

LOT 3

FRAMEWORK AGREEMENT

for the supply of heavy duty track maintenance and construction works

between

**TRANSPORT FOR LONDON or TfL
(as Company)**

and

**Keltbray Limited t/as Keltbray Environmental Solutions
(as Supplier)**

Contract Reference Number TfL-01025

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THIS DEED is made on

7th January 2019

BETWEEN:

- (1) **TRANSPORT FOR LONDON or TfL**, (the "Company" which expression shall include its successors, transferees and assignees), a statutory corporation established under the Greater London Authority Act 1999 of 55 Broadway, London SW1H 0BD; and
- (2) **Keltbray Limited t/as Keltbray Environmental Solutions** (the "Supplier"), a company registered in England and Wales under number 761484222 and having its registered office at St Andrews House, Portsmouth Road, Esher, Surrey KT10 9TA,

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

BACKGROUND

- (A) Pursuant to a notice published in the Official Journal of the European Union on 24th April 2018 (reference 2018/S 080-179975), the Company invited expressions of interest from appropriately qualified organisations relating to the provision of the Services (as defined in Clause 1 below) to the Company (for the benefit of itself and the other members of the TfL Group) under a framework agreement.
- (B) Following receipt of expressions of interest, potential service providers (including the Supplier) were invited to tender for the provision of the Services and, on the basis of the Supplier's tender, the Company has selected the Supplier to enter into a framework agreement to provide the Services to it.
- (C) This Framework Agreement sets out the terms and conditions on which the Company may order, and the Supplier shall provide, the Services.
- (D) Nothing in this Framework Agreement places the Company under an obligation to enter into a Call-Off Contract for the Services with the Supplier under this Framework Agreement or at all.

THIS DEED WITNESSES as follows:

PART 1: INTERPRETATION

1. Definitions and Interpretation

- 1.1 In this Framework Agreement, the following definitions shall have the following meanings:

"Abatement" has the meaning given to it in Schedule 13 (Performance Measurement).

"Affected Party" means the Party affected by a Force Majeure Event.

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006 save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded.

"Applicable Laws" means, depending on the context, all or any laws (including case law), legislation, 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 this Framework Agreement, any agreement or document referred to in this Framework Agreement, or for the performance of the Services.

"Asset Management System" means the Company's asset management system used for the planning, recording and management of maintenance work and any updates to the system from time to time.

"BAFO" means 'best and final offer'.

"Call-Off Award Criteria" means the award criteria for Services as set out by the Company in an ITT (Mini-Competition) in relation to a Project.

"Call-Off Contract" means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Company and the Supplier which incorporates the provisions of this Framework Agreement and the Mini-Competition Documents, in the form set out in Schedule 3 (as may be amended pursuant to Clause 6.3 (Scope of Framework Agreement)).

"Call-Off Completion Date" or "CCD" means the date that the Services to be provided under a Call-Off Contract are to be Completed, as specified in the relevant Call-Off Contract.

"Cessation Plan" means a plan agreed between the Parties or determined by the Company in accordance with Clause 82.1 (Transport for London Group) to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

"Change of Control" when applied to any person, shall be treated as occurring if any other person, or any other persons who together at the date of this Framework Agreement, Control such person subsequently ceases or together cease to Control it or if after the date of this Framework Agreement any person, or persons together, which did not have Control of that person at the date of this Framework Agreement but at any time thereafter acquire(s) Control of that person.

"Commencement Date" means the date specified as such in Schedule 1 (Detailed Terms).

"Company Party" means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Company acting in the course of his office or employment or appointment (as appropriate), but excluding the Supplier and any Supplier Parties.

"Company's Representative" means the person appointed by the Company and named as such in Schedule 1 (Detailed Terms).

"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 this Framework Agreement or any Call-Off Contract.

"Completed Mini-Competition Documents" means all documents comprised in the Mini-Competition (including the ITT (Mini-Competition) and the Tender Response (Mini-Competition)) relating to a successful bid for a Project.

"Completion" means the fulfilment by the Supplier of all of the Services to the standard required under the relevant Call-Off Contract (including the Specification) to the complete satisfaction of the Company including all required work on Site and full and complete submission to the Company (by such means as the Company may require which may include upload to the Company's electronic storage system) of associated documentation - including but not limited to a work removal report (including photos), waste note and a Completion Certificate signed by the Supplier (and referenced to "Completed" and/or "Complete" shall be construed accordingly).

"Completion Certificate" means, in respect of each Call-Off Contract, a certificate in the form required by the Company to be raised by the Supplier on Completion, stating the date that the Supplier considers Completion to have occurred and which, once countersigned by the Company, shall be known as the **"Valid Completion Certificate"**.

"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 Framework Agreement or any Call-Off 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.

"Construction Act" means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 or as further amended or supplemented.

"Contract Information" means (i) this Framework Agreement in its entirety (including from time to time agreed changes to this Framework Agreement); (ii) each Call-Off Contract in its entirety (including from time to time agreed changes the same); and (iii) data extracted from the invoices submitted pursuant to Clause 23.3 (Price and Payment) which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

"Contract Price" means the price set out in the relevant Call-Off Contract which shall be calculated using rates and prices no greater than those identified in Schedule 4 (Prices and Charging Structure).

"Contract Reference Number" means the number shown on the front page of the relevant Call-Off Contract.

"Contract Variation Procedure" means the procedure set out in Schedule 7(Contract Variation Procedure).

"Contract Year" means each period of 12 consecutive calendar months starting on the relevant Services Commencement Date.

"Contractual Documentation" means all documentation and information agreed to be delivered by the Supplier in accordance with this Framework Agreement and each Call-Off 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 this Framework Agreement and the relevant Call-Off Contract.

"Control" means, in relation to a body corporate, the ability of a person (or any persons acting together) to ensure that the activities and business of that body corporate are conducted in accordance with the wishes of that person (or those persons), and a person (or persons) shall be deemed to have Control of a body corporate (amongst other things) if, directly or indirectly, that person possesses or is entitled to acquire (or those persons possess or are entitled to acquire): (i) the majority of the issued share capital in that body corporate; or (ii) the majority of the voting rights in that body corporate; or (iii) the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding-up; or (iv) the right to appoint a majority of the directors to the board of that body corporate, and "Controlling", "Controlled" and "Controller" shall be construed accordingly.

"CPI" means the Consumer Prices Index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in a no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the provisions of Schedule 14 (Dispute Resolution Procedure).

"Data Protection Legislation" means:

- (A) any legislation from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (B) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation");
- (C) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data (as such terms are defined in section 1(1) of the Data Protection Act 1998); and
- (D) any statutory codes of practice issued by the Information Commissioner's

Office of the United Kingdom in relation to such legislation.

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Framework Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended) or Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

"Defect" means any defect, shrinkage or fault in the Services due to any failure of the Supplier to comply with the Call-Off Contract.

"Defect Liability Period" means, in respect of the relevant Services and/or Call-Off Contract, the period of 12 months from the date of Completion stated in the Valid Completion Certificate.

"Disclosed Data" means information relating to the provision of the Services disclosed to the Supplier before the date of this Framework Agreement including the Invitation to Tender.

"Dispute" has the meaning given to that term in Clause 71 (Dispute Resolution).

"DLP Completion Notice" has the meaning given to that term in Clause 30.13 (Inspection, Testing and Defects).

"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 this Framework Agreement or any Call-Off Contract and whether in paper form or stored electronically.

"Emergency" means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.

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

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

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

"Equipment" means equipment (not being Free Issue Materials) supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under a Call-Off Contract.

"Escalation Procedure" has the meaning given to it in Schedule 13 (Performance Measurement).

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

- (A) any Abatement levied in accordance with this Framework Agreement;
- (B) any costs of the Supplier of performing its obligations under this Framework Agreement or any Call-Off Contract, including but not being limited to the costs of re-performing the Services as required by Clause 25.2 (Performance Measurement);
- (C) any compensation on termination amounts pursuant to Clause 51.2 (Compensation on Termination);
- (D) any taxes, whether payable under any Applicable Laws or pursuant to this Framework Agreement or any Call-Off Contract;
- (E) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach of or failure to maintain such insurance);
- (F) Losses caused by fraudulent acts, including fraudulent misrepresentation or acts of a criminal nature;
- (G) Losses caused by the Supplier committing a Prohibited Act or Safety Breach;
- (H) loss of or damage to any property (including the TfL Network and Sites and any other property belonging to the Company or for which it is responsible);
- (I) claims made against the Company by third parties (whether under contract, tort, breach of statutory duty or otherwise);
- (J) any Losses against which the Company is indemnified under Clause 36 (TUPE);
- (K) any Losses against which the Company is indemnified under Clause 43.9 (Intellectual Property Rights);
- (L) death or personal injury caused by the Supplier's negligence or that of its personnel; and
- (M) any interest due as a result of any late payments of any of the Excepted Liabilities.

