employed, engaged or appointed the relevant individual; or
 - (d) if the *Employer* had no material confidential information in relation to such individual (including in relation to the individual's experience, attributes, remuneration) and if the *Employer* had not worked to a material extent with the individual at any time in the 12 months prior to the *Employer* making the offer of employment, engagement or appointment.

Non-solicitation – Employer personnel

- 1.3 During the currency of any Order for Implementation Works and for 12 months thereafter, the *Contractor* shall not (and shall procure that its Associated Companies and Subcontractors shall not), whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:
- (a) solicit, induce or entice away or endeavour to solicit, induce or entice away or cause to be solicited, induced or enticed away from the *Employer* or from any other member of the TfL Group; or
 - (b) employ, engage or appoint,
- any person employed by or contracted to the *Employer* or any other member of the TfL Group in a senior capacity, whether or not such person would breach his or her contract of employment or engagement by leaving the *Employer* or any other member of the TfL Group.
- 1.4 The restriction not to employ, engage or appoint such individual shall not apply:
- (a) if an individual is employed, engaged or appointed by the *Contractor*, its Associated Company or Subcontractor as a result of a response by the individual to a public advertisement;

- (b) if an individual is employed, engaged or appointed by the *Contractor*, its Associated Company or Subcontractor as a result of the operation of the Employment Regulations (as defined in Schedule 6 of the General Terms) (Staff Transfer); or
- (c) if the *Contractor*, its Associated Company or Subcontractor (as applicable) had no material confidential information in relation to such individual (including in relation to the individual's experience, attributes, remuneration) and if the *Contractor*, its Associated Company or Subcontractor (as applicable) had not worked with the individual at any time in the 12 months prior to the *Contractor* making the offer of employment, engagement or appointment.

Schedule 6

Staff Transfer

1 DEFINITIONS

- 1.1 In this Schedule, unless the context indicates otherwise, words and expressions defined in the General Terms or Operational Services Terms shall have the meaning therein ascribed to them, and the following words and expressions shall have the following meanings assigned to them:

"Aggregate Staffing Information" means in relation to those persons identified on the *Contractor's* Provisional Contractor Personnel List or the *Contractor's* Final Contractor Personnel List, as the case may be, the following consolidated information:

- (a) employees:
 - (i) mean annual salary and wages;
 - (ii) mean annual overtime (pay and hours) and allowances;
 - (iii) total bonus eligibility;
 - (iv) mean age (years);
 - (v) mean length of service; and
 - (vi) mean annual flexible employment benefits fund (or mean annual value of employment benefits).
- (b) contractors:
 - (i) number;
 - (ii) average daily rate; and
 - (iii) average weekly working hours;

"Collective Obligation" means an obligation either contractual, financial, regulatory, legal or otherwise entered into jointly or individually by any of the Parties to this Contract and/or by any Subcontractor;

"Contractor Personnel" includes all individuals employed or appointed by the *Contractor* including all directors, officers, employees, agents, consultants, servants and contractors of the *Contractor* or of any Subcontractor engaged in the performance of the *Contractor's* obligations under the Operational Services Terms;

"Employee Liabilities" means liabilities incurred or arising in connection with those matters indemnified by the *Contractor* as described in paragraph 3.5;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced from time to time, any equivalent law following Brexit or any other codes, regulations or legislation of any other jurisdiction that require or operate to transfer either or both the employment or liabilities associated with that employment of any person on the change of the provider of some or all of the Implementation Works and/or Operational Services;

"Final Contractor Personnel List" means a list prepared and updated by the *Contractor* of all Contractor Personnel (each identified by name, subject to compliance with the Data Protection Legislation (as defined in Schedule 12 of the General Terms (Privacy and Data Protection)), and their unique identification number) who as at the date of such list are engaged in the provision of the Implementation Works and/or the Operational Services (or in respect of an intended Service Transfer or partial termination of the Operational Services, the employees engaged in the provision of the relevant part of the Operational Services) such list to include all relevant Contractor

Personnel whether or not they are assigned (within the meaning of the Employment Regulations) and to indicate which (if any) members of the Contractor Personnel are, as at the date of the list, expected to be Transferring Contractor Employees;

"Provisional Contractor Personnel List" a list prepared and updated by the *Contractor* of all Contractor Personnel (each identified by their unique identification number) who as at the date of such list are engaged in the provision of the Operational Services (or in respect of an intended Service Transfer or partial termination of part of the Operational Services, the employees engaged in the provision of that part of the Operational Services (as the case may be)), such list to include all relevant Contractor Personnel whether or not they are assigned (within the meaning of the Employment Regulations) and to indicate which (if any) members of the Contractor Personnel are, as at the date of the list, expected to be Transferring Contractor Employees;

"Replacement Subcontractor" means any third party provider of replacement subcontracted works or services as appointed by the *Contractor* from time to time (or where the *Employer* or a member of the TfL Group is providing such works or services for its own account, the *Employer* or member of the TfL Group as applicable);

"Service Transfer" means any transfer of the Operational Services (or any part of the Operational Services), for whatever reason, from the *Contractor* or any Subcontractor to a Replacement Contractor or a Replacement Subcontractor (as the case may be), including the commencement of the provision of any services by a Replacement Contractor or a Replacement Subcontractor (as the case may be);

"Service Transfer Date" means the date upon which the Service Transfer takes place;

"Staffing Information" means in relation to all persons identified on the *Contractor's* Provisional Contractor Personnel List or *Contractor's* Final Contractor Personnel List, as the case may be, such information as the *Employer* may reasonably request (subject to all applicable provisions of Data Protection Legislation), but including in an anonymised format:

- (a) their job titles, job grades, ages, dates of commencement of employment or engagement;
- (b) details of whether they are employed, self- employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their contractual notice periods (or details of the remaining term of any fixed term contracts) and any other terms relating to termination of employment or engagement, including redundancy procedures, and any eligibility or entitlement to redundancy payments in excess of the statutory redundancy pay (and if so, any prescribed method of calculation of such enhanced redundancy payment);
- (e) their remuneration (including wages, salaries and bonus, commission or profit sharing arrangements as applicable);
- (f) details of other employment-related benefits, including medical insurance, life assurance, pension or other retirement benefit schemes (including details of employer and employee contributions), share option schemes and company car schedules applicable to them;
- (g) details of their working hours or patterns (including part time or shift work) and annual leave entitlement;
- (h) details of any outstanding or potential contractual, statutory or other liabilities in respect of such individuals relating to their employment or engagement (including in respect of personal injury claims);
- (i) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (j) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment and variations thereto (or relevant standard contracts if applied generally in respect of such employees), copies of any applicable

agreements or arrangements with trade unions, employee representatives or staff associations (or a written summary if such are not in writing) and any collective agreements applicable to such employees;

- (k) their location of work, weekly working hours, annual leave entitlement (days) and overtime eligibility; and
- (l) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Transferring Contractor Employees" means any person employed or engaged by the *Contractor* or any Subcontractor who is assigned (within the meaning of the Employment Regulations) immediately prior to the applicable Service Transfer Date to the provision of the Operational Services (or any relevant part thereof) or any replacement works or services to be provided in whole or in part by a Replacement Contractor or any Replacement Subcontractor from the applicable Service Transfer Date and whose employment or engagement transfers under the Employment Regulations to the *Employer*, a Replacement Contractor or any Replacement Subcontractor on the applicable Service Transfer Date;

"Trigger Date" has the meaning given in paragraph 2.7 of this Schedule.

2 INFORMATION PROVISION

2.1 During the Term, the *Contractor* shall provide, and shall procure that each Subcontractor shall provide, to the *Employer* any information which the *Employer* may reasonably request relating to the manner in which the Implementation Works and Operational Services or any part of the Operational Services (as the case may be) are organised, which shall include:

- (a) the numbers of Contractor Personnel engaged in providing the Operational Services or any part of the Operational Services;
- (b) the percentage of time spent by each member of Contractor Personnel employed or engaged in providing the Operational Services or any part of the Operational Services (and the reference period by which that percentage has been calculated);
- (c) the employer of the Contractor Personnel (i.e. whether Contractor Personnel are employees of the *Contractor* or particular Subcontractors); and
- (d) the job title or a general description of the role performed by each member of Contractor Personnel employed or engaged in providing the Operational Services by location.

2.2 The *Contractor* agrees that within ten Working Days of the earliest of:

- (a) receipt of a notification from the *Employer* of an intended Service Transfer;
- (b) receipt of a Termination Notice by either Party;
- (c) the date which is twelve months before the Term Expiry Date; and
- (d) receipt of a written request from the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six month period),

and without prejudice to its obligations to supply employee liability information pursuant to the Employment Regulations or its obligations under Schedule 6 (Staff Transfer), it shall provide to the *Employer*, or at the direction of the *Employer*, to either or both of any actual or proposed Replacement Contractor or any Replacement Subcontractor, the *Contractor's* Provisional Contractor Personnel List, together with the Staffing Information and Aggregate Staffing Information in relation to the *Contractor's* Provisional Contractor Personnel List. The *Contractor* agrees that thereafter it shall provide an updated *Contractor's* Provisional Contractor Personnel

List and, if applicable, updated Staffing Information and/or Aggregate Staffing Information at such intervals as are reasonably requested by the *Employer*.

2.3 At least twenty Working Days prior to the relevant Service Transfer Date, the *Contractor* shall provide to the *Employer* or, at the direction of the *Employer*, to either or both of any actual or proposed Replacement Contractor or any Replacement Subcontractor:

- (a) the *Contractor's* Final Contractor Personnel List; and
- (b) the Staffing Information and Aggregate Staffing Information (or updates thereto) in relation to the *Contractor's* Final Contractor Personnel List (insofar as such information has not previously been provided),

and the *Contractor* shall as soon as reasonably practicable thereafter notify the *Employer* or, at the request of the *Employer*, another Replacement Contractor or Replacement Subcontractor, of any change to any one or more of the *Contractor's* Final Contractor Personnel List, the Staffing Information or the Aggregate Staffing Information up to the relevant Service Transfer Date.

2.4 The provision of Personal Data regarding those individuals detailed on the *Contractor's* Provisional Contractor Personnel List and the *Contractor's* Final Contractor Personnel List pursuant to paragraphs 2.2 and 2.3 is subject to the *Contractor's* and any applicable Subcontractor's obligations under Data Protection Legislation and the *Contractor* shall, and shall procure that any Subcontractor shall, use its reasonable endeavours to obtain the consent of such individuals to the extent necessary under Data Protection Legislation or, in the absence of such individuals' consent or any other permitted basis under the Data Protection Legislation, the data shall be suitably anonymised so as to comply with Data Protection Legislation.

2.5 Subject to compliance with Data Protection Legislation and Clause 28 of the General Terms, the *Employer* shall be permitted to disclose information provided by the *Contractor* under either or both paragraphs 2.2 or 2.3 to either or both of any potential Replacement Contractor or potential Replacement Subcontractor for the purpose of informing any such potential Replacement Contractor or potential Replacement Subcontractor as part of any tendering or re-procurement of the Implementation Works and Operational Services or any part of the Implementation Works and Operational Services. Prior to disclosing such information to any such potential Replacement Contractor or potential Replacement Subcontractor, the *Employer* shall ensure that it has received appropriate undertakings from such potential Replacement Contractor or potential Replacement Subcontractor (as applicable) to comply with Data Protection Legislation and not to use or disclose such information for any purpose other than the relevant tendering or re-procurement process.

2.6 The *Contractor* warrants, for the benefit of the *Employer*, any Replacement Contractor, and any Replacement Subcontractor that all information provided pursuant to paragraphs 2.2 and 2.3 shall be true, complete and accurate in all respects at the time of providing the information and this warranty shall be deemed to be repeated by the *Contractor* at the time of the provision of such information by or on behalf of the *Contractor*.

2.7 From the date of the earliest event referred to in paragraph 2.2(a), 2.2(b), and 2.2(c) (the "**Trigger Date**"), the *Contractor* agrees, that it shall not, and agrees to procure that each Subcontractor shall not, without the approval of the *Employer* (not to be unreasonably withheld or delayed) in respect of the whole or relevant part of the Operational Services:

- (a) assign any person to the provision of the Operational Services or relevant part of any of the Operational Services who is not expected to be a Transferring Contractor Employee as at the applicable Trigger Date;
- (b) replace or re-deploy any Contractor Personnel listed on the *Contractor's* Provisional Contractor Personnel List or the *Contractor's* Final Contractor Personnel List (as applicable at the relevant time) other than where any replacement is of equivalent grade, skills,

experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (c) amend the rate of remuneration of, or make, promise, propose or permit any material changes to the terms and conditions of employment of, the Contractor Personnel (including any payments connected with the termination of employment);
- (d) amend any existing, compulsory or voluntary Collective Obligation or enter into any new Collective Obligation;
- (e) increase or decrease the proportion of working time spent on the Implementation Works and Operational Services (or the relevant part of the Implementation Works and Operational Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (f) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any Contractor Personnel;
- (g) increase or reduce the total number of Contractor Personnel, or deploy any other person to perform the Implementation Works and Operational Services (or the relevant part of the Implementation Works and Operational Services) save for fulfilling assignments and projects previously scheduled and agreed; or
- (h) terminate or give notice to terminate the employment or contracts of any persons on the *Contractor's* Provisional Contractor Personnel List or the *Contractor's* Final Contractor Personnel List (as applicable at the relevant time) save by due disciplinary process,

and shall promptly notify, and procure that each Subcontractor shall promptly notify, the *Employer* or, at the direction of the *Employer*, any other Replacement Contractor and any Replacement Subcontractor of any notice to terminate employment or engagement given by the *Contractor* or relevant Subcontractor or received from any persons listed on the *Contractor's* Provisional Contractor Personnel List or the *Contractor's* Final Contractor Personnel List (as applicable at the relevant time) regardless of when such notice takes effect.

2.8 From the Trigger Date, the *Contractor* shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the *Employer*, any Replacement Contractor and any Replacement Subcontractor to ensure the smooth transfer of the relevant Transferring Contractor Employees on the relevant Service Transfer Date. Such reasonable cooperation and assistance shall include complying with any reasonable request by any one or more of the *Employer*, any Replacement Contractor or any Replacement Subcontractor (as applicable) to do any one or more of the following:

- (a) inform or consult with (including pursuant to section 198A of the Trade Union and Labour Relations (Consolidation) Act 1992) or communicate or meet with any relevant Contractor Personnel or their trade union or other representative(s) or
- (b) providing sufficient information in advance of the relevant Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the relevant Transferring Contractor Employees to be paid as appropriate.

2.9 Without prejudice to the *Contractor's* obligations pursuant under this Contract (including compliance with applicable laws and any Exit Plan and the obligations pursuant to this Schedule) and insofar as it is within the *Contractor's* control, the *Contractor* shall take all commercially reasonable steps to reduce the circumstances under which the *Employer*, any Replacement Contractor and/or any Replacement Subcontractor may incur Employee Liabilities in connection with the Contractor Personnel as a result of any Service Transfer or otherwise as a result of the expiry or termination (or partial termination) of this Contract.

3 Exit Provisions - Transfer of Employment

- 3.1 The *Employer* and the *Contractor* acknowledge that subsequent to the commencement of the provision of the Operational Services (or any part thereof) pursuant to the Operational Services Terms, the identity of the provider of the Operational Services (or any part thereof) may change (whether as a result of expiry or earlier termination (or partial termination) of this Contract or otherwise upon a Service Transfer) resulting in the Implementation Works and/or Operational Services (or any part thereof) being undertaken by any one or more of the *Employer*, a Replacement Contractor or a Replacement Subcontractor. Such change in the identity of the contractor of such Operational Services may constitute a "relevant transfer" as defined in the Employment Regulations. The *Employer* and the *Contractor* further agree that, as a result of the operation of the Employment Regulations, where a relevant transfer occurs, the contracts of employment between the *Contractor* and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the relevant Service Transfer Date as if originally made between the *Employer*, the Replacement Contractor or a Replacement Subcontractor (as the case may be) on the one hand and each such Transferring Contractor Employee on the other hand. It is acknowledged by the Parties that in such circumstances certain employment-related liabilities in connection with the Transferring Contractor Employees would transfer to the *Employer*, the Replacement Contractor or a Replacement Subcontractor (as the case may be) (unless any Transferring Contractor Employee objects to the transfer pursuant to Regulation 4(7) of the Employment Regulations).
- 3.2 The *Contractor* shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Contractor Employees (whether arising under the Employment Regulations or otherwise) in respect of the period up to (and including) the relevant Service Transfer Date. In particular:
- (a) the *Contractor* shall (and shall procure that each Subcontractor shall) pay or provide to the relevant Transferring Contractor Employees wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, bonus payments, commission payments and other sums which are attributable to and payable during the employment of the relevant Transferring Contractor Employees by the *Contractor* or any Subcontractor prior to and including the relevant Service Transfer Date; and
 - (b) the *Contractor* agrees that periodic liabilities in connection with the contracts of employment or engagement of the Transferring Contractor Employees in relation to wages and salaries, paid holiday, sick pay, maternity pay, any liability to taxation, expenses, bonus payments, commission payments, insurance benefits and other sums shall be apportioned on a time basis so that such part of the relevant charges attributable to the period prior to and including the relevant Service Transfer Date shall be borne by the *Contractor*.
- 3.3 The *Contractor* shall, and shall procure that each Subcontractor shall, promptly provide to the *Employer*, any Replacement Contractor and any Replacement Subcontractor, in writing, such information as is necessary to enable the *Employer*, the Replacement Contractor and Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall or shall procure that the Replacement Contractor or Replacement Subcontractor (as applicable) shall promptly provide to the *Contractor* and each Subcontractor in writing such information as is necessary to enable the *Contractor* and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 3.4 Within five Working Days following the relevant Service Transfer Date, the *Contractor* shall provide, and shall procure that each Subcontractor shall provide, to the *Employer* or, at the direction of the *Employer*, to either or both any Replacement Contractor or any Replacement Subcontractor (as appropriate), in respect of each person on the *Contractor's* Final Contractor Personnel List who is a Transferring Contractor Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay;
- (f) bank/building society account details for payroll purposes;
- (g) immigration records;
- (h) all personnel records and any other reasonably requested records relevant to any Transferring Contractor Employee.

Contractor's Exit Indemnities

- 3.5 Subject to paragraph 3.6, the *Contractor* shall indemnify each of the *Employer*, the Replacement Contractor and any Replacement Subcontractor against any Losses resulting from Employee Liabilities which the *Employer*, such Replacement Contractor or such Replacement Subcontractor incurs arising from or in connection with:
- (a) any act or omission of the *Contractor* or any Subcontractor in respect of any Transferring Contractor Employee whether occurring before, on or after the relevant Service Transfer Date;
 - (b) the breach or non-observance by the *Contractor* or any Subcontractor occurring on or before the relevant Service Transfer Date of either or both:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the *Contractor* or any Subcontractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the *Contractor* or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the relevant Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the relevant Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the *Employer*, or Replacement Contractor or any Replacement Subcontractor (as applicable), to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the relevant Service Transfer Date;

- (e) a failure of the *Contractor* or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the relevant Service Transfer Date;
 - (f) any claim made by or on behalf of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer*, Replacement Contractor or the Replacement Subcontractor (as applicable) to comply with regulation 13(4) of the Employment Regulations; and
 - (g) any other claim or allegation made by or on behalf of a Transferring Contractor Employee in relation to his/her employment or engagement with the *Contractor* or Subcontractor (as the case may be) or the termination of that employment or engagement (howsoever caused) on or before the relevant Service Transfer Date.
- 3.6 The indemnities in paragraph 3.5 shall not apply to the extent that the Employee Liabilities arise from or in connection with an act or omission of the *Employer*, Replacement Contractor or any Replacement Subcontractor (as applicable) whether occurring or having its origin before, on or after the relevant Service Transfer Date, including any Losses resulting from Employee Liabilities:
- (a) arising from or in connection with the resignation of any Transferring Contractor Employee before the relevant Service Transfer Date because the relevant Service Transfer involves or is alleged to involve one or more substantial changes to working conditions to his/her material detriment; or
 - (b) arising from or in connection with the *Employer's* failure, the Replacement Contractor's failure, or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations (except to the extent that such failure arises from the *Contractor's* failure to provide (or procure that a Subcontractor provides)) the required information pursuant to regulation 11 of the Employment Regulations.
- 3.7 If any person other than an expected Transferring Contractor Employee identified by the *Contractor* on the *Contractor's* Final Contractor Personnel List claims, or it is determined in relation to such person, that his/her contract of employment or engagement has been transferred from the *Contractor* or any Subcontractor to the *Employer*, the Replacement Contractor or Replacement Subcontractor pursuant to the Employment Regulations, then:
- (a) the *Employer* shall, or shall procure that the Replacement Contractor shall, or any Replacement Subcontractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the *Contractor*; and
 - (b) the *Contractor* may offer (or may procure that a Subcontractor may offer) employment to such person within fifteen Working Days of the notification by the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable law.
- 3.8 If such offer is accepted, or if the situation has otherwise been resolved by the *Contractor* or a Subcontractor, the *Employer* shall, or shall procure that the Replacement Contractor or Replacement Subcontractor shall, immediately release or procure the release of the person from his/her employment or engagement or alleged employment or engagement.
- 3.9 If after the fifteen Working Day period specified in paragraph 3.7(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the *Employer* may, and shall advise the Replacement Contractor or Replacement Subcontractor, as applicable, that it may, within five Working Days give notice to terminate the employment or engagement or alleged employment or engagement of such person.

