

The provisions of Clauses 1, 3.1.3, 4, 5, 6.1.4, 8.1, 9.2.2, 9.2.3, 11.1.1, 11.1.2, 11.1.5, 11.2, 14, 16-20 (inclusive), 21.2, 22-25 (inclusive), 27, 29-31 (inclusive), 33-40 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

30. Rights of Third Parties

Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

30.2 Notwithstanding Clause 30.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

31. Contract Variation

Save where the Authority may require an amendment to the Services, the Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Schedule 6 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

32. Novation

32.1 The Authority may novate or otherwise transfer the Contract (in whole or in part).

32.2 Within 10 Business Days of a written request from the Authority, the Contractor shall at its expense execute such agreement as the Authority may reasonably require to give effect to any such transfer all or part of its rights and obligations under the Contract to one or more persons nominated by the Authority.

32.3 Subject to Clause 9, the Contract is personal to the Contractor who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Authority.

33. Non-Waiver of Rights

No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 35. The single or partial exercise of any right, power or remedy under the Contract shall

28.6 Without prejudice to the Authority's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25, in the event of a Public Procurement Termination Event, TfL shall promptly notify the Contractor and the Parties agree that the provisions of Clause 27 and these Clauses 28.6 to 28.10 (inclusive) shall apply as from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause 27 and these Clauses 28.6 to 28.10 or the Cessation Plan, the provisions of these Clauses 28.6 to 28.10 and the Cessation Plan shall prevail.

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

28.8 As from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, TfL shall reasonably determine an appropriate Cessation Plan with the object of achieving:

28.8.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and

28.8.2 minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of these Clauses 28.6 to 28.10 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

28.9 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

28.10 The Authority shall pay the Contractor's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to these Clauses 28.6 to 28.10 (inclusive)

29. Survival

not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

34. Illegality and Severability

If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

35. Notices

Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

if delivered by hand, at the time of delivery;

if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

36. Entire Agreement

36.1 Subject to Clause 36.2:

36.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which the Contract does not contain, and

36.1.2 without prejudice to the Contractor's obligations under the Contract, the Contractor is responsible for and shall make no

claim against the Authority in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

36.2

Nothing in this Clause 36 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

37.

Counterparts

This Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

38.

Relationship of the Parties

Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

39.

Further Assurance

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

40.

Governing Law

The Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 25, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Authority has the right in its absolute discretion to enforce a judgment and take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE CONTRACT has been signed for and on behalf of the Parties the day and year written above.

Signed by
for and on behalf of
The Authority

)
)
)
Signature [Redacted]
Print name and position [Redacted]
Date: *Mr Moly 2018*

Signed by
for and on behalf of
the Contractor

)
)
)
Signature [Redacted]
Print name and position [Redacted]
Date: *25/04/18*

SCHEDULE 1 - KEY CONTRACT INFORMATION

1. Contract Reference Number: LRC10237
2. Name of Contractor: Amey OWR Ltd
3. Commencement:
 - (a) Contract Commencement Date: 30th April 2018
 - (b) Service Commencement Date: 30th April 2018
4. Duration/Expiry Date: 36 months plus option to extend for a further period up to a maximum period of 24 months
5. Payment: Clause 5.1

Clause 5.4

Where no alternative is listed, payment must be made within 30 days of receipt of invoices.

6. Address where invoices shall be sent:

Rail for London
Accounts Payable
PO Box 45276
14 Pier Walk
London
SE10 1AL

Electronic format required (if any) for submission of orders by the Authority and of invoices by the Contractor:

12. Address for service of notices and other documents in accordance with Clause 35:

For the Authority: 55 Broadway, London, SW1H 0BD
For the attention of: [TBC]

7. Time for payment where not 30 days (see Clause 5.4):
N/A

8. Details of the Authority's Contract Manager

[Redacted]

9. Details of the Authority's Procurement Manager

[Redacted]

13. Office facilities to be provided to the Contractor in accordance with Clause 11.3:

[None]

14. Training to be provided by the Contractor in accordance with Clause 8.8:

[None]

10. Contractor's Key Personnel:

Name & Position	Contact Details	Area of Responsibility
[Redacted]	[Redacted]	[Redacted]

11. Notice period in accordance with Clause 26.4 (termination without cause):
90 days unless an alternative is listed here

SCHEDULE 2 - SPECIAL CONDITIONS OF CONTRACT

A3 Personnel Management and Training

A3.1 The Contractor shall provide the Key Personnel and shall procure that they:

A3.1.1 diligently supervise the performance of the Services;

A3.1.2 attend all contract meetings with the Authority (the location, frequency and time of which shall be specified by the Authority from time to time); and

A3.1.3 be available to the Authority to resolve any issues arising in connection with the Contract at such time period as is specified in Schedule 1.

A3.2 The Contractor may only make any changes to the Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Procurement Manager (which shall not be unreasonably withheld).

A3.3 The Contractor:

A3.3.1 without prejudice to Clause 8.2 undertakes that all the Contractor's Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;

A3.3.2 shall ensure that all the Contractor's Personnel are in possession of valid work permits if they are non-European Community nationals; and

A3.3.3 subject to Clause A3.5 shall (at its expense) provide or procure the provision of training for the Contractor's Personnel in respect of all aspects of its performance of the Contract and, as the Authority may require, for any employees, agents and contractors of the Authority in relation to the operation or use of any equipment supplied under the Contract in accordance with the terms set out in Schedule 1.