"Expiry Date" means the date specified as such in Schedule 1 (Detailed Terms), as may be extended pursuant to the provisions of Clause 2.2 (Duration and Option to Extend).

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

"Extension Period" has the meaning given to it in Clause 2.2 (Duration and Option to Extend).

"Final Warning Notice" has the meaning given to it in Clause 49.4 (Voluntary Termination by the Company).

"Financial Year" means 1st April to 31st March each year.

"First Services Commencement Date" means the Services Commencement Date of the first Call-Off Contract entered into between the Supplier and 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 this Framework Agreement or any Call-Off 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 this Framework Agreement or the relevant Call-Off 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, civil unrest, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority; or
- (B) 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.

"Framework Agreement" means this framework agreement made between the Company and the Supplier.

"Framework Suppliers" means the Supplier and other suppliers appointed as framework suppliers under framework agreements which are on substantially the same terms as this Framework Agreement.

"Free Issue Materials" means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under a Call-Off Contract.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily

be expected from time to time from a skilled, competent and experienced contractor seeking in good faith to comply with all its contractual obligations and all Applicable Laws (whether or not binding on the Company), and engaged in the same type of undertaking and under the same or similar circumstances as those envisaged by this Framework Agreement.

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

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

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

"Guarantor" means Keltbray Group (Holdings) Ltd.

"Guidance" means any guidance issued or updated by the UK government from time to time in relation to the UCR 2016.

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

"Initial Period" has the meaning given to it in Clause 2.1 (Duration and Option to Extend).

"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 as specified in Schedule 1 (Detailed Terms).

"Invitation to Tender" or "ITT" means the invitation to tender issued by the Company on 15th August 2018 through the TfL e-tendering portal under OJEU ID: 2018/S 080-179975.

"ITT Mini-Competition" means the document used to initiate a Mini-Competition, the form of which is attached at Schedule 2 (Mini-Competition and Call-Off Award Criteria).

"Key Personnel" means Supplier Personnel identified as such in Schedule 16 (Key Personnel) and any changes to the same that are made in accordance with Clause 37 (Personnel).

"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.

"Mini-Competition" means the process of competition for awards in relation to the Services.

"Mini-Competition Procedure" has the meaning given in Clause 7.1 (Ordering Procedure and Mini-Competition).

"Necessary Consents" means any permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier's obligations under this Framework Agreement and each Call-Off Contract, including those required in order to comply with Applicable Laws, Standards or as a result of the rights of any third party.

"Notice of Completion of Making Good" has the meaning given in Clause 30.12 (Inspection, Testing and Defects).

"Notice to Proceed" has the meaning given to that term in Clause 54.2(B) (Suspension).

"Notified Sum" has the meaning given to that term in Clause 23.7 (Price and Payment).

"Occasion of Tax Non-Compliance" means:

- (A) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - (1) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or
 - (2) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent of similar regime; and/or
- (B) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

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

"Payment Application" has the meaning given to that term in Clause 23.1 (Price and Payment).

"Payment Application Date" has the meaning given to that term in Clause 23.1 (Price and Payment).

"Period" means the Company's accounting periods as notified from time to time by the Company to the Supplier, each such Period being of between 25 and 32 days and one of 13 periods during the Company's Financial Year.

"Persistent Breach" means a breach for which a Final Warning Notice has been issued, which has continued for more than ten (10) Working Days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Warning Notice is served on the Supplier.

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

"Pre-Qualification Questionnaire" or "PQQ" means the pre-qualification questionnaire issued by the Company on 24th April 2018 through the TfL e-tendering portal under OJEU ID: 2018/S 080-179975.

"Processing" or "processing" has the meaning given to it in the Data Protection Legislation.

"Prohibited Act" means:

- (A) offering or agreeing to give to any servant, employee, officer or agent of the Company or any other member of the TfL Group any gift or consideration of any kind as an inducement or reward:
 - (1) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Framework Agreement or any other contract with the Company or other member of the TfL Group; or
 - (2) for showing or not showing favour or disfavour to any person in relation to this Framework Agreement or any other contract with the Company or other member of the TfL Group; or
- (B) entering into this Framework Agreement or any other contract with the Company or any other member of the TfL Group 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 this Framework Agreement is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (C) committing an offence:
 - (1) under the Bribery Act 2010;

- (2) under legislation creating offences in respect of fraudulent acts; or
- (3) at common law in respect of fraudulent acts,

in relation to this Framework Agreement or any other contract with the Company or any other member of the TfL Group; or

- (D) defrauding or attempting to defraud the Company or any other member of the TfL Group.

"Project" means a project actually or potentially procured by the Company pursuant to this Framework Agreement and set out in the Call-Off Contract.

"Public Procurement Termination Event" means:

- (A) the Framework Agreement has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (B) if the Company determines that the Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement Regulations.

"Quality and Safety Plan" means the Supplier's quality and safety plan set out in Schedule 8 (Health, Safety, Quality and Environmental Requirements) as amended from time to time.

"Quarter" means respectively each or all of Periods 1 to 4, 5 to 7, 8 to 10 and 11 to 13 in each Financial Year, and "Quarterly" will be construed in line with this definition.

"QUENSH" has the meaning given to it in Schedule 8 (Health, Safety Quality & Environmental Requirements).

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

"Relevant Tax Authority" has the meaning given to it in the Cabinet Office Procurement Policy Note: Measures to Promote Tax Compliance - Action Note 06/13 dated 25 July 2013.

"Relief Event" has the meaning given to it in Clause 35 (Relief Events).

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

"Replacement Employer" has the meaning given to it in Clause 36 (TUPE).

"Retention" means, in respect of each Call-Off Contract, the percentage of the Contract Price specified as the "Retention" in the Call-Off Contract.

"Responsible Procurement Policy" means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006, updated in January 2008 and June 2017 and as may be amended.

"Safety Breach" means a material breach of any obligation under this Framework Agreement or a Call-Off 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 TfL Network and/or Sites or the safety of the Company's customers, staff or any other person.

"Services" means all or any part of the services stated in Schedule 5 (Services) or any other part of this Framework Agreement and as stated in a Call-Off Contract which the Supplier shall provide to the Company from time to time during the term of the relevant Call-Off Contract and any services, functions or responsibilities which may reasonably be regarded as incidental to the supply of the Services and/or anything necessary to comply with them and which may reasonably be inferred from this Framework Agreement.

"Services Commencement Date" means the date specified as such in the relevant Call-Off Contract.

"Site" means the work areas detailed in the relevant Call-Off Contract and such other work areas as the Company may allow the Supplier to access (subject to and in accordance with Clause 27 (Access)) in order to perform the Services.

"Specification" means the description of the Services contained in the relevant Call-Off Contract.

"Standards" means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company or a Company Affiliate for the Supplier to perform the Services 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.

"Sub-Contract" means a contract between the Supplier and a Sub-Contractor.

"Sub-Contractor" means a sub-contractor to the Supplier, being the counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Services (or any part of them).

"Supplier Default" has the meaning given to it in Clause 50.1 (Termination on Supplier Default).

"Supplier Party" means:

- (A) an officer, servant or agent of the Supplier or any Affiliate of the Supplier and any officer, servant or agent of such a person;

- (B) any Sub-Contractor of the Supplier, and any of their officers, servants or agents; and
- (C) any person on or at any Site at the express or implied invitation of the Supplier (other than a Company Party).

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

"Supplier's Representative" means the person appointed by the Supplier and named as such in Schedule 1 (Detailed Terms).

"Tender Response (Mini-Competition)" means the documents submitted to the Company in response to the Company's invitation to Framework Suppliers for formal offers to supply it with Services (and which shall include any Supplier clarifications as may be relevant) which shall include the document in the form set out in Schedule 2 (Mini-Competition Award Criteria).