3.10 Subject to the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) acting in accordance with the provisions of paragraphs 3.7 to 3.9, and in accordance with all applicable proper employment procedures set out in [applicable law], the *Contractor* shall indemnify the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) against all Losses resulting from Employee Liabilities arising from or in connection with the termination of employment pursuant to the provisions of paragraph 3.9 provided that the *Employer* takes, or procures that the Replacement Contractor or the Replacement Subcontractor takes (as applicable), all reasonable steps to minimise any such Losses arising from Employee Liabilities in implementing the dismissals permitted by paragraph 3.9.

3.11 The indemnity in paragraph 3.10:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, harassment or victimisation, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity, sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable); or
 - (ii) any claim that the termination of employment was unfair because the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) failed to follow a fair dismissal procedure (although the indemnity in paragraph 3.10 shall still apply to the extent that the claim arises from any failure by the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) to consider existing *Employer*, Replacement Contractor or Replacement Subcontractor's employees in a pool when determining to dismiss the relevant employees or to offer to redeployment to the relevant employees); and
- (b) shall apply only where the notification referred to in paragraph 3.7(a) is made by the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) to the *Contractor* within six months of the relevant Service Transfer Date.

3.12 If any such person as is described in paragraph 3.7 is neither re-employed by the *Contractor* or any Subcontractor nor dismissed by the *Employer*, Replacement Contractor or Replacement Subcontractor within the time scales set out in paragraphs 3.7 to 3.9, such person shall be treated as a Transferring Contractor Employee and the *Employer*, Replacement Contractor and Replacement Subcontractor (as applicable) shall not have the benefit of the indemnity in paragraph 3.10.

3.13 If on the expiry or termination (or partial termination) of this Contract or otherwise upon a Service Transfer, the Employment Regulations do not apply, the *Contractor* shall indemnify each of the *Employer*, any other Replacement Contractor and any Replacement Subcontractor against any Losses resulting from Employee Liabilities which the *Employer*, such other Replacement Contractor or such Replacement Subcontractor incurs arising from or as a result of any claim or allegation made by or on behalf of:

- (a) one or more of members of Contractor Personnel or former Contractor Personnel and such claim or allegation relates to facts or events occurring at any time in connection with such person's employment or engagement in respect of the provision of the Operational Services (or any part of the Operational Services) or the termination of such employment or engagement (including any dismissal or alleged dismissal of such person by the *Contractor* or a Subcontractor) or otherwise;
- (b) a trade union or appropriate representatives in connection with all or any of the Contractor Personnel or former Contractor Personnel and such claim or allegation relates to facts or events occurring at any time, including in relation to obligations to inform and consult on any rights, entitlements or liabilities under any Collective Obligations.

Employer Indemnities

3.14 Subject to paragraph 3.15, the *Employer* shall indemnify, or shall procure that the Replacement Contractor indemnifies, the *Contractor* on its own behalf and on behalf of any Replacement Subcontractor against any Employee Liabilities which any or all of the *Contractor* or relevant Subcontractor incurs arising from or in connection with:

- (a) any act or omission of any or all of the *Employer*, Replacement Contractor or Replacement Subcontractor in respect of any Transferring Contractor Employee;
- (b) the breach or non-observance by any or all of the *Employer*, Replacement Contractor or Replacement Subcontractor after the relevant Service Transfer Date of either or both:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; or
 - (ii) any custom or practice in respect of any Transferring Contractor Employees which any or all of the *Employer*, the Replacement Contractor or Replacement Subcontractor is contractually bound to honour;
- (c) any claim by or on behalf of any trade union or other body or person representing any Transferring Contractor Employees arising from or in connection with any failure by any or all of the *Employer*, the Replacement Contractor or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising after the relevant Service Transfer Date;
- (d) any proposal made by or on behalf of any or all of the *Employer*, the Replacement Contractor or Replacement Subcontractor (as applicable) which involves or is alleged to involve one or more substantial changes to working conditions or to terms and conditions of employment to the material detriment of:
 - (i) any Transferring Contractor Employees on or after their transfer to the *Employer*, Replacement Contractor or Replacement Subcontractor (as the case may be) on the relevant Service Transfer Date; or
 - (ii) any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the relevant Service Transfer Date;

- (e) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the relevant Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Contractor* or Subcontractor, to the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the relevant Service Transfer Date;
 - (f) a failure of the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period after the relevant Service Transfer Date;
 - (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the *Employer*, Replacement Contractor or Replacement Subcontractor (as applicable) in relation to obligations under regulation 13 of the Employment Regulations; and
 - (h) any other claim or allegation made by or on behalf of a Transferring Contractor Employee in relation to his/her employment or engagement with the *Employer*, Replacement Contractor or Replacement Sub-contractor (as applicable) or the termination of that employment (howsoever caused) after the relevant Service Transfer Date.
- 3.15 The indemnities in paragraph 3.14 shall not apply to the extent that the Employee Liabilities arise from or in connection with an act or omission of either or both the *Contractor* or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the relevant Service Transfer Date, including any Employee Liabilities arising from the failure by the *Contractor* or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

4 Procurement

Notwithstanding any other provisions of this Schedule, where in this Schedule the *Employer* has an obligation to procure that a Replacement Contractor (other than the *Employer*) does or does not do something, the *Contractor* agrees (for itself and on behalf of each Subcontractor) that such procurement obligation shall be discharged by the *Employer* taking reasonable steps to ensure that a contractual obligation to that effect is included in the contract between the *Employer* and such Replacement Contractor.

5 Pensions

The *Contractor* shall indemnify the *Employer*, Replacement Contractor and any Replacement Subcontractor (as applicable) against any liability (including all claims, Losses, compensation and fines) that the *Employer*, Replacement Contractor or any Replacement Subcontractor (as applicable) may have or may incur to provide any benefits to Transferring Contractor Employees relating to an occupational pension scheme (other than benefits for old age, invalidity or survivors) within the meaning of regulation 10(2) of the Employment Regulations by virtue of being a transferee for the purposes of the "Transfer" within the meaning of those regulations.

Schedule 7

Exit Management

1. Overview and Definitions

- 1.1 The *Contractor* is required to ensure the orderly transition of the Implementation Works and Operational Services to the *Employer* or any Replacement Contractor in the event of termination or expiry of this Contract. The *Employer* may require such transition to be to one or more Replacement Contractors in its sole discretion.
- 1.2 This Schedule sets out the principles of the exit and service transfer arrangements intended to achieve such orderly transition which shall form the basis of the Exit Plan.
- 1.3 If the *Employer* terminates the Implementation Works Terms and/or the Operational Services Terms in relation to one or more Orders, as applicable (or any part thereof), this Schedule shall be read as only referring to the Orders (or the part thereof) which are the subject of the termination notice issued under the relevant Implementation Works Terms and/or Operational Services Terms.
- 1.4 In the event that different expiry or termination dates apply to different Orders, this Schedule can be applied separately to each such expiry or termination, to manage the orderly transition in respect of each expiring or terminating Order.

In this Schedule, unless the context indicates otherwise, words and expressions defined in the General Terms, Implementation Works Terms or Operational Services Terms shall have the meaning therein ascribed to them, and the following words and expressions shall have the following meanings assigned to them:

"IPR Register" means a register of IPR maintained and/or updated in accordance with clause Z2.7.7 of the Implementation Works Terms;

"Provisional Contractor Personnel List" has the meaning given in Schedule 6 of the General Terms (Staff Transfer);

"Staffing Information" and **"Aggregate Staffing Information"** have the meaning given to those terms in Schedule 8 of the General Terms;

"Technical Information" has the meaning given in the CWI 01;

"Termination Assistance Notice" has the meaning given in paragraph 5.1 of this Schedule;

"Termination Assistance Period" has the meaning given in paragraph 6 of this Schedule;

"Termination Services" has the meaning given in paragraph 5.1 of this Schedule; and

"Termination Services Charges" means the charges that would be payable for the provision of the Termination Services pursuant to this Schedule and as more fully described in paragraph 10 of this Schedule.

2. Exit Management duties

- 2.1 Each Party shall appoint and assign the exit management duties set out in this Schedule to its Exit Manager. The Parties acknowledge that such exit management duties do not warrant the appointment of a separate individual to perform them and the individuals who, for the purposes of this Schedule, are appointed to perform such exit management duties, shall do so without prejudice to their other roles in relation to the Project. Each Party shall provide written notification of the identity of its Exit Manager to the other Party within 60 Working Days of the Contract Date, and notify the other Party of replacement of its Exit Manager within 14 days for any reason.
- 2.2 The *Contractor* shall ensure that the *Contractor's* Exit Manager shall be responsible for ensuring that the *Contractor* and its Subcontractors and their personnel comply with this Schedule. The *Contractor* shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the *Contractor* as are reasonably necessary to enable the *Contractor* to comply with the requirements set out in this Schedule.

- 2.3 The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination or expiry of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3. **Obligations to Assist on Re-Tendering of the Works and Services**

- 3.1 Without prejudice to the Parties' obligations to prepare and maintain an Exit Plan in accordance with the provisions of paragraph 4 of this Schedule, at any time from the date on which a Termination Notice is served, on reasonable notice, the *Contractor* shall provide to the *Employer* and any other potential Replacement Contractors (if any) (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the *Employer* of any invitation to tender or to facilitate any potential Replacement Contractors undertaking due diligence:
- a) details of the Implementation Works and Operational Services;
 - b) a report detailing the configuration of the OPO CCTV System at the date of submission to the *Employer*;
 - c) the latest assessment of obsolescence risk and any developed mitigations;
 - d) an inventory of Employer Personal Data in the *Contractor's* possession or control;
 - e) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - f) a list of on-going and/or threatened Disputes in relation to the provision of the Implementation Works and Operational Services;
 - g) a copy of the following registers, updated by the *Contractor* up to and including the date of submission to the *Employer*:
 - i) the IPR Register;
 - ii) the *Contractor's* Risk Register(s) under the relevant Implementation Works Terms
 - h) the latest Interface Register together with any Interface Control Documents, containing details of interfacing organisations and details of each Interface with such interfacing organisation;
 - i) the latest Accepted Programme for each Order (during Implementation Works);
 - j) the latest version of the Exit Plan;
 - k) an extract of the *Contractor's* requirements database listing all of the applicable requirements prepared pursuant to the Technical Requirements CWI.05 Technical Requirements;
 - l) a description of all outstanding scope of the Services in sufficient detail to enable each element or item of outstanding scope of the Services to be identified, understood and prioritised by the *Employer*;
 - m) to the extent not included as part of the outstanding scope of the Services, details of any non-compliances with the Works Information included in the relevant Implementation Works Terms including reference to any derogations or concessions to Standards;
 - n) details of all Defects and Software Defects, cross referenced to the Works Information included in the relevant Implementation Works Terms and in sufficient detail to enable the *Employer* to identify, understand and prioritise each Defect and Software Defect;
 - o) the Technical Information with all Engineering Information contained therein updated to the most recent state, including any work in progress;
 - p) to the extent permitted by applicable law, the Contractor's Provisional Contractor

Personnel List, together with the Staffing Information and Aggregate Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and any other documents or information required to be provided under Schedule 6 of the General Terms (Staff Transfer);

- q) in respect of the Operational Services, the latest version of the Maintenance Plan updated to reflect the as undertaken Operational Services at the time of request;
 - r) financial information in relation to the status of the Project as at the date of the *Employer's* request, including:
 - i) for the Implementation Works, an estimate of the Defined Cost, PWDD, the Prices and any estimated contingent liabilities;
 - ii) for the Operational Services, an estimate of the Charges, instructed Variations and any estimated contingent liabilities; and
 - s) such other material and information as the *Employer* shall reasonably require, (together, the **"Exit Information"**).
- 3.2 Pursuant to Clause 26 of the General Terms, the *Contractor* acknowledges that the *Employer* may disclose the *Contractor's* confidential information to an actual or prospective Replacement Contractor or any third party whom the *Employer* is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the *Employer* may not disclose any *Contractor's* confidential information which is information relating to the *Contractor's* or its Subcontractors' pricing or costs).
- 3.3 The Contractor shall, once the Exit Information has been provided in accordance with paragraph 3.1 above:
- a) notify the *Employer* within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer or continuance of any Implementation Works and Operational Services and shall consult with the *Employer* regarding such proposed material changes; and
 - b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the *Employer*.
- 3.4 Unless the termination results from a *Contractor* default under this Contract, the *Contractor* may charge the *Employer* for its reasonable additional costs to the extent the *Employer* requests more than four updates to the Exit Information in any six month period. Such cost shall be included within the amount due in the terminated Implementation Works Terms and/or Operational Services Terms.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the *Contractor* shall be such as would be reasonably necessary to enable a third party to:
- a) prepare an informed offer for any or all of the Implementation Works and Operational Services; and
 - b) not be disadvantaged in any subsequent procurement process compared to the *Contractor* (if the *Contractor* were invited to participate, such decision being at the *Employer's* sole discretion).

4. **Exit Plan**

- 4.1 The *Contractor* shall, within six months after the Contract Date, deliver to the *Employer* a draft Exit Plan which:
- a) sets out the *Contractor's* proposed methodology for achieving an orderly transition of

the Implementation Works and Operational Services from the *Contractor* to the *Employer* or a Replacement Contractor on the expiry or termination of this Contract;

- b) sets out any specific requirements for the orderly transition of the Implementation Works and Operational Services relating to a particular Order (to the extent applicable);
- c) complies with the requirements set out in paragraph 4.3 of this Schedule;
- d) provides for exit occurring during the Implementation Works or Operational Services for an Order; and
- e) is otherwise reasonably satisfactory to the *Employer*.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then the *Employer* shall produce the Exit Plan.

4.3 The Exit Plan shall set out, as a minimum:

- a) how the Exit Information is obtained;
- b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the *Contractor* may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the *Contractor* of all such reasonable assistance as the *Employer* shall require to enable the *Employer* or its sub-contractors (or a Replacement Contractor) to provide the Implementation Works and Operational Services;
- c) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit including the management structure to be employed during both transfer and cessation of the Implementation Works and Operational Services in an Ordinary Exit and an Emergency Exit;
- d) the management structure to be employed during the Termination Assistance Period;
- e) how the Implementation Works and Operational Services will transfer to the *Employer* or a Replacement Contractor, including details of the processes, documentation, data transfer, systems migration and security;
- f) the scope of the Termination Services that may be required for the benefit of the *Employer* (or Replacement Contractor if applicable) (including such of the services set out in Annex 1 as are applicable);
- g) a timetable for, and critical issues in, providing the Termination Services during the Termination Assistance Period;
- h) save where the termination relates to a *Contractor* default, an estimate of any Termination Services Charges which shall be payable pursuant to the Implementation Works Terms and/or Operational Services Terms for the Termination Services;
- i) procedures to deal with requests made by the *Employer* or any Replacement Contractor for updates to the *Contractor's* Provisional Contractor Personnel List, Staffing Information and Aggregate Staffing Information pursuant to Schedule 6 of the General Terms (Staff Transfer); and
- j) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Implementation Works and Operational Services from the *Contractor* to the *Employer* or Replacement Contractor with the aim of ensuring that there is no unnecessary delay or unnecessary increased cost to the Implementation Works, or disruption or degradation of the Operational Services during the Termination Assistance Period.

- 4.4 The Parties acknowledge that the migration of the Implementation Works and Operational Services from the *Contractor* to the *Employer* or a Replacement Contractor may be phased, such that certain of the Implementation Works and Operational Services are handed over before others.
- 4.5 The *Contractor* shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule:
- a) within 90 days of the Order Commencement Date of any new Order;
 - b) within 30 days after achieving Completion for an Order; and
 - c) on the third anniversary of commencing Operational Services.
- 4.6 Following each such update the *Contractor* shall submit the revised Exit Plan to the *Employer* for review and acceptance.

5. Termination Services and Termination Assistance Notice

- 5.1 The *Employer* shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the *Contractor* (a "**Termination Assistance Notice**"):
- a) in the case of expiry, at least four months prior to the date of expiry of this Contract or as soon as reasonably practicable; or
 - b) in the case of termination, not later than one month following the service by either Party of a Termination Notice or other Notice, save in the case of termination for default where notice must be given at the same time as the Termination Notice.

The provision of the Termination Services pursuant to this Schedule is without prejudice to the Parties' rights and obligations pursuant to the termination provisions in the Implementation Works Terms and the Operational Services Terms.

- 5.2 The Termination Assistance Notice shall specify:
- a) the date from which Termination Services are required;
 - b) the nature of the Termination Services required; and
 - c) the period during which it is anticipated that Termination Services will be required.
- 5.3 The scope of the Termination Services which may be required pursuant to this Schedule are set out in Annex 1 (Scope of the Termination Services). For the avoidance of doubt, the Termination Services exclude the obligations regarding re-tendering which are set out in paragraph 3 of this Schedule. The Termination Services which the *Employer* may require the *Contractor* to provide will vary during the Termination Assistance Period based upon the status of the applicable Implementation Works and Operational Services at the time when the Termination Assistance Notice is served. The table in Annex 1 (Scope of the Termination Services) maps Termination Services which the *Employer* may specify against three scenarios:
- a) prior to the first Completion of an Order;
 - b) following the Operational Services Commencement Date for an Order; and
 - c) on expiry.
- 5.4 The *Employer* may request additional Termination Services.
- 5.5 The *Employer* shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice.

- 5.6 The *Employer* shall notify the *Contractor* to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire.
- 5.7 The *Employer* shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the *Contractor* to such effect. The *Employer* shall not be obliged to make any further payment to the *Contractor* in relation to any Termination Services which were to be performed after the date of such notice, and the *Contractor* shall have no Entitlement nor make any Claim in relation to the giving of such notice.
- 5.8 Notwithstanding any provision of this Schedule, the provision of the Termination Services shall be subject at all times to the provisions of Clause Z2.7 of the Implementation Works Terms and Clause 17 of the Operational Services Terms and the terms of the licences and sub-licences granted pursuant to those clauses.

6. Termination Assistance Period

- 6.1 Throughout the period for the provision of Termination Services as specified in the Termination Assistance Notice, or such shorter period as the *Employer* may require (the "**Termination Assistance Period**"), the *Contractor* shall, without prejudice to its obligations to assist with re-tendering pursuant to paragraph 3 of this Schedule:
- a) if required by the *Employer* pursuant to paragraph 5, provide the Termination Services in respect of each Order to which the Termination Notice applies;
 - b) on expiry or termination (other than for which a Termination Notice has been issued) and if agreed with the *Employer* in writing prior to the commencement of the Termination Assistance Period, continue to provide the Implementation Works for each Order;
 - c) continue to provide the Implementation Works for any Order not affected by the expiry or termination;
 - d) on expiry or termination (other than for which a Termination Notice has been issued), continue to provide the Operational Services for each Order (if applicable);
 - e) continue to provide the Operational Services for any Order not affected by the expiry or termination.

7. Termination Obligations

- 7.1 The *Contractor* shall comply with all of its obligations contained in the Exit Plan, such compliance to be without prejudice to the *Contractor's* termination obligations elsewhere in this Contract.
- 7.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Contractor's* provision of the Implementation Works and performance of the Operational Services and the Termination Services and its compliance with the other provisions of this Schedule), the *Contractor* shall
- a) subject to Z2.23.1 of the Implementation Works Terms and clause 45.6(a) of the Operational Services Terms cease to use the Employer Personal Data;
 - b) provide the *Employer* and the Replacement Contractor (if it is not the *Employer*) with a complete and uncorrupted version of the Employer Personal Data in electronic form (or such other format as reasonably required by the *Employer*);
 - c) return to the *Employer* such of the following as is in the *Contractor's* possession or control:

- (i) all copies of the *Employer's* Software and any other software licensed by the *Employer* to the *Contractor* under this Contract;
- (ii) all materials created by the *Contractor* under this Contract in which the IPR is owned by the *Employer*;
- (iii) equipment which belongs to the *Employer*; and
- (iv) any items that have been on-charged to the *Employer*, such as consumables;
- d) vacate any Sites and sites of Others; and
- e) provide access during normal working hours to the *Employer* or, at the *Employer's* discretion, to the Replacement Contractor, for the Termination Assistance Period to:
 - (i) the Exit Information and such other information relating to the Implementation Works and Operational Services as remains in the possession or control of the *Contractor* and which the *Employer*, acting reasonably, may request; and
 - (ii) such members of the *Contractor's* Personnel as have been involved in the design, development and provision of the Implementation Works and Operational Services and who are still employed by the *Contractor*.