A3.4 Without prejudice to the Contractor's other obligations under the Contract, where training of any or all of the Contractor's Personnel is required for the purposes of performance of the Contract, the Contractor shall not assign any Contractor's Personnel to the

performance of the Contract unless and until such Contractor's Personnel have satisfactorily completed such training.

A3.5 The Authority will arrange (at its expense) safety training (as referred to in Schedule 7) for those of the Contractor's Personnel identified at the Service Commencement Date (if any) but, for the avoidance of doubt, such safety training in respect of any other Contractor's Personnel will be arranged by and be at the expense of the Contractor. For the avoidance of doubt, the Authority will not be responsible for the remuneration, travel, subsistence or other similar costs and expenses of any of the Contractor's Personnel attending any training under this Clause A3.5.

A.3A Criminal Record Declarations

A.3A.1 In this Clause A.3A:

A.3A.1.1 "Relevant Individual" means any member of the Contractor's Personnel engaged in any aspect of the provision of the Services and requiring potentially the access to Authority Premises [or Authority Assets]; and

A.3A.1.2 "Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

A.3A.2 The Contractor shall procure from Relevant Individual a declaration that he has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to any Relevant Individual being engaged in aspect of the provision of the Services. The Contractor shall confirm to the Authority in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Contractor shall procure that a Relevant Individual notifies the Contractor immediately if he commits a Relevant Conviction throughout the duration of this contract and the Contractor shall notify the Authority in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

A.3A.3 The Contractor is not permitted to engage or allow the engagement of any Relevant Individual any person in any aspect of the provision of the Services any Relevant Individual who has disclosed a Relevant Conviction.

A.3A.4 The Authority may in accordance with the audit rights set out in Clause 16 audit and check any and all such records as are necessary in order to monitor compliance with this Clause A.3A at any time during performance of this Contract.

A.3A.5 If the Contractor fails to comply with the requirements under Clauses A.3A.2 and/or A.3A.3, the Authority may, without prejudice to his rights under Clause 26.1.1, serve notice on the Contractor requiring the Contractor to immediately remove, procure the removal of any Relevant Individual who has not provided a Declaration from the Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services unless (in the case of non-compliance with Clause A.3A.2) within 7 days of receipt of the notice the Contractor confirms to the Authority he has procured all of the Declarations required under Clause A.3A.2.

A.3A.6 A persistent breach of either or both of Clause A.3A.2 or A.3A.3 by the Contractor shall constitute a material breach of this Contract which is not capable of remedy and entitles the Authority to terminate the Contract in whole or in part with immediate effect in accordance with Clause 26.1.1.

A.3A.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Contractor shall remove, procure the removal of any Relevant Individual who has not provided a Declaration from the Authority Premises [and cease their access to any Authority Assets] (as the case may be) with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the provision of the Services.

A.3A.8 Nothing in this Clause A.3A in any way waives, limits or amends any obligation of the Contractor to the Authority arising under this Contract and the Contractor's obligation to provide the Services remains in full force and effect and the Contractor cannot claim any extra costs or time as a result of any actions under this Clause A.3A.

A10 Further Confidentiality Requirements

A10.1 The Contractor shall:

A10.1.1 at the Authority's request and in any event upon the termination or expiry of the Contract, promptly deliver to the Authority or destroy as the Authority may direct all documents and other materials in the possession, custody or control of the Contractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the Authority in writing, remove all electronically held Confidential Information, including the purging of all disk-based Confidential Information and the reformatting of all disks; and

A10.1.2 not, except where provided in Clause 23 or with the prior written consent of the Authority, disclose to any person the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.

A10.2 The Contractor acknowledges that damages would not be an adequate remedy for any breach of Clauses 23 or A10 and that (without prejudice to all other rights, powers and remedies which the Authority may be entitled to as a matter of law) the Authority shall be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of Clauses 23 and A10 and no proof of special damages shall be necessary for the enforcement of the provisions of Clauses 23 and A10.

A12 Option to Extend Duration

A12.1 The Authority has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of [two] years by notice in writing to the Contractor provided that such notice is served at least [one month] prior to the expiry of the initial duration of the Contract or the expiry of any previous extension, if later.

A13 Option to Extend Services

A13.1 The Authority has an option, exercisable at its sole discretion, to extend the Services to include some or all of the services set out below, as further detailed in the Specification:

[describe Additional Services]

("the Additional Services")

A13.2 If the Authority decides to exercise its option under this Clause, it shall give the Contractor not less than [one month's] written notice of such decision and it shall inform the Contractor of the Additional Services it requires, the date upon which it requires the Additional Services to be provided and any additional requirements in relation to the Additional Services. The Contractor shall provide the Additional Services from such date or from such other date as may be agreed by the Parties and at such rates as are specified in Schedule 4.

A13.3 The Contractor acknowledges and agrees that:

A13.3.1 the Authority shall be under no obligation to exercise an option under this Clause;

A13.3.2 the Contractor shall not be entitled to and shall have no expectation of the right to perform the Additional Services; and

A13.3.3 the Authority may appoint a person other than the Contractor to provide the Additional Services.