"Term" means the Initial Period together with the Extension Period, as applicable.

"Termination Notice" means a notice of termination issued in accordance with this Framework Agreement.

"TfL Business Area" means the subdivisions of TfL identified in Schedule 13b (Performance Measurement Matrix) under the heading of TfL Business Areas.

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

"TfL Network" means the assets owned, or used by, and/or the services provided by or on behalf of, any member of the TfL Group.

"Third Party Licence" means any third party licences, consents and permissions required to permit the Supplier to use the Asset Management System.

"Transparency Commitment" means the Company's commitment to publish its contracts, tender documents, and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Company's own published transparency commitments.

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

"Valid Completion Certificate" has the meaning given to that term in the definition of "Completion Certificate".

"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 forward by the Company or the Supplier to vary this Framework Agreement or a Call-Off Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 (Form of Variation Proposal/Variation Order) to Schedule 7 (Contract Variation Procedure).

"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 this Framework Agreement are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.4 Any reference to "writing" means a communication consisting of words in any legible and visible form, including words produced by any form of electrical or mechanical means and in typed, electronic or printed format as well as in manuscript, and "written" shall be construed accordingly.
- 1.5 A reference to a Clause, a Schedule or an Appendix shall be to a Clause of or, as the case may be, a Schedule or Appendix to this Framework Agreement and references to this Framework Agreement include its recitals, Schedules and Appendices.
- 1.6 References to (or to any specified provision of) this Framework Agreement or any other document shall be construed as references to this Framework Agreement, 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 this Framework Agreement or the document in question.
- 1.7 A 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.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 Any obligation on a Party to do or not do any act, matter or thing includes an obligation to procure that it is done or not done (as the case may be).
- 1.10 Words preceding the words "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.
- 1.11 In the event that a conflict, ambiguity or inconsistency exists between the Clauses of this Framework Agreement and the Schedules or between any of the Schedules, then (save as expressly provided in this Framework Agreement) the order of precedence shall be as follows:
 - (A) first the Clauses of this Framework Agreement;
 - (B) then second the Schedules to this Framework Agreement (equal priority, but

subject to this Clause 1.11);

(C) then third the Appendices to this Framework Agreement; and

(D) then fourth any other document referred to in, or incorporated by reference into, this Framework Agreement.

1.12 In the event that a conflict, ambiguity or inconsistency exists between the provisions of this Framework Agreement and the provisions of any Call-Off Contract, then (save as expressly provided in this Framework Agreement) the provisions of this Framework Agreement shall prevail over the Call-Off Contract.

1.13 If there is any inconsistency between any diagram and any text, the text shall take precedence.

1.14 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Company, nor the failure of the same shall, unless otherwise expressly stated in this Framework Agreement, relieve the Supplier of any of its obligations under this Framework Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.15 Where this Framework Agreement contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, the Company may make such election, determination, approval, rejection, consent, nomination, appointment, decision, specification, permission or consideration in its absolute discretion without being required to give reasons, unless this Framework Agreement expressly requires otherwise.

1.16 Where this Framework Agreement contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, this means in advance and in writing in order for the Supplier to be able to place reliance on it.

1.17 This Framework Agreement was drafted with the joint participation of the Parties and no provision of this Framework Agreement will be construed adversely to a Party solely on the ground that such Party was responsible for the preparation of this Framework Agreement or that provision.

1.18 Where used in any part of this Framework Agreement the phrase "reasonable endeavours" shall be taken to mean an obligation to do whatever could reasonably be done in the circumstances to fulfil the obligation concerned by:

(A) a responsible and sufficiently funded contractor acting in accordance with Good Industry Practice (in the case of the Supplier); or

(B) a responsible customer receiving the Services (in the case of the Company).

1.19 The Supplier acknowledges and agrees that the Company has entered into this Framework Agreement in its own name and for the benefit of the TfL Group. This Framework Agreement may therefore be utilised by the Company or any member of the TfL Group.

PART 2: FRAMEWORK ARRANGEMENTS AND MINI-COMPETITION PROCEDURE

2. Duration and Option to Extend

- 2.1 This Framework Agreement and the rights and obligations of the Parties (excluding the obligations of the Supplier to provide the Services) shall take effect on the Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2 (the "Initial Period"). The obligation of the Supplier to provide the Services shall take effect on the Services Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2.
- 2.2 The Company shall at its sole option be entitled at any time prior to the date falling no later than one (1) month prior to the Expiry Date to serve notice on the Supplier of its decision to extend this Framework Agreement for a period of up to thirty-nine (39) months (the "Extension Period") either in respect of all or part of the Services.
- 2.3 The provisions of this Framework Agreement shall continue to apply mutatis mutandis to any such extension of this Framework Agreement (other than Clause 2.2 containing the option to extend and subject to any variations as may be agreed by both Parties).
- 2.4 Save as otherwise may be agreed, the Contract Price at the start of the Extension Period shall be the Contract Price in the immediately preceding year prior to the Extension Period, indexed in accordance with the provisions of Schedule 4 (Prices and Payment Structure).
- 2.5 On receipt of notice further to Clause 2.2 from the Company by the Supplier, this Framework Agreement shall be deemed extended accordingly.

3. Duration of each Call-Off Contract

- 3.1 The term of any Call-Off Contract shall be set out in the relevant Call-Off Contract and any such term may be extended beyond the Term, in which case the provisions of this Framework Agreement shall survive beyond the Term if and to the extent such provisions are relevant to the Call-Off Contract.
- 3.2 Where any Call-Off Contract expires or is terminated early in accordance with its terms, such expiry or early termination shall not, of itself, give rise to the expiry or termination of any other Call-Off Contract or this Framework Agreement.

4. Due Diligence

- 4.1 The Supplier acknowledges and agrees that the Company has delivered or made available the Disclosed Data and that the Supplier has:
- (A) satisfied itself of all details relating to the Specification;
 - (B) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Framework Agreement and each Call-Off Contract;
 - (C) gathered all information necessary to perform its obligations under this Framework Agreement and each Call-Off Contract and other obligations

assumed, including:

- (1) obtaining all surveys, information and any and all data and any supporting documentation necessary for carrying out its obligations under this Framework Agreement and each Call-Off Contract; and
- (2) raising all relevant due diligence questions with the Company before the date of this Framework Agreement.

4.2 The Company shall not be liable for any costs arising from the Supplier's failure to perform its obligations under this Clause 4 or from any actual or perceived lack by the Supplier of information or knowledge.

4.3 The Supplier shall not in any way be relieved from any obligation under this Framework Agreement or any Call-Off Contract nor shall it be entitled to make any claim against the Company on grounds that any information, whether obtained from the Company or otherwise (including information made available by the Company), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

4.4 The Supplier acknowledges, represents and warrants that:

- (A) the Company has relied upon the Supplier's expertise and professionalism in the carrying out of all due diligence activities in relation to this Framework Agreement including the requesting of and verification of all Disclosed Data; and
- (B) the Disclosed Data, together with the Supplier's own expertise and knowledge of the Company's operations, are sufficient to enable the Supplier to satisfy itself:
 - (1) as to the scope and nature of the Services to be provided; and
 - (2) that it is able to perform its obligations under this Framework Agreement and each Call-Off Contract.

4.5 The Supplier shall not be entitled to any additional payment nor be excused from any liability under this Framework Agreement or any Call-Off Contract and has no right to make a claim against the Company as a result of:

- (A) the Supplier misinterpreting any matter or fact relating to the Specification, this Framework Agreement or any Call-Off Contract; or
- (B) the Supplier having failed to review the Disclosed Data or any documents referred to in the Disclosed Data.

4.6 Subject to Clause 4.7, no warranty, representation or undertaking (whether express or implied) is given by the Company as to the relevance, accuracy, completeness, adequacy or fitness for purpose of any Disclosed Data or that such information constitutes all of the information relevant or material to the Specification and the Services. The Supplier represents and agrees that it has placed and will place no reliance on the Disclosed Data and that it has made its own enquiries to satisfy itself as to the accuracy, adequacy and completeness of the Disclosed Data supplied to it in connection with this Framework Agreement. Accordingly, the Supplier shall not be

relieved from any obligation under this Framework Agreement or any Call-Off Contract in connection with:

- (A) the supply and the content of any Disclosed Data; and
- (B) any representations or statements made in respect of any Disclosed Data, and all liability on the part of the Company in connection with the matters set out at Clauses 4.5(A) and 4.5(B) is excluded to the extent permitted by Applicable Laws.

