

Dated 20 December **2017**

LONDON UNDERGROUND LIMITED (1)

and

RAILWAY WHEELSET & BRAKE LTD (2)

**FRAMEWORK AGREEMENT
for the supply of GOODS**

CONTRACT REFERENCE NUMBER :TfL 00781

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THIS AGREEMENT is made on *20 December* 2017
BETWEEN:

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Railway Wheelset & Brake Ltd** a company registered in England and Wales under number 03148643 and having its registered office at 6 Spencer Green, Whilton, Rotherham, South Yorkshire S60 4NR (the "**Supplier**").

BACKGROUND

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

THIS DEED WITNESSES as follows:

1 Definitions and Interpretation

- 1.1 In this Agreement and each Contract the following definitions shall have the following meanings:

"Additional Goods" means any goods which the Company requests the Supplier to provide in accordance with the terms of the Agreement and each Contract in addition to those set out in the Specification.

"Accounting Period" means a consecutive period of 28 days commencing on 1 April in each year.

"Aggregated Annual Spend" means the total of all sums paid by the Company to the Supplier (exclusive of VAT) pursuant to the terms of the Contract annually calculated in accordance with Clause 9.

"Agreement" means these terms and conditions, including the Schedules, as amended, varied or supplemented from time to time.

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

"BAFO" means 'best and final offer'.

"Bespoke Goods" Goods manufactured by the specified Original Equipment Manufacturer in Schedule 2, and 3B

"Cessation Plan" means a plan agreed between the parties or determined by the Company in accordance with Clause 48.1 to give effect to a Declaration of Ineffectiveness.

"Commencement Date" means the date specified as such in Schedule 1.

"Company Documents" means any plans, drawings, documents, handbooks, codes of practice or other information provided by the Company to the Supplier in accordance with the Agreement and each Contract.

"Company's Representative" means the person appointed by the Company and named as such in the relevant Order.

"CompeteFor" has the meaning given to that term in Clause 49.

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

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

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

"Contract" means a contract as defined in Clause 3.1.

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

"Contract Information" means (i) each Contract and Agreement in its entirety (including from time to time agreed changes to any Contract and/or Agreement) and (ii) data extracted from the invoices submitted pursuant to Clause 9.2 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

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

"Contract Variation Procedure" means the procedure set out in Schedule 5.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

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

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

"Delivery Note" has the meaning given to that term in Clause 10.6.

"Dispute" has the meaning given to that term in Clause 37.1.

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

"Excepted Liabilities" means the liability of the Supplier for:

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

"Excess Costs" has the meaning given to that term in Clause 17.5.

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

"Expected Order Delivery Date" means the date set out in each Order upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

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

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;

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

"Goods" means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 7.

"Greater London" has the meaning ascribed to it in the GLA Act.

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

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

"Initial Period" means the number of years from the Commencement Date stated in Schedule 1.

"Intellectual Property Rights" means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms

of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

"Interest Rate" means the percentage above the base rate from time to time of the Bank of England.

"Invoice" means a request for payment bearing all information required by the Company including the Agreement and each Contract reference number, Supplier's name, address and a brief description of the materials supplied or services provided.

"Key Personnel" means Supplier Personnel identified as such in Schedule 1 and any changes to the same that are made in accordance with Clause 24.

"Liquidated Damages" means the sums identified and calculated in accordance with each Order; subject to the terms set out in Schedule 1.

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

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

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

"Nominated Representatives" has the meaning given to that term in Clause 37.3.

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

"Notified Sum" has the meaning given to that term in Clause 9.8.

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

"Order" means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 4, entered into by the Company and the Supplier.

"Order Delivery Date" means the date upon which the Goods or any part of them are actually delivered to the Delivery Address by the Supplier to the Company.

"Order Price" means the amount stated under the heading "Order Price" in the relevant Order.

"Payment Application" has the meaning given to that term in Clause 9.2.

"Policies" means the policies set out in Clause 27.3.

"Prohibited Act" means:

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

"Proposal" means the Supplier's offer to provide the Goods in response to a Request Form.

"Quality and Safety Plan" means the Supplier's quality and safety plan set out in Schedule 6 as amended from time to time.

"QUENSH" has the meaning given to it in Schedule 6.

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

"Rejected Goods" has the meaning given to that term in Clause 14.2.

"Rejection Notice" has the meaning given to that term in Clause 14.2.

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

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

"Specification" means the description of the Goods set out in Schedule 3 and Schedule 3B and to be provided by the Supplier in accordance with the Agreement.

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

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

"Supplier Personnel Information" means information about Supplier Personnel including the numbers of Supplier Personnel involved in supplying the Goods and their approximate full time equivalents; their location; the skill sets in each location; role definitions; employment status; details of any previous transfer(s) pursuant to Clause 24; information regarding overall annual remuneration (including benefits); length of service; notice period; details of terms and conditions of employment (including pension schemes, annual leave, bonus entitlement, share options, car allowance, health insurance, life assurance and trade union recognition); details of any current grievances or disciplinary issues and any other information relating to Supplier Personnel reasonably requested by the Company.

"Supplier's Representative" means the person appointed by the Supplier and named as such in the relevant Order.

"Suspension Notice" has the meaning given to that term in Clause 17.2(b).

"Term" means the period specified as such in Schedule 1 to this Agreement;

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

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

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

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

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

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

"Variation Proposal" means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

"Warranty Period" the period specified as such in Schedule 1.

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

- 1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement and each Contract include its recitals and Schedules.

- 1.5 References to (or to any specified provision of) the Agreement and each Contract or any other document shall be construed as references to the Agreement and each Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and each Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the “**Company**” shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company includes any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Agreement and each Contract, the order of priority for the purpose of construction in descending order is:
- (a) the Clauses of the Agreement and each Contract;
 - (b) the Schedules to the Agreement and each Contract (equal priority but subject to Clause 1.10); and
 - (c) any other document referred to in, or incorporated by reference into, the Agreement and each Contract.
- 1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the clauses of the Agreement and each Contract and a provision of any other Schedule then the clauses of the Agreement and each Contract will take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Agreement and each Contract.

2 Duration and Option to Extend

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement and subject to Clause 2.3.
- 2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract.
- 2.3 The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Supplier of its intention to extend the Term of the Agreement by a period of up to 48

months. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term (other than this Clause 2.3 containing the option to extend). On receipt of such notice from the Company by the Supplier, the Agreement shall be deemed extended accordingly and in accordance with the Contract Variation Procedure Schedule 5.

3 Supplier's Primary Obligations

3.1 The Supplier shall supply the Goods to the Company in accordance with:

- (a) the terms set out in the Agreement (including the Schedules); and
- (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,

each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a "**Contract**".

3.2 When Goods are required by the Company, the Company shall give the Supplier an Order for the goods to be delivered and each Order so given shall be final, unless varied in accordance with the Contract Variation Procedure.

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

- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description;
- (b) be of satisfactory quality and fit for the purpose for which they are intended;
- (c) comply with all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company;
- (f) have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment.

3.4 The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term in accordance with the requirements set out in the Specification.

- 3.5 The Supplier warrants and undertakes that the Supplier has entered into and executed this Agreement and any Contract by the Supplier's duly authorised representative in accordance with all procedures required by its governing laws and contractual documents.
- 3.6 The Supplier shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and the Quality and Safety Plan any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.7 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.8 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.9 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Agreement or any Contract.
- 3.10 The Supplier shall be responsible for the accuracy of all Contractual Documentation save for any which is supplied or on behalf of the Company and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.11 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TFL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Agreement.
- 3.12 **Not Used**
- 3.13 **Not Used**
- 4 Not Used**
- 5 Records and Audit**
- 5.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Agreement and each Contract and all transactions related to the Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:
- (a) all necessary information for the evaluation of claims or variations;

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

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

5.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 5.1 at any time during the period referred to in Clause 5.2 by giving the Supplier minimum seven (7) working days notice.