A13.4 Any extension of the Services to include the Additional Services shall be on the terms of this Contract and on such other terms as are agreed in writing between the Parties and references to "Services" in this Contract shall include the Additional Services.

A17 Adjustment to Charges (Indexation)

A17.1 For the purposes of this Clause A17, unless the context indicates otherwise, the following expressions shall have the following meanings:

"CPI" means the version of the United Kingdom consumer price index published by the Office for National Statistics as 'CPI'

"Index" CPI, or such replacement index as the Parties may agree or determine under this clause A17.

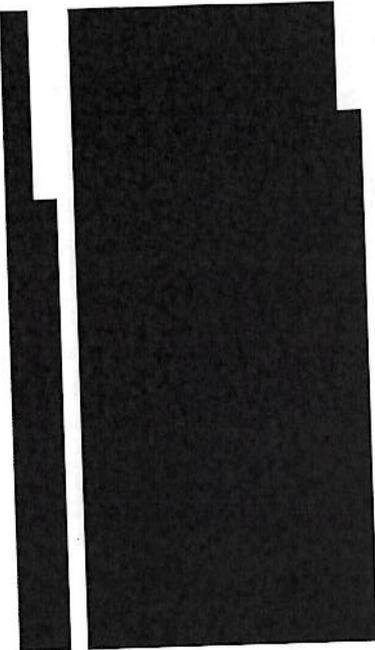
"Review Date" the second and each subsequent anniversary of the Services Commencement Date

A17.2 With effect from each Review Date:

- (A) 
- (B) 
- (C) 

17.3

A17.4



A20 Transfer of Employees to Contractor

A20.1 Clause 8.1 shall be deleted and replaced with the following.

A20.2 For the purposes of this Clause A20 and Clause A21, unless the context indicates otherwise, the following expressions shall have the following meanings:

A20.2.1 "Current Contractor(s)" means the provider or providers of services substantially similar to the Services immediately before the Service Commencement Date;

A20.2.2 "Employment Costs" means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);

A20.2.3 "Employment Liabilities" means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and reasonable legal costs;

A20.2.4 "Final Staff List" has the meaning set out in Clause A21.4;

A20.2.5 "Further Transfer Date" means the date on which the Services (or any part of them) cease to be provided by the Contractor and start to be performed by the Authority or any Replacement Contractor when the transfer of employment of the Re-Transferring Personnel from the Contractor to the Authority or any Replacement Contractor occurs;

A20.2.13 "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

A20.3 [REDACTED]

A20.4 [REDACTED]

A21 Transfer of Employees on Expiry or Termination

A21.1 The Contractor will, subject to its obligations under any applicable data protection laws, promptly provide (and procure that its Sub-Contractors provide) when requested by the Authority (but not more than twice in any 12 month period) and not more than 14 days after the date of any notice to terminate this Contract given by either Party, the following information to the Authority:

A21.1.1 an anonymised list of current Contractor's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the "Staff List");

A21.1.2 such of the information specified in Appendix 1 to this Clause A21 as is requested by the Authority in respect of each individual included on the Staff List;

A21.1.3 in the situation where notice to terminate this Contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, whom the Contractor considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Contractor thinks such persons will not transfer,

such information together being the "Staffing Information".

A21.2 The Contractor will notify the Authority as soon as practicable and in any event within 5 days of the Contractor becoming aware of any additional or new Staffing Information and/or any material changes to any Staffing Information already provided.

A21.3 The Contractor warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all material respects and will be kept complete and accurate in all material respects.

A20.2.6 "Relevant Period" means the period starting on the earlier of:

- (a) the date falling 6 calendar months before the date of expiry of the Contract; or
- (b) if the Contract is terminated by either Party in accordance with Clause 26.3 or by the Authority in accordance with Clause 26.1, 26.2, 26.4 or 26.5, the date of the relevant termination notice;

and ending on the Further Transfer Date;

A20.2.7 "Replacement Contractor" means any replacement supplier or provider to the Authority of the Services (or any part of the Services) and any Sub-Contractor to such replacement supplier or provider;

A20.2.8 "Re-Transferring Personnel" means any Contractor's Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Authority or the Replacement Contractor pursuant to TUPE with effect from the Further Transfer Date;

A20.2.9 "Staff List" has the meaning set out in Clause A21.1;

A20.2.10 "Staffing Information" has the meaning set out in Clause A21.1;

A20.2.11 "Sub-Contractor" means any subcontractor to the Current Contractor(s), the Contractor or the Replacement Contractor as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them);

A20.2.12 "Transfer of Services" means the transfer of the provision of the Services from the Current Contractor and any Sub-Contractor to the Contractor and any Sub-Contractor;

on the most recent Staff List or any Re-Transferring Personnel.