4.7 Nothing in this Clause 4 shall exclude any liability which the Company or any of its agents or employees would otherwise have to the Supplier in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Commencement Date.

5. Supplier Appointment

5.1 The Company hereby appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Call-Off Contracts by the Company and members of the TfL Group during the Term.

6. Scope of Framework Agreement

6.1 Without prejudice to Clause 76 (Contracts (Rights of Third Parties) Act 1999), this Framework Agreement governs the relationship between the Company and the Supplier in respect of the provision of the Services by the Supplier to the Company.

6.2 The Company may, at its absolute discretion and from time to time during the Term, enter into Call-Off Contracts with the Supplier in accordance with the procedures set out in Clause 7 (Order Procedure and Mini-Competition) and Schedule 2 (Mini-Competition and Call-Off Award Criteria).

6.3 If and to the extent that the Company requires Services under this Framework Agreement, the Company shall enter into a contract with the Supplier for those Services in accordance with the terms of a Call-Off Contract, as required and in accordance with this Framework Agreement.

6.4 If there is a conflict between:

- (A) Clause 7 (Ordering Procedure and Mini-Competition) and Schedule 2 (Mini-Competition and Call-Off Award Criteria), then Clause 7 (Ordering Procedure and Mini-Competition) shall take precedence;
- (B) Clause 7 (Ordering Procedure and Mini-Competition) and/or Schedule 2 (Mini-Competition and Call-Off Award Criteria) and the UCR 2016, then the UCR 2016 shall take precedence.

6.5 The Supplier acknowledges and agrees that:

- (A) there is no obligation whatsoever on the Company or on any member of the TfL Group to invite or select the Supplier to provide any Services and/or to purchase any Services under this Framework Agreement;
- (B) in entering into this Framework Agreement no form of exclusivity has been

conferred on the Supplier nor volume or value guarantee granted by the Company or any member of the TfL Group in relation to the provision of the Services by the Supplier and that TfL and the members of the TfL Group are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services; and

- (C) in the event that a member of the TfL Group contracts with any third party to perform any services similar or analogous to any part or all of the Services, the Supplier shall provide such information and assistance and within such timescales as the Company may reasonably request in connection with such procurement.

7. Ordering Procedure and Mini-Competition

- 7.1 If the Company decides to source Services through the Framework Agreement then it shall satisfy its requirements for Services by awarding a Call-Off Contract following a Mini-Competition conducted in accordance with the procedure and requirements of Clause 7.2 and Schedule 2 (Mini-Competition and Call-Off Award Criteria) ("**Mini-Competition Procedure**").

- 7.2 Subject always to Clause 6.4 and Clause 8 (Direct Award), the Company shall:

- (A) conduct a Mini-Competition in accordance with the Mini-Competition Procedure, the UCR 2016 and Guidance and in particular:
 - (1) consult in writing the Framework Suppliers and invite the same to participate in a Mini-Competition using an ITT (Mini-Competition);
 - (2) invite the Framework Suppliers to submit a Tender Response (Mini-Competition);
 - (3) set a time limit in the ITT (Mini-Competition) for the receipt by it of the Tender Responses (Mini-Competition) which takes into account factors such as the complexity of the subject matter of the Call-Off Contract and the time needed to submit tenders; and
 - (4) keep each Tender Response (Mini-Competition) confidential in compliance with the UCR 2016 and Guidance;
- (B) apply the Call-Off Award Criteria to any compliant Tender Responses (Mini-Competition) submitted through the Mini-Competition; and
- (C) subject to Clause 7.4 enter into a Call-Off Contract with the successful Framework Supplier.

- 7.3 The Supplier agrees that all Tender Responses (Mini-Competition) submitted by the Supplier in relation to a Mini-Competition held pursuant to this Clause 7 shall remain open for acceptance for ninety (90) days (or such other period specified in the ITT (Mini-Competition) issued by the Company in accordance with this Clause 7).

- 7.4 Notwithstanding the fact that the Company has followed the procedure set out above for Services, the Company may cancel, postpone, delay or end the procedure without awarding a Call-Off Contract. Nothing in this Framework Agreement shall oblige the

Company to place any contract or Call-Off Contract.

Acceptance

- 7.5 The Parties acknowledge and agree that any invitation to participate in a Mini-Competition is an "invitation to treat" by the Company. Accordingly, any response shall constitute the Supplier's offer to the Company.
- 7.6 Subject to Clause 7.1 to Clause 7.5 above, the Company may accept the successful Framework Supplier's offer on the basis of the final terms agreed through the Mini-Competition process (and as set out in the Completed Mini-Competition Documents).
- 7.7 The Supplier shall be directly liable to the Company in relation to any damage caused by the acts or omissions of the Supplier (or any officer, servant, employee or agent of the same) or any of the Supplier's contractors or sub-contractors of any tier (including in each case any director, officer, servant, employee or agent of the same acting in that capacity) to any property belonging to or under the control of the Company (or any other party to whom the Company may be liable in relation to such damage) during the period of any Mini-Competition.

Non-entry

- 7.8 If the Supplier elects not to submit a bid for a Mini-Competition, it shall confirm to the Company in writing on or prior to the date of the time limit set by the Company pursuant to Clause 7.2(A)(3) its decision together with reasonable details of the Supplier's reasons for not entering the relevant Mini-Competition.

8. Direct Award

- 8.1 Notwithstanding the provisions of Clause 7 (Ordering Procedure and Mini-Competition) above, the Company may award a Call-Off Contract to a Framework Supplier using the following direct award procedure ("**Direct Award Procedure**"):

(A) The Company shall:

- (1) consult in writing the relevant Framework Supplier setting out details of the relevant Services using substantially the same document as Attachment 1 to Schedule 2 (Mini-Competition and Call-Off Award Criteria) (save that paragraph 8 (Call-Off Award Criteria) shall not apply) and invite the Supplier to submit a written proposal in relation to the relevant Services using Attachment 2 of Schedule 2 (Mini-Competition and Call-Off Award Criteria);
- (2) set a time limit in its written notice referred to in sub-paragraph (1) above for the receipt by it of the Framework Supplier's written proposal which takes into account factors such as the complexity of the subject matter of the Call-Off Contract and the time needed to submit proposals; and
- (3) keep each proposal confidential in compliance with the UCR 2016 and Guidance;

(B) subject to Clause 8.3, enter into a Call-Off Contract with the relevant Framework Supplier.

- 8.2 The Supplier agrees that all proposals submitted by the Supplier in relation to the Direct Award Procedure held pursuant to this Clause 8 shall remain open for acceptance for ninety (90) days (or such other period specified in the Company's written notice referred to in Clause 8.1(A)(1) above) issued by the Company in accordance with this Clause 8).
- 8.3 Notwithstanding the fact that the Company has followed the Direct Award Procedure, the Company may cancel, postpone, delay or end the procedure without awarding a Call-Off Contract. Nothing in this Framework Agreement shall oblige the Company to place any contract or Call-Off Contract.

Acceptance

- 8.4 The Parties acknowledge and agree that any invitation to participate in the Direct Award Procedure is an "invitation to treat" by the Company. Accordingly, any response shall constitute the Supplier's offer to the Company.
- 8.5 Subject to Clause 8.1 to Clause 8.4 above, the Company may accept the successful Framework Supplier's offer on the basis of the final terms agreed through the Direct Award Procedure process (and as set out in the completed Attachments 1 and 2 to Schedule 2 (Mini-Competition and Call-Off Award Criteria) referred to in Clause 8.1(A)(1)).
- 8.6 The Supplier shall be directly liable to the Company in relation to any damage caused by the acts or omissions of the Supplier (or any officer, servant, employee or agent of the same) or any of the Supplier's contractors or sub-contractors of any tier (including in each case any director, officer, servant, employee or agent of the same acting in that capacity) to any property belonging to or under the control of the Company (or any other party to whom the Company may be liable in relation to such damage) during the period of any Direct Award Procedure.

9. Call-Off Contract Performance

- 9.1 The Supplier shall perform all Call-Off Contracts entered into with the Company in accordance with:
- (A) the provisions of this Framework Agreement; and
 - (B) the provisions of the relevant Call-Off Contract.