7.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the *Contractor's* performance of the Implementation Works and Operational Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all confidential information of the other Party and shall certify that it does not retain the other Party's confidential information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Implementation Works and Operational Services or Termination Services or for statutory compliance purposes or for the purposes, in the case of the Employer, of continuing the use of IPRs in accordance with Clause Z2.7 of the Implementation Works Terms and Clause 17 of the Operational Services Terms.

7.4 Except where this Contract provides otherwise (including pursuant to Clause Z2.7 of the Implementation Works Terms and Clause 17 of the Operational Services Terms), all licences, leases and authorisations granted by the *Employer* to the *Contractor* in relation to the Implementation Works and Operational Services shall be terminated with effect from the end of the Termination Assistance Period.

8. **Assets, Subcontracts and Software**

The *Contractor* shall comply with the termination provisions in the Implementation Works Terms and/or Operational Services Terms in relation to transfer and/or assignment of subcontracts, assets and software.

9. **Contractor Personnel**

- 9.1 The *Employer* and *Contractor* agree and acknowledge that in the event of the *Contractor* ceasing to provide the Implementation Works and/or Operational Services or part of them for any reason, Schedule 6 of the General Terms (Staff Transfer) shall apply.
- 9.2 The *Contractor* shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Implementation Works and/or Operational Services from transferring their employment to the *Employer* or the Replacement Contractor.
- 9.3 During the Termination Assistance Period, the *Contractor* shall give the *Employer* and the Replacement Contractor reasonable access to the Contractor Personnel (as defined in Schedule 6 of the General Terms (Staff Transfer)) to discuss any potential transfer to the *Employer* or the Replacement Contractor under the Employment Regulations (as defined in Schedule 6 of the General Terms (Staff Transfer)).
- 9.4 The *Contractor* shall promptly notify the *Employer* or, at the direction of the *Employer*, the Replacement Contractor of any period of notice given by the *Contractor* or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

10. Termination Services Charges

- 10.1 Unless the termination results from a *Contractor* default under this Contract, the *Contractor* may charge the *Employer* for its reasonable additional costs of providing the Termination Services. Such cost shall be included within the amount due in the terminated Implementation Works Terms and/or Operational Services Terms. In accordance with clauses 29.5 and 29.6 of the General Terms, any Termination Services Charges shall only be paid under the applicable Implementation Works Terms and/or the Operational Services Terms.

ANNEX 1: Scope of the Termination Services

The following table identifies the Termination Services anticipated to be required in each of the four identified scenarios.

	Termination Service	Termination Scenario			
		Prior to key date 2 of an Order		After the Operational Services Commence	
1	Notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed.	X		X	
2	Providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services.			X	
3	With respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition.			X	
4	Providing the <i>Employer</i> with any information on Defects and Software Defects which have not previously been provided to the <i>Employer</i> (if any).			X	
5	Making available to the <i>Employer</i> and the Replacement Contractor (as applicable) expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the <i>Employer</i> (acting reasonably) at the time of termination or expiry, and provide a documented plan relating to such training matters for review by the <i>Employer</i> at the time of termination or expiry of this Contract.			X	
6	Generating a computer listing of the Source Code of <i>[insert details of relevant Software]</i> in a form and on media reasonably requested by the <i>Employer</i> . ¹			X	
7	Agreeing with the <i>Employer</i> a handover plan for all of the <i>Contractor's</i> responsibilities as set out in the Cyber Security Plan, and co-operating fully in the execution of the agreed handover plan, providing skills and expertise of a suitable			X	

¹ BIDDER NOTE: To be included based on the relevant solution

		Termination Scenario			
	Termination Service	Prior to key date 2 of an Order		After the Operational Services Commence	
	standard.				
8	In respect of the maintenance and support of the OPO CCTV System, providing historical performance data for the previous 13 LUL Accounting Periods.			X	
9	Providing an information pack listing and describing the Implementation Works and Operational Services for use by the Employer in the procurement of the Replacement Services.	X		X	
10	Answering all reasonable questions from the <i>Employer</i> and the Replacement Contractor regarding the Implementation Works and Operational Services.	X		X	
11	Agreeing with the <i>Employer</i> and the Replacement Contractor (as applicable) a plan for the migration of the Employer Personal Data to the <i>Employer</i> and the Replacement Contractor (as applicable), and fully co-operating in the execution of the agreed <i>Employer</i> database migration plan, providing skills and expertise of a reasonably acceptable standard.	X		X	
12	<p>Providing access to the <i>Employer</i> and/or the Replacement Contractor during the Termination Assistance Period and for a period not exceeding 24 months afterwards for the purpose of the smooth transfer of the Implementation Works and/or Operational Services to the <i>Employer</i> or the Replacement Contractor (as applicable):</p> <p>(i) to information and documentation relating to the works and/or services being transferred that is in the possession or control of the <i>Contractor</i> or its Subcontractors (and the <i>Contractor</i> agrees and shall procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and</p> <p>(ii) following reasonable notice and during the <i>Contractor's</i> normal business hours, to members of the Contractor Personnel who have been involved in the provision or</p>	X		X	

		Termination Scenario			
	Termination Service	Prior to key date 2 of an Order		After the Operational Services Commence	
	management of the Implementation Works and/or Operational Services and who are still employed or engaged by the <i>Contractor</i> or its Subcontractors.				
13	<p>Knowledge transfer services, including:</p> <p>(i) transferring all training material and providing appropriate training to those <i>Employer</i> or Replacement Contractor staff (as applicable) responsible for internal training in connection with the provision of the Implementation Works and Operational Services;</p> <p>(ii) providing for transfer to the <i>Employer</i> or the Replacement Contractor (as applicable) of all knowledge reasonably required for the provision of the Implementation Works and Operational Services which may, as appropriate, include information, records and documents; and</p> <p>(iii) providing the <i>Contractor</i> or the Replacement Contractor (as applicable) with access to such members of the <i>Contractor's</i> or its Subcontractors' personnel as have been involved in the design, development, provision or management of the Implementation Works and Operational Services and who are still employed or engaged by the <i>Contractor</i> or its Subcontractors.</p> <p>(iv) the information which the <i>Contractor</i> shall provide to the <i>Employer</i> and the Replacement Contractor (as applicable) pursuant to such knowledge transfer services shall include:</p> <p>a) copies of up-to-date procedures and operations manuals;</p> <p>b) product information;</p> <p>c) contracts with third party contractors of goods and services which are to be transferred to the <i>Employer</i> and the Replacement Contractor (as applicable);</p> <p>d) information regarding any unresolved Defects and Software Defects in progress at the commencement of</p>	X		X	

		Termination Scenario			
	Termination Service	Prior to key date 2 of an Order		After the Operational Services Commence	
	<p>the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;</p> <p>e) details of physical and logical security processes and tools which will be available to the <i>Employer</i>; and</p> <p>f) any relevant Interface information.</p>				
14	Facilitating the transfer of knowledge from the <i>Contractor</i> to the <i>Employer</i> or its Replacement Contractor (as applicable), by providing a detailed explanation of the procedures and operations used to provide the Implementation Works and Operational Services, the change management process and other standards and procedures to the operations personnel of the <i>Employer</i> or the Replacement Contractor (as applicable).	X		X	
15	<p>Granting any agent or personnel (including employees, consultants and Contractors) of the Replacement Contractor and the <i>Employer</i> (as applicable) access, during business hours and upon reasonable prior written notice, to any <i>Contractor</i> sites for the purpose of effecting a prompt knowledge transfer provided that:</p> <p>a) any such agent or personnel (including employees, consultants and contractors) having access to any <i>Contractor</i> sites in accordance with this Termination Service shall:</p> <p>i. sign a confidentiality undertaking in favour of the <i>Contractor</i> (in such form as the <i>Contractor</i> shall reasonably require); and</p> <p>ii. during each period of access comply with the reasonable security, systems and facilities operating procedures of the <i>Contractor</i> relevant to such <i>Contractor</i> site; and</p> <p>b) the <i>Employer</i> and the Replacement Contractor (as applicable) shall pay the reasonable, proven and proper costs of the <i>Contractor</i> incurred in facilitating such access.</p>	X		X	
16	Notifying the <i>Employer</i> of any substandard condition, adverse occurrence or safety notice of which the <i>Contractor</i> becomes aware that	X		X	

		Termination Scenario			
	Termination Service	Prior to key date 2 of an Order		After the Operational Services Commence	
	occurs on any other system supplied by the <i>Contractor</i> to its other customers that includes a critical element of the OPO CCTV System, and notifying the <i>Employer</i> of what steps the <i>Employer</i> must take in order to rectify the substandard condition or adverse occurrence or respond to the safety notice.				
17	Removing and safely disposing of all relevant Plant from the Site following such removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.	X		X	

Schedule 8

Parent Company Guarantee

(Form of Parent Company Guarantee)

THIS DEED OF GUARANTEE is effective as of the _____ day of _____ 20[]

BETWEEN:

- (1) [•], a company incorporated in [•] with registered number [•] and having its registered office at [•] (the "**Guarantor**");
- (2) [•], a company incorporated in [•] (the "**Contractor**");
- (3) **LONDON UNDERGROUND LIMITED**, a company incorporated in England with registered number 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the "**Company**").

WHEREAS:

- (A) Pursuant to an agreement (the "**Contract**") dated [insert date] between the Company and the Contractor, the Contractor has agreed to provide certain whole life cycle works and services in relation to the Piccadilly Line Order in respect of a One Person Operation CCTV system for the Deep Tube Upgrade Programme.
- (B) It is a condition precedent of the Company's obligation to make any payment (or any further payment as the case may be) under the Contract that the Guarantor, as the ultimate parent company of the Contractor, enters into and delivers this Guarantee in favour of the Company to guarantee the due performance of the Contract by the Contractor, in the manner hereinafter described.
- (C) The Contractor is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out therein.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Guarantee:

"**Contractor's Obligations**" shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;

1.2 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;

1.3 references to "**Contractor**", "**Guarantor**" and/or "**Company**" shall include their respective transferees, successors and assigns whether immediate or derivative;

1.4 the headings to Clauses are for convenience only and have no legal effect;

1.5 the headings in this Guarantee are for convenience only and shall not affect its interpretation;

- 1.6 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;
- 1.7 the expression "**person**" shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and
- 1.8 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.9 The parties to this Guarantee intend it to be a deed.

2. Guarantee and Indemnity

- 2.1 The Guarantor irrevocably and unconditionally:
- a) guarantees to the Company the due and punctual performance and observance by the Contractor of all of the Contractor's Obligations;
 - b) undertakes with the Company that whenever the Contractor:
 - c) does not pay any amount in respect of the Contractor's Obligations when due, it shall forthwith on written demand by the Company stating that the Contractor has failed to pay such amount, pay the relevant amount; and
 - d) does not perform or discharge any obligation in respect of the Contractor's Obligations when due, it shall within five (5) Working Days of written demand by the Company stating that the Contractor has failed to perform the Contractor's Obligations, perform or cause to have performed or discharge such obligation,
 - e) in each case as if it, instead of the Contractor, were expressed to be the principal obligor; and
 - f) as principal obligor agrees to indemnify the Company on written demand against any loss or liability suffered by it if any Contractor's Obligations guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.
- 2.2 The Guarantor's liability under this Guarantee shall be no greater than the liability of the Contractor under or pursuant to the Contract or what would have been the liability of the Contractor under or pursuant to the Contract were it not for the unenforceability, invalidity or illegality of the Contract and, accordingly, the Guarantor shall be entitled to raise the same defences as those which the Contractor is entitled to raise (save as to the unenforceability, invalidity or illegality of the Contract) or would have been entitled to raise were it not for the unenforceability, invalidity or illegality of the Contract (but so that the same defence shall not be raised more than once).
- 2.3 As between the Guarantor and the Company, the Guarantor shall remain liable under clause 2.1 as if it was the sole principal obligor and not merely a surety or guarantor provided that nothing in this Guarantee set out herein shall render the Guarantor liable in respect of any provision of the Contract that is illegal, invalid or unenforceable.

3. Continuing Guarantee

- 3.1 Notwithstanding any re-issue or re-execution of this Guarantee required in accordance with the provisions of Clause 4 of the General Terms, this Guarantee takes effect and remains in effect from the Contract Date of the Contract until the Term Expiry Date.

- 3.2 Without prejudice to the foregoing, this Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by the Contractor, the Guarantor or any other person) until all obligations (whether actual or contingent), warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor and the Company under the Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full and will extend to the ultimate balance of all sums payable by the Contractor in respect of the Contractor's Obligations, regardless of any intermediate payment or discharge thereof in whole or in part.
- 3.3 Without prejudice to the generality of the foregoing, this Guarantee shall remain binding on the Guarantor notwithstanding that the Contractor shall become subject to Insolvency (as defined in the General Terms) and/or that any of its obligations under the Contract shall be disclaimed or determined in such proceedings and/or termination of the Contract and/or breach by the Contractor of the Contract and until all such obligations, warranties, duties and undertakings of the Contractor shall have been performed in full.

4. Reinstatement

- 4.1 Where any discharge (whether in respect of the Contractor's Obligations or any security for such obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.
- 4.2 The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

5. Waiver of Defences

- 5.1 The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):
- a) any time or waiver granted to, or composition with, the Contractor or any other person;
 - b) any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;
 - c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - d) any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;
 - e) any variation (however fundamental) or replacement of the Contract or any other document or security or the placing of any Order (whether pursuant to the exercise of the Option) so that references to such documents in this Guarantee shall include each variation, replacement or Order;
 - f) any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be

construed accordingly, as if there were no such unenforceability, illegality or invalidity; or

- g) any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

6. Immediate Recourse

6.1 The Guarantor:

- a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety; and
- b) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

7. Appropriations

7.1 Until all amounts which may be or become payable in respect of the Contractor's Obligations have been irrevocably paid in full, the Company may:

- a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- b) hold in a suspense account any moneys received from the Contractor on account of the Contractor's Obligations or on account of the Guarantor's liability under this Guarantee.

8. Non-Competition

8.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Contractor's Obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

- a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
- b) claim, rank, prove or vote as a creditor of the Contractor or its estate in competition with the Company unless the Company so directs in which case it shall; or
- c) receive, claim or have the benefit of any payment, distribution or security from or on account of the Contractor, or exercise any right of set-off as against the Contractor unless the Company so directs in which case it shall.

8.2 The Guarantor shall hold in trust for and forthwith pay or transfer to the Company any payment or distribution or benefit of security received by it either contrary to this Clause 8 (Non-Competition) or as a result of a direction of the Company under Clause 8.1(b) or 8.1(c).

9. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Company.

10. **Assignment**

The Company may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor, provided that the Company shall give a written notice to the Guarantor to that effect.

11. **Notices**

Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery) or facsimile (in the case of facsimile to be confirmed in writing within 24 hours of being sent by such notice being delivered or sent by first class recorded delivery as aforesaid). The address for service of each party shall be as follows:

Guarantor:

Address:

Attention:

Company: London Underground Limited

Address: 5 Endeavour Square, London E20 1JN

Attention: []

12. **Miscellaneous**

12.1 The Company is entitled to make any number of demands under this Guarantee.

12.2 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

12.3 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

12.4 The Company acknowledges and agrees that it will notify the Guarantor within five (5) Working Days of any claim made against the performance bond provided pursuant to the Contract.

13. **Severance**

If any provision of this Guarantee (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Guarantee are not void or unenforceable be deemed to be deleted and the validity and enforceability of the remaining provisions of this Guarantee shall not be affected.

14. **Counterparts**

This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

15. Governing Law and Jurisdiction

15.1 This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.

15.2 If any dispute or difference arises between the Guarantor and the Company in connection with this Guarantee or any non-contractual obligation arising out of or in connection with this Guarantee which cannot be resolved by mutual agreement, it shall be referred to the jurisdiction of the English Courts.

16. Legal Opinion

If the Guarantor is domiciled outside England and Wales, the Guarantor provides to the Company a legal opinion in the form appended to this Guarantee with such amendments as the Company may request or agree (acting reasonably) on the Guarantor's execution of this Guarantee.

IN WITNESS whereof this Guarantee has been executed as a deed and delivered by the Guarantor and the Company the day and year first before written.

EXECUTED AS A DEED by)		
[INSERT NAME OF GUARANTOR])	
on being signed by two)	(duly	authorised officer)
duly authorised officers)		
)	
)	(duly authorised officer)	

Date: _____

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

LONDON UNDERGROUND LIMITED

In the presence of:

Authorised Signatory

FORM OF LEGAL OPINION

[Date] I am the legal adviser to [] and I am giving this legal opinion in connection with the making by [] of the Document (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "**Document**") dated [] made between the [] (the "**Guarantor**"), [] (the "**Contractor**") and London Underground Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of [] I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in [] on [] for an indefinite period as *[a limited company]* and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor is the ultimate parent company of the Contractor;
 - (c) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in [] has been taken to enable the Guarantor to:
 - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder;
 - (ii) guarantee the Company in respect of the obligations to the Guarantor under the Document;

and implementation by the Guarantor of the foregoing will not cause:

- (iii) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
 - (iv) any law or order to be contravened;
 - (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Guarantor is a party or by which it or any of its assets is bound;
- (d) the Document has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Guarantor under the laws of [] and in the courts of [];
- (e) it is not necessary or advisable under the laws of [] in order to ensure the validity, enforceability and priority of the obligations of the Guarantor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;

- (f) the obligations of the Guarantor under the Document rank at least equally and ratably (pari passu) in point of priority and security with all other unsecured obligations of the Guarantor;
 - (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Guarantor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in [];
 - (h) there are no registration, stamp or other taxes or duties of any kind payable in [] in connection with the signature, performance or enforcement by legal proceedings of the Document;
 - (i) the Company will not violate any law or regulation in [] nor become liable to tax in [] by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in [] in order to enforce any provisions of the Document;
 - (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the [] Courts;
 - (k) the consent to the jurisdiction by the Guarantor contained in the Document is valid and binding on the Guarantor and not subject to revocation;
 - (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Guarantor would be recognised and accepted by the [] Courts without re-trial or examination of the merits of the case.
3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of [] and accordingly express no legal opinion herein based upon any law other than the laws of [].

Signed []

.....

Name and position

Schedule 9

Performance Bond

(Form of Contractor's Bond)

To: London Underground Limited
5 Endeavour Square
London E20 1JN (the "**Beneficiary**")

Performance Bond No []

1. We have been informed that our customer, [...] of [...] (the "**Contractor**"), and you, the Beneficiary have entered into a contract dated [...] for the [...] (the "**Contract**").
2. The terms of the Contract require that the obligations of the Contractor under the Contract are supported by this Performance Bond in your favour in the event that the credit rating of the ultimate parent company of the Contractor falls below the Minimum Acceptable Credit Rating (as defined in the Contract). We understand that this event has now occurred and the Contractor is therefore obliged to procure a Performance Bond in accordance with the provisions of Clauses 4.5 - 4.10 of the General Terms included in the Contract.
3. In consideration of the aforesaid, we, [...], hereby irrevocably undertake as a primary obligation to pay to you any amount you may claim from us upon receipt of your first demand in writing and substantially in the form set out in Annex 1 ("**Demand**") but not exceeding £[##], being equivalent to [##%] of the Relevant Prices as defined in the Contract (the "**Guaranteed Amount**") and provided that:
 - (a) our liability under this Performance Bond is limited to an amount or amounts in aggregate not exceeding the Guaranteed Amount;
 - (b) any claim hereunder shall be accompanied by your statement that the amount claimed is due by reason of any breach by the Contractor of the terms of the Contract, or any Insolvency (as defined in the Contract) of the Contractor, the termination or expiry of the Contract or any non-payment by the Contractor of sums due to the Beneficiary under the terms of the Contract.
4. This Performance Bond shall be valid for Demands received in accordance with this Performance Bond until *[insert appropriate expiry having regard to the amounts guaranteed]* (the "**Expiry Date**") whereupon you shall return this Performance Bond to the Contractor. After the Expiry Date, our undertaking will become automatically null and void if no claim has been received by us on or before that date, whether or not this Performance Bond is returned to us (but without prejudice to the Contractor's obligation to provide a further or replacement Performance Bond if, on any subsequent occasion, such credit rating again falls below the Minimum Acceptable Credit Rating (as defined in the Contract)).
5. It is a condition of this Performance Bond that the Contractor shall provide a replacement Performance Bond to you in the amount equal to the Guaranteed Amount by no later than 7 Working Days prior to the Expiry Date. This Performance Bond shall be returned to the Contractor upon receipt by the Beneficiary of the replacement Performance Bond. In the event that the Contractor fails to provide the aforementioned replacement Performance Bond by no later than 7 Working Days prior the Expiry Date, we hereby irrevocably undertake to pay you any amount you may claim up to the Guaranteed Amount upon receipt of your first demand in writing made within 7 Working Days prior to the Expiry Date stating that the Contractor has failed to provide the replacement Performance Bond.
6. We shall make payment to you within 5 Working Days upon service of your Demand:
 - (a) without regard to any information or instructions which we may then have received or may thereafter receive from any other source and we shall not be entitled to inquire into or require proof of the facts stated in the Demand which, as between ourselves and you, shall be conclusive; and

- (b) notwithstanding any dispute between the Contractor and you; it being the intention of the parties hereto that the event upon which payment must be made hereunder is the service of your Demand without any rights on our part to raise any objections, irrespective of the validity and/or the effectiveness of the Contract and the obligations arising there under and irrespective of the underlying facts or their significance under the Contract.
7. All sums payable under this Performance Bond shall be paid in pounds sterling to such bank account as may be specified in your Demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law. If we are required by law to make any deduction or withholding, the amount payable by us hereunder shall be increased to such amount as shall ensure that you receive a net amount equal to the amount which would have been received in absence of such deduction or withholding.
8. This Performance Bond shall not be affected by:
- (i) any change in the constitution of the Contractor and/or you and/or ourselves; and/or
 - (ii) the granting of any time by you to the Contractor and/or any forbearance; and/or
 - (iii) indulgence on any account shown by you to the Contractor; and/or
 - (iv) any change in the terms and conditions of the Contract; and/or
 - (v) termination of the Contract for any reason; and/or
 - (vi) the placing of any Order (as defined in the Contract) (whether pursuant to the exercise of the Option); and/or
 - (vii) any other circumstances which might operate to release a guarantor at law or in equity.
9. This Performance Bond may be assigned or charged without our consent to any member of the TfL Group. Any other assignment of this Performance Bond shall require our consent, which consent not to be unreasonably withheld or delayed.
10. This Performance Bond is irrevocable and may not be amended, varied or supplemented in any manner whatsoever without the prior written consent of you and us, other than in accordance with its express terms.
11. Until the full Guaranteed Amount and all amounts which may be or become due and payable in respect of the Guaranteed Amount have been unconditionally and irrevocably paid in full and unless the Beneficiary otherwise directs, we shall not exercise any rights which we may have by reason of performance by us of this Performance Bond or by reason of any amount being payable, or liability arising, under this Performance Bond to:
- (a) be indemnified by the Contractor;
 - (b) claim any contribution from any other guarantor of the Contractor's obligations;
 - (c) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary or of any other guarantee or security taken by the Beneficiary; and/or
 - (d) claim, rank, prove or vote as a creditor of the Contractor or in its estate in competition with the Beneficiary,

and if we receive any benefit, payment or distribution in relation to such rights, we shall hold that benefit, payment or distribution to the extent necessary to enable all the Guaranteed Amounts to be paid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct for application.