- A21.4 Subject to Clause A21.5, the Contractor will provide the Authority with a final Staff List (the "Final Staff List") and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.
- A21.5 If the Contract is terminated by either Party in accordance with Clause 26.1 or by the Authority in accordance with Clause 26.1, 26.2 or 26.5 then the Final Staff List will be provided by the Contractor to the Authority as soon as practicable and no later than 14 days after the date of termination of the Contract.
- A21.6 The Contractor warrants that as at the Further Transfer Date:
- A21.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate in all material respects;
- A21.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- A21.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
- A21.7 During the Relevant Period the Contractor will not and will procure that its Sub-contractors do not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- A21.7.3 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that the Authority is informed promptly of such termination);
- A21.7.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
- A21.7.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
- A21.7.6 increase to any significant degree the proportion of working time spent on the Services by any of the Contractor's Personnel; or
- A21.7.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed
- A21.8 The Contractor will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in Clause A21.7 regardless of when such notice takes effect.
- A21.9 The Contractor agrees that the Authority will be permitted to disclose any information provided to it under this Clause A21 in anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Authority to review the delivery of the Services and to any Replacement Contractor.
- A21.10 If TUPE applies on the expiry or termination of the Contract or the appointment of a Replacement Contractor, the following will apply:
- A21.10.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Authority or Replacement Contractor (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).
- A21.10.2 During the Relevant Period the Contractor will:
- A21.10.2.1 provide the Authority or Replacement Contractor (as appropriate) with access to such employment and payroll records as the Authority or Replacement Contractor (as appropriate) may reasonably require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Authority or Replacement Contractor (as appropriate);
- A21.10.2.2 subject to its obligations under any applicable data protection laws, allow the Authority or Replacement Contractor (as appropriate) to have copies of any of those employment and payroll records;
- A21.10.2.3 subject to its obligations under any applicable data protection laws, provide all

original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Contractor (as appropriate); and

A21.10.2.4 co-operate with the Authority and any Replacement Contractor in the orderly management of the transfer of employment of the Re-Transferring Personnel.

if the Re-Transferring Personnel are employed or engaged by Sub-Contractors, the Contractor will procure such Sub-Contractors provide the Authority or Replacement Contractor (as appropriate) with the same level of access, information and cooperation.

A21.10.3 The Contractor warrants to each of the Authority and the Replacement Contractor that as at the Further Transfer Date no Re-Transferring Personnel (except where the Contractor has notified the Authority and the Replacement Contractor (if appointed) in writing to the contrary) to the Contractor's knowledge:

A21.10.3.1 is under notice of termination;

A21.10.3.2 is on long-term sick leave;

A21.10.3.3 is on maternity, parental or adoption leave;

A21.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;

A21.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Contractor (as appropriate);

A21.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

A21.10.3.7 has received a written warning (other than a warning that has lapsed);

A21.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

A21.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Replacement Contractor (as appropriate) under TUPE.

A21.10.4 The Contractor undertakes to each of the Authority and any Replacement Contractor that it will (and will procure that its Sub-Contractors will):

A21.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;

A21.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Contractor or any Sub-Contractor which fall due in the period up to the Further Transfer Date;

A21.10.4.3 to pay to the Authority or the Replacement Contractor (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in Clause A21.10.5; and

A21.10.4.4 subject to the Authority or Replacement Contractor (as applicable) complying with its obligations under regulation 13(4) of TUPE, to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Replacement Contractor (as appropriate) such information as the Authority or Replacement Contractor may reasonably request in order to verify such compliance.

A21.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

A21.10.5.1 the Contractor will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;

A21.10.5.2 the Authority or (where appointed) any Replacement Contractor will be responsible for

the Employment Costs relating to the period after the Further Transfer Date

and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

A21.10.6 The Contractor will indemnify and keep indemnified each of the Authority and any Replacement Contractor from and against all Employment Liabilities which the Authority and/or the Replacement Contractor incurs or suffers arising directly or indirectly out of or in connection with:

A21.10.6.1 any failure by the Contractor to comply with its obligations under this **Clause A21.10**;

A21.10.6.2 any act or omission by or on behalf of the Contractor (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;

A21.10.6.3 any failure by the Contractor (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Authority or the Replacement Contractor to comply with Regulation 13 of TUPE);

A21.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;

A21.10.6.5 any claim or demand or other action taken against the Authority or any Replacement Contractor by any person employed or engaged by the Contractor (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the Authority or Replacement Contractor has inherited any liability from the Contractor (or its Sub-Contractors) in respect of them by virtue of TUPE.

A21.11 The Authority shall procure that any Replacement Contractor shall provide a directly enforceable indemnity to the Contractor from and against all Employment Liabilities arising out of or in connection with:

A21.11.1 any failure by the Replacement Contractor to comply with its obligations under Regulation 13(4) of TUPE;

A21.11.2 any claim arising out of the provision of, or proposal by the Replacement Contractor to offer any change to any Re-benefit, term or condition or working condition of any Re-Transferring Personnel after the Further Transfer Date;

A21.11.3 the employment by the Replacement Contractor on or after the Further Transfer Date of any of the Re-Transferring Personnel other than on terms which are equivalent to those enjoyed immediately prior to the Further Transfer Date or the termination of the employment of any of them after the Further Transfer Date; or

A21.11.4 any act or omission by the Replacement Contractor in relation to any Re-Transferring Personnel on or after the Further Transfer Date.

Where after the Further Transfer Date the Services (or any part of them) will be performed by the Authority, the Authority shall indemnify the Contractor itself and the references to Replacement Contractor in this clause A21.11 shall be read as references to the Authority.

A21.12 If TUPE does not apply on the expiry or termination of the Contract, the Contractor will remain responsible for the Contractor Personnel and will indemnify and keep indemnified the Authority against all Employment Liabilities which the Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Contractor Personnel or former Contractor Personnel.