PART 3: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

10. Supplier Warranties

10.1 The Supplier warrants to the Company and each of the other members of the TfL Group that:

- (A) it is properly constituted and incorporated under the laws of England and Wales and has all necessary authority, power and capacity to enter into this Framework Agreement, and that this shall remain the case until the Expiry Date;
- (B) it has entered into and executed this Framework Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and constitutional documents and all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Framework Agreement have been taken by the Supplier and this Framework Agreement is executed on behalf of the Supplier by a duly authorised representative of the Supplier;
- (C) it has the right to grant to the Company and any other 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 Framework Agreement and such Intellectual Property Rights are not infringing upon the Intellectual Property Rights or infringed by the Intellectual Property Rights of any third party;
- (D) it has examined this Framework Agreement all other documents forming this Framework Agreement and is not aware of any ambiguity or discrepancy within this Framework Agreement or between this Framework Agreement and any other documents which it is required to comply with which might adversely affect the carrying out of the Services for the Contract Price in accordance with the terms of this Framework Agreement;
- (E) at the Commencement Date there are no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge (having made all due enquiry), threatened against or affecting the Supplier or any of its assets before any court or administrative body or arbitration tribunal that might affect the ability of the Supplier to meet and carry out its obligations under this Framework Agreement;
- (F) at the Commencement Date all information, representations and other matters of fact communicated in writing to the Company or its agents or employees in connection with the response of the Supplier to the Pre-Qualification Questionnaire and Invitation to Tender or in the course of negotiations in respect of this Framework Agreement are true, complete and accurate in all respects or were at the time they were made with any omissions or inaccuracies being notified to the Company by the Supplier prior to the Commencement Date by way of updating information;
- (G) as at the Commencement Date, the execution, delivery and performance by the Supplier of its obligations under this Framework Agreement will comply with Applicable Laws and will not result in a default under any agreement by which the Supplier is bound or any order or decree of any court of competent

jurisdiction or arbitrator which is binding on the Supplier, and which could prevent the supplier from entering into and performing its obligations under this Framework Agreement;

- (H) it has not (and none of its employees or contractors or agents or any employees of any contractors or agents has) committed any Prohibited Act in relation to this Framework Agreement prior to entering into or in entering into this Framework Agreement;
- (I) it has and will throughout the Term have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Supplier from bribing any person with the intention of obtaining or retaining business for the Supplier or with the intention of obtaining or retaining an advantage in the conduct of business for the Supplier;
- (J) it has obtained or will obtain, at or before the time such Necessary Consents are required to be obtained, all Necessary Consents from time to time necessary to carry out its obligations under this Framework Agreement and each Call-Off Contract;
- (K) as at the date of this Framework Agreement there are no material facts or circumstances in relation to the financial position or operational constitution of the Supplier which have not been fully and fairly disclosed to the Company and which if disclosed might reasonably have been expected to affect the decision of the Company to enter into this Framework Agreement;
- (L) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Supplier, having made all due enquiry, threatened) for the winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of the assets or revenues of the Supplier;
- (M) it has and until the Expiry Date will continue to have the expertise to supply the Services;
- (N) it has and will continue to have in place at all times, both before and after the Expiry Date, sufficient contractual obligations with any Supplier Parties who are directly involved in the provision of the Services and who need to know the Confidential Information to ensure that such Supplier Parties are aware of and comply with the obligations of confidence in Clause 44 (Confidentiality);
- (O) it is resident for tax purposes in (and only in) the UK, and undertakes that it will, at all times ensure that its affairs are conducted in a way which ensures they are and will remain resident for tax purposes in (and only in) the UK;
- (P) as at the date of this Framework Agreement, it has notified the Company in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance;
- (Q) as at the date of this Framework Agreement, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the UCR 2016; and

- (R) it shall not collude or otherwise join/collaborate in any way with any other Framework Supplier in relation to any actual or potential Mini-Competition.
- 10.2 Each time that a Call-Off Contract is entered into and on the extension of this Framework Agreement pursuant to Clause 2.2 (Duration and Option to Extend) above, the warranties set out in Clause 10.1 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.
- 10.3 The Supplier shall perform its obligations under this Framework Agreement and each Call-Off Contract:
- (A) in accordance with:
- (1) the provisions of this Framework Agreement and the requirements of the Company set out in this Framework Agreement (in particular the provisions of Schedule 5 (Services)) and all lawful and reasonable directions of the Company (and in the case of a Call-Off Contract, the Company) provided that those directions are not inconsistent with this Framework Agreement and/or the relevant Call-Off Contract;
- (2) the terms and conditions of the respective Call-Off Contract;
- (3) all applicable Standards;
- (B) in compliance with all Applicable Laws (including any Applicable Laws and Regulations applicable to the Company and/or the TfL Network); and
- (C) in a regular and diligent manner and in accordance with Good Industry Practice; and
- (D) so as not to detract from or damage the image and reputation of the Company or any member of the TfL Group.
- 10.4 Following the Commencement Date and during the term of this Framework Agreement and each Call-Off Contract, the Supplier shall:
- (A) hold membership of a recognised asbestos industry trade association such as ARCA or ACAD;
- (B) maintain and comply with a HSE licence to undertake work with asbestos (and shall have held such licence for a period of not less than three years prior to the Commencement Date). The licence shall have been granted to run for a period of at least two years at the last licence renewal and must not have any additional conditions attached beyond standard conditions 1,2 and 3 (with the exception of condition 19). The Supplier shall immediately notify the Company if its HSE licence is withdrawn or restricted in any way during the term of this Framework Agreement and each Call-Off Contract;
- (C) maintain and comply with a recognised quality management systems certified to (i) ISO 9001:2015 standard or equivalent; (ii) OHSAS 18001:2007 (health and safety) standard or equivalent; and (iii) ISO 14001:2015 (environmental) standard or equivalent, for the Services and TfL shall be entitled to see and take copies of copies of any manuals or plans. In the event that the Supplier is not accredited to these standards as at the Commencement Date, it shall

draw up plans for compliance with the same and apply for and obtain registration or certification from a recognised registration or certification body approved in writing by the Company in respect of the Services and the performance of the Supplier's obligations under this Framework Agreement within two (2) years from the Commencement Date, shall take all necessary steps to maintain and renew those registrations or notifications throughout the term of this Framework Agreement and each Call-Off Contract;

- (D) ensure the Supplier is registered and maintains its registration under the Waste (England and Wales) Regulations 2011 as an upper tier waste carrier.

11. Service Pre-requisites

The Supplier shall not commence the provision of any Services in relation to a Project unless and until the Parties have entered into a Call-Off Contract and such Services shall commence under the terms of the relevant Call-Off Contract.

PART 4: THE SERVICES

12. Supplier's Primary Obligations

- 12.1 The Supplier shall provide the Services to the Company and perform its obligations in accordance with the terms of this Framework Agreement and the relevant Call-Off Contract.
- 12.2 The Supplier shall ensure that, and warrants to the Company that, it shall perform all of its obligations under this Framework Agreement and the relevant Call-Off Contract and provide the Services:
- (A) so as to satisfy the requirements of the Specification;
 - (B) in a regular and diligent manner and in accordance with Good Industry Practice;
 - (C) so as to conform to all Applicable Laws (including but not limited to any law and Regulations applicable to the Company or the TfL Network);
 - (D) so as to comply with all Standards and any additional standards listed in Schedule 1 (Detailed Terms), in the Specification or the relevant Call-Off Contract;
 - (E) so as to comply with the requirements of the Company (as set out in this Framework Agreement and the relevant Call-Off Contract) and all lawful and reasonable directions of the Company provided that those directions are not inconsistent with this Framework Agreement or the relevant Call-Off Contract;
 - (F) using goods, materials, facilities, vehicles, plant and equipment that are new and of a satisfactory quality, sound and free from defects;
 - (G) in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services and the Quality and Safety Plan, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company;
 - (H) in an economic, efficient, effective and resource and energy efficient manner;
 - (I) in a manner that is safe and not injurious to health and does not create safety hazards and that does not cause a nuisance or damage to property or harm to the environment;
 - (J) so as not to detract from or damage the image and reputation of the Company or any other member of the TfL Group;
 - (K) so as not to impede the Company in carrying out its functions or increase the cost to the Company of carrying out its functions including so as to accommodate the operations and activities of the Company; and
 - (L) using only personnel who are competent, appropriately qualified and properly trained and supervised, exercising the highest standard of diligence, care and skill and who hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards.