- 12. Words and phrases defined in the Contract shall have the same meanings in this Performance Bond unless inconsistent with the context.
- 13. Each of the provisions of this Performance Bond is severable and distinct from the others, and if at any time any such provisions is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Performance Bond, and in such event the remaining provisions of this Performance Bond shall continue to have full force and effect.
- 14. This Performance Bond shall be governed and construed in accordance with the laws of England and Wales and the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Performance Bond and any matter arising from it.

Executed as a deed by the parties and delivered on the date of this Performance Bond.

**EXECUTED AND DELIVERED AS
A DEED** for and on behalf of
[INSERT NAME OF GUARANTOR]
acting by:

Signature of Authorised Signatory
Print name of Authorised Signatory
Signature of Authorised Signatory
Print name of Authorised Signatory

EXECUTED AND DELIVERED AS A DEED
by affixing the Common Seal of
LONDON UNDERGROUND LIMITED
In the presence of:

Authorised Signatory _____
.

Annex 1

Form of Demand from the Beneficiary to *[insert name of Guarantor]*

Dear Sirs

[Contract No *[insert contract number]*] or [Contract dated *[insert contract date]*] with *[insert name of Contractor]* in respect of *[insert brief description of Works]*

We refer to the Performance Bond given by you to us dated *[insert Performance Bond date]*.

We hereby demand from you the sum of £*[insert demand amount – up to maximum amount of the Performance Bond]* under your Performance Bond. The amount claimed is due by reason of *[insert details]*.

Please make payment by transferring funds in sterling to London Underground Limited at the following account:

[●] Bank plc

Address:

Account Number:

Sort Code:

Account Name:

Yours faithfully

ON BEHALF OF LONDON UNDERGROUND LIMITED

Schedule 10

Notices

1. **GENERAL**

- 1.1 This Schedule sets out the provisions applicable to the issue of Notices under the General Terms.
- 1.2 Any Notice issued under the General Terms shall:
- (a) be in writing;
 - (b) describe itself as a Notice; and
 - (c) refer to the relevant provision of the General Terms under which it is issued.
- 1.3 For the avoidance of any doubt, unless otherwise stated in the Contract, the provisions of this Schedule shall not apply to notices under: (i) the Implementation Works Terms for any Order; (ii) the Operational Services Terms; or (iii) the Dispute Resolution Procedure.
- 1.4 Any *Employer's* Notice may be served by the *Employer* or the Employer's Representative on its behalf.

2. **SERVICE OF NOTICES**

- 2.1 Any Notice shall be deemed duly given if delivered personally or sent by email or by prepaid first-class post or by airmail (if posted to or from a place outside the United Kingdom) in accordance with the requirements of this Schedule.

3. **METHOD AND TIME OF SERVICE**

- 3.1 The following table sets out the method by which Notices may be served under the General Terms and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

4. **DETAILS FOR SERVICE**

- 4.1 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of Notices:

Address	Contractor	Employer 5 Endeavour Square, London E20 1JN Attention: Director of Legal
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5. CHANGE OF DETAILS

A Party may notify the other Party to this Contract of a change to its name, relevant addressee or postal address to update the information in paragraph 4.1 provided that such notification shall only be effective:

- (a) on the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Working Days after the date on which notification is given, the date falling five (5) Working Days after notification of any such change has been given.

Appendix 1

Pro Forma Notices

FORM OF OPTION NOTICE

[To be issued to the Contractor on London Underground Limited's headed notepaper]

[insert Contractor's name and address for receipt of Notices in accordance with Schedule 7 of the General Terms (Exit Management)]

Option Notice issued pursuant to Clause 8 Bakerloo Line Option of the General Terms comprising Section 1 of the OPO CCTV Contract dated [insert date of the Contract] and made between London Underground Limited (the "*Employer*") and [insert name of the Contractor] (the "*Contractor*") (the "General Terms")

1. Words and expressions defined in the General Terms shall have the same meanings when used in this Option Notice and the provisions of the General Terms (including clause 54 (Governing Law and Jurisdiction)) shall apply to this Option Notice.
2. This Notice constitutes an Option Notice under the General Terms and is issued pursuant to Clause 8 Bakerloo Line Option of the General Terms. This Option Notice is issued in the period between the Earliest Option Exercise Date and the Longstop Date.
3. By delivering this Option Notice, the *Employer* exercises the Option in relation to the Bakerloo Line Option on the terms set out in the General Terms.
4. This Option Notice includes the attached Annex, which contains the Order documentation included in the Contract for the Option.
5. The Order shall take effect on the date of delivery of this Option Notice (the "Order Commencement Date").
6. The Option Dates for the Option are set out below:
 - 6.1 The *starting date* is [insert date].
 - 6.2 The *completion dates* are [insert dates].
 - 6.3 The *key dates* are [insert dates].
7. The Option Prices for this Option are [insert].

Signed for and on behalf of **the *Employer***

Signature

Name.....

Position.....

Date.....

ANNEX
Bakerloo Line Option Order

[Insert the relevant Order comprising the documents included in the Contract for the Bakerloo Line Option referred to in Section 2]

Schedule 11

Dispute Resolution Procedure

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

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 11;

"days" means a period of time stated in days as calculated in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

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

"Notice of Adjudication" means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- details of where and when the Dispute arose; and
- the nature of the redress which is sought;

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

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

W2.A The *Employer, Contractor* and the Employer's Representative follow the procedure set out in Clause 50 of the General Terms, W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.

W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely

upon any without prejudice statements in any proceedings.

W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.

W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

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

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

W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:

- is a natural person acting in his personal capacity; and
- is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.

W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

W2.6 The Referral Notice includes:

- the facts relied upon by the referring party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.

W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for

the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.

- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.14 The Adjudicator:

- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- reaches his decision in accordance with the law of the contract;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the *Project Manager* (in the event the Dispute arises under or in relation to the Implementation Works Terms) or the Client Representative (in the event the Dispute arises under or in relation to the Operational Services Terms) related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- inspect any part of the LUL Network.

W2.16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.

W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.

- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 of the Implementation Works Terms (if applicable to the Dispute) when making any award (including an award of costs and/or expenses).
- W2.26 If any Party to a Dispute is dissatisfied with the Adjudicator's decision, then any party may, within three (3) months after the date on which it received notice of such decision, commence court proceedings for the final determination of the

Dispute. Court proceedings may not be commenced unless commenced within three (3) months after receipt of the Adjudicator's decision.

Schedule 12

Privacy and Data Protection

1. GENERAL

1.1 This Schedule sets out the Parties respective obligations in relation to privacy and Data Protection.

1.2 In this Schedule the following terms shall have the following meanings:

"Data Controller" has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Controller".

"Data Processor" has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Processor".

"Data Protection Impact Assessment" means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.

"Data Protection Legislation" means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016.680 (the Law Enforcement Directive);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data including the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

"Data Subject" has the meaning given to it in Data Protection Legislation.

"Employer Personal Data" means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor) on behalf of the *Employer*, pursuant to or in connection with this contract as set out in the Processing Statement.

"Personal Data" has the meaning given to it in Data Protection Legislation.

"Processing" has the meaning given to it in Data Protection Legislation and **"Process"**, **"Processes"** and **"Processed"** will be construed accordingly.

"Processing Statement" is in the form required by the Data Protection Legislation.

"Restricted Countries" means any country outside the European Economic Area as may be constituted from time to time or the UK.

"Subject Access Request" means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

2. DATA PROTECTION

2.1 The *Contractor* shall comply with all of its obligations under the Data Protection Legislation and, if Processing Personal Data on behalf of the *Employer*, only carries out such Processing to Provide the Works in accordance with this contract. With respect to the Parties' rights and obligations under this contract, the Parties acknowledge that the *Employer* is a Data Controller solely

responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor.

2.2 Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties shall complete before any Processing takes place.

2.3 The *Contractor* shall:

- (a) Process the Employer Personal Data only in accordance with documented instructions from the *Employer* to perform its obligations under this Contract;
- (b) use its reasonable endeavours to assist the *Employer* in complying with its obligations under Data Protection Legislation and shall not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (c) notify the *Employer* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Employer* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (d) maintain, and make available to the *Employer* on its request, documentation which describes the Processing operations for which it is responsible under this contract including:
 - (i) the purposes for which Employer Personal Data is Processed,
 - (ii) the types of Personal Data and categories of Data Subject involved,
 - (iii) the source(s) of the Personal Data,
 - (iv) any recipients of the Personal Data;
 - (v) the location(s) of any overseas Processing of Employer Personal Data;
 - (vi) retention periods for different types of Employer Personal Data and
 - (vii) where possible a general description of the security measures in place to protect Employer Personal Data.
- (e) where requested to do so by the *Employer*, or where Processing Employer Personal Data presents a specific risk to privacy, carry out or assist the *Employer* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Employer*;
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this Contract, take appropriate technical and organisational security measures that are satisfactory to the *Employer* from time to time, against unauthorised or unlawful Processing of Employer Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data;
- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provide the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor) with paragraphs 2.3(f) and 2.3(h) including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer*;

- (h) notify the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this paragraph 2.3, including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;
- (i) having notified the *Employer* of a breach in accordance with paragraph 2.3(h), keep the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer*;
- (j) fully cooperate as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);
- (k) notify the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor), receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Subject Access Request (or purported Subject Access Request),
 - (B) a request to rectify, block or erase any Employer Personal Data or
 - (C) any other request, complaint or communication relating to the *Employer's* obligations under Data Protection Legislation;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or
 - (iii) a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;
- (l) provide the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer*) in relation to any complaint, communication or request made as referred to in paragraph 2.3(k) including by promptly providing:
 - (i) the *Employer* with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
 - (iii) where applicable, such assistance as is reasonably required by the *Employer* to enable it to comply with a request from a Data Subject to rectify, block or erase any Employer Personal Data.
- (m) when notified in writing by the *Employer*, supply a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;
- (n) prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the *Employer* in relation to the Employer Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if appointed) or other

person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Employer*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in this paragraph 2.3; and (v) the same information in relation to any Subcontractor, together with its name and contact details and when notified in writing by the *Employer*, complies with any agreement between the *Employer* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;

- (o) if required to do so by Data Protection Legislation, appoint a designated Data Protection Officer; and
 - (p) make available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in this paragraph 2.3.
- 2.4 The *Contractor* shall not share Employer Personal Data with any Subcontractor without prior written consent from the *Employer* and only where there is a written contract in place between the *Contractor* and the Subcontractor which requires the Subcontractor to:
- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor*; and
 - (b) comply with the same obligations which the *Contractor* is required to comply with under this paragraph 2.3.
- 2.5 The *Contractor* shall and shall procure that any Subcontractor shall:
- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and as reasonably necessary to perform this Contract in accordance with its terms;
 - (b) not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer*;
 - (c) not Process Employer Personal Data in such a way as to:
 - (i) place the *Employer* in breach of Data Protection Legislation,
 - (ii) expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects;
 - (iii) expose the *Employer* to reputational damage including adverse publicity;
 - (d) not allow its personnel to access Employer Personal Data unless such access is necessary to carry out its obligations under this Contract;
 - (e) take all reasonable steps to ensure the reliability and integrity of the Connected Persons who can access Employer Personal Data;
 - (f) ensure that all Connected Persons who can access Employer Personal Data:
 - (i) are informed of its confidential nature;
 - (ii) are made subject to an explicit duty of confidence;
 - (iii) understand and comply with any relevant obligations created by either this contract or Data Protection Legislation; and

- (iv) receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;
 - (g) not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
 - (h) without prejudice to paragraph 2.3, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensure that each such device encrypts Employer Personal Data; and
 - (i) comply during the course of this Contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time.
- 2.6 The *Contractor* shall not, and shall procure that any Subcontractor shall not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*).
- 2.7 If, after the Contract Date, the *Contractor* (including any Subcontractor) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:
- (a) the *Contractor shall* submit a written request to the *Employer* setting out details of the following:
 - (i) the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,
 - (ii) the Restricted Countries which the Employer Personal Data will be transferred to and/or Processed in;
 - (iii) any Subcontractor or other third parties who will be Processing and/or receiving Employer Personal Data in Restricted Countries,
 - (iv) how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Employer Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Employer's* compliance with Data Protection Legislation,
 - (b) in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
 - (c) the *Contractor* shall comply with any instructions and carries out such actions as the *Employer* may notify in writing when providing its consent to such Processing or transfers, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Employer Personal Data in any Restricted Countries enters into a data processing agreement with the *Contractor* on terms which are equivalent to those agreed between the *Employer* and the *Contractor* in connection with the Processing of Employer Personal Data in (and/or transfer of Employer Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in the bullet point above;

- 2.8 The *Contractor* and any Subcontractor (if any), acknowledge:
- (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer's* instructions and this Contract;
 - (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this Contract or negligence in relation to Employer Personal Data;
 - (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non-performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with his obligations;
 - (d) notwithstanding the *Employer's* rights of termination under this Contract, if the *Contractor* has committed a material breach under paragraph 2.8(c) on two or more separate occasions, the *Employer* may at its option:
 - (i) withdraw authorisation for Processing by a specific Subcontractor by immediate written notice; or
 - (ii) terminate the *Contractor's* obligations under this Contract in whole or part with immediate written notice to the Contractor;
- 2.9 Compliance by the *Contractor* with this Schedule is without additional charge to the *Employer*.
- 2.10 Following termination or expiry of this contract or termination of the *Contractor's* obligations under this Contract, in each case howsoever arising, the *Contractor*:
- 2.11 Employer Personal Data may not be Processed following termination or expiry of this Contract save as permitted by paragraph 2.10.
- 2.12 For the avoidance of doubt, and without prejudice to paragraph 2.10, the obligations in this Schedule apply following termination or expiry of this contract or termination of this Contract to the extent the Party concerned retains or Processes Employer Personal Data.
- 2.13 The *Contractor* shall take reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.
- 2.14 The *Contractor* shall indemnify the *Employer* and other members of the TfL Group from and against all Losses resulting from any breach by the *Contractor* or any Subcontractor of the Data Protection Legislation or this Schedule. The *Contractor's* liability in respect of any breach of this Schedule insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

Schedule 13

Cyber Security

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1 General

This document provides guidance to the *Contractor* and defines the Cyber Security requirements that are to be complied with in the design, manufacture, installation, testing, commissioning, operation and maintenance of the *works*.

2 Glossary

Term	Definition
Cloud	A type of internet-based computing service where organisation can have aspects of their IT infrastructure managed by external providers, normally as a Software as a Service (SaaS), Platform as a Service (PaaS) or Infrastructure as a Service (IaaS) basis
Cyber Essentials Scheme	is a UK government scheme encouraging organisations to adopt good practice in information security, focussing mainly on technical controls rather than governance, risk, and policy
Cyber Security Policy / Policies	The high level Cyber Security requirements for all IT and Operational technology and data owned by LUL or operated and supported by third parties for on behalf of LUL.
Cyber Security Standard(s)	The technical detail behind the implementation of the high level cyber security requirements as set out in the Cyber Security Policies.
Data	means data created, generated or collected, during the performance of the <i>works</i> (or any part thereof), including personal data and data supplied to LUL and members of the TfL Group in connection with the <i>works</i> ;
Good Industry Practice	means the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor/supplier/operator engaged in the same type of undertaking under the same or similar circumstances.
HMG Information Security Assurance Standards	the meaning and definition as well as relevant policy documents and standards can be found at https://www.gov.uk/government/collections/government-security_or_any_updated_link ;
Information Asset Register	means a register of all information assets relating to the <i>works</i> .
Information Security Management System or "ISMS"	a framework of governance models, policies and procedures, based on a business risk approach to establish, implement, operate, monitor, review, maintain and improve information security in accordance with the requirements.
ISO/IEC 27001	is an information security standard specification for an Information Security Management System (ISMS), with an emphasis on measuring and evaluating how well an organisation's ISMS is performing.
IT Systems	means the IT Systems that support the delivery of the <i>works</i> ;
Malicious	means any software that brings harm to a computer system. Commonly known as malware can be in the form of (but is not limited to) worms,

Software	viruses, trojans, spyware, and adware which steal protected data, delete documents or add software not approved by a user.
Operational Technology	means any hardware or software which monitors and/or operates a physical process.
Outline Cyber Security Management Plan	means the security plan provided by the <i>Contractor</i> as part of their tender submission
Removable Media	any type of storage device that can be removed from a computer while the system is running. Examples of removable media include CDs, DVDs and Blu-Ray disks, as well as diskettes and USB drives
Security Incident	a potential or actual event or attempted breach of security affecting the confidentiality, integrity or availability of the Systems, IT Systems or Networks which process or hold Data
Cyber Security Management Plan	means the <i>Contractor's</i> cyber security plan developed and revised pursuant to the requirements.
Security Policy	means any LUL security policies as amended by LUL from time to time;
Security Risk	meaning all Risks associated with the security of the <i>works</i> which may have a negative impact upon the agreed security posture, including information security and any risks identified pursuant to this schedule.
Security Risk Register	means a register of Security Risks produced and maintained by the <i>Contractor</i> in accordance with the requirements
System Assets	means all assets and rights including all physical assets, Software, IPR, as well as spares and components whether in storage, repair or on sites, used by the <i>Contractor</i> to provide the <i>works</i> in accordance with the contract;
<i>Contractor</i> Personnel	means all employees, agents, consultants and contractors of the <i>Contractor</i> or of any Subcontractor of any tier.
Contractor Premises	means any land or building where the <i>Contractor</i> carries out any part of this contract
TfL Information Security Controls Framework	means a hierarchy of IT security documents consisting of the high level Information Management Security Policy and ten security principles (Information Security Controls Framework);
TfL Network(s)	means the network infrastructure and Systems owned or used by TfL to support the delivery of the IT Systems.
TfL Personnel	means all employees, agents, consultants and contractors of TfL
TfL Restricted	as defined in the TfL Information Security Classification Standard

3 Scope and Purpose

3.1 The purpose of this schedule is to:

- (a) set out the principles of cyber security to be applied by the *Contractor* in its delivery of the *works*;
- (b) set out the principles of cyber security to be applied by the *Contractor* for the operation and maintenance of the *works*;
- (c) set out the *Contractor's* wider security obligations relating to the *works*;
- (d) set out the *Contractor's* requirements to test and audit the *works* including any Information Security Management System and Cyber Security Management Plan, to ensure compliance with the security requirements set out in this contract;
- (e) set out the *Contractor's* obligations in the event of a Security Incident, or of an actual, potential or attempted breach of cyber security of the *works*;
- (f) require the *Contractor* to deliver, maintain and operate the *works* in accordance with all applicable security Standards and Policies as referenced in this schedule;
- (g) set out the principles for the *Contractor's* development, implementation, operation, maintenance and continual improvement of the Cyber Security Management Plan;
- (h) set out the principles for the *Contractor's* development, implementation, operation, maintenance and continual improvement of the Information Security Management System;
- (i) set out any *Contractor* obligation for certification for the *works* such as, ISO/IEC 27001, the Cyber Essentials Scheme or HMG Information Security Assurance Standards;
- (j) set out the requirements on the *Contractor* when delivering the *works*, which are aligned with the NCSC 10 Steps to Cyber security; and
- (k) set out the *Contractor's* obligation to comply with the Operational Technology Cyber Security Standard.