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

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the

performance of the Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;

- (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.

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

5.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 5.1, free of charge within thirty (30) days of the Company's request for the same.

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

6 Company's Obligations

6.1 The Company shall pay the Supplier the Order Price for the Goods in accordance with the terms of the relevant Contract.

6.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.

6.3 The Agreement is not an exclusive arrangement and nothing in the Agreement or any Contract operates to prevent the Company from engaging any other organisation or person to supply goods similar to or the same as the Goods.

7 Additional Goods

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

8 Variation

- 8.1 Unless the parties agree otherwise in writing, any variation to the Agreement or any Contract shall be made under the Contract Variation Procedure.
- 8.2 The Supplier shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

9 Price and Payment.

- 9.1 The prices for the Goods, shall be the Order Price set out in the Order using the rates and prices set out in Schedule 2 and shall be inclusive of costs of packaging, carriage and insurance. The prices for the Goods in this Agreement or in respect of any Order shall only be changed in accordance with the Contract Variation Procedure.
- 9.2 The Supplier shall submit an application for payment to the Company's Representative for the Goods after the Order Delivery Date of such Goods (a "**Payment Application**"). If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application to the Company's Representative after the Order Delivery Date of each instalment.
- 9.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.
- 9.4 **Not Used**
- 9.5 The Company's Representative shall assess the Payment Application and shall notify the Supplier in writing not later than fourteen (14) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled);
 - and
 - (b) the basis on which the amount was calculated,

a **"Payment Certification"**. It is immaterial for the purposes of this Clause 9.5 that the amounts referred to in Clauses 9.5(a) or 9.5(b) may be zero.

9.6 Within seven (7) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company. The final date for payment of such VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.

9.7 **Not Used**

9.8 **Not Used**

9.9 **Not Used**

9.10 **Not Used**

9.11 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Order Price for the Goods shall only be changed in accordance with the Contract Variation Procedure.

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

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

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

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

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

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

- 9.15 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 9.16 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Order Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Order Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 9.16, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 9.17 **Not Used**
- 9.18 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement and any Contract or otherwise.

10 Delivery of Goods

- 10.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date and on the times stated in the Purchase Order and at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order. The Supplier shall within one (1) working day of receipt of the Purchase Order either accept the Purchase Order in full or reject the Purchase Order where the delivery times are not in accordance with Schedule 2.
- 10.2 The time of delivery of the Goods shall be of the essence in respect of each Contract.
- 10.3 If the Goods are not supplied on the Expected Order Delivery Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event, or a (iii) Permitted Delay Event.

- 10.4 The Supplier accepts that the amount of Liquidated Damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Order Delivery Date.
- 10.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract.
- 10.6 The Supplier shall provide a detailed delivery note stating the relevant Contract Reference Number, Order number (given on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by electronic mail to the Company on the Order Delivery Date in accordance with Clause 36.
- 10.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 10.8 In the event that all or any of the obligations of the Supplier under any Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 10 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.
- 10.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 13.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.
- 10.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any

expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate

- 10.11 Notwithstanding Clause 10.1 the Company may revise the Purchase Order Delivery Note by providing the Supplier with not less than two (2) days notice of the revised Delivery Date (the "Revised Delivery Note").

11 Supplier Performance

- 11.1 On the date that the Company's Representative receives the first Payment Application and every 4 weeks after that date, the Company assesses the Supplier's performance under the Agreement and each Contract in accordance with Schedule 10.
- 11.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 10; and
 - (b) use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 10.

12 Failure to Supply

- 12.1 Without prejudice to any other right or remedy of the Company under this Agreement and each Contract, and its rights under Clause 17, if the Supplier fails to supply the Goods or any part to the Company's satisfaction the Company may give the Supplier at least seven (7) days' notice in writing (except in an emergency when no notice need be given) requiring the Supplier to remedy such failure. If the Supplier fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the supply of the Goods or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 12 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 12.2 For the purposes of Clause 12.1 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be

required by the Company to exercise its rights under Clause 12.1 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 12.1.

13 Risk and Ownership

- 13.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 14.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 14.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.
- 13.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

14 Inspection of the Goods

- 14.1 Following delivery by the Supplier to the Company of the Goods the Company shall, within five (5) working days of the Goods Delivery Date inspect the Goods.
- 14.2 If, following the inspection referred to in Clause 14.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, conforming to the Specification and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").
- 14.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company's option:
- (a) replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
 - (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
 - (c) pay the Company's Losses resulting from the Supplier's delivery of Goods that were not in conformity with the terms of the relevant Contract.

- 14.4 The Company's rights and remedies under this Clause 14 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the relevant Contract by the Sale of Goods Act 1979.
- 14.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 14.3(a), the Company may, without affecting its rights under Clause 14.3(c), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall promptly reimburse the Company for the costs it incurs in doing so.
- 14.6 The Goods shall conform in all respects with any sample approved by the Company and in the absence of a sample; all the Goods provided shall be within the normal limits of industrial quality.

15 Warranty

- 15.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.
- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of the relevant Contract and the provisions of Clauses 10, 13 and 14 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 10 or, where applicable, re-delivers the Goods in accordance with this Clause 15.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.

16 Intellectual Property Rights

16.1 Existing Contracts

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

16.2 Vesting of Intellectual Property Rights created under this Agreement or any Contract

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

16.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 16.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 16.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

16.4 Company's Licence to use the Supplier's Intellectual Property Rights

The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 16.3 for the purposes of:

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

16.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (a) promptly, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the

Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 16.2, 16.3 and 16.4 above; and

- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

16.6 Company's Rights of Retention

If the Supplier has not complied with its obligations under Clause 16.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under each Contract until the Supplier has complied with its obligations under Clause 16.5(a).

16.7 Company's Rights to the Software

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

16.8 Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 16.5 above and anything in which the Intellectual Property Rights referred to in Clauses 16.2, 16.3 and 16.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods for the carrying out of any activities in connection with the licence under Clause 16.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

16.9 Supplier's Indemnity against Third Party Intellectual Property Rights Infringement

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the Tfl Group against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in

connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.

- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the Goods as may be necessary to ensure that the use and provision of the Goods continues in spite of such claim.

16.10 Ownership of the Company's Intellectual Property Rights

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

Company's Intellectual Property Rights

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

17 Termination and Suspension

- 17.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:
 - (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within ten (10) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
 - (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
 - (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded and a new limit is not agreed between the Company and the Supplier
 - (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting

from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Agreement and each Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same

- (e) a breach of the Supplier's obligations under Clause 43 or;
- (f) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 10.

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

- (a) to terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods by giving notice in writing (a "**Suspension Notice**") to the Supplier.

17.3 In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 17, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law at the Company's option law, at the Company's option:

- (a) permit the Company to enter the Supplier's premises and take possession of any equipment, goods or Documentation which are the property of the Company; and
- (b) permit the Company to place an order for the remaining Goods (or equivalent goods) with any other person or persons; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

In either such case, the Company shall be entitled to retain those Goods already provided by the Supplier in accordance with the Agreement and the relevant Contract, at the material time.

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

- 17.5 Following a termination in accordance with Clause 17.1 (but not a termination in accordance with Clause 17.2(a)) the Supplier shall be liable to the Company for
- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
 - (b) where the Company exercises its rights under Clause 17.3(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods under the Agreement and the relevant Contract by the Supplier ("**Excess Costs**"), such Excess Costs.
- 17.6 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 17.2(b), the Supplier shall:
- (a) issue to the Company an application for payment in respect of those Goods provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension; and
 - (b) not carry out any further work in connection with the provision of the Goods until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").
- 17.7 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 17.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 17.8 In the event that the parties are unable to agree upon the variation requested under Clause 17.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 37.
- 17.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 17.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods with immediate effect and that individual may only resume the provision of the Goods at the Company's absolute discretion.