12.3 The Supplier shall (at the sole cost of the Supplier) train any of the Company's employees and any of their contractors or agents as required by the Specification or the relevant Call-Off Contract.

12.4 **Design**

- (A) The Supplier shall carry out any design required as part of the Services in accordance with the provisions of the relevant Call-Off Contract (in particular, the Specification).
- (B) The Supplier shall submit the particulars of any design which the Specification requires to the Company's Representative for acceptance. The Supplier shall not proceed with the performance of the Services until the Company's Representative has accepted its design. Reasons for not accepting the Supplier's design may include:
 - (1) it does not comply with the Specification or any other part of this Framework Agreement or the relevant Call-Off Contract;
 - (2) it does not comply with Applicable Laws and Standards;
 - (3) it is not integrated and coordinated with the designs of others where the Supplier is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Supplier to perform the Services; or
 - (4) it is not in a format which is accepted for use by the Company's Representative.
- (C) The Supplier shall not be entitled to any changes to the Contract Price or to relief from any of its obligations under this Framework Agreement or the relevant Call-Off Contract by reason of anything in this Clause 12.4.
- (D) The Supplier may submit his design for acceptance in parts if the design of each part can be assessed fully.
- (E) The Supplier in designing and specifying the Services which it is required to design and specify, warrants, undertakes and represents to the Company that the design:
 - (1) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in this Framework Agreement and/or the relevant Call-Off Contract;
 - (2) complies with all Applicable Laws and Standards; and
 - (3) is fit for the purpose defined in the Specification.
- (F) The Supplier accepts entire responsibility for the design and specification of the Services which it is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between its design and the specification of the Services and the documents which are part of the relevant Call-Off Contract.

13. Work on the Site

13.1 During the term of each Call-Off Contract, the Supplier shall:

- (A) ensure that all Supplier Parties working on each Site or any third parties' sites comply with the applicable Site or site's local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or applicable third party;
- (B) notwithstanding the terms of Clause 13.1, ensure that all Supplier Parties adhere to the terms and conditions of this Framework Agreement and the relevant Call-Off Contract;
- (C) supply the Company with a list of all personnel working on each Site together with any other related information that the Company may reasonably require and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (D) be responsible for bringing to, erecting and maintaining on and dismantling and removing from the Site its facilities, vehicles, plant and equipment whether of a temporary or permanent nature;
- (E) ensure that no Supplier Parties use the Company's or a third party's site equipment without the prior written consent of the Company or the relevant third party;
- (F) carry out the Services in such a manner as not to endanger or interfere in any way with the TfL Network, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in this Framework Agreement and the relevant Call-Off Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway;
- (G) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway;
- (H) notify the Company of any circumstances or events of which the Supplier is aware which are likely in the Supplier's reasonable opinion to affect the operation of the TfL Network and/or Sites so as to impact on the services provided to the general public; and
- (I) ensure that the Services are carried out without unreasonable, unnecessary or improper disturbance to the public or, insofar as compliance with the requirements of this Framework Agreement and the relevant Call-Off Contract permits, without interference with access to and use or occupation of public and private roads and properties, whether in the possession of the Company or of any other person.

13.2 The Company's Representative may require the Supplier to remove or require a Sub-Contractor to remove from any Site any person employed by the Supplier or Supplier Party who in the opinion of the Company's Representative:

- (A) misconducts himself or persists in any conduct which is prejudicial to health or safety;
- (B) is incompetent or negligent in the performance of its duties; or
- (C) has had his employment terminated in whatever capacity from any of the Sites, any part of the TfL Network or any other Company premises,

and the Supplier shall comply with the Company's Representative's requirements. Such removal shall not affect the Supplier's obligation to provide the Services in accordance with this Framework Agreement and the relevant Call-Off Contract. Any such person shall not be employed again by the Supplier or Supplier Party to provide the Services without prior written permission of the Company's Representative.

- 13.3 Any person removed from the Site under Clause 13.2 shall be replaced as soon as reasonably possible by the Supplier and the Supplier shall promptly notify the Company of such replacement and in any event by no later than two (2) Working Days of the replacement.

14. Consents

- 14.1 Subject to Clause 14.2 the Supplier shall:

- (A) (subject to Clause 14.1(B)), in its own name, apply for, obtain, maintain and renew all Necessary Consents which may be required for the performance of the Services;
- (B) use all reasonable endeavours to assist the Company to obtain all Necessary Consents that, as a matter of law, the Supplier is not eligible to obtain;
- (C) be responsible for implementing each Necessary Consent (which it is required to obtain pursuant to Clause 14.1(A)) within the period of its validity in accordance with its terms;
- (D) supply free of charge to the Company's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
- (E) comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Supplier to carry out the Services; and
- (F) not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Company (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the date of this Framework Agreement and/or the relevant Call-Off Contract) or of any condition attached to it but, subject to the compliance by the Supplier with its obligations under this Clause 14.1(F), references in this Framework Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied,

relaxed or waived.

- 14.2 The Supplier shall immediately notify the Company if it becomes aware of any allegation of non-compliance with any Applicable Law or Necessary Consent from time to time by itself or any Sub-Contractor in relation to this Framework Agreement and/or the relevant Call-Off Contract.
- 14.3 The Supplier shall promptly provide the Company with such information relating to any Necessary Consent applied for or obtained as the Company may require from time to time.
- 14.4 Where the period of a Necessary Consent would extend beyond the termination or expiry of this Framework Agreement and/or the relevant Call-Off Contract, the Supplier shall, before applying for and throughout the process of obtaining such Necessary Consent, consult with the Company about the terms of such Necessary Consent and use reasonable endeavours to ensure that, to the extent the terms would apply after the termination or expiry of this Framework Agreement and/or the relevant Call-Off Contract, they do not adversely affect any interest of the Company.

15. Co-Operation

- 15.1 The Company and the Supplier shall co-operate with one another and act reasonably in and about the performance of their respective obligations and the exercise of their respective rights under this Framework Agreement and each Call-Off Contract.
- 15.2 Following the Commencement Date and during the term of this Framework Agreement the Supplier shall co-operate with (and shall procure that the Supplier Parties co-operate with) any third party engaged to provide services to the Company (whether at the relevant Site, the Supplier's premises or otherwise) so as to integrate (where reasonably required by the Company) other services, materials or equipment supplied by the Company or any third party with the Services. Such co-operation shall include, where appropriate, the provision of information and provision of access to the Supplier's and any Supplier Party's operations.

PART 5: LIAISON, GOVERNANCE AND CHANGE

16. Early Warning

- 16.1 The Supplier shall give an early warning by notifying the Company as soon as it becomes aware of any matter which could:
- (A) increase the Contract Price;
 - (B) prevent the Supplier from performing its obligations under this Framework Agreement and/or a Call-Off Contract;
 - (C) cause the Supplier to be in breach of this Framework Agreement, a Call-Off Contract or any Sub-Contract;
 - (D) adversely affect the Company; or
 - (E) lead to the Supplier terminating or suspending any Sub-Contract; or
 - (F) cause a breach of any Applicable Laws or Standards.

17. Company's and Supplier's Representatives

- 17.1 Each Party shall appoint one (1) or more representatives to act on its behalf under this Framework Agreement. Each Party shall advise the other Party, in writing, of the names and contact details of its representatives and these shall be recorded in Schedule 1 (Detailed Terms). 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. Amendments to the Supplier's Representative and/or the Company's Representative (as set out in Schedule 1 (Detailed Terms)) do not require the Parties to comply with the Contract Variation Procedure.
- 17.2 Subject to Clause 81 (Notices and Service of Process), any notice, information, instructions or communication given:
- (A) to the Supplier's Representative shall be deemed to have been given to the Supplier; and
 - (B) to the Company's Representative shall be deemed to have been given to the Company.
- 17.3 The Company shall not be responsible for any notice, communication or other purported instruction required to be given under this Framework Agreement given by a person alleging to act for and on behalf of the Company unless such person is one of the Company's Representatives. Accordingly, the Supplier shall not be entitled to rely on any such notice, communication or purported instruction and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Supplier act on or fail to act on it.