4 Security Principles

4.1 The *Contractor* ensures that security, data protection and confidentiality are of fundamental importance in relation to its provision of the *works* and LUL's ability to retain public confidence. The *Contractor* shall at all times comply with the security principles set out in the Contract in the delivery of the *works*.

4.2 In recognition of the importance that LUL places on security, data protection and confidentiality, the *Contractor* shall ensure that the *Project Manager*, is made aware of the risks set out in the Cyber Security Management Plan and Security Risk Register. The *Contractor* has overall responsibility for ensuring that:

- (a) appropriate members of *Contractor* personnel and the *Contractor's* management team take responsibility for managing the different levels of security risk and promoting a risk management culture;

- (b) a Security Risk Register is produced and maintained by the *Contractor*. All Security Risks are documented in an appropriate manner and Security Risk Register must be available for review / audit when requested by the *Project Manager*;
- (c) All assets are documented in an appropriate manner in the asset register and shall identify the criticality of the relevant System Assets in the delivery of the *works*. This register must be available for audit when requested by the *Project Manager* and or when a Security Incident occurs; and
- (d) supporting policies are implemented (where relevant) and communicated to the *Project Manager*.

4.3 The *Contractor* shall at all times:

- (a) security threats to the *works* are minimised and mitigated at all times;
- (b) the *works* fully comply at all times with:
 - (i) the accepted Cyber Security Management Plan and Information Security Management System; and
 - (ii) industry best practice.

4.4 The *Contractor* shall notify the *Project Manager* in writing of any instances where software, applications, services or processes are hosted or run from the Cloud even those that are not part of the *works* and host, process or connect with any of TfL Operational or IT technology, Data and Networks or handle TfL Restricted Data.

5 Cyber Security Management Plan

5.1 The *Contractor* shall produce a Cyber Security Management Plan structured in accordance with IEC 62443-2-1 and IEC 62443-2-2 detailing the programme of activities they will undertake to ensure that the System is acceptably cyber secure throughout its entire lifecycle. For guidance, a Cyber Security Management Plan template is provided in Appendix 1.

5.2 The *Contractor* shall within sixty (60) days of the *starting date* produce and submit to the *Project Manager* for review and acceptance, an Outline Cyber Security Management Plan which as a minimum will:

- (a) set out the security measures to be implemented and maintained by the *Contractor* in relation to all aspects of the *works* and all processes associated with the delivery of the Systems.
- (b) reference the security requirements set out in this schedule;
- (c) state any other cyber security industry standards which are applicable to the *works*; and
- (d) state all applicable law which relates to the security of the Systems.

5.3 The *Contractor* shall within ninety (90) days of acceptance of the Outline Cyber Security Management Plan produce and submit to the *Project Manager* for acceptance, a full Cyber Security Management Plan.

5.4 The *Contractor* shall review and update the Cyber Security Management Plan at least annually and as required in response to:

- (a) changes to the Cyber Security Standards;

- (b) emerging changes in Good Industry Practice;
 - (c) any relevant Operational Change or Variation and/or associated processes;
 - (d) at each major project milestone;
 - (e) any new perceived or changed security threats;
 - (f) any material change; and
 - (g) any reasonable instruction by the *Project Manager*.
- 5.5 The *Contractor* shall define a cyber security lifecycle management process in the Cyber Security Management Plan that complies with the Cyber Security Lifecycle section of S1744 Operational Technology Cyber Security Standard.
- 5.6 The *Contractor* shall comply in full with the Cyber Security Lifecycle section of S1744 Operational Technology Cyber Security Standard.
- 5.7 The *Contractor* shall produce a suite of Cyber Security Plans, Processes and Procedures to support the cyber security activities throughout the System lifecycle. The *Contractor* shall provide details of the contents of each document in the Cyber Security Management Plan.
- 5.8 The Cyber Security Management Plan shall include a documentation schedule detailing the following for each document in the security documentation:
- (a) Date on which or stage at which the document will be produced;
 - (b) Date on which or stage at which the document will be accepted; and
 - (c) Frequency with which the document will be updated.
- 5.9 The documents that shall be listed in the security documentation schedule shall include, as a minimum:
- (a) Cyber Security Management Plan
 - (b) Cyber Security Requirement Specification
 - (c) Cyber Security Risk Assessment
 - (d) Cyber Security Audit Plan
 - (e) Cyber Security Non-Compliance / Statement of Applicability Report
 - (f) Cyber Security Lab Implementation Plan
 - (g) Cyber Security Site Implementation Plan
 - (h) System Security Architecture Design
 - (i) Cyber Security Testing and Validation Plan
 - (j) Cyber Security Penetration Test Report/s
 - (k) Cyber Security Operations and Maintenance Documentation
 - (l) Cyber Security Training and Awareness Material
 - (m) Cyber Security Case (If required)

These documents shall be submitted by the *Contractor* to the *Project Manager* for acceptance when first produced, following any update and at regular intervals as accepted by the *Project Manager*.

- 5.10 The *Contractor* shall ensure that all cyber security documentation including Designs, Architectures, Plans, Processes, Procedures and Manuals are provided to the *Employer* at implementation works completion, throughout the operation and maintenance period and following any update(s).
- 5.11 Within the Cyber Security Management Plan the *Contractor* shall define processes and procedures which shall be used throughout the design, build, test, installation and operation and maintenance of the System to:
- (a) Identify – Develop the organisational understanding to identify and manage cyber security risk;
 - (b) Protect – Develop and implement cyber security controls;
 - (c) Detect – Develop and implement activities to identify the occurrence of a cyber security event;
 - (d) Respond – Develop and implement activities to take action regarding a cyber security event; and
 - (e) Recover – Develop and implement activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to a cyber security event.
- 5.12 The *Contractor* shall, as part of the Cyber Security Management Plan, propose a:
- (a) System cyber security disaster recovery plan and associated cyber security incident response plan in line with TfL Standards and Policies and Industry Best Practice;
 - (b) problem reporting plan and a vulnerability management plan in line with TfL Standards and Policies and Industry Best Practice that includes but is not limited to vulnerabilities identified, cyber security threats and intelligence, design or configuration flaws;
 - (c) patch and software management plan in line with TfL Standards and Policies and Industry Best Practice.
- 5.13 The *Contractor* shall, as part of the Cyber Security Management Plan propose a Cyber Security Risk Management Plan which as a minimum will:
- (a) Set out how often and when cyber security risk assessments are conducted;
 - (b) Determine the timeframes to mitigate the risks identified;
 - (c) Reference the output of penetration testing and vulnerability scans and the risks identified by such; and
 - (d) reference and comply with the security requirements set out in this schedule.
- 5.14 The *Contractor* shall produce, maintain and implement a cyber security risk assessment throughout the System lifecycle using the NIST 800-30 "Guide for Conducting Risk Assessments", TfL Policy P123 Cyber Security Risk Management and Industry Good Practise.
- 5.15 The cyber security risk assessment shall be submitted by the *Contractor* to the *Project Manager* for acceptance at regular intervals, frequency to be agreed with the *Project Manager*;

- 5.16 The cyber security risk assessment shall include applicable threat sources, threats and vulnerabilities to the *works* as identified by the *Contractor* in collaboration with the *Project Manager*;
- 5.17 The *Contractor* shall update the cyber security risk assessment when any new vulnerabilities associated to the *works* are identified, either by the *Contractor* or by the *Project Manager*;
- 5.18 The *Contractor* shall classify all risks identified in the cyber security risk assessment in terms of both impact and relationship to safety, RAM, performance or other.
- 5.19 The *Contractor* shall ensure that all cyber security risks relating to safety are cross-referenced with the core safety hazards and provided to the *Project Manager* for acceptance to determine if further risk controls and/or mitigation are required by the *Contractor*;
- 5.20 The *Contractor* shall ensure that all cyber security risks relating to RAM/performance are provided to the *Project Manager* for acceptance to determine if further risk controls and/or mitigations are required by the *Contractor*;
- 5.21 In the event that the *works* requires a Safety Case as part of Engineering Safety and Assurance, the *Contractor* shall update the Cyber Security Case following any significant change in cyber security risk.
- 5.22 Additional cyber security controls deemed necessary following a cyber security risk assessment must be implemented by the *Contractor*.

6 Access Controls and Secure Configuration of Systems

- 6.1 The *Contractor* shall ensure that:
- (a) security patches are applied to System Assets as soon as possible in line with vendor recommendations in accordance with overall risk management;
 - (b) account management and configuration control processes are implemented to ensure that access to System Assets by *Contractor* personnel is limited to the extent required for them to fulfil their roles in supporting the delivery of the *works*;
 - (c) when *Contractor* personnel change roles or no longer support the delivery of the *works*, access rights are to be reviewed and/or revoked;
 - (d) any system administration functionality is strictly controlled and restricted to those *Contractor* personnel who need to have access to such functionality and that the ability of *Contractor* personnel to change the configuration of the OPO CCTV System is appropriately limited and fully auditable;
 - (e) *Contractor* personnel are informed of what constitutes acceptable access of Operational or Information technology, Data and Networks and the consequences of non-compliance;
 - (f) any preconfigured passwords delivered with any System Assets are changed prior to their implementation for use in the OPO CCTV System;
 - (g) the OPO CCTV System have appropriate devices, tools or applications in place to filter traffic or separate connections, such as industry standard firewalls and Malicious Software protection, to all public or private networks which are not controlled by or on behalf of TfL.
 - (h) all wireless functionality is secure; and

- (i) software upgrades and patching must be managed appropriately and access to any software shall be granted using the principle of least privilege.

7 Contractor personnel

- 7.1 The *Contractor* shall appoint a Cyber Security Manager who shall be responsible for the development, monitoring, enforcement, maintenance and enhancement of all cyber security measures set out in this contract.
- 7.2 The *Contractor* shall ensure that all *Contractor* Personnel are vetted appropriately before being allowed to perform any activities associated with this contract. The *Contractor* shall provide the *Project Manager* within sixty (60) days of the *starting date*, and at twelve (12) month intervals thereafter, written confirmation of which *Contractor* Personnel have been vetted in the period and evidence of what checks have been performed to ensure that this obligation has been complied with.
- 7.3 The *Contractor* as soon as it becomes aware, shall notify the *Project Manager* of any security clearance issues in relation to *Contractor* Personnel. The *Contractor* shall immediately undertake any reasonable action requested by the *Project Manager* in relation to mitigating the impact of any such security clearance issues.
- 7.4 The *Contractor* shall:
 - (a) notify the *Project Manager* promptly of the absence of the Cyber Security Manager (other than for short-term sickness or holidays of two (2) weeks or less, in which case the *Contractor* shall ensure appropriate temporary cover for the Cyber Security Manager);
 - (b) ensure that the Cyber Security Manager role is not vacant for any longer period than fourteen (14) calendar days;
 - (c) ensure that all arrangements for planned changes in the Cyber Security Manager provide adequate periods during which the incoming and outgoing Cyber Security Manager work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Systems; and

8 Training

- 8.1 The *Contractor* shall ensure that all its technical personnel and applicable subcontractors have undergone suitable security awareness training prior to their deployment and such security awareness training shall cover, as a minimum; account usage, malicious software, home and mobile working, use of removable media, audit and inspection and Security Incident reporting and data handling. The *Contractor* shall implement an up-to-date on-going programme of security awareness training throughout the contract duration.
- 8.2 The *Contractor* shall provide additional training (as required) for its personnel and its subcontractors, following a Security Incident, the application of a patch or update, or any relevant Operational Change.
- 8.3 The *Contractor* shall ensure that all its installers and technical maintainer personnel are familiar with their responsibilities under applicable law and policies including, as a minimum, the Data Protection Legislation, the Security Policies detailed in this schedule and policies in relation to the handling of protectively marked materials throughout the duration of the contract.

9 Testing

- 9.1 The *Contractor* shall conduct regular automated vulnerability scans of the Systems, as accepted in the Cyber Security Management Plan and ensure that any identified

vulnerabilities are appropriately mitigated or patched in line with this schedule, taking into consideration the risk posed to LUL and the Systems.

- 9.2 The *Contractor* shall conduct security tests, including ethical hacking and penetration tests, to assure compliance with the Security Incident Management Process, the information security provisions in this contract and the Cyber Security Management Plan. The *Contractor* shall conduct such security tests, as agreed with the *Project Manager* and shall include security penetration testing of the Systems and the associated technical infrastructure. Wherever the Systems are accessible from the internet or other such public network, the *Contractor* shall carry out security penetration tests from the internet or the public network.
- 9.3 The *Contractor* shall, within one (1) calendar week of completion of each security test performed, shall provide a report to the *Project Manager* for acceptance detailing:
- (a) the outcome of such security tests including all identified vulnerabilities;
 - (b) the *Contractor's* plans to remedy each such identified vulnerability as soon as possible, provided that any such remediation must be implemented in accordance with this contract.
- 9.4 Following a Security Incident, the *Contractor* shall carry out additional security testing over and above the obligations set out in Section 9.2 as agreed with the *Project Manager*.
- 9.5 The *Project Manager* shall be entitled to send a member of the *Employers* personnel to witness any audit or security tests carried out by or on behalf of the *Contractor*. The *Contractor* therefore shall notify the *Project Manager* no later than two (2) calendar weeks before any planned audit or security test. Following any audit or security test, the *Contractor* shall provide the *Project Manager* with the results of such audits and security tests (in a form to be agreed with the *Project Manager*) within one (1) calendar week of completion of each audit or security test.
- 9.6 Prior to the start of integration testing and then annually thereafter, the *Contractor* shall engage a Crest approved independent third party to conduct a formal audit of the OPO CCTV System against the then current versions of the following:
- (a) the security controls, processes and procedures required pursuant to this contract;
 - (b) the Data Protection Legislation (using BS10012 or another standard as agreed with the *Project Manager*), where applicable; and
 - (c) the Cyber Security Management Plan and Information Security Management System,
- The *Contractor* shall, within five (5) days of becoming aware of actual or potential security issue(s) which impact or could impact the OPO CCTV System, inform the *Project Manager* of each such issue and shall keep the *Project Manager* up-to-date as the *Contractor* investigates the nature and impact of such issue. Within one (1) week of the investigation conclusion, the *Contractor* shall provide to the *Project Manager* a copy of all such findings which are relevant to the Systems.

10 Audit

- 10.1 Without prejudice to any other right of audit or access granted to the *Project Manager* or *Employer* pursuant to this contract or at Law, the *Employer* and/or its representatives may carry out such audits in relation to security matters as are reasonably required to assess the *Contractor's* compliance with the Information Security Management System and the Cyber Security Management Plan.

- 10.2 If any test or audit carried out reveals any non-compliance with this contract or vulnerability, the *Contractor* shall within one (1) week of becoming aware, provide the *Project Manager* with a written plan to remedy each such identified vulnerability as soon as possible, provided that any such remediation must be implemented in accordance with this contract. The *Contractor* shall implement its plans to remedy each identified vulnerability in accordance with such report save to the extent directed by the *Project Manager* in writing.

11 Security Incident Management Process

11.1 The *Contractor* shall:

- (a) establish, document and send to the *Project Manager* a process to identify and respond to Security Incidents and mitigate the impact of such Security Incidents on the Systems, including in relation to assigning clearly defined roles and responsibilities to specific *Contractor* personnel; and
- (b) record each Security Incident and corresponding severity level in the *Contractor's* incident register.

11.2 The *Contractor* shall notify the *Project Manager* no later than one (1) hour upon becoming aware of any Security Incident or any potential Security Incident.

11.3 The *Contractor* will additionally provide written notice with all relevant details reasonably available of any actual or suspected breach of security in relation to personal data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any authority personal data.

11.4 The *Contractor* will additionally provide written notice with all relevant details reasonably available of any actual or suspected breach of security in relation to the plans, processes and procedures as defined within the Cyber Security Management Plan and Information Security Management System. This includes but is not limited to implications with regards to *Contractor* and third party personnel with access to the OPO CCTV System and its information, malware events and malicious activity and those that extend to the leakage of the *Contractor's* corporate information relating to the System deployed and any proprietary information pertinent to the *Employer*. The *Contractor* shall inform the *Project Manager* as soon as they become aware of any breach impact to any *Employer* Assets or relates to the leakage of information relating to those.

11.5 If a Security Incident occurs, the *Contractor* shall, within the framework of the Security Incident Management Process:

- (a) Immediately take steps to assess the scope of the Incident, assess which Systems have been affected and any potential or actual operational impact;
- (b) immediately take steps to assess the scope of the Data, user accounts and/or personal data compromised or affected including, but not limited to, the amount of Data and/or personal data affected;
- (c) immediately take the steps necessary to remedy or protect the integrity of the Systems against any such Security Incident;
- (d) securely collect and preserve evidence, including logs, to support the Security Incident Management Process and send to the *Project Manager* such evidence via secure channels as requested;
- (e) handle any information pertaining to the Security Incident according to the handling requirements for TfL Restricted data defined in TfL's Information Security Classification Standard;

- (f) promptly escalate the Security Incident to a person or governance forum with a level of seniority within the *Contractor's* organisation as the *Project Manager* may reasonably require;
- (g) The *Contractor* shall within seventy-two (72) hours or as instructed by the *Project Manager*:
 - (i) provide an impact assessment;
 - (ii) provide such information in relation to the Security Incident (including, if necessary, by collating such information from its and its Subcontractors' systems and the *Contractor* personnel);
 - (iii) provide relevant *Employer* personnel with supervised access (or, if agreed, direct access) to any relevant systems, *working areas* and *Contractor* personnel in order to investigate the Security Incident; and
 - (iv) follow the *Project Managers* instruction in relation to the steps necessary or desirable to remedy or protect the integrity of the Systems; and
- (h) as soon as reasonably practicable develop and provide the *Project Manager* with a copy of its remediation plan and recommended actions for the Security Incident which sets out full details of the steps taken and to be taken to:
 - (i) correct, make good, reinstate, replace and remediate all deficiencies and vulnerabilities, loss and/or damage to the System Assets, Data, and/or Systems in connection with the Security Incident; and
 - (ii) perform or re-perform any security tests or alternative tests relating to the security of the System Assets and/or Systems as appropriate and within the timescales specified by the *Project Manager*, to assure that the Security Incident has been addressed and its effects mitigated,

The *Contractor* shall fully implement and comply with such remediation plan save to the extent directed by the *Project Manager* in writing.

11.6 The *Contractor* shall provide a detailed report to the *Project Manager* within two (2) working days of the resolution of the Security Incident, such report to detail:

- (a) the nature of the Security Incident;
- (b) the causes and consequences of the Security Incident;
- (c) the actions undertaken and length of time taken by the *Contractor* to resolve the Security Incident; and
- (d) the actions undertaken by the *Contractor* to prevent recurrence of the Security Incident.

11.7 If there is a suspected security event up to and including a Security Incident, the *Contractor* shall to the extent requested by the *Project Manager*:

- (a) provide information in relation to the OPO CCTV System which is relevant, collating if necessary, relevant information from Sub-contractors' systems and the *Contractor* Personnel;
- (b) provide relevant *Employer* personnel with supervised access (or, if the Parties agree, direct access) to any relevant systems, *Contractor* Sites and *Contractor* Personnel in order to investigate the security incident; and

- (c) follow the *Project Managers* directions in relation to the steps necessary or desirable to remedy or protect the integrity of the Systems; and
- (d) work with the *Project Manager* to identify any lessons learnt which could mitigate any gaps in process, policy or controls.