18 Cooperation in Handover

- 18.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and in the three (3) months after the expiry of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the supply of the Goods and in such a manner so as not to unduly disrupt or hinder the Company's business.
- 18.2 Without prejudice to the generality of Clause 18.1 above, the Supplier shall on or prior to the expiry of the Term transfer to the Company such Documentation relating to the Goods or full copies thereof as the Company may request.

19 Indemnity and Insurance

- 19.1 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Supplier under the Agreement and each Contract:
- (a) in respect of death or personal injury to any person;
 - (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
 - (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Supplier, its employees, agents or subcontractors; and
 - (d) arising under the Company's contracts with third parties,
- and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.
- 19.2 The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 19.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.
- 19.3 The Supplier's indemnity under Clause 19.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of the Agreement and each Contract and for

the period of twelve (12) years after the Order Delivery Date or earlier termination of the Agreement and each Contract.

- 19.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 19.1.
- 19.5 Other than in respect of the Losses (i) described in Clauses 19.1(a) and 19.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.
- 19.6 Without prejudice to the obligation to indemnify the Company set out in Clause 19.1, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;
 - (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence;
 - (d) maintain at its own cost an adequate level of "goods in transit" insurance commensurate with the risk and, where appropriate, being not less than £500,000 (five hundred thousand pounds) per occurrence, in respect of the Supplier's liability for theft, loss or damage to property and Goods while in transit from one place to another or being stored during a journey;
 - (e) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person, or loss or damage to any property arising out of its performance of any Contract in an amount not less than £10,000,000 (ten million pounds),[for any one occurrence;
 - (f) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the delivery of the Goods;

- (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the provision of any of the Goods by the Supplier under any Contract satisfactory evidence in the form of a broker's letter or similar, confirming the existence of insurance in accordance with the terms of this Clause 19.6.

19.7 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 19.6.

19.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 19, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

19.9 The Supplier's total liability to the Company for all matters arising under or in connection with the Agreement, other than the excluded matters, is limited to amount specified in Schedule 1 and applies in contract, tort and otherwise to the extent allowed under the law of the Agreement. The excluded matters are amounts payable by the Supplier as stated in the Agreement for:

- (a) Excepted Liabilities
- (b) loss of or damage to the Company's property,
- (c) any Losses against which the Company is indemnified under Clause 24 (Supplier Personnel); or
- (d) any Losses against which the Company is indemnified under Clause 16.9 (Intellectual Property Rights).

20 Force Majeure and Permitted Delay events

Force Majeure

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

affects the abilities of the Supplier to perform its obligations under the relevant Contract, the Company shall have the right to terminate the relevant Contract immediately upon giving written notice of such termination to the Supplier.

Permitted Delay Events

- 20.2 If delay is caused or either Party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Delivery Date, within seven (7) days after the cause of any delay has arisen.
- 20.3 For the purposes of this Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
- (a) any act of prevention, omission, default or neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
 - (b) any variation of the Agreement or any Contract under Clause 8; or
 - (c) the suspension of this Agreement or any Contract in accordance with Clause 17 (other than where the suspension is necessary by reason of default by the Supplier).
- 20.4 Where any delay in achieving the Expected Order Delivery Date arises, the Supplier shall be entitled to an extension to such Expected Order Delivery Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to provide the Goods by the Expected Order Delivery Date and provided that the Supplier:
- (a) notifies the Company of the Permitted Delay Event in accordance with Clause 20.2 and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
 - (b) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
 - (c) uses its reasonable endeavours to mitigate the delay to the relevant Delivery Date; and
 - (d) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Contract by the Supplier, its subcontractors and/or employees.

21 Safety

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

22 Not Used

23 Independent Supplier

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

24 Supplier Personnel

- 24.1 For the purposes of this Clause 24:

"Current Service Provider" means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company;

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

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

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

“Subsequent Relevant Employee” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);

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

“Transferring Employees” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Supplier under the Transfer Regulations.

24.2 The Supplier complies and procures that his sub-contractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the expiry of the Term or earlier termination of the Agreement.

24.3 At any time during the last twelve (12) months of the Agreement and/or during any period of notice terminating the Agreement, the Company may require the Supplier to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Supplier or its subcontractors) engaged in supplying the Goods, their salaries and other conditions of employment, ages and length of service;

- (b) the method of organisation of the employees (of the Supplier or its subcontractors) engaged in supplying the Goods and documentary evidence relating to such organisation;
- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations,
- (f) and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.

24.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 24 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 24 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

24.5 The Supplier will not and will procure that its subcontractors will not in the 48 months prior to the expiry of the Term or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in the provision of the Goods, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in supplying the Goods or relates to the expected expiry of the Term or termination of the Agreement, or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Goods, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant sub-contractor's business and are not related to the expiry of the Term or termination of the Agreement (either because they are applied to all of the Supplier's or the relevant sub-contractor's employees, whether or not engaged in providing the Goods or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant sub-contractor which is not related or confined to the employees engaged in supplying the Goods or relates to the expiry of the Term or termination of the Agreement.

24.6 The Supplier shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection

with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Goods.

24.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (c) In this Clause 24.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

24.8 The provisions of this Clause 24 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Supplier of any provision of this Clause 24 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Key Personnel

24.9 The Supplier shall ensure that each of the Key Personnel devotes sufficient time and effort to the provision of the Goods. The Supplier shall take all reasonable steps to ensure it retains the

services of the Key Personnel and shall not without the Company's prior written consent (which shall not be unreasonably withheld or delayed), remove or change Key Personnel.

- 24.10 The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.
- 24.11 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the provision of the Goods). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.
- 24.12 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 24.13 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 24.14 **Not Used**

25 Confidentiality

- 25.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to

the Supplier and shall use such information only for the purpose of the performance of his obligations under each Contract.

- 25.2 On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
 - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 25.3 The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 25.1 and 25.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 25.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 25.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, any Contract or the Goods without the prior written consent of the Company.
- 25.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Goods, or any Dispute arising under or in connection with any Contract.
- 25.7 The provisions of Clauses 25.1 to 25.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities

or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

- 25.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 25 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 25.

26 London Living Wage

- 26.1 The Supplier shall, to the extent each Contract is for the provision of Goods to be undertaken within Greater London or on the Underground Network:

- (a) ensure that none of its employees engaged in the provision of Goods under the relevant Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 26 and the provisions of this Clause 26 are included in any subcontract (of any tier).

- 26.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 26.

27 Responsible Procurement

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

- 27.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with the Responsible Procurement Policy.
- 27.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "**Ethical Sourcing Policy**") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Supplier shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 27.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 27.5 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 27.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 27 and the provisions of this Clause 27 are included in any subcontract (of any tier).
- 27.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 27.

28 Assignment and Subcontracting

- 28.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 28.2 The subcontracting of all or any part of the Goods to a subcontractor shall not relieve the Supplier of its obligations to supply the Goods under the Agreement and each Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 28.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.

- 28.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 7 in favour of any person to whom the Agreement and/or any Contract is being novated.

29 Company's and Supplier's Representative

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

30 Costs

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

31 Severance

If a provision of the Agreement or any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Agreement or any Contract, provided that the operation of this Clause 31 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

32 Publicity

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

33 Corrupt Gifts and Payments of Commission

- 33.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.

- 33.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 33.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 33 at any time during performance of the Agreement and each Contract and during the twelve (12) year period following completion of performance.

34 No Waiver

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

35 Entire Contract

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

36 Notices and Service of Process

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

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

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 36.