18. Records and Audit

- 18.1 The Supplier shall, and shall procure that its Sub-Contractors shall, maintain a true and correct set of records relating to all aspects of their performance of this Framework Agreement and each Call-Off Contract and all transactions related to this Framework Agreement and each Call-Off Contract. For the avoidance of doubt, such records shall include:
- (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) sub-contract 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;
 - (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; and
 - (M) personnel records including all payroll information in respect of any personnel, including personnel of the Supplier, any Sub-Contractor and any agency staff of the Supplier involved in the performance of the Services.
- 18.2 The Supplier shall, and shall procure that its Sub-Contractors shall, 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 this Framework Agreement and each Call-Off Contract. In the absence of specific instructions as to the method of storage, the Supplier shall, and shall procure that its Sub-Contractors shall, retain its records in an orderly and logical fashion and in accordance with Good Industry Practice.
- 18.3 The Company, any party authorised by it and any party legally authorised to inspect any part of the TfL Network and/or any Site shall have the right to inspect and audit any of the records required pursuant to Clause 18.1, at any time during the period referred to in Clause 18.2.

18.4 The Supplier shall promptly provide all reasonable co-operation and assistance (and shall procure such co-operation and assistance from any Supplier Parties) in relation to any audit or check including:

- (A) granting or procuring the grant of access to any premises or Sites used in the performance of this Framework Agreement and each Call-Off Contract, whether the Supplier's own premises or otherwise;
- (B) granting or procuring the grant of access to any assets and equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under this Framework Agreement and each Call-Off Contract, wherever situated and whether the Supplier's own equipment or otherwise (including whether leased or licensed and whether situated at the Supplier's premises, the Sites or otherwise);
- (C) making any contracts and other documents and records required to be maintained under this Framework Agreement and each Call-Off 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;
- (E) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of this Framework Agreement and each Call-Off Contract; and
- (F) providing such oral or written information as required by the Company for the purposes of the audit.

19. Provision of Contractual Documentation and Progress Meetings

- 19.1 During the term of this Framework Agreement and any Call-Off Contract, the Supplier shall keep the Company fully informed as to the progress and status of all Services as set out in the relevant Call-Off Contract. The Supplier shall, during the Term, supply the Company from time to time with such information and reports (including the Contractual Documentation) as the Company reasonably requires in relation to the provision of the Services (the **"Progress Information"**).
- 19.2 The Supplier shall provide all Progress Information within the times stated in Schedule 1 (Detailed Terms), the Specification or the relevant Call-Off Contract or, if no such times are stated, by no later than ten (10) Working Days from the date on which the Company's Representative requests the same.
- 19.3 The Supplier shall be responsible for the accuracy of all Progress Information 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 Progress Information accordingly.
- 19.4 The Supplier shall attend progress and review meetings in accordance with the provisions of Schedule 17 (Contract Management).

20. Variations

20.1 Variations

Unless the Parties agree otherwise in writing, any variation to this Framework Agreement or a Call-Off Contract shall be made under the Contract Variation Procedure. The Supplier shall not proceed to implement any variation unless there has been a Variation Order.

PART 6: PAYMENT AND FINANCIAL

21. General

The provisions of a Call-Off Contract shall apply in respect of the Supplier's remuneration for the Services in addition to the provisions set out in Clauses 22 (Company's Obligations) to 27 (Access) below.

22. Company's Obligations

- 22.1 The Company shall pay the Supplier the Contract Price for the Services in accordance with the terms of this Framework Agreement and the relevant Call-Off Contract.
- 22.2 Payment of the Contract Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under this Framework Agreement and/or the relevant Call-Off Contract properly.

23. Price and Payment

- 23.1 The Supplier shall submit its application for payment of:
- (a) the total Contract Price to the Company's Representative following the Completion of the Services; or
- (b) where a Call-Off Contract provides for interim payments on the completion of a milestone and a schedule of such interim milestone payments or provides for payment for works performed during that Period, the application referred to in this Clause shall be for the relevant portion of the Contract Price and the Supplier shall submit its application for payment of the relevant portion,
- (in each case a "Payment Application"). Each such Payment Application shall be submitted on the last day of each Period ("Payment Application Date") and shall include the Supplier's application for payment for all Call-Off Contracts in respect of which the Supplier is entitled to apply for payment.
- 23.2 Each Payment Application shall specify the sum in respect of each Call-Off Contract that the Supplier considers will become due on the Due Date (as defined below) 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.
- 23.3 The due date for each Payment Application for the purposes of the Construction Act shall be the Payment Application Date (the "Due Date").
- 23.4 The Company's Representative shall assess and verify the Payment Application in a timely manner and shall notify the Supplier in writing (a "Payment Certification") not later than fourteen (14) days after the date of receipt of each Payment Application of:
- (A) the amount (if any) the Company's Representative considers to be due at the Due Date (which amount shall be net of any discount to which the Company is entitled and/or any Retention which the Company is entitled to retain in respect of the relevant Call-Off Contract and in accordance with Clauses 23.9

and 23.10 (below)); and

(B) the basis on which the amount was calculated;

the "Notified Sum". It is immaterial for the purposes of this Clause 23.4 that the amounts referred to in Clause 23.4(A) or Clause 23.4(B) may be zero. Any notification given under this Clause 23.4 shall constitute a payment notice for the purposes of section 110A of the Construction Act.

23.5 If no Payment Certification is issued within 14 days then the Notified Sum shall be the amount identified in the Payment Application.

23.6 Within six (6) days of either:

(A) receipt of a Payment Certification; or

(B) where Clause 23.4 applies, the fifteenth day after the date the Payment Certification should have been issued;

the Supplier shall issue a VAT invoice for the Notified Sum. The final date for payment ("**Final Date for Payment**") of such VAT invoice for the purposes of the Construction Act shall be thirty (30) days after the Due Date except if the Supplier fails to issue a VAT invoice in accordance with the timescales set out in this Clause 23.6 and such failure is not due to any failure by the Company to comply with its obligations under Clause 23.4 then the Final Date for Payment shall be extended by the additional number of days taken by the Supplier to issue the VAT invoice.

23.7 Subject to Clause 23.8, the Company shall pay the Supplier the Notified Sum on or before the Final Date for Payment of the relevant VAT invoice.

23.8 If the Company intends to pay less than the Notified Sum, the Company or the Company's Representative (as the case may be) should notify the Supplier in writing not later than one (1) Working Day prior to the Final Date for Payment of the relevant VAT invoice of:

(A) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or

(B) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 23.8 that the amounts referred to in Clause 23.8(A) and Clause 23.8(B) may be zero. Where a notice is given under this Clause 23.8, the Company's obligation to pay the Notified Sum under Clause 23.7 applies only in respect of the sum specified pursuant to this Clause 23.8.

23.9 Where any Call-Off Contract provides for a Retention, the Company shall:

(A) subject to sub-Clause (B) below be entitled to withhold and retain such Retention from each Payment Application; and

(B) release such Retention within 30 days of the issue to the Supplier of a DLP Completion Notice in accordance with Clause 30.13 (Inspection, Testing and Defects).

- 23.10 The Company's interest in the Retention is fiduciary as trustee for the Supplier (but without an obligation to invest).
- 23.11 The Contract Price shall each be fixed and inclusive of all expenses and disbursements.
- 23.12 The Contract Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the relevant Payment Application and will be shown as a separate item on all Payment Applications. The Contract Price shall only be changed in accordance with the Contract Variation Procedure as set out in Schedule 7 (Contract Variation Procedure).
- 23.13 In addition to any other rights of the Company whether at law or equity under this Framework Agreement or the relevant Call-Off Contract, whether under or arising out of this Framework Agreement, the relevant Call-Off Contract or any other contract between the Company and the Supplier, if:
- (A) any sum of money is recoverable from or payable by the Supplier; or
 - (B) any Losses are reasonably and properly owed to, or incurred by, the Company or any member of the TfL Group,

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

- 23.14 All Payment Applications shall clearly show the relevant Contract Reference Number(s) 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.
- 23.15 All sums payable to the Company by the Supplier under this Framework Agreement and the relevant Call-Off 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.

24. Adjustment to the Contract Price following Termination

- 24.1 Where a Call-Off Contract is terminated in part pursuant to any of Clauses 49 (Voluntary Termination by the Company), 50 (Termination on Supplier Default), or 53 (Force Majeure), the Contract Price for that particular Call-Off Contract will be adjusted to reflect the extent of such termination in part.