12 Security Logging and Monitoring

- 12.1 The *Contractor* shall ensure that the Cyber Security Management Plan sets out its Monitoring Strategy to monitor its own performance of its obligations under this schedule. The *Contractor* shall update its monitoring strategy as necessary throughout the term of this contract in response to:
- (a) changes to applicable laws, regulations and standards;
 - (b) changes to Good Industry Practice;
 - (c) any relevant Operational Changes or Variations and/or associated processes;
 - (d) any Security Incident; and
 - (e) any reasonable instruction by the *Project Manager*.
- 12.2 The monitoring strategy should include, as a minimum, processes for monitoring and logging (as appropriate):
- (a) networks and host systems to detect attacks originating both on an internal private network or from public networks (e.g. internet);
 - (b) instances of misuse of the Systems, *Contractor* systems used in the delivery of the works and access to TfL restricted data by the *Employers* Personnel and *Contractor* Personnel, including attempts at such misuse;
 - (c) Malicious Software on: (i) the *Contractor* systems used in the delivery of the *works* and, (ii) the Systems;
 - (d) access to and movement of TfL Restricted data, including internal access to such Data; and
 - (e) traffic for unusual or malicious incoming and outgoing activity that could be indicative of an attempt or actual attack.
- 12.3 The *Contractor* shall ensure that access to system logs and monitoring information is strictly restricted to those *Contractor* Personnel who need to access these items to ensure the delivery and integrity of the Systems.
- 12.4 The *Contractor* shall ensure that any monitoring process complies with the monitoring strategy developed in accordance with this schedule and all of its legal and regulatory obligations pursuant to Applicable Law.
- 12.5 The *Contractor* shall implement logging mechanisms to identify *Employer* Personnel and *Contractor* Personnel and their actions when cases of misuse are being investigated and shall ensure that any such recording mechanisms are protected against manipulation and disruption.
- 12.6 The *Contractor* shall regularly review logs to identify:
- (i) anomalies;
 - (ii) suspicious activity; and

- (iii) suspected Security Incidents.

The *Contractor* shall notify the *Project Manager* of such findings in accordance with the contract.

- 12.7 The *Contractor* shall provide copies of any log data collected by the *Contractor* during its delivery of the works (system audit log data) at the *Project Manager's* request in a human readable electronic format such as comma-separated value or Microsoft Excel.

13 Malicious Software

- 13.1 The *Contractor* shall use the latest versions of anti-malware solutions and software available from an industry accepted vendor (unless otherwise agreed by the *Project Manager*) to check for, contain the spread of, and minimise the impact of Malicious Software in the Systems (or as otherwise agreed by the parties).
- 13.2 Notwithstanding the above, if Malicious Software is detected within Systems provided by the *Contractor*, the *Contractor* shall ensure the effect of the Malicious Software is mitigated and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Data, restore the Systems to their desired operating efficiency.
- 13.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Section 10.13.2 shall be borne as follows:
- (a) by the *Contractor* if the Malicious Software originates from the OPO CCTV System, the Third Party Software supplied by the *Contractor* (except where the *Project Manager* has waived the obligation set out in Section 13.1) or *Employer* Data (whilst *Employer* Data was under the control of the *Contractor*) unless the *Contractor* can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the *Employer* when provided to the *Contractor*.
 - (b) otherwise by the *Employer*.

14 Removable Media

- 14.1 The *Contractor* may only use removable media to support its delivery of the works if it has obtained prior written consent of the *Project Manager* and has implemented appropriate controls to ensure that the use of any input or output devices and removable media is restricted strictly to that needed to supply and support delivery of the Systems.
- 14.2 If removable media is approved for use by the *Project Manager*, the *Contractor* shall ensure that it deploys suitable anti-virus and anti-malware checking solutions to actively scan for the introduction of Malware onto systems and networks through all Data imports and exports from removable media and that the removable media is encrypted to a suitable standard accepted in advance with the *Project Manager* in writing.
- 14.3 The *Contractor* shall report any loss or interception of Data as a result of the use of removable media to the *Project Manager*. The *Project Manager* may in such instances to rescind its acceptance in relation to the *Contractor's* continued use of removable media.

15 Mobile and Home Working

- 15.1 The *Contractor* may only use / offer mobile and home working to support its delivery of the works if it has obtained prior written consent from the *Project Manager* and has implemented appropriate controls.
- 15.2 If such consent is granted but the *Contractor* does not have an existing mobile and home working policy for the its personnel, the TfL Home and Mobile Working Cyber Security Policy shall apply to the *Contractor* and its personnel. The *Contractor* adopts the TfL policy in its entirety and without amendment.

15.3 If the *Contractor* has a mobile and home working policy in relation to the *Contractors* Personnel working on this contract, the *Contractor* shall:

(a) ensure through this policy that:

- (i) Data is protected and suitably encrypted in line with Cyber Security Policy when stored outside of the *Contractor* Premises;
- (ii) Data is protected when accessed, imported or exported through a connection other than one which is accessed at the *Contractor* Premises; and
- (iii) Security Incident management plans acknowledge the increased risk posed by mobile and home working such as theft or loss of Data and *Employer* Data and/or devices; and

15.4 The *Contractor* shall report any loss or interception of Data or *Employer* Data as a result of mobile or home working to the *Project Manager* in accordance with the contract.

16 Disposals

16.1 The *Contractor* shall not reuse any System Asset or Removable Media used in the performance of the *works* unless such items have been wiped securely in accordance with a TfL agreed standard.

16.2 The *Contractor* shall securely dispose of and delete Data from System Assets used for the delivery of the *works* to a TfL agreed standard upon the termination or expiry of this contract or when such System Assets are no longer required for the delivery of the *works*, whichever is sooner, and shall be documented accordingly.

16.3 The Contractor shall ensure that the disposal of any System Asset is accurately reflected in the Information Asset Register.

17 Information Security Management System

17.1 The *Contractor* shall within sixty (60) days of the *starting date* submit to the *Project Manager* for acceptance, an Outline Information Security Management System (ISMS). The *Contractor* shall ensure that the Information Security Management System includes the Cyber Security Management Plan.

17.2 The ISMS shall, unless otherwise agreed by the *Project Manager* in writing, be designed to protect all aspects of:

- (a) the *works*;
- (b) all processes associated with the delivery of the *works*; and
- (c) TfL Sites, the *Contractor* solution and any information and Data (including but not limited to TfL Confidential Information and TfL Restricted Data) to the extent used by TfL, the *Employer* or the *Contractor* in connection with this contract.

17.3 The *Contractor* shall within ninety (90) days of acceptance of the Outline ISMS submit to the *Project Manager* for acceptance, a full Information Security Management System.

17.4 The ISMS shall provide a framework of governance models, policies and procedures for the secure operation and maintenance of the *works*. The ISMS should contain but not be limited to:

- (a) The Cyber Security Governance of the System
 - (i) Cyber Security Organisation and Accountabilities

- (ii) Competencies, Accreditation, Training and Skills Management
- (iii) Operational Systems and Assets Classification
- (iv) Cyber Security Risk Management
- (v) Cyber Security Policy Framework
- (vi) Cyber Security Assurance
- (b) The Cyber Security Protection of the System
 - (i) Asset Management
 - (ii) Cyber Security Documentation
 - (iii) Connectivity and Remote Access Management
 - (iv) Media and Temporary / External Devices Management
 - (v) Secure Configuration
 - (vi) Systems Recovery
 - (vii) Access Control and Acceptable Use
 - (viii) Vulnerability Management
 - (ix) System Patching
 - (x) Anti-Malware Management
 - (xi) Configuration Management
 - (xii) Obsolescence Management
 - (xiii) Repaired Asset Handover
 - (xiv) Decommissioning and Disposal
 - (xv) Cyber Security Argument Maintenance
 - (xvi) Personal Data Protection
 - (xvii) NIS Regulation Requirements
 - (xviii) Operational Data Protection
 - (xix) Security Controls Management
 - (xx) Secure Documentation and Data Handling
- (c) The Cyber Security Detection of the System
 - (i) Detection of Malicious Code
 - (ii) Network Management
 - (iii) Collection and Processing of System Logs
 - (iv) Intrusion Detection
 - (v) Triage, Assessment and Classification of Cyber Security Incidents

- (d) The Cyber Security Response and Recovery of the System
 - (i) Preparation
 - (ii) Detection
 - (iii) Containment
 - (iv) Eradication
 - (v) Recovery
 - (vi) Lessons Learnt
- 17.5 The *Contractor* shall make any document referenced in the ISMS available to the *Project Manager* upon request.
- 17.6 If the investigation of a Security Incident reveals weaknesses or flaws in the ISMS, then any change to the ISMS to remedy the weakness or flaw shall be submitted to the *Project Manager* for acceptance. For the avoidance of doubt, if a change needs to be made to the ISMS to address an instance of non-compliance with the Cyber Security Management Plan or security requirements, the change to the ISMS shall be at no cost to the Employer.
- 17.7 The ISMS will be fully reviewed in accordance with ISO/IEC 27001 by the *Contractor* at least annually, or from time to time as agreed with the *Project Manager*, in response to:
 - (a) changes to Good Industry Practice;
 - (b) any relevant Operational Changes or Variations or proposed Operational Changes or Variations to the Systems and/or associated processes;
 - (c) any new perceived or changed security threats; and
 - (d) any reasonable request by the *Project Manager*.
- 17.8 The *Contractor* shall provide the results of such reviews to the *Project Manager* (together with such related information as the *Project Manager* may reasonably request) no later than seven (7) days after their completion. The results of the review should include, but is not limited to:
 - (a) suggested improvements to the effectiveness of the ISMS;
 - (b) updates to the risk assessments;
 - (c) proposed modifications to the procedures and controls that affect the ability to respond to events that may impact on the ISMS; and
 - (d) suggested improvements in measuring the effectiveness of controls.
- 18 Cyber Security Requirements Compliance**
- 18.1 During the implementation works and the operational and maintenance lifecycles of the *works*, the *Contractor* shall comply with this schedule as well as the following Standards and Policies:
 - (a) P123 Cyber Security Risk Management
 - (b) P124 Secure Builds and Configurations
 - (c) P125 Network Cyber Security
 - (d) P126 System Access Control

- (e) P127 Cyber Security Incident Management
 - (f) P128 Malware Prevention
 - (g) P129 Security Logging, Monitoring and Audit
 - (h) P130 Removable Media Controls
 - (i) P131 Home and Mobile Working
 - (j) P132 Third Party Cyber Security
 - (k) EASF-POL-0004 Secure Network Engineering for Computer Based Engineering Assets
 - (l) S1741 Cloud Cyber Security
 - (m) S1744 Operational Technology Cyber Security
 - (n) S1748 Wireless Networks and Communications
 - (o) S1749 Secure Software, Application and Web Development
 - (p) S1782 TfL Information Security Classification Standard
 - (q) TfL Cyber Security Assurance Principles
- 18.2 The *Contractor* shall assess the applicability of individual cyber security controls based on the *Contractor's* submission against the contract scope of works and subject to a cyber security risk assessment. The applicability of individual cyber security controls shall be provided to the *Project Manager* for review and acceptance.
- 18.3 The cyber security controls deemed applicable must be captured as project requirements by the *Contractor* in the relevant project documentation and/or requirements management tools.
- 18.4 The *Contractor* shall provide traceability for the cyber security requirements through the entire design, build, testing, installation and handover of the *works*.
- 18.5 All applicable cyber security controls must be implemented by the *Contractor*.
- 18.6 During the maintenance and operation of the *works* the *Contractor* shall comply with the applicable cyber security control Maintenance Requirements of S1744 Operational Technology Cyber Security Standard.
- 18.7 Any non-compliances with the requirements and individual cyber security controls of the Standards and Policies shall be identified by the *Contractor* and submitted by the *Contractor* for acceptance by the *Project Manager*.
- 18.8 Exclusion of applicable cyber security controls must be justified by the *Contractor* with a cyber security risk assessment including appropriate compensating controls and these must be accepted by the *Project Manager* prior to implementation.
- 18.9 Additional cyber security controls deemed necessary following a cyber security risk assessment must be implemented by the *Contractor*.
- 18.10 The *Contractor* shall ensure that all applicable cyber security requirements are fully defined in all System Interface Control Documents.
- 18.11 The *Contractor* shall ensure that additional cyber security requirements developed throughout the contract are captured, tracked and implemented.

- 18.12 During the implementation works and the operational and maintenance lifecycles of the *works*, the *Contractor* shall adhere to the principles, practices and guidance contained within the following Industry Best Practise documents:
- (a) IEC BS 62443 suite of Standards.
 - (b) CPNI Security for Industrial Control Systems framework documents.
 - (c) NCSC 10 Steps to Cyber Security.
 - (d) DfT Rail Cyber Security Guidance to Industry.
- 18.13 During the implementation works and the operational and maintenance lifecycles of the Works, the *Contractor* shall comply with the Objectives and Principles of the Network and Information Systems Regulations 2018. The *Contractor* should use where relevant, the Guidance that supports each of the Principles.

19 Cyber Security Lifecycle Requirements

- 19.1 The *Contractor* shall produce a System Security Architecture Design. This design document shall ensure the architecture and design delivers all the cyber security requirements and risk mitigations.
- 19.2 The *Contractor* shall produce a Cyber Security Lab Implementation Plan and a Cyber Security Site Implementation Plan. These plans shall ensure that the *Contractor's* development, testing, installation, lab and repair locations are suitably cyber secure and are free from malware.
- 19.3 The *Contractor* shall ensure that any device sent for repair or replacement is free from malware upon return to the System.
- 19.4 The *Contractor* shall produce a Cyber Security Testing and Validation Plan detailing the testing processes that complies with the Cyber Security Lifecycle section as well as any Factory, Site, function or component testing of S1744 Operational Technology Cyber Security Standard.
- 19.5 The *Contractor* shall, as part of the Cyber Security Testing and Validation Plan, undertake security testing and penetration testing of the *works* throughout the contract, in particular at Factory Acceptance Testing and Site Acceptance Testing. The security testing and penetration testing at Site Acceptance Testing shall as a minimum:
- (a) Demonstrate that remediation activities as a result of the security testing and penetration testing undertaken at Factory Acceptance Testing have been completed;
 - (b) Demonstrate the absence of vulnerabilities and effectiveness of security controls.
- 19.6 The *Contractor* shall provide all information on known or newly discovered Cyber Security Vulnerabilities and flaws on a monthly basis. Cyber Security vulnerabilities shall be categorised in accordance with the Common Vulnerability Scoring System.
- 19.7 The *Contractor* shall provide and apply software updates and patches to all known security vulnerabilities and flaws every six (6) months for the contract duration.
- 19.8 The *Contractor* must provide and apply patches for Critical vulnerabilities and flaws within fifteen (15) days or as agreed with the *Project Manager*. Critical vulnerabilities are defined in accordance with the Common Vulnerability Scoring System.
- 19.9 The *Contractor* must undertake full testing and validation of any software updates and patches on an operational replica System and provide evidence that they do not compromise the System before applying the updates and patches to the System. The

evidence shall be in the form of a detailed test report. For the duration between being informed of the critical vulnerability to when the patch is made available, the *Contractor* shall provide temporary remediation and recommended actions.

- 19.10 The *Contractor* shall ensure that all software updates are hardened in line with industry best practise to ensure that unnecessary services and programmes are removed.
- 19.11 In the event that anti-malware software is utilised in the *works*, the *Contractor* shall provide and apply anti-malware signature updates every calendar month.
- 19.12 In the event that anti-malware software is utilised in the *works*, the *Contractor* must undertake full testing and validation of any anti-malware signatures on the *Contractor's* operational replica System and provide evidence that they do not compromise the System before applying the signatures to the System. The evidence shall be in the form of a detailed test report.
- 19.13 In the event that the *works* requires a Safety Case as part of Engineering Safety and Assurance, the *Contractor* shall produce a Cyber Security Case within the Safety Case as specified by TfL's "Cyber Security Assurance Principles".
- 19.14 During the operation and maintenance of the System, the *Contractor* shall annually undertake a Cyber Security assessment in collaboration with the *Employer*. The purpose of this activity includes but is not limited to ensuring that current Cyber Security Controls, Plans and Processes are current and effective, that the Cyber Security Plans and Processes are being adhered to and being enforced, to determine changes on the Cyber Security Risk to the System and to ensure that software updates, signatures and patching processes are current and effective. This may require the *Contractor* to provide recommended actions for and update and disseminate security plans and processes if necessary. This extends to both the System and all the *Contractor* locations for testing, development and repairs.
- 19.15 During the operation and maintenance of the System, the *Contractor* shall, with the use of a TfL endorsed third party, undertake penetration testing of the System every twelve (12) months in collaboration with the *Employer*. The purpose of this activity includes but is not limited to ensuring that vulnerabilities of the System are identified and addressed. This may require the *Contractor* to address identified vulnerabilities and undertake remediation activities at the *Contractor's* own cost.
- 19.16 The *Employer* reserves the right to audit at any time any aspect of the Cyber Security management of the *works* including but not limited to development, lab and repair locations, personnel, security plans and processes, and patch, software update and signature testing or undertake a request for evidences to the *Contractor* in order to demonstrate compliance with this schedule.
- 19.17 The *Contractor* shall ensure that all personnel who have interactions with the design, development, maintenance or repair of the System and the *works* are cleared through their own HR policies. The *Contractor* shall evidence compliance with this requirement to the *Project Manager* upon request.
- 19.18 The *Contractor* shall have and ensure the continuous implementation of a process for managing on a need to know basis the access to the System and the *Contractor's* corporate information relating to the System deployed and any proprietary information pertinent to the *Employer*. The process shall identify the activities and controls applicable to new starters, movers & leavers to the *Contractor's* organisation.
- 19.19 The *Contractor* shall ensure and provide evidence that the *Contractor* and all the *Contractor's* subcontractors and third parties in their supply chain adhere to all the defined security requirements within this schedule, including the Plans, Processes and Procedures and the security classification and associated handling of information.

- 19.20 The *Contractor* shall ensure that all credentials, passwords or security codes for any part of the System (including network devices) are changed prior to the System going into operation.

Appendix 1 – Cyber Security Management Plan Template

Refer to file titled: Operational Technology Cyber Security Management Plan Template Rev A.xlsx

Schedule 14

Access

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1 Introduction

- 1.1 This schedule describes the Contractor's obligations in relation to Access.

2 Glossary

- 2.1 The terms and phrases defined in the below table apply to all elements of this schedule.

Term	Meaning
Access	means access to the LUL Network.
Access Plan	the access plan as produced by following Appendix 03.7
Access Strategy	describes the overall Access Plan at a high level. It covers the duration of the works and describes the types of Access planned for various activities.
Application to Work Form	is used by the <i>Contractor</i> if opportunities to use the <i>Employer's</i> existing Closure programme are identified.
Closure	means any planned disruptive works which result in facilities required for Revenue Service to be not available and is one of a Major Closure, a Minor Closure or a L&E Closure.
Engineering Hours	this term applies to the running line and is described as being when traction current is switched off (as published in the Guide to Switching Traction Current On and Off subject to variance as published in an Engineering Notice) and trains are not running.
Engineering Look Ahead Notice	a draft publication produced and circulated by LUL providing a week-view of items that, at that time, are planned to be published on the Engineering Notice for a specific shift
Engineering Notice	a publication produced and circulated by LUL containing details of engineering works, special current arrangements, engineers' possessions and engineers' trains and similar activities not included in the Traffic Circular
Exclusive Access	is a category of Access that prohibits any party not directly involved in the works for which Exclusive Access has been booked from working in that worksite. The <i>Contractor</i> is required to clearly define the area covered by the Access request and to limit the area to the minimum required to deliver the relevant works.
Lift & Escalator Closure (L&E Closure)	means closure of lifts, escalators, travellers, fixed stairways, route ways or cross-passageways which can be accommodated without requiring a Station or Platform to be closed.
Major Closure	means any planned disruptive work which results in any LU service being unavailable between 0600 and 2100 on a weekday (excluding Bank Holidays).

Minor Closure	means any planned disruptive work, apart from Lift & Escalator Closures (defined below) which results in any LU services being unavailable outside the hours of 0600 and 2100 on a weekday (excluding Bank Holidays) or at any other time at weekends and Bank Holidays (including the Night Tube Running Period for work on sites where Night Tube is in operation).
Nightly Engineering Protection Arrangements (NEPA)	a publication produced and made available by LUL containing details of safety related material for engineering works and Engineer's Trains and Engineer's Vehicles.
Non-Restrictive/Non-Exclusive Access	is a category of Access for undertaking non-restrictive and non-exclusive works on the LUL Network requiring the <i>Contractor</i> to clearly define the area covered by the Access request and to limit the area to the minimum required to deliver the relevant works.
Published	in respect of Restrictive Access and Exclusive Access to Track 'Published' means the works which need to be notified in the Engineering Look Ahead Notice, the Engineering Notice and the Nightly Engineering Protection Arrangements (NEPA) Notice. For Restrictive Access and Exclusive Access to Stations 'Published' means the works which need to be notified in the Station Works Plan.
RailSys	is an online system that supports the planning of track and stations Access and is mandatory tool for preparation of Access Plan and Works Plan.
Restrictive Access	is a category of Access that places a restriction on what can take place within a particular worksite and where the restriction will apply to all parties attempting to work that particular shift. The <i>Contractor</i> is required to clearly define the area covered by the Access request and to limit the area to the minimum required to deliver the relevant works.
Self Serve Access	is a category of access for undertaking Non-Exclusive and Non-Restrictive works on the LUL Network requiring only the RailSys number without any further approvals.
Traffic Circular	Is the weekly traffic circular which contains diverse information such as, infrastructure changes, train service changes, events affecting LUL, notification of restrictions to LUL operations and operational communications.

3 Access Planning

- 3.1 The *Contractor* is responsible for planning its works associated with delivery of the *works* and requesting Access. To do so the *Contractor* shall complete the Works Plan(s) as detailed in this document. The *Employer* is responsible for arranging Access in accordance with the Works Plan and the arrangements set out in this document.

- 3.2 The *Contractor* shall collaborate with the *Employer* with the objective of maximising the availability and efficient use of Access to the railway whilst avoiding or minimising disruption to the travelling public.
- 3.3 The *Contractor* shall plan Installation and commissioning of all station / platform based equipment to be completed during Engineering Hours.
- 3.4 The *Contractor* shall not book disruptive Closures including Major Closure, Minor Closure and Lift & Escalator Closure.
- 3.5 The *Contractor* shall prepare two types of Access planning documents in relation to the works:
- a) Access Strategy;
 - b) Works Plans.
- 3.6 All Access planning documents must maximise the efficient use of the available working time and take into account the following in the Access planning process:
- a) whether the *works* can be carried out in Traffic Hours (and the *Contractor* shall construct the Works Plans accordingly to achieve the optimisation of working time);
 - b) the utilisation of existing planned Closures (booked by Others);
 - c) the hours/shifts/days in the week required to be worked in order to comply with the Accepted Programme;
 - d) the use of Non Restrictive/Non Exclusive Access where possible;
 - e) whether the productivity of Engineering Hours working can be increased, safely, by completing the clearance of workers, Equipment and Materials in Traffic Hours (and the *Contractor* shall support such plans with method statements detailing appropriate measures for the protection of the public);
 - f) the maximisation of working time during Engineering Hours when accessing the track through a Station (where it is safe to do so, all persons, plant and equipment and materials may be positioned within the Station ready to access the Track immediately on confirmation of traction current being turned off; traction current switching times are detailed in the Works Information 03 Access);
 - g) a standard call back time of 20 (twenty) minutes for Access to the Track before the expiry of each Shift (to allow for the safe removal of all workers, Equipment and Materials). A reduced call back time may be available where the *Contractor* works within a possession as defined in the LU Rule Books and the *Contractor* can demonstrate that it can achieve this safely and that it presents no additional risk of over run into Traffic Hours. Reduced call back times will be considered on an activity-by-activity basis by the *Employer*;
 - h) any limitation on Engineering Hours as published in the Engineering Look Ahead Notice, the Engineering Notice, the Nightly Engineering Protection Arrangements (NEPA) or the Traffic Circular, or as may be notified by the *Project Manager* or Client Representative from time to time;
 - i) the time required for the *Contractor* to ensure the worksite is left clean and safe; and
- 3.7 The *Contractor* shall use RailSys for preparation of an Access Plan and Work Plans. The *Project Manager* or Client Representative is responsible for arranging access to RailSys via LU access planning team.
- 3.8 Guidance on using RailSys is provided in Appendix 03.10.

4 Access Strategy

- 4.1 The *Contractor* shall submit an Access Strategy to the *Project Manager* or Client Representative for acceptance within eight (8) weeks of the Order Commencement Date. The *Project Manager* or Client Representative either accepts the Access Strategy or notifies the *Contractor* of the reasons for not accepting it within twenty (20) days.
- 4.2 The Access Strategy shall describe the overall Access Plan at a high level. It should cover the duration of the *works*, describe the types of Access planned for various activities and broad timeline associated with access.
- 4.3 The Access Strategy shall be updated and re-submitted by the *Contractor* for acceptance:
 - a) if the accepted Access Strategy is no longer accurate and/or applicable in all the circumstances;
 - b) when a change is required to align with the Accepted Programme; or
 - c) within twenty (20) Working Days after the *Project Manager* or Client Representative has requested the *Contractor* to do so.

5 Works Plan

- 5.1 The *Contractor* shall submit Works Plans for each Line to the *Project Manager* or Client Representative for acceptance in sufficient time to meet the notice, review and booking times.
- 5.2 Within two weeks of a Works Plan being submitted, the *Project Manager* or Client Representative will notify the *Contractor* of any Access requests in the Works Plan which are not accepted and the reasons for not accepting them.
- 5.3 The *Project Manager* or Client Representative will not accept or reject the entire Works Plan. The Works Plan will be managed on an Access request by Access request basis. The flowchart shown in Appendix 03.7 is then followed and describes how the Works Plan is processed and used to produce the Access Plan.
- 5.4 The Works Plan shall describe Access requirements at a granular level. It will, in detail, describe the requirements of all work parties for all shifts and shall include as a minimum, but without limitation, the following information:-
 - a) type of access;
 - b) description of works;
 - c) date of works;
 - d) Station / Track location;
 - e) out-stabling requirements;
 - f) protection requirements;
 - g) Site representative name and contact number;
 - h) details of tools, plant and equipment being used;
 - i) details of known specific safety risks (e.g. working at height, asbestos).
- 5.5 The Works Plan shall be updated and re-submitted by the *Contractor* for *Project Manager* or Client Representative acceptance:
 - a) if the Access Plan is no longer accurate and/or applicable in all the circumstances;

- b) when a change is required to align with the Accepted Programme; and
- c) as soon as reasonably practicable, but in any event no later than ten (10) Working Days after the *Project Manager* or Client Representative has requested the *Contractor* to do so.

6 Access Rejection

6.1 The *Project Manager* or Client Representative may reject the Access Strategy or Access requests in a Works Plan in circumstances including the following:

- a) it is not compatible with the Accepted Programme;
- b) the Access Strategy or Works Plan (as applicable) is not compatible with other submitted Access documentation;
- c) the planned Access or closure types are inappropriate for the *works*;
- d) they do not take into account the available types of Access arrangement;
- e) the *Contractor's* planned works are not practicable or realistic to execute;
- f) it does not show the information required;
- g) it does not maximise, where reasonable, the efficient use of available working time or Access;
- h) insufficient Access is shown for the *Contractor* to provide the *works*;
- i) it does not adequately make use of existing planned Closures, where it is reasonable to do so;
- j) it does not comply with the timescales for booking Access;
- k) it does not allow a reasonable processing time for the *Project Manager* or Client Representative;
- l) it does not adequately provide for other works to be carried out by the *Employer* and/or Others, where it is reasonable to do so;
- m) excessive Access requirements are shown;
- n) it does not allow for minimum call-back periods or other working constraints as detailed in the Works Information;
- o) it does not allow sufficient time for worksites and the Site as a whole to be left clean and safe;
- p) the Works Plan does not provide as a minimum all the information required.

7 Additional Access

7.1 Where the *Contractor* requires additional Access to that stated in the Access Plan (within the constraint of the maximum working hours available within the booked Access types), the *Contractor* may request additional Access from the *Project Manager* or Client Representative. The *Project Manager* or Client Representative is under no obligation to agree to such a request but will use its reasonable endeavours to provide the requested Access. The *Contractor* shall obtain the *Project Manager's* or Client Representative's acceptance prior to using any such additional Access.

8 Access Publications & Clash Checking

- 8.1 The *Project Manager* or Client Representative will be responsible for clash checking against pre-existing bookings during the period in which the Access is being processed and prior to the *Contractor* being notified of a successful Access booking. Thereafter the *Contractor* shall be responsible for checking for clashes in respect of Access booked by the *Employer* and Others in respect of which the *Employer* has provided the *Contractor* with the Access Visualisation Tool.
- 8.2 In the event of clashes identified by the *Contractor*, the *Contractor* shall notify the *Project Manager* or Client Representative and submit a revised Works Plan for acceptance. The indicative publication timescales (in advance of proposed works) for the above notices are as provided in Appendix 03.3.

9 Cancelled/Delayed Access

- 9.1 In the event that the *Contractor* attends the Site and Access is not provided by the *Employer* in accordance with the Access Plan the *Contractor* shall complete and submit to the *Project Manager* or Client Representative a Cancelled or Delayed Access Form in the form contained in Appendix 03.4 within four (4) Working Days of the occurrence.

10 Contingency Access

- 10.1 The *Contractor* shall book contingency access against its Non-Restrictive/Non-Exclusive Access requirements but shall not exceed a 25% contingency. The *Contractor* is encouraged to liaise with the *Project Manager* or Client Representative to assess the level of contingency access required by the *Contractor* for Restrictive Access or Exclusive Access. All such requests for contingency access must be reasonable.
- 10.2 Contingency access may take the form of an alternative site or sites on a given date; or additional dates at any given location, beyond those which are planned to be required.
- 10.3 The *Contractor* shall cancel at the earliest possible opportunity any contingency access which is not required to avoid wasted Access, resource and cost.

11 Access Types

- 11.1 The *Contractor's* Access planning documents shall be based upon the types of access as set out below. In preparing the Access planning documents the *Contractor* shall select the type of Access required for the *works*.
- 11.2 The Access Types which can be used in the formulation of the Access Plan will be agreed between the *Contractor* and the *Project Manager* or Client Representative.

Self Serve Access

- 11.3 Self Serve Access is a category of access for undertaking Non-Exclusive and Non-Restrictive works on the LUL Network, using all necessary tools and equipment. It is valid for both Station and Track. The RailSys number is valid for only one access event at one location. It can be raised at short notice and the RailSys number is instantly raised without the need for approval. Self Service Access is not published.

Non-Restrictive/Non-Exclusive Access

- 11.4 Non-Restrictive/Non-Exclusive Access is a category of Access for undertaking non-restrictive and non-exclusive works on the LUL Network, using all necessary tools and equipment. It is valid for both Stations and Track.
- 11.5 The *Contractor* shall clearly define the area covered by a Non Restrictive/Non Exclusive Access request and limit the area to the minimum required to deliver the relevant works.
- 11.6 The *Contractor* should note that Non-Restrictive/Non-Exclusive Access is not published.

Restrictive Access

- 11.7 Restrictive Access is a category of Access that places a restriction on what can take place within a particular worksite and where the restriction will apply to all parties attempting to work that particular Shift.
- 11.8 The *Contractor* shall only request Restrictive Access where the *Contractor* can demonstrate that this is the most appropriate form of Access. Restrictive Access will not typically be permitted to cover a protracted number of Shifts or consecutive Shifts across the same geographical area.
- 11.9 The *Contractor* shall clearly define the area covered by a Restrictive Access request and shall restrict the area to the minimum required to deliver the relevant *works* and avoid unduly impeding the *works* of the *Employer* and or Others.
- 11.10 Restrictive Access is published and it is the *Contractor's* responsibility to check that the granted Access has been published and to check that the published details are correct.

Exclusive Access

- 11.11 Exclusive Access is a category of Access that prohibits any party not directly involved in the *works* for which Exclusive Access has been booked from working in that worksite.
- 11.12 The *Contractor* shall only request Exclusive Access where it can demonstrate that this is the most appropriate form of Access. Exclusive Access will not typically be permitted to cover a protracted number of Shifts or consecutive Shifts, across the same geographical area.
- 11.13 The *Contractor* shall clearly define the area covered by an Exclusive Access request and restricts it to the minimum area required to deliver the relevant works and to avoid unduly impeding the *works* of the *Employer* and or Others.
- 11.14 Exclusive Access is published and it is the *Contractor's* responsibility to check that the granted Access has been published and to check that the published details are correct.

Emergency Access

- 11.15 Emergency Access is Access required to deal with an incident as defined in the LUL Rule Books, or required to rectify the failure of an asset which, if not rectified, would have a material adverse impact on passenger services or safety of the line for the following day. Emergency Access takes precedence over any other booking or request as directed by the *Project Manager* or Client Representative.

Access Subcategories

- 11.16 Within the above Access Types there are a number of Access subcategories which are used in the Access booking system. The subcategories are detailed in Appendix 03.5 and a description of the typical work to which they apply, such as Track possession, is also provided in order to assist the *Contractor* in identifying the Access Type applicable to particular works.

12 Access Notice Periods

- 12.1 The Access Plan and Access Requests shall be prepared in RailSys.
- 12.2 In preparing a Works Plan, Access Plan and Access Requests the *Contractor* shall comply with the minimum booking periods for the applicable Access, as set out in Table 1 below:

Table 1

Type	Applicable to:			
	Station Access	Track Access	Working Time in	
			Engineering Hours	Traffic Hours
Non-Restrictive/Non-Exclusive Access	Yes (14)	Yes (14)	Yes	Yes
Restrictive Access	Yes (21)	Yes (56)	Yes	Yes
Exclusive Access	Yes (21)	Yes (56)	Yes	Yes

a) The above table gives the T-date in days, the values in brackets, by which planning must be completed (the "Latest Request Date"). The *Contractor* must allow for sufficient time for adequate Access planning.

12.3 The *Contractor* shall plan and apply for Access as early as possible. The *Contractor* may plan Access after the Latest Request Date, but this will be managed by the *Employer* on a reasonable endeavours basis and as such, is not guaranteed.

Utilising Existing Closures

12.4 The *Contractor* shall actively seek to utilise the *Employer's* existing Closure programme as provided by the *Project Manager* or Client Representative to progress the *works*. Details of existing planned Closures will be provided by the *Project Manager* or Client Representative either periodically or upon request from the *Contractor*.

12.5 The *Contractor* shall identify all possible opportunities to use the *Employer's* existing Closure programme and provide the information necessary to complete the Application to Work Form. The *Contractor* shall complete the Application to Work Form and submit this to the *Project Manager* or Client Representative for acceptance. Such form shall be submitted a minimum of 15 (fifteen) weeks prior to the relevant Closure start date. The *Contractor* shall attend the planning meetings for the relevant Closure and shall prepare for submission any information as may be requested by the *Project Manager* or Client Representative as part of this planning process.

12.6 The *Contractor* may also propose an extension to any existing *Employer's* planned Closure. The *Project Manager* or Client Representative will consider the proposal and, where the business benefit more than offsets the increased customer disruption, will ask the *Contractor* to make a formal application. Such request must be made prior to the Latest Request Date. Where such application has been approved by the *Project Manager* or Client Representative, the *Contractor* shall submit an updated Works Plan to reflect such application to the *Project Manager* or Client Representative for acceptance.

12.7 The *Contractor* acknowledges the level of disruption and limitation of journey opportunities which result from Closures and where the *Contractor* plans any change to the scope or type of works to be undertaken under an existing Closure, the *Contractor* shall seek the approval of the *Project Manager* or Client Representative. The *Contractor* acknowledges and agrees that if the *Employer* considers that changes in scope are such that the business benefit of the *works* to be carried out is no longer commensurate with the disruption caused, that the Closure may be cancelled. Where a Closure is cancelled in these circumstances the *Contractor* shall submit a revised Works Plan for acceptance by the *Project Manager* or Client Representative.

13 Booking and Arranging Access

- 13.1 The *Project Manager* or Client Representative shall book and co-ordinate Access to the Site with the *Employer* in accordance with the Access process and the Access Plan. Access to the Site will be refused without a valid Access Number and the *Contractor* shall check that it is in possession of a valid Access Number for all access requirements detailed on the Access Plan. If the *Contractor* is not in possession of the same it shall advise the *Project Manager* or Client Representative accordingly.
- 13.2 The *Contractor* shall ensure that individuals attending LUL Network are in possession of a valid LUCAS or Sentinel smartcard.
- 13.3 Note the *Employer* is phasing out the use of LUCAS smartcards and is adopting Sentinel as a replacement access and competency control system. On expiry of existing LUCAS smartcards the *Contractor* shall ensure its personnel required to work on the *Employer's* infrastructure obtain replacement Sentinel smartcards if they are not already Sentinel smartcard holders.

14 Access Control

- 14.1 All *Contractor* personnel require either:
- a valid LUCAS smartcard OR
 - a Sentinel smartcard endorsed with the Industry Common Induction (ICI) competence plus the LUL ICI endorsement in order to access the Site and carry out works on LUL operational infrastructure.
- 14.2 The *Contractor* is registered to be a Sentinel sponsor via the Rail Industry Supplier Qualification Scheme (RISQS). Further details can be found at the following Sentinel website address (note that Sentinel administer the scheme on behalf of RISQS):
- <http://info.railsentinel.co.uk/help-support/sponsors/>
- 14.3 All sponsors and sponsored individuals must abide by the Sentinel scheme rules, the latest version of which can be found at the following Sentinel website address:
- <https://www.railsentinel.co.uk/Content/Downloads/SentinelSchemeRules.pdf>
- 14.4 The LUCAS and Sentinel smartcards are specific to an individual and are not transferable.
- 14.5 The *Contractor's* personnel carry their LUCAS or Sentinel smartcard with them at all times when working on LUL operational infrastructure and present them to any authorised representative of the *Employer* for inspection when requested to do so. Failure to produce a valid smartcard, or requisite certification, for inspection may result in the individual being instructed to leave site. A smartcard is not required when working solely on non-operational LUL Network property.
- 14.6 The smartcard does not entitle the *Contractor's* staff or personnel to any benefits other than permitting access to the Site for the purpose of carrying out works during the agreed hours of work. The LUCAS smartcard remains the property of the *Employer* and is required to be returned immediately upon request.
- 14.7 Details of required courses and medicals are detailed in QUENSH.
- 14.8 Exceptions to the smartcard process

For certain exceptional Access circumstances it may not always be practical or cost effective to enrol suppliers or Others onto the Sentinel scheme.

Such scenarios whereby temporary LUA-LU paper certificates are issued may be:

- specialised *Contractors* requiring limited Access on a short term basis;
- survey work requiring limited Access for a short time.

The *Contractor* must obtain the *Project Manager's* or Client Representative's written permission for exceptional Access to the Site or the Working Areas. This must detail personnel and work activities and be obtained prior to commencement on Site. This will be passed to the *Employer* who will issue a temporary LUA-LU paper certificate, subject to their agreement that the situation merits exceptional Access.

- 14.9 Any person attempting to gain access to the Site who is not in possession of a valid LUCAS or Sentinel smartcard is treated as a visitor. All visitors, except for authorised collection or delivery drivers, are escorted or supervised at all times by an authorised member of staff whilst on Site.
- 14.10 The *Contractor* maintains a register of all visitors including:
- Name
 - Employer
 - Nature of business
 - Person(s) being visited
 - Time in
 - Time out
 - Supervisor/escort name including signature
- 14.11 The *Contractor* provides a health and safety site briefing to the visitor who signs a form to confirm that they have received the briefing and understand the site rules and their respective responsibilities as a visitor.
- 14.12 The *Contractor* issues the visitor a temporary pass that is valid for a maximum 24 hours and the expiry date and time is clearly indicated.
- 14.13 The *Contractor* ensures the temporary pass is returned when the visitor leaves the site and that a list of any lost passes is maintained.
- 14.14 Lost electronic visitor passes are de-activated immediately on the *Contractor* being made aware of the loss.
- 14.15 When booking in and out of the Site, the *Contractor's* staff and personnel report in, record entry and exit, and present their smartcards when and where required, in accordance with the local Access control arrangements.
- 14.16 Where a smartcard reader is installed on Site as part of the local Access control arrangements, then all *Contractor* staff and personnel as a mandatory requirement must swipe their smartcard on entry and egress from the Site. Any individuals found on site where such a card-reading system is in place who have not followed such a procedure may be instructed to leave Site for the duration of the associated shift, regardless of whether they may hold the appropriate smartcard. The *Employer* takes no responsibility for any abortive costs or impact to schedule of any such instruction to any member of the *Contractor's* staff under such circumstances.

15 Access within the Railway Environment

Interference with Railway Plant and Track

- 15.1 The *Contractor* shall ensure that its staff and personnel do not operate or interfere with any railway Plant or Track in any manner whatsoever except as required by these Implementation Works Terms.

- 15.2 The *Contractor's* staff and personnel shall not at any time trespass upon the railway.
- 15.3 During the carrying out of the *works* the traffic along the LUL Network will be continued and all rules and regulations must be strictly observed by the *Contractor*. These rules and regulations may from time to time be updated by the *Employer*.
- 15.4 The *Contractor* shall Provide the Works in such manner so as not to interrupt endanger or interfere in any way with the LUL Network or the traffic thereon or equipment thereon existing. The *Employer* will permit the *Contractor* reasonable facilities to enable it to carry out the relevant works but the *Contractor* must strictly observe any rules, regulations or instructions which the *Contractor* may from time to time receive from the *Project Manager* or Client Representative for the working and protection of such traffic and protection of cables, signals, permanent way or other equipment or for the protection of persons employed on or adjacent to the Site.

Interrupted or Delayed Access

- 15.5 The *Contractor* acknowledges the *Employer's* frequent operational need to run Engineering Trains and Sleet Trains, both on a planned and unplanned basis.
- 15.6 The *Contractor* shall make itself familiar with and cognisant of such issues by monitoring Published access related notices and shall allow for any planned Engineering Train movements within the planning and programming of the *works*. The *Contractor* shall react to such disruptions by redeploying operatives and re-sequencing the relevant works so as to mitigate the effects in such circumstances where interrupted or delayed Access may occur. The *Contractor's* planning shall allow for delays and interruptions and highlight such contingency work operations that the *Contractor* can carry out in the event that interrupted or delayed Access occurs.