37 Dispute Resolution

- 37.1 The Company and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any disputes.
- 37.2 Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 37.
- 37.3 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Supplier (together the "**Nominated Representatives**") which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.
- 37.4 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 38.3 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts and Procurement Manager and the Supplier's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputed to resolve disputes on behalf of their respective companies.
- 37.5 If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Contracts and Procurement Manager and the Supplier's Managing Director or their deputies in accordance with Clause 38.4 either party may propose by notice to the other party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 37.6 If the parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either party may apply to the Centre for Effective Dispute Resolution (CEDR) in London to appoint a mediator. The costs of that mediator shall be divided equally between the parties or as the parties may otherwise agree in writing.
- 37.7 Where a Dispute is referred to mediation under 38.6, the parties will attempt to settle such dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

- 37.8 If the parties reach an agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the parties authorised representatives, shall be final and binding on the parties.
- 37.9 If either party refused at any time to participate in the mediation procedure and in any event if the parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice, either party may commence proceedings in accordance with Clause 38.6.
- 37.10 For the avoidance of doubt, the Supplier shall continue to provide the supply in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 38.
- 37.11 Clauses 37.1 to 37.5 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 38.11, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

38 Counterparts

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

39 Partnerships and Joint Ventures

- 39.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement are joint and several. The Agreement and the liabilities of the partners under the Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Agreement.
- 39.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement are joint and several.
- 39.3 Nothing in the Agreement shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

40 Governing Law and Jurisdiction

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

41 Contracts (Rights of Third Parties) Act 1999

- 41.1 Subject to the Replacement Employer's rights in accordance with Clause 24, no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 41.2 Notwithstanding those rights referred to in Clause 41.1, the Company and the Supplier may agree to vary or rescind the Agreement and any Contract without the consent of any third party.

42 Bonds, Warranties and Guarantees

- 42.1 Where stated in Schedule 1, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:
- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
 - (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.
- 42.2 The Supplier shall ensure that any bond required under Clause 42.1:
- (a) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1; and
 - (b) is renewed every twelve (12) months until the earlier of (i) expiry of the Warranty Period applicable to the final Delivery Date or (ii) twelve (12) months after termination.

- 42.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 42.1 and 42.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.
- 42.4 If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 42.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.
- 42.5 If any performance bond and/or parent company guarantee required by any Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 42.1, one quarter of the aggregate of the Order Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.
- 42.6 If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:
- (a) a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Supplier shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and
 - (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 42.6.
- 42.7 If any warranty (including any accompanying parent company guarantee) required under Clause 42.6 is not delivered to the Company in accordance with Clause 42.6 one quarter of the aggregate of the Order Price relative to the Goods provided by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

43 Change of Control

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

44 Interest

- 44.1 If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 44.1 shall be immediately payable by the paying party on demand.
- 44.2 Interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

45 Freedom of Information

- 45.1 For the purposes of this Clause 45:

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

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

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

- 45.2 The Supplier acknowledges that the Company:

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

- 45.3 Without prejudice to the generality of Clause 45.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

- (a) transfer to the Company's Representative (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to the Agreement or any Contract, the supply of Goods or any member of the TfL Group that it or they (as the case

may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and

- (b) in relation to Information held by the Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

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

46 Data Transparency

- 46.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 25 and Clause 45, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 46.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 46.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

47 Survival

- 47.1 The provisions of Clauses 5 (Records and Audit), 9.13 (Set-Off), 15 (Warranty), 16 (Intellectual Property Rights), 17 (Termination), 19 (Indemnity and Insurance), 24 (Supplier Personnel), 25 (Confidentiality), 27 (Responsible Procurement), 31 (Severance), 32 (Publicity), 33 (Corrupt Gifts and Payments of Commission), 34 (No Waiver), 35 (Entire Contract), 36 (Notices and Service of Process), 37 (Dispute Resolution), 40 (Governing Law and Jurisdiction), 41 (Contracts (Rights of Third Parties) Act 1999), 45 (Freedom of Information), 46 (Data Transparency), 47 (Survival), 48.1 and 48.5 (Transport for London Group) will survive the termination or expiry of this Agreement and any Contract and continue in full force and effect, along with any other Clauses or Schedules of this Agreement and any Contract necessary to give effect to them. In addition, any other provision of this Agreement and any Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

48 Transport for London Group

48.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and any Contract under Clause 17.1, Clause 17.2(a) or at common law, the Company may terminate the Agreement and any Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 48.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 48.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 17.1 and this Clause 48.1 or the Cessation Plan, the provisions of this Clause 48.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the supply of Goods or (at the Company's request) a transition of the supply of Goods to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 48.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and any Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and any Contract in accordance with this Clause 48.1.

48.2 Crime and Disorder Act 1998

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

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area;
 - (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - (ii) the misuse of drugs, alcohol and other substances; and
 - (iii) re-offending

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

48.3 The Company's business

The Supplier acknowledges that it:

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

48.4 Best value

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

48.5 Data Protection

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

48.6 Conflict of Interest

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the supply of Goods or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and any Contract and in any event not less than

once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the supply of Goods under the Agreement and any Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the supply of Goods from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and any Contract.

48.7 **Equality and Diversity**

48.7.1 Without limiting the generality of any other provision of the Agreement and any Contract, the Supplier:

- (a) shall not unlawfully discriminate;
- (b) shall procure that its employees and agents do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Supply,

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

48.7.2 The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:

- (a) eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;
- (b) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a Protected Characteristic and persons who do not.

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

48.7.3 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and each Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as

may be updated from time to time. Copies of these policies are available from the Company at any time on request.

- 48.7.4 To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.

48.8 Work Related Road Risk

- 48.8.1 For the purposes of Clauses 48.8.2 to 48.8.9 (inclusive) of this Agreement, the following expressions shall have the following meanings:

“Bronze Accreditation” the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Car-derived Vans” a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Collision Report” a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

“Delivery and Servicing Vehicle” a Lorry, a Van or a Car-derived Van;

“Driver” any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Goods;

“DVLA” Driver and Vehicle Licensing Agency;

“FORS” the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

“FORS Standard”

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

www.fors-online.org.uk

“Gold Accreditation”

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

www.fors-online.org.uk

“Lorry”

a vehicle with an MAM exceeding 3,500 kilograms;

“MAM”

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

“Side Guards”

guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

“Silver Accreditation”

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

www.fors-online.org.uk

“Van”

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

Fleet Operator Recognition Scheme Accreditation

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

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the “Alternative Scheme”); and

- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

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

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

Driver Licence Checks

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

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (b) each of its Drivers engaged in the provision of the Goods has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been Approved in writing by the Company within the last 12 months:

- (i) 0 – 3 points on the driving licence – annual checks;
- (ii) 4 – 8 points on the driving licence – six monthly checks;
- (iii) 9 – 11 points on the driving licence – quarterly checks; or
- (iv) 12 or more points on the driving licence – monthly checks.

Driver Training

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

Collision Reporting

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

Self Certification of Compliance

- 48.8.7 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 48.8.3, 48.8.4 and 48.8.5 of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Supplier Regarding Subcontractors

- 48.8.8 The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles to provide the Goods shall:
- (a) comply with Clause 48.8.2; and

(b) where its subcontractors operates the following vehicles to provide the Goods shall comply with the corresponding provisions of this Agreement:

(i) For Lorries – Clauses 48.8.3, 48.8.4, 48.8.5 and 48.8.6; and

(ii) For Vans – Clauses 48.8.4, 48.8.5, and 48.8.6,

as if those subcontractors were a party to this Agreement.

Failure to Comply with Work Related Road Risk Obligations

48.8.9 Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Supplier fails to comply with any of Clauses 48.8.2, 48.8.3, 48.8.4, 48.8.5, 48.8.6, 48.8.7 and/or 48.8.8:

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

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

49 CompeteFor

49.1 Without prejudice to Clause 28 the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier.

49.2 The Supplier will use all reasonable endeavours to ensure that its sub-contractors (for the purposes of this clause, the "**Supplier's Sub-contractors**") use CompeteFor, on a non-exclusive basis, to make available to other sub-contractors all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works and services to the Supplier's Sub-contractors.

49.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement and each Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier's Sub-contractors, as required by this Clause 49, and will report this information on a quarterly basis by way of email to the Company Representative.

50 Criminal Record Declarations

50.1 For the purposes of this Clause 50:

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

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

- 50.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (**"Declaration"**) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual providing any of the Goods. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 50.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Goods any Relevant Individual who has disclosed a Relevant Conviction.
- 50.4 The Company shall have the right in accordance with the audit rights set out in Clause 5 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 50 at any time during performance of this Agreement and each Contract.
- 50.5 If the Supplier fails to comply with the requirements under Clauses 50.2 and/or 50.3 the Company may, without prejudice to its rights under Clause 17.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Contract and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods unless (in the case of non-compliance with Clause 50.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 50.2.
- 50.6 A persistent breach of Clause 50.2 and/or Clause 50.3 by the Supplier shall entitle the Company to terminate the Agreement and each Contract in whole or in part with immediate effect in accordance with Clause 17.1(a).
- 50.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Agreement and each Contract and/or the Company's site with

immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Goods.

- 50.8 Nothing in this Clause 50 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and each Contract and the Supplier's responsibilities in respect of the provision of the Goods remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 50.

Schedule 1

Detailed Terms

Commencement Date	Date of the Agreement
Term	4 years with the option to extend for up to an additional 4 years
Warranty Period	■ years warranty commencing on the Order Delivery Date for the relevant Goods or until the point where it is removed for overhaul having reached its scrapping diameter whichever is earlier
Initial Period	4 years
Framework Specification	See Schedule 3 & 3B
The Liquidated Damages for delay for the purpose of Clause 10.3 payable for such Goods are: The period of delay over which the Liquidated Damages shall be calculated for the purpose of Clause 10.3 is every:	To be agreed in respect of each Order Week
The maximum amount of Liquidated Damages payable under Clause 10.3 expressed as a percentage of the price payable for such Goods is:	In respect of each order, ■■■■ of that Order Price
Security required pursuant to Clause 42.1: Bond Parent Company Guarantee	■■■ ■■■
Application for payment dates	At point of delivery by the Supplier at the specified LU

	location (Please see clause 9.1)	
Interest Rate pursuant to Clause 44.1	at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.	
The Suppliers total liability for the purpose of Clause 19.9 is	[REDACTED]	
The Supplier's total liability per event for the purpose of Clause 19.9 is	The minimum amount recoverable under the relevant insurance policy referred to in Clause 19.6 that applies (or should apply) in respect of the relevant event.	
Company's Representative:	Name: [REDACTED] Address: [REDACTED] Fax: [REDACTED] E-mail: [REDACTED]	
The following Supplier Personnel are Key Personnel	Name: [REDACTED] Address: [REDACTED] Tel: [REDACTED] Email: [REDACTED] Name: [REDACTED] Address: [REDACTED] Tel: [REDACTED] Email: [REDACTED]	
Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
Product and Public Liability Insurance All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising	Supplier	[REDACTED] for any one Occurrence and in the aggregate

out of or in connection with the Contract.		
Employer's Liability Insurance Liability for death of or bodily injury or illness sustained by employees of the Supplier arising out of or in the course of their employment in connection with the Contract.	Supplier	[REDACTED] for any one Occurrence and in the aggregate
Transit Insurance Transit Insurance to cover Materials, Goods, materials supplied by the Supplier until safe receipt at the Premises by the Company.	Supplier	[REDACTED] per Occurrence

Schedule 2
Goods and Pricing

Contract Material Data – Schedule 2

SAP Vendor number [REDACTED] - Railway Wheelset & Brake Ltd

Contract Tfl -00781

Outline Agreement number TBC

Schedule 2 - Generic																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
Part	Product Number LUL	Assembly	Part	Drawing				Relevant Standards	Estimated Forecast 2017/18	Estimated Forecast 2018/19	Estimated Forecast 2019/20	Estimated Forecast 2020/21	Estimated Forecast 2021/22	BIDDER'S PROPOSAL PRODUCT LIFE WARRANTY					ASSURANCE		BIDDER TO PROPOSAL ORDER & DELIVERY								STOCK HOLDING																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
				Drawing Available	Drawing LUL Own	Number	Notes							Unit Price	Warranty	Extended Warranty	Warranty Start	Specified Life	Safety Critical	Certificates Required	Unit of Measure	Minimum Order Qty	Delivery Lot Size	Minimum Bin Qty	Tolerance Allowed	Delivery Lead Time from Stock Holding	Delivery Lead Time Outside Stock Holding	Delivery Method	Quantities			Method																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																

*** Forecast are estimated and will be reviewed at the monthly Contract Review Meeting ***

Schedule 2 - Bespoke																																			
Root	Product Number LUL	Assembly	Part	Drawing				Supplier	Relevant Standards	Bids used Forecast 2017/18	Estimated Forecast 2018/19	Bids used Forecast 2019/20	Estimated Forecast 2020/21	Estimated Forecast 2021/22	BIDDER'S PROPOSED PRODUCT LIFE & WARRANTY					ASSURANCE		BIDDER TO PROPOSED ORDER & DELIVERY										STOCK HOLDING			
				Drawing Available	Drawing LUL Dev	Number	Notes								Unit Price	Warranty	Extended Warranty	Warranty Start	Expected Life in	Safety Critical	Certificates Required	Unit of Measure	Minimum Order Qty	Delivery Lot Size	Season in Stock Qty	Tolerance Allowed	Delivery Lead Time from Stock Holding	Delivery Lead Time Outside Stock Holding	Delivery Method	Quantities			Method		
Bakerloo	002014006	Suspension Unit	Bearing Unit						Spheroidal Graphite Cast Iron BS 1786	0	10	10	10					From		Y	Y														
	002014006	Gearwheel	Gearwheel (7 1/2 deg angle helical 85 teeth)						Steel to BS970 S25 M17	20	30	30	30							Y	Y														
	002014092	Pinion	Pinion (16 teeth 7 1/2 degree)						Steel to BS970 S25 M17 Teeth to be finished to Grade 5 BS 435 Part 2 - 10M	0	30	30	30							Y	Y														
Floodcity	0044071	Gearwheel	Gearwheel						Steel to BS970 S25 M17 See dpg For surface treatment	64	16	48	232	288						Y	Y														
	0044067	Pinion	Pinion						Steel to BS970 S25 M17 See dpg For surface treatment	64	16	48	232	288						Y	Y														
	TL 10941	Motor suspension Unit Assembly	Motor suspension sleeve						Spheroidal Graphite Cast Iron to BS2799 Grade 450 10	64	16	48	232	288						Y	Y														
Jubilee	002042672	Gearwheel	Intermediate Gearwheel (1st TB in)						TBC	0	0	125	210	210						Y	Y														
	002042674	Gearwheel	Intermediate Gearwheel (2nd TB in)						TBC	0	0	125	210	210						Y	Y														

*** Forecast are estimated and will be reviewed at the monthly Contract Review Meeting ***

Schedule 3

Framework Specification

1. SCOPE

- The general scope of Supply is the Manufacture and Supply of Wheels, Axles and related Goods for the Bakerloo, Central, Jubilee and Piccadilly Lines.

1.1 Scope of Works included in the offer –

- Railway Wheelset & Brake Ltd to supply the Goods listed in Schedule 3B the Specification.
- The Goods will be available at the price given in Schedule 2 and [REDACTED] [REDACTED]
the Initial Framework Agreement [REDACTED] [REDACTED].
- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
- The scope of requirement will be agreed by the Company and Supplier as and when required.
- The scope of requirement will be as detailed in the issued Purchase Order.
- The actual order delivery dates will be as detailed in the issued Purchase Order.
- The Company shall provide a 6 monthly forecast to the Supplier.
- Supplier Stock holding listed in Schedule 2 shall be agreed jointly in line with the Company Requirements and jointly agreed in terms of its content Goods at the Monthly Contract review meetings or as agreed between both Parties.
- Supplier Stock holding cost is inclusive of the unit prices stated in Schedule 2.
- Goods held in stock at the Supplier premises shall remain the property of Railway Wheelset & Brake Ltd until delivered to the Company at the LU specified location.