A21.13 The Contractor, using reasonable endeavours, will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 2 years following the date of expiry or earlier termination of the Contract the Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

A21.13.1 is still an employee or sub-contractor of the Contractor or any of the Contractor's associated companies; and

A21.3.2 was at any time employed or engaged by the Contractor in order to provide the Services to the Authority under this Contract,

and such access and consultation will be charged at reasonable rates for the time spent by the Contractor and/or its employees or Sub-Contractors on such consultation. The Contractor will use all reasonable endeavours to procure that such persons co-operate with the Authority's requests.

A21.14 Clause 30.1 shall be amended so that benefits conferred on the Replacement Contractor under this Clause A21 shall be enforceable by them.

**Appendix 1 to Clause A21
Information to be provided in respect of those on the Staff List**

- Amount of time spent on the Services (or any part of the Services specified by the Authority)
- Date of birth
- Role Title/Designation and Role Profile
- Annual Salary £
- Bonus and Commission Amount and Frequency
- Pay Frequency and Date
- Overtime - Contractual or Non Contractual and Rates
- Contractual Working Hours
- Contract Type - Perm/Temp
- Geographical Area Of Work / Location
- Commencement of Employment Date
- Continuous Service Date
- Car Allowance
- Pension Contributions
 - 1) Employer
 - 2) Employee
 - Including additional info on:
 - who were originally employees of the Authority,
 - who were members of (or eligible to become members of) the TFL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme,
 - whose employment transferred from the Authority to the Contractor under TUPE; and
 - who were entitled to broadly comparable benefits under the Current Contractor's Scheme
- Details of any Contracting Out Certificate

- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of Annual Pay Award
- Annual Leave Entitlement
- Contractual Notice Period
- Public Holiday /Concessionary Days Entitlement
- Sickness Entitlement (in 12 month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual
- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom
- Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided
- Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

- A30.2.4 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time.
- A30.2.5 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and
- A30.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- A30.3 For the avoidance of doubt the Contractor shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.
- A30.4 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Contractor's staff and the staff of its sub-contractors.
- A30.5 Any breach by the Contractor of the provisions of this Clause A30 shall be treated as a material breach capable of remedy in accordance with Clause 26.1.1.
- A32 Ethical Sourcing**
- A32.1 The Authority is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Contract, the Contractor shall comply with and shall procure that its sub-contractors (as applicable) comply with those principles of the Ethical Trading Initiative (ETI) Base Code as are detailed in Ethical Sourcing Appendix to this Schedule, or an equivalent code of conduct (the "Ethical Sourcing Principles") in relation to the provision of the Services.
- A32.2 [As at the Contract Commencement Date] OR [As soon as practicable following the Contract Commencement Date] the Contractor shall be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Contractor agrees that for the duration of this Contract, it shall permit and enable the Authority to have access to the information relating to the Contractor that subsists in such ethical supplier database.
- A32.3 During the course of this Contract, the Authority has the right to request the Contractor to carry out one or more audits using a reputable auditor to verify whether the Contractor is complying with the Ethical Sourcing Principles. The identity of the auditor is to be approved by the Authority, such approval not to be unreasonably

withheld or delayed. The costs of the audit shall be borne by the Authority.

A32.4 During the course of this Contract, if the Authority has reasonable cause to believe that the Contractor is not complying with any of the Ethical Sourcing Principles, then the Authority shall notify the Contractor and the Parties shall agree an action plan with appropriate timeframes for compliance by the Contractor (the "Action Plan"), such Action Plan to be agreed by the Parties by no later than *[insert timeframe]* from the date of the Authority notifying the Contractor that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Contractor.

A32.5 Following the agreement of the Action Plan, the Authority reserves the right to conduct one or more audits, (either itself or via a third-party auditor approved by the Authority) in relation to compliance by the Contractor with the Action Plan.

A32.6 For the avoidance of doubt, the rights of audit contained in this Clause A36 shall include without limitation the right of the Authority (or an Authority-approved auditor) acting reasonably to undertake physical inspections of relevant sites/factories, to conduct interviews with relevant personnel and to inspect relevant documents. The Contractor shall co-operate and shall procure that its sub-contractors (as applicable) co-operate with the Authority in relation to all aspects of any audit.

A33 Supplier Diversity

A33.1 Compliance

A33.1.1 Without limiting the generality of any other provision of this Contract, the Contractor:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate, and
- (c) shall use reasonable endeavours to procure that its direct and indirect sub-contractors do not unlawfully discriminate in relation to the Services,

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

A 33.1.2 The Contractor acknowledges that the Authority as a public authority is subject to a statutory duty under section 149 of the Equality Act

2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership or status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Contractor shall assist and cooperate with Authority where possible in satisfying this duty.

A.33.1.3 The Contractor acknowledges where the Authority is the GLA, the GLA is under a duty under section 404(2) of the Greater London Authority Act 1999 and where the Authority is TfL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

- (a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (b) eliminate unlawful discrimination;
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and
- (d) in providing the Services, the Contractor shall assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty.

A33.1.4 TfL's Harassment, Bullying and Discrimination Policy ("Policy") as up-dated from time to time (copies of which are available on request from TfL) requires TfL's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Contractor shall:

- (a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

A33.2 Strategic Equality & Diversity Plan

A33.2.1

For the duration of this Contract, the Contractor shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as that agreed with TfL and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this Agreement the expression "Agreed Strategic Equality & Diversity Plan" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to the Contract as a Schedule headed "Agreed Strategic Equality & Diversity Plan".

A33.2.2 Where a subcontractor has, pursuant to Clause A33.2 or otherwise, adopted a Strategic Equality & Diversity Plan, the Contractor shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.3 Diversity Training

A33.3.1 For the duration of this Contract, the Contractor shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached to the Contract as a Schedule headed "Agreed Training Plan". The Contractor shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors uses reasonable

endeavours to procure that those indirect subcontractors adopt and implement;

a diversity training plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Training Plan.

A33.3.2 Where a subcontractor has, pursuant to Clause A33.1 or otherwise, adopted a diversity training plan, the Contractor shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide a copy of its diversity training plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.4 Supplier Diversity

A33.4.1 For the duration of this Contract the Contractor shall at all times comply with the "Agreed Supplier Diversity Plan". For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached to the Contract as a Schedule headed "Supplier Diversity Plan". The Contractor shall procure that each of its direct subcontractors:

- (a) adopts and implements; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement

a supplier diversity plan in relation to the performance of this Contract which is as least as extensive as the Agreed Supplier Diversity Plan.

A33.4.2 Where a subcontractor has, pursuant to Clause [33.4.1] or otherwise, adopted a supplier diversity plan, the Contractor shall procure that each of its direct subcontractors:

- (a) provides; and
- (b) in respect of other tiers of subcontractors beneath the Contractor's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide; a copy of its supplier diversity plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A 33.5 Communications Plan

A33.5.1 For the duration of this Contract and in all dealings with the Local Community, the Contractor shall comply with the Agreed Communications Plan. For the purposes of this Contract the expression "Agreed Communications Plan" means the communications plan agreed and attached to the Contract as a Schedule headed "Agreed Communication Plan" and the expression "Local Community" means those areas of London affected by the Works from time to time.

A33.6 Monitoring and Reporting

A33.6.1 Subject to Clause [A33.6.2], the Contractor shall use reasonable endeavours to provide TfL on the date of this Contract and subsequently every 12 months from the date or such other frequency as TfL may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in clauses A33.2 to A33.5. The annual report should set out:

- (a) the performance of the Contractor over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with clause A33.6.1 (d)
- (b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:
 - (i) female;
 - (ii) of non-white British origin or who classify themselves as being non-white British;
 - (iii) from the Local Community;

(iv) disabled

(c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.

(d) a plan of action for the forthcoming 12 months showing what the Contractor plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the attached document called TfL Supplier Diversity Definitions.

A33.6.2 The Contractor shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to TfL pursuant to clause A33.6.1.

A33.7 Equality and Diversity Infractions

A33.7.1 If the Contractor or any of its direct subcontractors commits a Equality & Diversity Infraction, TfL shall be entitled (but not obliged) to act as follows:

(a) if a Equality & Diversity Infraction is committed by the Contractor then TfL may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Contractor shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or

(b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Contractor, TfL may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Contractor shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction (or within 30 days of receipt by the Contractor of such notice) if the Contractor fails to procure the remedy of the Diversity Infraction, TfL may serve a further written notice upon the Contractor and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Contractor shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in clauses A33.2 to A33.5 of this Contract.

A33.7.2 It shall be a fundamental term and condition of the Contract that the Contractor complies with its obligations under clauses A33.7.1 (a) to A33.7.1(b). Where, following receipt of a notice given pursuant to clause A33.7.1(a) or A33.7.1(b) the Contractor fails to remedy a Diversity Infraction to the satisfaction of TfL or in the case of clause A33.7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in clause A33.7.1(b) the Contractor will be in breach of the Contract and TfL shall be entitled (but not obliged) to terminate the Contract, without further notice to the Contractor, in accordance with the [termination clause] in the Contract Conditions.

A.33.7.3 For the purposes of this clause A33.7 "Equality & Diversity Infraction" means any breach by the Contractor of its obligations specified in clauses A33.2 to A33.5 of this Contract and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in clauses A33.2 to A33.5 of this Contract.

A.33.8 Equality and Diversity Audit

Transport for London



- A33.8.1 TfL or its nominee may from time to time undertake any audit or check of any and all information regarding the Contractor's compliance with clauses A33.2 to A33.5
- A33.8.2 TfL's rights pursuant to this clause shall include any and all documents and records of the Contractor and its direct contractors A33.4 indirect subcontractors and shall include the Minimum Records.
- A33.8.2 The Contractor shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.5. The Contractor shall procure that each of its direct and, where applicable subject to the provisions of clauses A33.2 to A33.4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.4. The Contractor shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of clauses A37.2 to A33.4 each subcontract between its direct subcontractor and any indirect subcontractor of the Contractor shall contain rights of audit in favour of and enforceable by TfL substantially equivalent to those granted by the Contractor pursuant to clause A33.8.
- A33.8.3 TfL shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Contractor and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).
- A33.8.4 The Contractor shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of clauses A33.2 to A33.4 indirect subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- (a) granting or procuring the grant of access to any premises used in the Contractor's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Contractor's own premises or otherwise;
 - (b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's or the relevant subcontractor's obligations specified in clauses A33.2 to A33.4 wherever

situated and whether the Contractor's own equipment or otherwise; and

- (c) complying with TfL's reasonable requests for access to senior personnel engaged in the Contractor's performance of the Contract or the relevant subcontractor's performance of its subcontract.

A33.8.5

For the purposes of this clause A33.8 the expression Minimum Records means all information relating to the Contractor's performance of and compliance with clauses A33.2 to A33.5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of clauses A33.2 to A33.4 indirect subcontractor of the Contractor.

TfL Supplier Diversity Definitions

Issue Date: February 2010
 Effective: February 2010

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- 1. Document Outline
- 1.1 Background

Encouraging a diverse base of supplier forms a part of the GLA Group Responsible Procurement Policy. The TfL Supplier Diversity Definitions ensure consistency across Supplier Diversity activities across TfL. These definitions form a basis for the TfL Supplier Diversity Policy and act as a basis for alignment in the measurement of diverse suppliers.

1.2 Version Control

Version Date	Author	Notes
26 February 2010	C Cottam	Turnover/Balance Sheet Amendment
02 February 2009	C Cottam	SME definition update
31 January 2008	J Gall	Ownership categorisation
8 th May 2006	J Gall	EU definitions
19 th October 2005	J Gall	Updates/clarifications

2. Diverse Suppliers

For the purposes of TfL's Procurement Supplier Diversity Programme, "Diverse Suppliers" comprise the following four subsets:

- 2.1 Small and Medium Enterprises (SMEs)
- 2.2 Black, Asian and Minority Ethnic (BAME) businesses
- 2.3 Suppliers from other under-represented or protected groups
- 2.4 Suppliers demonstrating a diverse workforce composition

The more detailed explanations of the four above subsets are given in the sections below.

3. Small and Medium Enterprises (SMEs)

3.1 A Small Enterprise¹ is a business which has both the following:

- i) 0-49 Full Time Equivalent employees²;
AND EITHER
- ii) Turnover² per annum of no more than £5.6 million net (or £6.72 million gross); in the last financial year;
OR
- iii) Balance sheet total⁴ of no more than £2.8 million net (£3.36 million gross).

3.2 A Medium Enterprise⁵ is a business which has both the following:

- i) 50-249 Full Time Equivalent employees¹;
AND EITHER
- ii) Turnover² per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;
OR
- iii) Balance sheet total⁴ of no more than £11.4 million net (or £13.68 million gross).

3.3 A Large Enterprise⁵ is a business which has both the following:

- i) 250 and over Full Time Equivalent employees¹;
AND EITHER
- ii) Turnover² per annum over £22.8 million net (or £27.36 million gross) in the last financial year;
OR
- iii) Balance sheet total⁴ of over £11.4 million net (or £13.68 gross).

¹ Full Time equivalent employees is defined in Section 7.1

² Turnover is defined in Section 7.3

⁴ Balance Sheet Total is defined in Section 7.5

⁵ Further explanation is outlined in Section 7.7 (Definition of Size) & 7.8 (Ownership Categorisation)

4. Black, Asian and Minority Ethnic (BAME) owned businesses

A Black, Asian and Minority Ethnic (BAME) owned business is a business which is 51% or more owned by members of one or more Black, Asian or Minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'White British'.

The minority ethnic classification groups used by TfL for monitoring purposes are:

Ethnic group	Racial Origin
White	Irish Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian or Asian British	Indian Pakistani Bangladeshi Any other Asian background
Black or Black British	Caribbean African Any other Black background
Chinese or other Ethnic Group	Chinese Any other Ethnic Group

7.2 Annual Work Units

Refer to anyone who worked, over the past year, full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

7.3 Turnover

Turnover is in line with that defined in the Companies Act 1985:

The amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:

- i) trade discounts
- ii) value added tax

Please refer to Section 7.8 regarding ownership categorisation to understand how to interpret ownership, where an enterprise is part of a parent organisation.

7.4 Financial Year

Financial Year relates to 1st April – 31st March or any other 12 month period as defined by the company.

All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

7.5 Balance Sheet Total

The annual balance sheet total refers to the value of your company's main assets.

7.6 Ownership

Individual or those in named control holding capital or voting rights - either through private or shared ownership - of any given business entity.

7.7 Definition of Size

Where headcount and turnover and/or balance sheet conditions apply to different size definitions, headcount acts as the more predominant aspect, in defining size.

An organisation does not need to satisfy both turnover and balance sheet total, only one of the conditions and may exceed one of them without losing its status. This is illustrated by an organisation which has 30 employees, a

5. Suppliers from other under-represented groups or protected groups

5.1 A Supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

- 5.1.1 Women (gender)
- 5.1.2 Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;
- 5.1.3 Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and
- 5.1.4 Older people (aged 60 or over), young people (aged 24 or under) (age)

5.2 A Supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

6. Suppliers demonstrating a diverse workforce composition

This relates to Full Time Equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in II and III above.

7. Other Definitions & Information

7.1 Full-Time Equivalent Employees

Where employee numbers are used, these refer to Full-Time Equivalents (FTEs) expressed in Annual Work Units (see below). Staff headcount should include full-time, part-time and seasonal staff and includes the following:

- Employees
- Persons working for the enterprise being subordinated to it and considered to be employees under national law
- Owner managers
- Partners engaged in regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Full-time workers are expressed as hours worked per week. TFL refer to standard UK hours of work as full time workers - i.e. those who work 35 hours a week and 52 weeks a year (including annual leave).

turnover of £12 million and a balance sheet total of £10 million. The number of employees figure would class the organisation as a small organisation, however the turnover and balance sheet total define the organisation as medium. In this case, the headcount would be used to define the classification of the organisation. This organisation would be classed as a small organisation.

To illustrate this, the following scenarios have been mapped for the different characteristics of supplier diversity definitions (based on information from the Department for Trade & Industry (now Department for Business Enterprise & Regulatory Reform)):

Employees	Turnover/Balance Sheet Total		Employees more predominant
	£5.6m net(up to)/ £2.8m net (up to)	£22.8m net(up to/incl.)/ £11.4m net (over) (up to/incl.)	
0-49	✓		Employees more predominant
50-249	Employees more predominant	✓	Employees more predominant
250+	Employees more predominant	Employees more predominant	✓

7.8 Ownership Categorisation

EU Commission Definition on Enterprise Ownership Categorisation

The European Commission's Guidance published in 2005 "The New SME Definition: User Guide and Model Declaration"⁶, outlines parameters for defining an organisation's ownership categorisation and whether an organisation is autonomous, partner or linked.

7.8.1 Autonomous

This is the most common category of ownership.

An organisation is autonomous if:

- It is totally independent, i.e. there is no participation in other enterprises and no enterprise has a participation.
- It has a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a

stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If an organisation is autonomous, it means that it is not a partner or linked to another enterprise

7.8.2 Partner

An enterprise is a partner enterprise if:

- It has a holding equal to or greater than 25% of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in the other.

It is not linked to another enterprise. This means, among other things, that voting rights in the other enterprise (or vice versa) do not exceed 50%.

7.8.3 Linked

Enterprises formed as a group through the direct or indirect control of the majority of voting rights. An enterprise owned by another or through the ability to exercise a dominant influence on another enterprise.

Two or more enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

⁶Refer directly to the EU Commission Definitions for more guidance:
http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

8. Document Owner & Contact Details



SCHEDULE 3 - SPECIFICATION

1. PURPOSE AND GENERAL SCOPE

1.1 The purpose of this document is to describe the technical requirements of the services to be provided under the contract covering a range of examinations, inspections, surveys, evaluations and other activities. The proposed services are intended to enable Rail for London to manage its civil structures, earthworks, drainage and operational property structures and buildings assets in line with stated policies and standards.

1.2 The aim of the proposed services is therefore to make sure "information obtained enables timely and appropriate actions to be taken to maintain, in a cost-effective manner, the safety and performance" of the asset. Furthermore the data collected will be used for modelling asset condition, deterioration and other facets, to allow whole life evaluations. This approach will ultimately help to make sure that each asset can function adequately and will not unduly compromise the safety of either rail users or members of the public.

1.3 The contract requires the delivery of the works within the Schedule to be completed to the required quality and programme to ensure Rail for London is compliant with Standards and can demonstrate that risk from the assets is being appropriately managed. Appendix B discusses the Schedule and the Data Room includes all examinations carried out to date.

1.4 Rail for London manages, operates and maintains its infrastructure in accordance with Rail Group Standards and Network Rail Company Standards. These Standards form the Rail for London Standards Catalogue and discussed further in Section 2.

1.5 The examinations / Inspections shall apply to but not limited to:

1.5.1 Civil

The proposed services within the Contract cover various Rail for London owned or managed, shared and outside party Assets, as defined by the following categories within NR/L1/CIV/032 The Management of Structures:

- Bridges and Tenanted Bridges Spans
- Culverts
- Lined Tunnels and Unlined Tunnels
- Retaining Walls

- Coastal, Estuarine and River Defences
- Operational Property Structures and Buildings
- Ancillary Structures
- Earthworks
- Drainage

1.5.2 Operational Property Structures and Buildings

Property Structures and or Buildings to be Inspected / Examined include Rail for London owned or managed Buildings and Structures, Outside Party Buildings and Structures and Shared Buildings and Structures assigned to a particular Category, and include the following examples:

- Stations: leased to Train Operating Companies
 - Buildings such as TP huts, traction sub stations, bulk supply buildings, operational building complex, maintenance facility buildings
 - Critical Line side Buildings: for example signal, cable posts and cable hangers
 - Non-critical Line side Buildings; for example relocatable equipment buildings
 - Platform Canopies and supporting elements; other than Canopies on Footbridges
 - Platforms;
 - Retaining Walls;
 - Train Sheds and structural elements of adjacent Buildings which provide support;
 - Ancillary Structures such as Lighting Support structures;
 - Those parts of Subways which are not examined as a Bridge.
- 1.6 Drainage (excluding Culverts) serving Civils Structures and Operational Property Structures and Buildings is deemed to be part of the Asset it serves and is addressed with it.
- 1.7 Track drainage is outside the scope of this Contract. However, large diameter pipes greater than 650mm diameter are not considered as track drainage assets but as structures and shall be examined in line with stated policies and standards.