16 Protection

- 16.1 The *Contractor* shall consult with and agree all protection arrangements (including provision of additional Specialist Protection resources) with the *Project Manager* or Client Representative. The categories for protection and the responsibilities for provision of the resource are given in Appendix 03.9.
- 16.2 The *Contractor* provides a minimum of one qualified site person in charge for each work party.
- 16.3 The *Contractor* shall seek the *Project Manager's* or Client Representative's approval for the agreed protection arrangements (including provision of agreed Specialist Protection resources) by submitting a Work Request that complies with the applicable LUL Rule Book requirements.
- 16.4 The *Contractor's* site person in charge (who works on the Track) shall hold a dual qualification enabling them to provide protection as well as provide work site supervision and shall work as part of the protection detail. If works are planned to take place during Engineering Hours, the site person in charge shall hold a dual qualification enabling them to provide protection during Engineering Hours, and shall be familiar with the area that they will be working in and safe routes to / from the worksite.
- 16.5 In the event of additional Specialist Protection staff being required to be provided by the *Employer*, the *Contractor* shall advise the *Project Manager* or Client Representative accordingly. The *Contractor* shall request the additional Specialist Protection resources from the *Project Manager* or Client Representative a minimum of 21 days before the Specialist Protection is required. The *Project Manager* or Client Representative will review the protection arrangements and determine the number and qualifications of any Specialist Protection staff that may be required. This will be done in consultation with the *Contractor*. Any Specialist Protection will be arranged and provided by the *Employer* in accordance with Appendix 03.9.

- 16.6 In the event of cancellation (or non-utilisation) of Specialist Protection staff, abortive costs incurred by the *Employer* will be charged back to the *Contractor* on the following basis:
- a) cancellations made 96 hours or more in advance of the activity start date – no charge will be levied by the *Employer*;
 - b) cancellations made less than 96 hours before the activity start date – the full cost will be charged to the *Contractor*.
- 16.7 The above durations are subject to the cancellation being made before 12.00 hours on a weekday (Monday to Friday inclusive). Where a cancellation notice is received after 12.00 hours, the cancellation period will be calculated from 09.00 on the next weekday.
- 16.8 In the event of Specialist Protection staff being cancelled, both parties shall endeavour to redeploy the resource so as to avoid cancellation charges.
- 16.9 If the *Employer* cancels a Shift at any time, then no charge for such protection services will be levied, as long as such cancellation is not due to the fault of the *Contractor*.

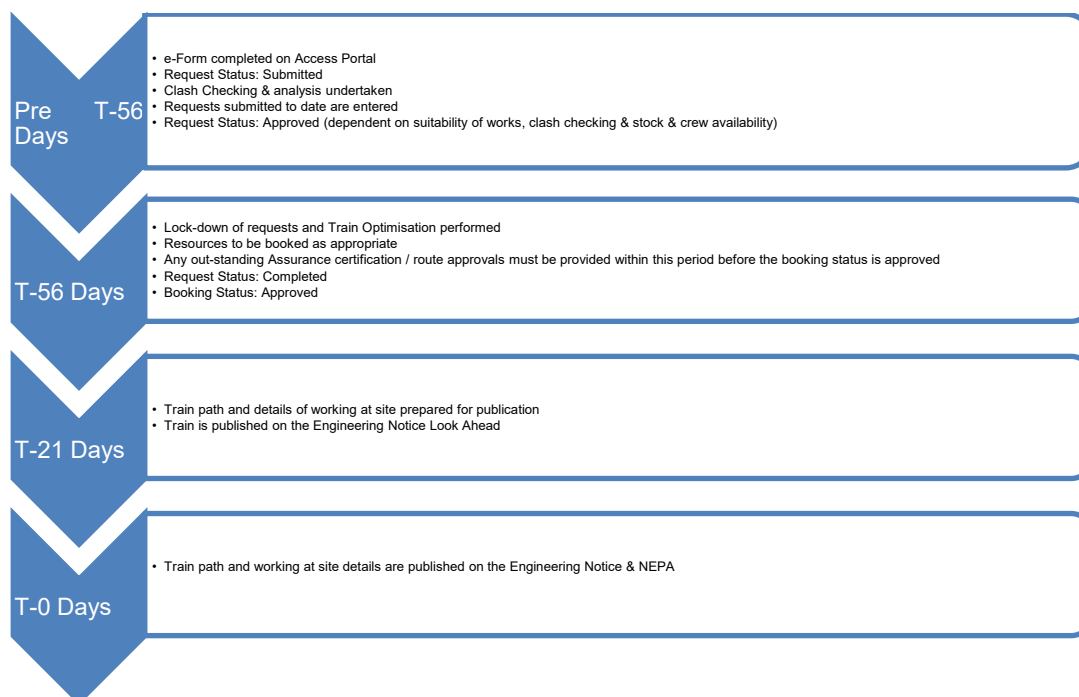
17 Access to Equipment Rooms

- 17.1 The Contractor shall ensure that all persons requiring access to secure rooms on London Underground are in possession of a QAF54 certificate that is authorised via the Project Manager or Client Representative.
- 17.2 If entry into Escalator and Lift Machine Rooms is required for survey or cabling activities, the Contractor shall ensure that at least one member of the work team attends a Lift & Escalator Machine Room Awareness course. The pass, issued upon successful completion of this course, enables the trained person to take four untrained persons into these areas, subject to the restrictions explained in the course. This course is also required for persons supervising the movement of materials by lift or escalator.
- 17.3 The Contractor shall arrange access to Switch, Relay, Machine and other Equipment Rooms by giving the Project Manager or Client Representative a minimum of two days' notice of his intention to access these areas.
- 17.4 The Contractor shall ensure that all access doors are securely locked when the work in the room is completed.
- 17.5 All the Contractor's personnel are forbidden from leaving the Employer's premises in possession of an LUL key and from having a duplicate of any of LUL's keys manufactured.

Appendix 03.1 - Not used

Appendix 03.2 – Request Lifecycle for a Train or Motorised Vehicle Request

The timescales for booking an Engineering Train or other mechanised vehicle is described the in following flow chart.



Note: 'T' indicates the Monday of the week that the Train or vehicle is booked to work in.

The process at each stage is summarised as follows:

a. Pre T-56 Days

A Work Request for a Train can be submitted at any time prior to T-56 days. All requests will be made by the *Contractor* to the *Project Manager* or Client Representative comprehensively completing all the requisite screens of the Work Request. The Work Request is the sole means by which Engineer's Vehicles can be booked and requested and there is provision on the Work Request to provide specific details as to the make-up of each Train (if the configuration is known).

b. T-56 Days

All planning for Engineering Trains, train paths or mechanised vehicles must be completed & received by T-56 days, after which train optimisation will be carried out by the *Employer*.

From T-56 days onwards the requested Access for an Engineering Train or mechanised vehicle will be entered onto the system and a check for any clashes can be carried out. The *Project Manager* or Client Representative will update the request's status to 'Completed' if there are no clashes or impediments pertaining to the request at that time. If there is a clash at this stage, the *Project Manager* or Client Representative will assess whether the clash is likely to be resolvable by the train optimisation process and will work with the *Project Manager* or Client Representative to identify potential alternative dates.

The *Employer* and *Project Manager* or Client Representative will agree the Engineering Train paths, confirm the Engineering Train's method of working at site; access and egress to the worksite for mechanised vehicles and/or personnel, and carry out protection planning.

The *Project Manager* or Client Representative will update the booking status to 'Approved'.

c. T-21 Days

At this time the train path, and details of the Train or mechanised vehicle's working at site, will be prepared for publication. These details will be included on the Engineering Notice Look Ahead.

d. T-0 Day of the Works

The Engineering Notice is published with full details of the Train or mechanised vehicle's path and its working at the Site.

Appendix 03.3 – Indicative timescales for the publication of Engineering Look Ahead Notice and Engineering Notices

T - 4 weeks							T - 3 weeks							T - 2 weeks							T - 1 week							Work due this week							
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
				Closing date for draft ELAN						Draft ELAN published for requesters comments						Closing date for Final ELAN comments 17:00hrs																		Planned work, anytime this week	
																																			Planned work due to start - EN NEPA published by 15:00hrs
																																			Planned work due to start - EN / NEPA published by 15:00hrs
																																			Planned work due to start - EN / NEPA published by 15:00hrs
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																																			Planned work due to start - EN / NEPA published by 15:00hrs
																																			Planned work due to start - Engineering Notice / NEPA published by 15:00hrs on Friday

Notes
ELAN = Engineering Look Ahead Notice
EN = Engineering Notice
NEPA = Nightly Engineering Protection Arrangements

Appendix 03.4 – Cancelled or Delayed Access Form

London Underground					
Frustrated Access (Cancelled / Delayed / Curtailed) Form					FAC-001 v1
Directorate:			Upgrade / Asset Group:		
Project / Work Title:			Project Id / Work Order / Job Ref:		
Line: _____			Unique Ref.: _____		
Access Affected: (tick one) Canceled: <input type="checkbox"/>			Delayed / Curtailed: <input type="checkbox"/>		
Date: (shift start) _____			Day: ____/____/____ Night: (start) ____ - (end) ____/____/____		
Access Authority Details: (must be valid)					
Booking Ref. (1): <input type="text"/>			PICER Ref (copy required) _____		
Booking Ref. (2): <input type="text"/>			Access Type: TRACK / STATION / OTHER (Circle as applicable)		
All details Mandatory					
Access Location (or Code):			Work Location or Code (+ SB/NB/EB/WB):		
Station Supervisor Name:			Track Current Sections Booked Out (ref required):		
Work to be done (brief details)					
Time Booked on Station:		Time Booked on with TAC:		Call Back Time given by TAC:	
Planned Start time:		Actual Start time:		Planned finish time:	
				Actual finish time:	
				Total Shift or Time Lost:	
Reporters Details: (mandatory)					
Name:		Company		Contact No.	
				Email	
LU Accountable Manager Details:					
Name:		Directorate / delivery Group		Contact No.	
				Email	
Contractors / Sub-Contractors affected: (mandatory)					
Contractor		Ops in work Party (no.)		Contractor	
				Ops in work Party (no.)	
Cause of Lost Time / Shift (mandatory)					
Engineers Train		Train ref. no.		Was train published in ENLA?	
Y/N				If so, which no?	
		Reason for late running (if known)			
Passenger Train		Train ref. no.		Line	
Y/N				Direction (circle one) SB / NB / EB / WB	
		Reason for late running (if known)			
Other Contractor		<input type="checkbox"/> Name			
LU Supervisor		<input type="checkbox"/> Name			
Late Book on TAC		<input type="checkbox"/> Details			
Early call back TAC		<input type="checkbox"/>			
Other		<input type="checkbox"/>			
Signature of station supervisor				Was further investigation completed by DOE / DOME? Y / N	

This form must be faxed to XXXXX or emailed to XXXX

Appendix 03.5 – Access Subcategories

Station works			
Access Type	Booking Description	Days	Work Type Description
Non Restrictive/ Exclusive Access	Non Restrictive/ Exclusive Access (non Track)	14	For undertaking everyday access needs, using relevant tools and materials within a defined area
Restrictive Access	Restrictive - Asbestos Site	21	Only issued to specialist asbestos contractors registered with LUL for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
	Restrictive - Bright Lights	21	For where access introduces the use of additional lighting that could potential impact other access users. Rarely applied.
	Restrictive - Closure Area	21	To define an area of a Station subject to a Closure (i.e. taken out of service for the purposes of engineering works).
	Restrictive - Movement of Materials	21	For where Access necessitates the movement of materials either through a Station that may impact on other Access users. May include craning over of materials.
	Restrictive - Noisy Works	21	For where Access will result in particularly noisy works that may have an impact on other Access users.
	Restrictive - Plant / Chemicals in a confined space	21	For where Access introduces the use of plant and chemicals in a confined space. Rarely used.
	Restrictive - Power Cessation- Power Outages Possible	21	For where Access will introduce a cessation of power that may impact other Access users (e.g. need for temporary supplies/portable lighting).
Exclusive Access	Exclusive – Asbestos Exclusion Zone	21	Only issued to specialist asbestos contractors registered with LUL for asbestos works. Access for asbestos works e.g. removal for which no other parties can be

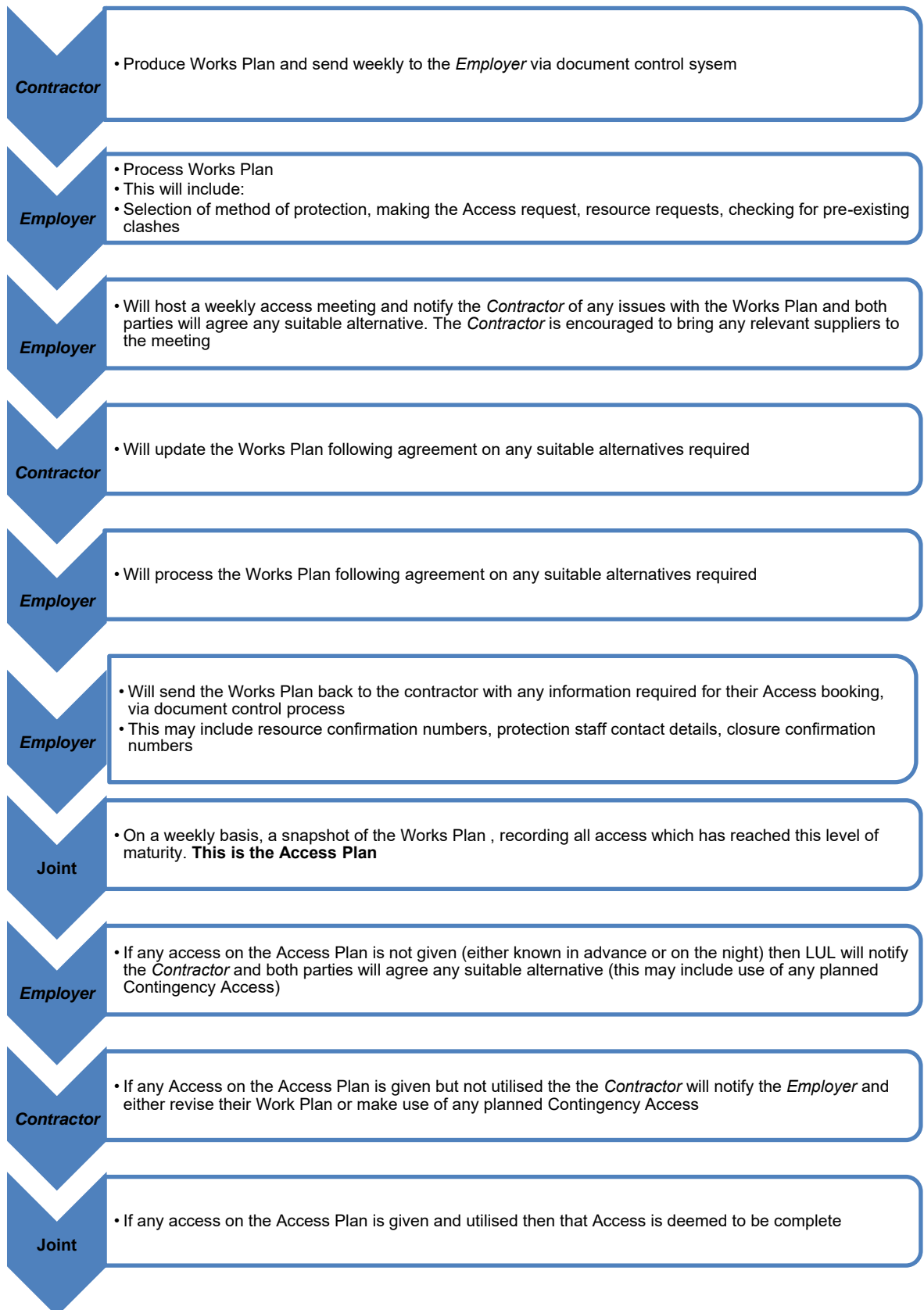
			present on grounds of safety.
Track			
Booking Description	Booking Description	Days	Work Type Description
Non Restrictive/ Non Exclusive Access	Non Restrictive/ Non Exclusive Access (Track)	14	For undertaking everyday Access needs, using relevant tools and materials within a defined area
Restrictive	Restrictive - Allied Track	56	To define an area of Track used in conjunction with, or subject to impact from, another Access booking e.g. unloading of materials from a train booked under a Specified Area.
	Restrictive - Asbestos Site	56	Only issued to specialist asbestos contractors registered with LUL for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
	Restrictive - Bright Lights	56	For where Access introduces the use of additional lighting that could potential impact other Access users. Rarely applied.
	Restrictive - Closure Area	56	To define an area of the LUL railway subject to a Closure (i.e. taken out of service for the purposes of engineering works).
	Restrictive - Motorised Trolley	56	For the operation of a motorised track trolley on the railway.
	Restrictive - Movement of Materials	56	For where Access necessitates the movement of materials either on, over or adjacent to the LU railway that may impact on other Access users. May include craning over of materials.
	Restrictive - Noisy	56	For where Access will result in

	Works		particularly noisy works that may have an impact on other Access users.
	Restrictive - Out-stabled Trains	56	To define an area of the LUL railway where a service train is stabled (normally in Platforms/Sidings). May restrict the type of works that can be performed adjacent to this location.
	Restrictive - Plant / Chemicals in a confined space	56	For where Access introduces the use of plant and chemicals in a confined space (e.g. platform invert). Rarely used.
Restrictive (Published) Cont'd	Restrictive - Power Cessation- Power Outages Possible	56	For where Access will introduce a cessation of power (e.g. tunnel lighting, supply points) that may impact other Access users (e.g. need for temporary supplies/portable lighting).
	Restrictive - Protection Area	56	To define an area of track used as a protecting or 'buffer' zone. Used in conjunction with another exclusive booking e.g. Exclusive Specified Area possession.
	Restrictive - Sub Station Works	56	Primarily for the use of LUL power teams requiring access to sub-stations supplying power to the LU traction current system.
	Restrictive - Wheels Free Zone	56	For works that require the running rails to be free of electrically conducting plant or equipment e.g. trolleys, trains etc. Usually used for works requiring isolation of the signalling circuits e.g. commissioning.
Exclusive (Published)	Exclusive	56	For works necessitating sole Access of the LUL railway, and not more appropriately catered for under other categories herein. Only used sparingly and for short durations due to its restrictive

			nature on other works.
	Exclusive - Asbestos Exclusion Zone	56	Only issued to specialist asbestos contractors registered with LU for asbestos works. Access for asbestos works e.g. removal for which no other parties can be present on grounds of safety.
	Exclusive - Current Rail Resistance Measurements	56	Primarily for the use of LUL power teams requiring controlled current measurements of the traction current delivery system.
	Exclusive - Engineers' Current Area	56	For the running of Engineering Vehicles on live traction current in accordance with the LUL Rule Book.
	Exclusive - Possession	56	For the exclusive control of Access to a given area of the railway. Traction current may be on or off. May involve the use of Engineering Trains, RRVs etc. As defined in the LUL Rule Book.
	Exclusive - Running on current, moving according to signals	56	For the running of vehicles on live traction current obeying LU signalling systems (e.g. test trains). Often referred to as 'Cancelled Engineering Hours'. As defined in the LUL Rule Book.
Exclusive (Published) Cont'd	Exclusive - Specified Area	56	For the running of engineering machines e.g. trains, RRVs on the railway. As defined in the LUL Rule Book.
	Exclusive - Traction Current Switching During Engineering Hours	56	For Access that requires traction current to be switched on and off intermittently during the Engineering Hours Shift. Primarily used in relation to power supply testing/commissioning etc.

Appendix 03.6 – Not Used

Appendix 03.7 – Production of an Access Plan



Appendix 03.8 – Not Used

Appendix 03.9 – Provision of Access Resource

In this Appendix all descriptions and requirements for the protection grades shall be as given in the applicable LU Rule Books and Standards or their equivalent.

A - LU Protection Grades	Must Hold	Responsibility
Protection Person Engineering Hours	PWT-EH licence	<i>Contractor</i>
Protection Person Traffic Hours	PWT-TH or PMTH licence	<i>Employer</i>
Protection Person Dual Certified	PWT-EH and PWT-TH/PM TH	<i>Employer</i>
Protection Person Train Movements	PWT-TM or Train Master licence	<i>Employer</i>
Depot Possession Controller	Depot Possession Controller or Possession Master Depot	<i>Employer</i>
Possession Controller	Possession Controller or Possession Master Train Movements	<i>Employer</i>
PWT-PW (Protecting workers on the track – possession)	PWT-PW or Site Person in Charge (P)	<i>Contractor</i>
Fire Watchman	Fire Watchman licence	<i>Contractor</i>
Track Trolley Controller	Track Trolley Controller Licence	<i>Contractor</i>
B - LU Other	Must Hold	Responsibility
Track Handback	T002 / T003 licence	<i>Contractor</i>
Technical Officer*	IRSE Licence	<i>Employer</i>
Cable Lineman*	IRSE Licence	<i>Employer</i>
Site Person in Charge	TSW0035	<i>Contractor</i>
*Technical Officer & Cable Lineman for protection purposes only		

Appendix 03.10 – RailSys Guidance