2. MATERIAL QUALITY ASSURANCE

- Goods are to be manufactured in accordance with the Specifications and Standards stated in Schedule 3B the Specification. The Supplier is wholly responsible for it's sub contractors quality and assurance for all Goods.

2.1 First Article Inspection and Testing

- There shall be a documented procedure for the inspection and testing of a representative sample from the first series production run of any new/upgraded product to be supplied as a Goods. This inspection shall include the verification, documentation and update of production and test records for the Goods.
- The Supplier shall ensure that LU is offered the opportunity to witness the First Article Inspection and Testing giving ample time for LU to select personnel and make any necessary travel and accommodation arrangements.
- The Supplier shall provide evidence of the documented procedure to the Company on request.

2.2 Surveillance and Sub- Contractors and Suppliers

- The Supplier shall have in place a fully documented assurance process for the surveillance of sub-contractors and suppliers in order to mitigate the risk of poor quality Goods not being detected and corrected at the start of the manufacturing and /or assembly process.
- The surveillance shall include First Article Inspection and Testing and be supported by ongoing robust quality assurance audits and inspections.
- The Supplier to provide evidence of the documented procedure to the Company on request.

2.3 Maintain Quality Assurance

- The Supplier is required to conduct period quality checks on the LU Goods manufactured by its subcontractors.
- The Supplier is required to review the dimensions of all manufactured Goods on an annual basis or as agreed with LU representative.
- The Supplier shall provide evidence of the above mentioned documented procedure to the Company on request.

3. PRICE

- [REDACTED]

4. TERMS OF PAYMENT

- Payment shall be made in accordance with Clause 9.1 of the Agreement.

- The Company shall issue a Purchase Order for each order.

5. DELIVERY LEAD TIME OF PARTS IN SCHEDULE 2

- Lead time of the Goods being ordered for this Agreement will commence from the date that the Purchase Order is issued to the Supplier, that point being known as Notice to Proceed.

6. PACKAGING

- All packaging shall be in accordance with the Lifting of Equipment Regulations (LOER) standards and inclusive of the unit prices.

Packaging for wheel blanks must be as follows:

- All blanks to be covered with rust inhibitor
- Four vertical post pallet preventing wheel blanks moving
- Solid base pallet with a suitable safe working load
- Sealed shrink wrap covering the entire pallet to ensure moisture cannot cause rusting to the wheel blank
- Silicon gel pack included to absorb any moisture

7. INSPECTION ON DELIVERY

NON CONFORMANCE PROCESS (NCR)

- All goods received at the Company shall be inspected by Stores personnel for signs of obvious physical damage. If Deliveries are considered to be unsafe, stores personnel may refuse to accept the delivery.
- If the goods are not for the Company then they shall not be accepted. Where the carrier or suppliers have left the goods unsigned for then they shall be contacted to arrange return.
- If the goods show obvious signs of damage or quantity discrepancies then this fact shall be noted on the advice/delivery note prior to signing and an appropriate entry made in the day book. If goods are considered to be seriously damaged, stores personnel may refuse delivery
- LU Stores Personnel or relevant Contract Manager shall advise the Supplier by telephone that they have 48 hours to correct the problem. If the problem is not corrected within 48 hours then a non-conformance report shall be raised. A photocopy of the non-conformance report shall be attached to the advice/delivery note.

8. CHANGE PROCESS

Engineering Change Requests/Modifications/approvals

- No changes will be made whatsoever to any goods supplied to the Company unless fully approved and signed off by LUL Engineering even if the designs (IPR) are not owned by the Company but that of the Supplier. The Supplier fully understands that the goods they supply are of a business and safety critical nature and are in use on an operational railway.
- All product changes must be signed off through the Company's engineering change procedure, "change to rolling stock" (CRS) and must not be introduced or supplied to the Company without formal approval from the Company's Engineering department.
- These changes must be identified to the Commercial Manager.

Schedule 3B

The Specification

Fleet	Product Number LUL	Assembly	Part	Drawing		Relevant Standards
				Number	Status	
Bakerloo	00201/5277	72TS Motor Suspension Unit	Bearing Unit	74514	C	Spheroidal Graphite Cast Iron BS 2789 Grade 450/10
	00201/3600	790 LT3 Wheel	Wheel Monobloc Blank 790mm	81601	B	Steel to BS 5892 Part 3:1992 Grade R9 Heat Treatment "T" LUL Standard MR-E6343 A1 LT3 Wheel Profile LU Drawing 67620 Rev F
	00200/6186	Axle	Trailer Axle	81623	A	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
	00200/7004	Axle	Motor Axle	81615	C	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
	00201/4606	Gearwheel	Gearwheel (7.1/2 deg single helical 65 teeth)	47106	F	Steel to BS970 665 M17 See drg. For surface treatment
	00201/4592	Pinion	Pinion (16 teeth 7.1/2 degree)	47112	B	Steel to BS970 832M13 See drg. For surface treatment
Piccadilly	655/1875	Wheel	790 LT3 Motor Wheel	TL81601	D	Steel to BS5892 Part 3:1992 Grade R9 Heat Treatment "T" LUL Standard MR-E6343 A1 LT3 Wheel Profile LU Drawing 67620 Rev F
	TLL -24/1850 (00200/7758)	Axle	Trailer Axle	TL81629	D	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
	TLL -24/1849 (00200/6098)	Axle	Motor Axle	TL81628	C	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
	655/4071	Gearwheel	Gearwheel	TL100445	F	Steel to BS970 665 M17 See drg. For surface treatment
	655/4067	Pinion	Pinion	TL103116	F	Steel to BS970 Grade 832M13 See drg. For surface treatment
	TL10941	Motor Suspension Unit	Motor Suspension Sleeve	TL104941	D	Spheroidal Graphite Cast Iron to BS2789 Grade 450/10
Central	00141/9176	Wheel	Wheel Monobloc Blank 28"	1P106588A3 031/J	J	Steel to BS5892 Part 3:1992 Grade R9 Heat Treatment "T" LUL Standard MR-E6343 A1 LT5 Wheel Profile LU Drawing 92667 Rev B
	00201/4639	Axle	Axle (Style 1)	1P106589-3051	F	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
	00201/4685	Axle	Axle (Style 2)	1P106589-3051	E	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
Jubilee	00204/6050	Motor Wheel	770-710 Monobloc Motor Wheel	11-232-121	H	Steel to BS5892 Part 3:1992 Grade R9 Heat Treatment "T" LUL Standard MR-E6343 A1 LT5 Wheel Profile LU Drawing 92667 Rev B
	00204/6730	Trailer Wheel	770-690 Monobloc Trailer Wheel	11-233-121	E	Steel to BS5892 Part 3:1992 Grade R9 Heat Treatment "T" LUL Standard MR-E6343 A1 LT5 Wheel Profile LU Drawing 92667 Rev B
		Axle	Trailer Axle	11-233-120	E	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
		Axle	Motor Axle	11-232-120	E	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1
		Axle	Motor Axle (with negative support)	11-232-122	G	Steel to BS 5892 Part 1:1992 + A3:2009 Grade A1 Heat Treatment "T". Read for Normal Surface Speed LUL Standard SSL-S-3279 MR-6002-A1

Schedule 4

Form of Order

Transport for London

London Underground Limited



Purchase order

Page 1 of 2

Vendor address

Contact

Requested by

Telephone

Invoice to

London Underground Ltd
Accounts Payable
1st Floor
PO Box 45276 14 Pier Walk
London SE10 1AJ
Telephone 0845 303 5100
Fax 020 3054 5331
email: accountspayable@tfl.gov.uk

Information

Purchase order no.
Creation date
Vendor no.
Currency
Payment terms

Delivery address

London Underground Limited
55 Broadway
London
SW1H 0BD
Or as agreed below

Instructions to vendor

The supply of goods/services under this purchase order is subject to the Purchase Order Conditions which are available on www.tfl.gov.uk or available upon request from the contact named below. Supply of goods or services under this purchase order indicates your acceptance of such conditions.

Item	Description	Quantity	UM	Net price	Total price

Procurement Department:

London Underground Limited

Registered Office: 55 Broadway, London SW1H 0BD. Registered in England and Wales no: 01900907

VAT number: 756 2770 08. London Underground Limited is a company controlled by a local authority within the meaning of Part V of the Local Government and Housing Act 1989. The controlling Authority is Transport for London.

Date:

MAYOR OF LONDON

If you have problems reading this text please call 020 70384614

Schedule 5

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a "**Variation Order**") and supplying such Variation Order to the Supplier. The relevant part(s) of the Agreement and the relevant Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a "**Variation Order**") and supplying such Variation Order to the Supplier. The relevant part(s) of the Agreement and the relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods to be supplied.
- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Agreement and each Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Agreement and each Contract Variation Procedure before the commencement of such additional work.

- 8 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with any applicable rates set out in Schedule 2.
- 9 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Agreement and the relevant Contract, including, but not limited to the Specification.
- 10 Strict adherence to the procedure described in this Schedule 5 shall be a condition precedent to any addition to the price for the Goods. If the Supplier does not adhere to each paragraph in this Schedule 5 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods.

Appendix 1

Form of Variation Proposal/Variation Order

To:

From:

Order Number**Variation Number:****Variation Title:**

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VARIATION ORDER)

Description of change:

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

Variation Proposal Authorised by:**Proposal Date:****PART B (TO BE COMPLETED BY THE SUPPLIER)**

Price Breakdown

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

Expected Order Delivery Date:**Supplier's Representative:**

Print Name: _____

Signature:

Date:

Completed document to be returned to the Company's Representative

PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)

Comment on Parts A and B:

Variation Authorisation

Company's Representative:

Print Name:

Signature:

Date:

Schedule 6
QUENSH and Quality and Safety Plan

Quality and Safety Plan to be provided in accordance with Schedule 11 Appendix 1

Schedule 7

Deed of Novation

THIS DEED is made

day of

201[1]

BETWEEN:

LONDON UNDERGROUND LIMITED a company registered in England and Wales under number 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1 0TL (the "**Company**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**Supplier**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**New Company**").

WHEREAS:

- (A) The Company has a framework agreement dated [] and referenced [insert contract number] with the Supplier pursuant to which contracts may be entered into for the provision of [describe in brief the scope of supply] (together the "**Contract**").
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Supplier and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:
 - 1.1 "**Transfer Date**" means [].
2. With effect from the Transfer Date:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in

every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;

- 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
- 2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and
- 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier.
- 2.4 the Company transfers its rights and obligations under the Contract to the New Company.
3. A person who is not a party to this Deed may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

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

Executed as a deed by affixing the Common Seal of)
London Underground Limited)
in the presence of:-)

.....

[Authorised Signatory]

Executed as a Deed by [SUPPLIER])
acting by)
) Authorised Signatory
and)
) Authorised Signatory

Executed as a Deed by [NEW COMPANY]

)

acting by

)

) Authorised Signatory

and

)

) Authorised Signatory

Schedule 8

THIS GUARANTEE is made the

201

BETWEEN:

- (1) [] a company registered in England and Wales under number [] and having its registered office at [] (the "**Guarantor**");
- (2) [] a company registered in England and Wales under number [] and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors in title and assigns); and
- (3) [] a company registered in England and Wales under number [] and having its registered office at [] (the "**Supplier**").

WHEREAS:

- (A) This Guarantee is supplemental to a framework agreement pursuant to which contracts may be made (together the "**Contract**") for the carrying out of [] at [] made between (1) the Company and (2) the Supplier.
- (B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.
- (C) The Supplier is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.
3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and

undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.

4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;
 - (c) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;
 - (h) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;
 - (j) the termination of the Contract; or
 - (k) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
 - (b) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs; or
 - (c) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs.
7. This Guarantee is irrevocable.
8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.
9. The Guarantor:
- (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
 - (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
 - (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.
10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:
- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
 - (b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.
11. The Company is entitled to make any number of demands under this Guarantee.
12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
14. No person other than Tfl (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

16. *[For non-UK resident Guarantors only:*

For the purposes of this Guarantee the Guarantor hereby appoints of [to be a London address] to accept service of process on its behalf, and service on the said at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate such appointment).]

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

Executed as a Deed by [GUARANTOR]

)

acting by

)

) Authorised Signatory

and

)

) Authorised Signatory

Executed as a deed by affixing the Common Seal of

)

[COMPANY]

)

in the presence of:-

)

.....

[Authorised Signatory]

Executed as a Deed by [SUPPLIER]

)

acting by

)

) Authorised Signatory

and

)

) Authorised Signatory

FORM OF ON DEMAND PERFORMANCE BOND WITH ANNEX 1

BOND

(Letterhead of Guarantor)

To: [Company name] (its successors in title and assigns)

Contract Bond No. [•]

1. Whereas our clients [•] (the "**Supplier**") have entered into a contract with you dated [•] (the "**Contract**") in respect of [•], we [•] (the "**Guarantor**", which term shall include our successors in title and assigns) hereby irrevocably undertake as a primary obligation upon first demand in writing made by you upon us from time to time or at any time to pay to you on each occasion the sum demanded by you within five (5) banking days upon service of your demand.

PROVIDED THAT:

2. This Bond shall come into force on the date hereof.
3. Any demand hereunder shall be substantially in the form of Annex to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention 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 or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.
4. All sums payable under this 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.
5. For the purpose of this paragraph 5, the expression "Expiry Date" means [•]. Our liability hereunder shall be limited as follows:
 - (a) we shall have no liability in respect of any demand received after the Expiry Date; and
 - (b) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £[•].
6. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:
 - (a) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or

- (b) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or
 - (c) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or
 - (d) any time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract; and/or
 - (e) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or
 - (f) the release or waiver of any such other bond, security or guarantee; and/or
 - (g) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or
 - (h) the termination of the Contract; and/or
 - (i) any other event which might operate to discharge a guarantor at law or in equity.
7. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.
 8. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.
 9. This Bond may be assigned or transferred without our prior consent to any member of the TfL Group. Any other assignment or transfer of this Bond by either party shall require the consent of the other party, such consent not to be unreasonably withheld or delayed.
 10. This bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.
 11. Each of the provisions of this bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this bond, and in such event the remaining provisions of this bond shall continue to have full force and effect.
 12. All bank charges and other fees payable in relation to or in connection with this bond are for the account of the Manufacturer and you shall have no liability or responsibility therefor.
 13. Except to the extent it is inconsistent with the express terms of this bond, this bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

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

Executed as a Deed by [GUARANTOR])

acting by)

) Authorised Signatory

and)

) Authorised Signatory

Executed as a deed by affixing the Common Seal of)

[COMPANY])

in the presence of:-)

.....

[Authorised Signatory]

ANNEX 1

Form of Demand from the Company to the Guarantor

Dear Sirs

[Contract Title]

Contract No: [•] (the “Contract”)

We refer to the Bond given by you to us dated [•].

An event has occurred of the type described in Clause [•] of the Contract.

We hereby demand payment from you of the sum of £[•] under the Bond. Please make payment by CHAPS made payable to [Company name / bank account details].

Yours faithfully

.....

[Company name]

Windsor House

42-50 Victoria Street

London

SW1H 0TL

Schedule 9

Form of Collateral Warranty

THIS AGREEMENTS is made the

day of 20[]

BETWEEN : -

- (1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**”);
- (2) [] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the “**Sub-Contractor**”); and
- (3) [] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the “**Supplier**”).

WHEREAS :-

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

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

1. The Sub-Contractor warrants to the Company that:
 - (a) the Sub-Contract Supply have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Supply;
 - (b) reasonable skill and care has been and will continue to be exercised in connection with:

- (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
 - (ii) the selection of all goods and materials comprised in the Sub-Contract Supply (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Supply (the "**Sub-Contract**");
 - (iv) the execution and completion of the Sub-Contract Supply;
 - (v) the Sub-Contract Supply will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
- (c) the Sub-Contract Supply will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and
- (d) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

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

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Supplier is granted an extension of time under the Main Contract for completion of the Supply:
- (a) Execute and complete the Sub-Contract Supply in accordance with the provisions of the Sub-Contract; and

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

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

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

5. The Sub-Contractor agrees:
- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and
 - (b) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Supply.
6. The parties hereby agree that:
- (a) this Agreement shall be personal to the Sub-Contractor;
 - (b) the Company may assign the benefit of this Agreement to any third party;
 - (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.
7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Supply, he has professional indemnity insurance with a limit of indemnity of not less than *[two million pounds (£2,000,000)]* in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Supply. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Supply provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.
8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Supply which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Supply to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the

Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.

9. (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a **"Step-in Notice"**) that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.
- (c) With effect from the date of the service of any Step-in Notice:
 - (i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
 - (ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;
 - (iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

- (iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:
 - (1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and
 - (2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
 - (d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.
- 10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
- 11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.
- 12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.
- 13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Supply.
- 14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
- 15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Executed as deed by the parties and delivered on the date of this Agreement.

Executed as a deed by affixing the Common Seal of)

London Underground Limited)

in the presence of:-)

.....

[Authorised Signatory]

Executed as a Deed by [SUB-CONTRACTOR])

acting by)

) Authorised Signatory

and)

) Authorised Signatory

Executed as a Deed by [SUPPLIER])

acting by)

) Authorised Signatory

and)

) Authorised Signatory

Schedule 10

SUPPLIER PERFORMANCE

1.

1.1. KEY PERFORMANCE INDICATORS

- 1.1.1. DELIVERY – The target is 100% on time delivery, with respect to the Purchase Order Delivery Date. Failure to meet delivery times will attract the following abatements against the full order value of all Goods due to be delivered in the measured period. This will be measured for each Accounting Period.

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

- 1.1.2. Not required

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

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

1.2.1.1. Non Safety Critical Goods

- Defects found in 3 or more Accounting Periods over a rolling six Accounting Periods; or
- Defects found in over 2% of Goods Delivered in an Accounting Period.

1.2.1.2. Safety Critical Goods

- Any single Defect

- 1.2.2. STOCK HOLDING – The Supplier shall maintain the value of agreed stock holding.

Where the stock holding is:

- below 100% for 4 or more Accounting Periods over a rolling six Accounting Periods;
- below 90% for 2 or 3 Accounting Periods over a rolling six Accounting Periods; or

- below 75% in any single Accounting Period,

the escalation process shall begin.

- Stock holding to be measured by review of the agreed delivery schedules, Contract Programme and in line with London Underground's Material Team.

2. ESCALATION PROCESS

In the event of unsatisfactory performance standards, including (but not limited to) failure to reach the targets set by the Service Delivery Indicators, failure to reach the targets set by the key performance indicators (in 1.1. above), faults open beyond the rectification time and any other deficiencies in performance, the escalation process shall be invoked by the Company in their absolute discretion.

The purpose of the escalation process is to provide a structured framework within which the Parties can address unsatisfactory performance standards against timescales and deliverable targets. For the purposes of this process notified levels of poor performance will be termed "**Non-Conformances**".

This procedure operates with four levels; the lowest level Non-Conformance being Level 1. Should Non-Conformances escalate they will receive an appropriate level of management intervention from the Company and the Supplier. Level 3 gives final review and opportunity for remedial actions to resolve issues before the Non-Conformance reaches Level 4, which will entitle the Company to terminate in accordance with Clause 17.1 of this Agreement.

In the event that a performance issue is not resolved between the Company and the Supplier then the Non-Conformance may be raised formally to a Level 1 or Level 2 Non-Conformance, depending upon the severity of the performance failure. It is possible for a number of Level 1 and/or Level 2 issues to be in hand at any one time.

Summary of Escalation Process

TRIGGER	LEVEL	ACTION	BY	RESULT
Failure to rectify identified non- conformance issued as part of KPIs and/ or SDIs	LEVEL 1	Improvement plan with precise end date required. On going review dates specified.	Supplier	Satisfactory -
				Stop
				Unsatisfactory -
				Level 2

TRIGGER	LEVEL	ACTION	BY	RESULT
Level 1 re-occurrence Consistent failure to meet required requirement Safety Condition infringements.	LEVEL 2	Improvement plan with precise end date required. Ongoing review dates specified.	Supplier	Satisfactory - Stop Unsatisfactory - Level 3
Level 2 re-occurrence	LEVEL 3	Final review. Final opportunity for remedial action. Precise end date required.	Supplier	Satisfactory - Stop Unsatisfactory - Level 4
Level 3 re-occurrence	LEVEL 4	POSSIBLE TERMINATION		

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

Level 1

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

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

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

Level 2

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

The Supplier shall in response (such response to be within 10 Working Days of service of the notice by the Company) prepare and submit to the Company a Level 2 Non-Conformance Report. Such report will contain:

- Confirmation of the date and details of the Level 2 Non-Conformance
- The steps to be taken by the Supplier to ensure there is no repetition of such Level 2 Non-Conformance (the "**Level 2 Required Action**")
- The time within which such Level 2 Required Action is to be completed (which shall be a reasonable period and no longer than the "**Level 2 Rectification Period**").

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

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

Level 3

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

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

Level 4

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

Schedule 11

Appendix 1

Quality and Safety Plan requirements

Railway Wheelset & Brake Ltd is required to [REDACTED] submit the following documentation prior to the first Article Inspection (FAI) of the initial Supply of Goods, failure to submit these documentation [REDACTED]

Agreement TfL-00781.

1. A successful quality assurance audit.
2. Inspection and Test Plan for the manufacture of Axles (to be submitted as an appendix to RWB overall Quality Plan).
3. Quality Plan for the manufacture of Axles (to be submitted as an appendix to RWB overall Quality Plan).
4. PFMEA for Axle.
5. PFMEA for Wheels.
6. Inspection and Test Plan for the manufacture of Wheels (to be submitted as an appendix to RWB overall Quality Plan).
7. Quality Plan for the manufacture of Wheels (to be submitted as an appendix to RWB overall Quality Plan).
8. Example of Wheel Certificate of Conformity (COF) (to be submitted as an appendix to RWB overall Quality Plan)
9. Example of Axle Certificate of Conformity (COF) (to be submitted as an appendix to RWB overall Quality Plan).
10. RWB Quality overall Quality Plan for the manufacture of Wheels and Axles.
11. Axle Ultrasonic testing procedure shall be submitted for agreement (to confirm, compliance with London Underground (LU) standard E6344).
12. Axle MPI testing procedure to be submitted to LU for agreement (to confirm, compliance with LU standard E6344).
13. One axle to be sectioned (axle section position drawing to be provided) and a hardness profile test conducted to confirm that the cold rolling process results in the required hardness profile prior to the FAI.
14. Wheel Ultrasonic testing procedure shall be submitted to LU for agreement (to confirm, compliance with LU standard E6344).
15. Information on the procedure/equipment used for measuring the wheel profile to be provided for review.

Technical Specification Documentation

EXECUTION PAGE:

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

Executed as a deed by)
affixing the Common Seal of)
London Underground Limited)
[Redacted])

[Redacted]

[Redacted]

.....

[Redacted]



Executed as a Deed on behalf of)
Railway Wheelset & Brakes Limited)
acting by [Redacted])

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]