25. Performance Measurement

At the end of the first Period after the first Mini-Competition (in respect of KPI 5) and the First Services Commencement Date (in respect of all other KPIs) (and for the duration of this Framework Agreement, every four (4) weeks after that date) the

Company shall assess the Supplier's performance under this Framework Agreement and each Call-Off Contract, in accordance with Schedule 13 (Performance Measurement).

25.1 The Company shall have the right (in addition to any other remedy including as set out in Schedule 13 (Performance Measurement)) to:

(A) levy Abatements as set out in Schedule 13 (Performance Measurement) and the relevant Call-Off Contract; and/or

(B) use the Escalation Procedure set out in Schedule 13 (Performance Measurement) to rectify any unsatisfactory performance by the Supplier in its performance of this Framework Agreement and/or the relevant Call-Off Contract or any failure by the Supplier to meet the performance standards set out in Schedule 13 (Performance Measurement).

25.2 Without limiting any other remedy, if the Services are not performed in accordance with this Framework Agreement and the relevant Call-Off Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with this Framework Agreement and the relevant Call-Off Contract at no extra cost to the Company within five (5) Working Days.

26. Interest

26.1 If either the Company or the Supplier fails to pay to the other any amount payable in connection with this Framework Agreement or the relevant Call-Off Contract on or before the Final Date for Payment, interest shall accrue on the overdue amount from the Final Date for Payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 26 shall be immediately payable by the paying Party on demand.

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

PART 7: PROPERTY AND ASSETS

27. Access

27.1 The Company shall give the Supplier access to the parts of the TfL Network and/or Sites required for the performance of the Services provided that:

- (A) in relation to the LUL Network (as defined in Schedule 6 (Access)), the Supplier complies with the access requirements set out in Schedule 6 (Access) and otherwise subject to and in accordance with Schedule 6 (Access); and
- (B) in relation to all other assets and Sites within the TfL Network the Supplier complies with such access requirements as notified by the Company to the Supplier from time to time in writing.

27.2 Where the Supplier or any Supplier Party has access to the TfL Network and/or Sites for the carrying out of any of the Services, the Supplier shall and shall ensure that any Supplier Party shall:

- (A) not cause any damage to the TfL Network and/or Sites;
- (B) not do or permit to be done on the TfL Network and/or Sites anything which is illegal or which may be or become a nuisance (whether actionable or not) or cause damage or disturbance to the Company or to any tenants or occupiers of the TfL Network and/or Sites or any owner or occupier of any neighbouring property;
- (C) not knowingly do anything that will or might constitute a breach of any Necessary Consent affecting the TfL Network and/or Sites that have been disclosed to the Supplier or which will or might vitiate in whole or in part any insurance effected by the Company in respect of the TfL Network and/or Sites from time to time of which the Supplier has notice;
- (D) observe any rules and regulations the Company acting reasonably makes in the interests of good estate management and notifies to the Supplier from time to time in writing governing the Supplier's use of the TfL Network and/or Sites and in particular:
 - (1) the lawful requirements and recommendations of the Company's local fire officer and the Company's health and safety representative in respect of the TfL Network and/or Sites or their use; and
 - (2) all regulations and Government establishment regulations, standing orders, any traffic regulations and any other regulations made by the Company; and
- (E) make good any damage that is wilfully or negligently caused by the Supplier or any Supplier Party to any equipment in or on the TfL Network and/or Sites as soon as reasonably practicable.

28. Free Issue Materials and Equipment

28.1 In the event of the Company supplying Free Issue Materials and Equipment to the

Supplier the cost of which has been included in calculating the Contract Price, the Contract Price shall be reduced by the amount included in the Contract Price for the materials which have been replaced by such Free Issue Materials and Equipment.

- 28.2 Any Free Issue Materials and Equipment supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials and Equipment are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 28.3 The Supplier shall check the Free Issue Materials and Equipment at the time of delivery to ensure that they are in good condition and in accordance with the Specification and shall certify the advice note of the supplier of the Free Issue Materials and Equipment accordingly and return the advice note as soon as reasonably possible to that supplier. The Supplier shall report any loss or damage immediately following inspection of the Free Issue Materials and Equipment to the Company, the Company's Representative, the supplier of the Free Issue Materials and Equipment and the carriers of the Free Issue Materials and Equipment. In the event that such a report is not made, the Supplier shall be responsible for any loss or damage existing at the time of receipt which would have been apparent on a visual check of quantities and condition.
- 28.4 The Supplier shall properly store all Free Issue Materials and Equipment and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss or damage to such Free Issue Materials and Equipment and other property of the Company whilst the same are in or ought to be in the Supplier's possession or in, or ought to be in, the possession of any Sub-Contractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.
- 28.5 The Supplier shall maintain the Equipment in good working order for the duration of the Framework Agreement and the relevant Call-Off Contract, including replacement of the Equipment where repair is uneconomic.
- 28.6 No later than ninety (90) days before the date of expiry of the relevant Call-Off Contract or immediately following receipt of a Termination Notice, the Supplier shall return to the Company's Representative all Free Issue Materials and Equipment provided to the Supplier in accordance with this Clause 28 and paragraph 3 of Schedule 15 (Obligations on Handover).

29. Other Materials, Staff and Labour

- 29.1 Unless otherwise stated in this Framework Agreement or the relevant Call-Off Contract, the Supplier shall provide all staff and labour, including management and supervision, and all materials (except Free Issue Materials), vehicles, plant and equipment (whether of a temporary or permanent nature), support services and other facilities necessary for the performance of its obligations under this Framework Agreement and each Call-Off Contract.
- 29.2 The Supplier shall be fully responsible for the management of obsolescence in equipment and materials until the Expiry Date or the expiry date of the last Call-Off Contract (whichever is the later) in accordance with the requirements stated in each Specification.

30. Inspection, Testing and Defects

- 30.1 All goods, materials, facilities, vehicles, plant, equipment, workmanship and systems to be supplied and work to be provided under this Framework Agreement and each Call-Off Contract may be subject from time to time to such tests as may be provided for in the Specification or as the Company's Representative may consider necessary to ensure that the Services are carried out in accordance with this Framework Agreement and the relevant Call-Off Contract.
- 30.2 Testing and inspection may take place at the place of manufacture or fabrication or on Site or at any other place as may be specified in the Specification or approved by the Company's Representative.
- 30.3 The Supplier shall provide the Company's Representative with copies of all test results and inspection certificates which it obtains in connection with the tests and inspections referred to in this Clause 30.
- 30.4 The costs of any test ordered by the Company's Representative which are not provided for in the Specification shall be borne by the Company unless the tests show that workmanship, vehicles, plant, equipment or materials provided by the Supplier are not in accordance with this Framework Agreement or the relevant Call-Off Contract. The costs of any test whether ordered by the Company's Representative, or otherwise which are provided for in the Specification shall be borne by the Supplier.
- 30.5 The Supplier shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be required to carry out efficiently the tests referred to in this Clause 30.
- 30.6 If a test or inspection shows that any work has a Defect, the Supplier shall repeat the work or otherwise correct the Defect, and the relevant test or inspection shall be repeated.
- 30.7 The Supplier does not deliver any of the Services which the Specification states are to be tested or inspected prior to delivery until the Company has notified the Supplier that they have passed the test or inspection.
- 30.8 Until the end of the Defect Liability Period each Party shall notify the other as either Party becomes aware of a Defect.
- 30.9 If any Defects appear within the Defect Liability Period:
- (A) such Defects shall be specified by the Company in a schedule of Defects which the Company shall deliver to the Supplier as an instruction not later than 14 days after the expiry of that Defect Liability Period; and
 - (B) prior to issue of that schedule, the Company may whenever it considers necessary issue instructions requiring any such Defect to be made good, provided no instructions under this Clause 30.9(B) shall be issued after delivery of that schedule or more than 14 days after expiry of the relevant Defect Liability Period.
- 30.10 Within a reasonable time after receipt of the schedule or instructions referred to in Clause 30.9 and a timescale which minimises the adverse effect on the Company, the Supplier shall at no cost to the Company make good the Defect(s) unless the Company shall otherwise instruct. If the Company so instructs otherwise: