

466/3/2FWA

DATED 14 February 2017

TRANSPORT FOR LONDON (1)

and

LANES GROUP PLC

**FRAMEWORK AGREEMENT
FOR THE SUPPLY OF AD HOC
STRUCTURAL MAINTENANCE WORKS
LOT 3
CONTRACT REFERENCE NUMBER TfL – 00466 (L)**

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SECTION 1

FORM OF AGREEMENT

THIS AGREEMENT is made on *14 February 2017*

BETWEEN

- (1) **TRANSPORT FOR LONDON**, a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company" which expression shall include its successors and assigns); and
- (2) Lanes Group PLC, a company registered in England and Wales under number 3784486 and having its registered office at 17 Parkside Lane, Parkside Industrial Estate, Leeds, LS11 5TD (the "Contractor").

RECITALS:

- (1) The Contractor is an expert in the provision of the Works.
- (2) In reliance on that expertise, the Company wishes to appoint the Contractor to provide the Works to it and other members of the TfL Group.
- (3) When the Company or any other member of the TfL Group requests Works from the Contractor, and the Contractor is able to provide such Works, the relevant parties will enter into a separate Contract in accordance with this Agreement.
- (4) Each Contract will incorporate the terms and conditions set out in this Agreement.
- (5) This Contract may be utilised by the Company and any other member of the TfL Group.

WHEREBY IT IS AGREED as follows:

1. General

1.1. This Agreement does not place the Company or any member of the TfL Group under any obligation to procure the Works from the Contractor at a particular time or at all.

1.2. The following documents shall comprise this Agreement:

- (a) this Form of Agreement (Section 1);
- (b) the Framework Particulars (Section 2); and
- (c) Conditions of Contract (including the Schedules) (Section 3);

together with all other documents included or incorporated by reference in these documents.

2. Commencement and duration

- 2.1. This Agreement shall commence on the Framework Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.2. Expiry or termination of this Agreement shall not, in and of itself, give rise to the expiry or termination of any Contract and each Contract shall continue for the term set out in the relevant Contract unless terminated earlier in accordance with this Agreement. The provisions of this Agreement shall survive expiry or termination to the extent that such provisions are relevant to any Contract the term of which expires beyond expiry of the Term and additionally in accordance with Clause 27.
- 2.3. The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Contractor of its decision to extend the Term, provided that the aggregate duration of any extension(s) to the Term shall not exceed the period specified in the Framework Particulars. The provisions of this Agreement shall continue to apply mutatis mutandis to any such extension(s) of the Term. On receipt of such notice from the Company by the Contractor, this Agreement shall be deemed extended accordingly.

3. Contract Formation Procedure

- 3.1. At any time during the term of this Agreement, the Company may identify the Works which at its sole discretion it wishes to let under the terms of this Agreement. Any decision by the Company to place an Order under the terms of this Agreement shall be preceded by a Mini-Competition save where the Company, having considered the Applicable Laws and Standards (including the Utilities Contracts Regulations 2016), considers it appropriate to issue an Order to one or more framework suppliers without holding a Mini-Competition.
- 3.2. If pursuant to Clause 3.1, the Company wishes to be provided with a Proposal it shall issue to the relevant contractor(s) an ITT. The ITT shall specify the Works the Company requires including but not limited to the Site and details requested by the draft Order enclosed with the ITT.
- 3.3. On receipt of the ITT, the Contractor shall within two (2) Working Days of the date of issue of the relevant ITT, confirm receipt of such ITT.
- 3.4. If at any stage following receipt of an ITT and in any event not less than five (5) Working Days before the deadline for responding set out in the ITT, the Contractor decides that it does not wish to submit a Proposal in response to such ITT, the Contractor shall notify the Company's Representative in writing that it does not intend to submit a Proposal stating its reasons for not doing so.

- 3.5. If the Contractor receives an ITT, and the Contractor has not notified the Company's Representative that it is declining the ITT in accordance with Clause 3.4 above, the Contractor shall:
- 3.5.1. before submitting its Proposal, visit the location(s) of the Works to ascertain the exact scope and details of the work contained within the ITT, raise all queries and clarifications in respect of the ITT with the Company's Representative and, at the Company's Representative's request, attend any meetings in respect of the ITT. If the Contractor fails to attend any such meetings, the Company reserves the right to exclude the Contractor from continuing to participate in the applicable ITT process;
- 3.5.2. by the date specified in the ITT (or, if no date is specified, within seven (7) Working Days of the date of issue of such relevant ITT) or by such other date agreed in writing between the Company and the Contractor, complete and issue to the Company a Proposal which shall be in the form set out in Part C of Schedule 2 and shall include in full the information requested by the Company in the relevant ITT and full details of the basis on which the prices have been calculated in accordance with Schedule 4 including confirmation that the price proposed takes account of the location and conditions in which the Works are to be provided.
- 3.6. The Contractor acknowledges and agrees that a Proposal remains valid for at least six (6) months (or such longer period as may be specified in the relevant ITT) from the date such Proposal is submitted to the Company.
- 3.7. On receipt of the Contractor's Proposal pursuant to Clause 3.5 the Company's Representative shall:
- 3.7.1 clarify and confirm any points arising from its review of the Contractor's Proposal with the Contractor and the Contractor shall respond to any such requests for clarification within the period specified by the Company's Representative or, if no such period is specified, within two (2) Working Days of the applicable request for clarification;
- 3.7.2 be entitled to request any amendments to the Contractor's Proposal, in which event the Contractor shall submit a new Proposal to the Company's Representative in the form set out in Part C to Schedule 2 incorporating the agreed amendments;
- 3.7.3 be entitled to exclude the Contractor from the applicable ITT process if the Contractor fails to respond to the Company's Representative's requests pursuant to Clauses 3.7.1 or 3.7.2 within the requisite timescales.
- 3.8. If the Company's Representative considers that at least one (1) of the Proposals received satisfies the terms of the ITT, it shall evaluate such Proposals to determine which of them is

the most economically advantageous with reference to the applicable criteria set out in Part E of Schedule 2 as indicated by the ITT.

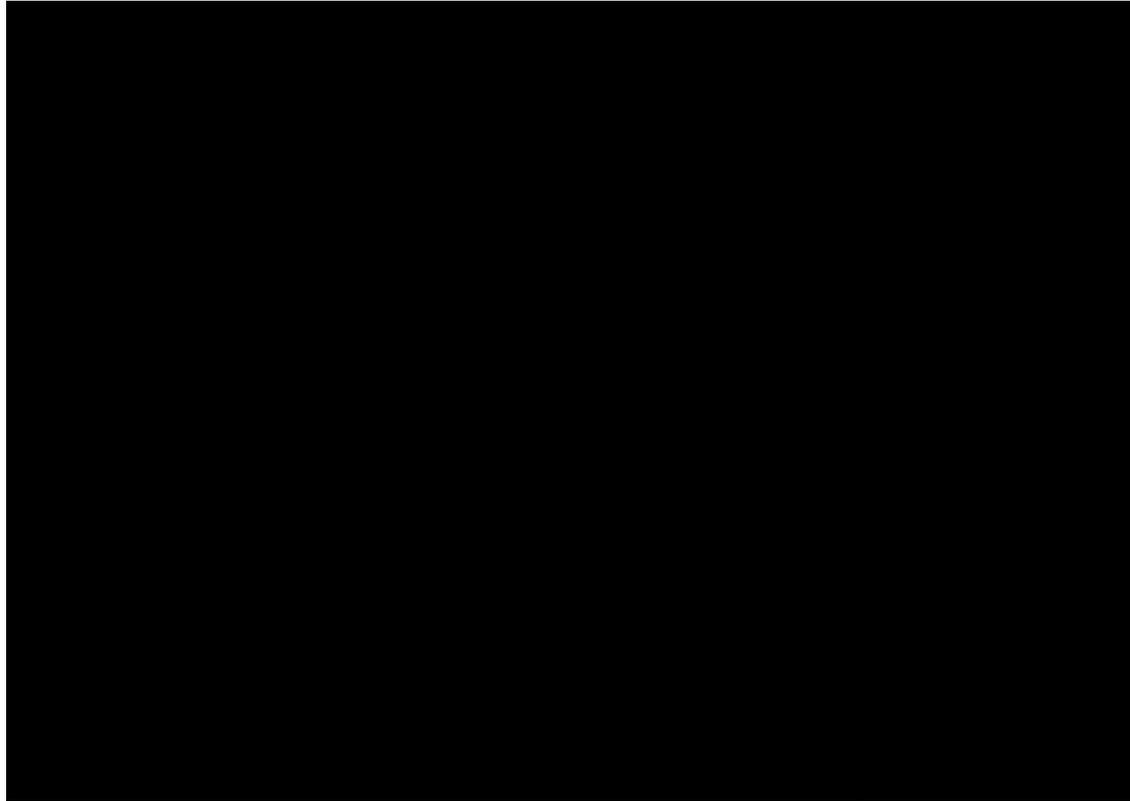
- 3.9. If the Company accepts a Proposal issued pursuant to Clause 3.5, it shall notify the Contractor of its intention to place an Order for the Works to be performed and each Order so given shall be final unless varied in accordance with terms of this Agreement or the relevant Contract. If the Proposal is accepted, the Company's Representative shall instruct the Contractor to commence the Works by issuing an Acceptance in the form set out at Part D to Schedule 2.
- 3.10. Each Order shall incorporate the terms of this Agreement and shall form a separate and distinct contract between the Parties to it (herein referred to as a "**Contract**").
- 3.11. An ITT and anything prepared or discussed by the Company constitutes an invitation to treat and does not constitute an offer capable of acceptance by the Contractor. The Company is not obliged to consider or accept any Proposal submitted by the Contractor.
- 3.12. This Agreement does not oblige the Company to place an Order or enter into any Contract with the Contractor.
- 3.13. The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3 (the "**Procurement Process**"), and the Company shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Contract (which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled Procurement Process).

4. Strategic Labour Needs and Training

- 4.1. The Contractor shall comply with the strategic labour needs and training requirements set out in Schedule 14 to the Conditions of Contract.

5. Priority of Documents

- 5.1. The documents forming this Agreement and each Contract are to be taken as mutually explanatory of one another. Subject to Clause 5.2, in the event of any ambiguity, discrepancy or inconsistency between the provisions of all or any of the documents, their priority shall be as follows:
- (a) this Form of Agreement;
 - (b) the Framework Particulars;
 - (c) the Conditions of Contract and, where relevant, Schedule 10 (Design); and
 - (d) the remaining Schedules excluding Schedule 10 (Design).



SECTION 2

THE FRAMEWORK PARTICULARS

(a) The Framework Commencement Date is:	01 April 2017
(b) The Initial Term is:	5 Years – 01/04/2017 – 31/03/2022
(c) The total duration of the Term (including the Initial Term and any extensions) shall be no greater than:	<p>8 Years (5 years + option to extend for 3 years): (Contract extension start date: 01/04/2022, contract extension end date: 31/03/2025 (In the event of the contract being extended by an additional 3 years) – Options 1 (Bridges and Structures) and 2 (Drainage)</p> <p>5 Years (3 years + option to extend for 2 years): (Contract extension start date: 01/04/2020, contract extension end date: 31/03/2022 (In the event of the contract being extended by an additional 2 years) – Option 3 (Civils Reactive Maintenance)</p>
(d) The Company's Representatives are	<p>Brian Sequeira</p> <p>Commercial Manager, London Underground (Representing Bakerloo, Central and Victoria Line Groups)</p> <p>Steven Taylor</p> <p>Commercial Manager, London Underground (Representing Jubilee, Northern and Piccadilly Line Groups)</p>
(e) The Contractor's Representative is:	<p>Matthew Todd,</p> <p>Commercial Director (Rail), Lanes Group – PLC,</p> <p>16 Lamsons Road</p>

	Rainham, Essex, RM13 9YY
(f) The notice details for the Company / Company's Representative under Clause 38 are:	London Underground Limited, 15 Westferry Circus, London, E14 4HD
(g) The notice details for the Contractor / Contractor's Representative under Clause 38 are:	16 Lamsons Road, Rainham, Essex, RM13 9YY
(h) Email to be used for notices and communications pursuant to Clause 38:	Brian. Sequeira@tube.tfl.gov.uk and Steven.Taylor@tube.tfl.gov.uk
(i) E-tendering system to be used for notices and communications pursuant to Clause 38.3:	https://eprocurement.tfl.gov.uk/epps/home.do
(j) If the E-tendering system is to be used, it shall be used for the purposes of the following types of notices and communications:	Issuing mini tender documents.
(k) The E-tendering system to be used for the purposes of Clause 38.3 is:	https://eprocurement.tfl.gov.uk/epps/home.do
(l) Parent Company Guarantee to be provided by the Contractor:	N/A
(m) Performance Bond to be provided by the Contractor:	Yes
(n) The Defects Liability Period is:	Twelve (12) months following the issuance of the Contract Completion Certificate.
(o) The Contract Programme shall, for the purposes of Clause 3, be in the following form:	
(p) The Key Personnel pursuant to Clause 4 are:	Greg Hulbert Project Manager Lanes Group PLC
(q) The Contractor's total aggregate liability	Shall be agreed on a Contract by Contract

for the purpose of Clause 29.6 is:	basis and recorded within the Additional Comments/Special Instructions section within each Form of Order
(r) Liquidated Damages for failure to meet the Contract Completion Date: The amount of liquidated damages payable [per day/week] under Clause 11.1.1 is:	The liquidated damages amount can be specified at call-off stage.
(s) Liquidated Damages for disruption to the Underground Network: The amount of liquidated damages payable [per day/week] under Clause 11.1.2 is:	The liquidated damages amount can be specified at call-off stage.
(t) <i>The maximum amount of liquidated damages payable under Clause 11 in the aggregate (expressed as a percentage of the Contract Price) is:</i>	The liquidated damages amount can be specified at call-off stage.
(u) The Interest Rate pursuant to Clause 45 is:	[].
(v) The Parent Company Guarantor is:	N/A
(w) <i>The amount of the Performance Bond under Clause 21.1 is:</i>	Shall be agreed on a Contract by Contract basis and recorded within the additional comments/special instructions section within each contract.

SECTION 3

CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1. Definitions

In this Agreement and each Contract the following words and expressions shall have the following meanings:

"Acceptance" means a written acceptance by the Company of the Proposal submitted by the Contractor in the form set out in Part D to Schedule 2 issued by the Company to the Contractor.

"Agreement" means this agreement as described in Clause 1.2 of the Form of Agreement (including any Schedules, annexes or attachments) as may be amended from time to time in accordance with its terms.

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

"Asset" means:

- (a) any real property and any equipment owned, controlled or otherwise held by the Company in respect of which the Company has an interest of whatsoever nature or any part thereof; and
- (b) the Equipment or any part thereof.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 including any approved code of practice, as may be amended, supplemented or replaced from time to time and any guidance requirements issued by the Health and Safety Executive.

"Beyond Economic Repair" means (i) a situation where the projected cost of a repair of a repairable or replaceable component in an Asset exceeds sixty per cent (60%) of the replacement cost of that Asset or (ii) a situation where the repair or replacement of an Asset

offers limited additional operational life such that having regard to the cost involved in such repair or replacement does not represent good value for money.

"Cessation Plan" means a plan agreed between the Parties or determined by the Company in accordance with Clause 53.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

"Company" means the entity named as such in the Form of Agreement and its legal successors in title and assigns.

"Company's Representative" means the person appointed by the Company and named as such in the Framework Particulars or, for the purpose of an individual Contract, as otherwise identified in the applicable Contract.

"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 Agreement or any Contract.

"Completion" means in respect of any Works that the Works comply fully with the Contract Completion Criteria as evidenced by and occurring upon the issue by the Company's Representative of a Contract Completion Certificate for such Works.

"Conditions of Contract" means the Conditions of Contract incorporated in Section 3 of this Agreement, including the Schedules and other documents or parts of other documents expressly referred to in them.

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

"Consequential Loss" means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial

loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach.

“Contract” means an agreement for the provision of Works by the Contractor to the Company or any member of the TfL Group agreed in accordance with Clause 3 of the Form of Agreement.

“Contract Commencement Date” means the date stated in the Order.

“Contract Completion Certificate” means the certificate to be given by the Company to the Contractor in accordance with Clause 10.1 in the form set out in Schedule 3.

“Contract Completion Criteria” means:

- (a) the Works meet in all material respects the requirements of the Specification;
- (b) all notified defects which would have prevented the Company from using the Works and others from doing their Works have been corrected;
- (c) the Contractor has provided to the Company’s Representative the health and safety file containing all information in respect of the Works, materials and workmanship, as-built information and quality and assurance documentation and the Company’s Representative has approved the same;
- (d) the Works comply with all Applicable Laws and Standards;
- (e) the Works satisfy such other criteria for completion stated in the Contract;
- (f) the Contractor has provided to the Company’s Representative the health and safety file containing all information in respect of the Works, materials and workmanship, as-built information and quality and assurance documentation and the Company’s Representative has approved the same.

“Contract Completion Date” means the date by which the Works are to be performed as specified as such in each Order or such other date as may be agreed between the Parties in accordance with the terms of each Contract.

“Contract Information” means (i) each Contract and this Agreement in its entirety (including from time to time agreed changes to this Agreement or any Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 19.1 which shall consist of the Contractor’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Price” means the amount stated under the heading “Contract Price” in the relevant Order.

“Contract Programme” means the programme set out in each Contract or, where no programme is so included or the included programme has subsequently been revised (and such revisions have been accepted by the Company’s Representative), the latest programme accepted by the Company’s Representative pursuant to Clause 3. The latest programme accepted by the Company’s Representative supersedes previous Contract Programmes.

“Contract Register” has the meaning given to that term in Clause 9.1.

“Contract Specification” means the specification appended to the relevant Contract.

“Contractor Personnel” means all employees, agents or consultants of the Contractor and the Contractor’s subcontractors from time to time.

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

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

“Contract Variation Procedure” means the contract variation procedure set out in Schedule 5.

“Contractor” means the entity named as such in the Form of Agreement.

“Contractor’s Representative” means the person appointed by the Contractor and named as such in the Framework Particulars.

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

“Defects Liability Period” means in respect of the Works the period identified as such in the Framework Particulars during which period the Contractor is responsible for making good defects and damage in accordance with Clause 14.

“Designed Portion” means the portion of the Works to be designed by the Contractor as stated in the relevant Order.

“Dispute” has the meaning given to the term in Clause 34.

“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 Contractor in the performance of the Contract and whether in paper form or stored electronically.

“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 the equipment, rolling stock, plant, premises or other assets (or any part of the same) that are the subject matter of the Works.

“Escalation Procedure” means the procedure of that name in Schedule 12.

“Ethical Sourcing Policy” has the meaning given to the term in Clause 50.3.

“Excepted Liabilities” means the liability of the Contractor for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) losses, expenses, liabilities, claims, demands, actions, costs or charges against which the Contractor is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) losses caused by fraudulent acts or acts of a criminal nature;
- (e) losses caused by death or personal injury to any person; and
- (f) Losses caused by the Contractor committing a Prohibited Act or Safety Breach.

“Existing Contracts” means any and all contracts, whether current, expired or terminated, pursuant to which works have been provided by the Contractor (in the capacity of contractor or subcontractor) to the Company and/or any other member of the TfL Group.

“Fault” means a circumstance, condition, defect, event or flaw that adversely affects any Asset in the performance of its functions.

“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 Agreement or any Contract and is not an event or circumstances (i) whose effect the party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under this Agreement or any Contract or (ii) which the party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network and/or Sites;
- (d) lightning, earthquake or, subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse;
- (h) compliance with the provision of sections 118 to 12 of the Railways Act 1993;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and

(k) strikes, lock outs or other industrial action being in each case industry-wide.

"Form of Agreement" means the Form of Agreement contained in Section 1.

"Framework Particulars" means the Framework Particulars contained in Section 2.

"Framework Commencement Date" means the date specified as such in the Framework Particulars.

"Free Issue Materials" means materials, apparatus and components supplied by the Company to the Contractor without charge and intended for use by the Contractor exclusively in the provision of Works under each Contract.

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

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

"HGCRA" 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.

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

"Initial Term" means the period of time specified as such in the Framework Particulars.

"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 the Framework Particulars.

“Invitation to Tender” or **“ITT”** means an invitation to tender for works under a contract in the form set out in Part A to Schedule 2 issued to the Contractor by the Company in accordance with Clause 3.2 of the Form of Agreement.

“Key Performance Indicator” or **“KPI”** means any or all, as the case may be, of the indicators set out in paragraph 2 of Schedule 12.

“Key Personnel” means Contractor personnel identified in the Framework Particulars and the relevant Order and any changes to the same that are made in accordance with Clause 4.

“Liquidated Damages” means the liquidated damages identified as such in the Framework Particulars and payable subject to and in accordance with Clause 11.

“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 Living Wage Foundation, 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 whatsoever or howsoever arising incurred by the Company, its subcontractors, employees or agents or any other member of the TfL Group.

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

“Milestone” means all of the activities corresponding to the milestone stated in the Contract and the Milestone Payment Plan.

“Milestone Payment” means the sum corresponding to the applicable Milestone stated on the Milestone Payment Plan.

“Milestone Payment Plan” means the plan attached to each Contract setting out the Milestones and corresponding Milestone Payment.

“Mini-Competition” means a competitive process which the Company may from time to time utilise to select a Contractor to provide the Works.

“Notified Sum” has the meaning given to that term in Clause 19.6.

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

“Order” means an order which, unless the Parties agree otherwise, shall be substantially in the form set out in Part B to Schedule 2, entered into by the Company and the Contractor.

"Parties" means the Company and the Contractor and **"Party"** shall mean either of them as the case may be.

"Payment Application" has the meaning given to that term in Clause 19.1.

"Permitted Delay Event" has the meaning given to that term in Clause 28.2.

"Planned Works" means routine or planned works set out in the Specification such as planned performance, support services, planned maintenance and preventative maintenance.

"Plant and Materials" means any plant, materials, apparatus, components or other items which are intended to be included in the Works.

"Prescribed Period" has the meaning given to that term in Clause 19.8.

"Prohibited Act" means:

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

“Proposal” means the Contractor’s offer to provide the Works in response to an ITT in the form set out in Part C to Schedule 2.

“Public Procurement Termination Event” means:

- (a) this Agreement or any Contract 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) the Company determines that this Agreement or any Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations contained in the EU Treaties and applicable procurement Regulations.

“Reactive Works” means Works set out in the Specification that are not planned Works and which entail responding to Faults and other unplanned events.

“Rectification Time” has the meaning given to it in Schedule 12.

“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).

“Response Time” has the meaning given to it in Schedule 12.

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

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

“Service Delivery Indicator” or **“SDI”** means any or all as the case may be of the indicators of performance of the Works against a target set out in paragraph 3 of Schedule 12.

“Site” means the place or places as specified in the Specification provided or made available by the Company where any part of the Works is to be carried out by the Contractor or to which the Works are to be delivered, together with so much of the area surrounding the same as the

Contractor shall, with the consent of the Company, use as a laydown area in connection with the Works other than merely for the purposes of access.

"Specification" means the description of the Works set out or referenced in Schedule 1 and the relevant Contract Specification including any subsequent amendments made in accordance with this Agreement.

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

"Subcontract" means a contract between the Contractor and a Subcontractor.

"Subcontractor" means a subcontractor to the Contractor, being the counterparty of a contract with the Contractor involved in the performance of works or services necessary for or related to the carrying out of the Works (or any part of them).

"Term" means the duration of this Agreement which, unless terminated earlier in accordance with this Agreement, shall be the Initial Term as may be extended pursuant to Clause 2.3 of the Form of Agreement.

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

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

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

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

"Undelivered Completed Work" has the meaning given to it in paragraph 3.1.5 of Schedule 12.

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

“Variation” means any addition, omission or other change to the Specification.

“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 Contractor for a Variation in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

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

“Works” means any or all of the works and activities, including the Planned Works and the Reactive Works, to be undertaken and completed by the Contractor for the Company in accordance with the each Contract including any Variations to such Works and any Works, functions or responsibilities which may be reasonably regarded as incidental to the foregoing Works or activities and which may be reasonably inferred from the Contract.

1.2. Interpretation

- (a) Headings in this Agreement are for reference only and are not to be used for the interpretation of this Agreement.
- (b) A reference to a Clause, Schedule or Section shall be to a Clause of, or a Section or Schedule to, this Agreement or each Contract (as the case may be) and references to this Agreement or any Contract include its recitals and Schedules.
- (c) Where appropriate, the singular includes the plural and vice versa and words importing a particular gender shall include all genders.
- (d) References to (or to any specified provision of) this Agreement, any Contract or any other document shall be construed as references to this Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of this Agreement and any Contract.
- (e) 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.
- (f) References to the “Company” shall include its successors, transferees and assignees.

- (g) 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.
- (h) Where another member of the TfL Group enters into a Contract with the Contractor, references in a Contract to "the Company" shall, unless the context otherwise requires, be to that member of the TfL Group.

2. Contractor's Primary Obligations

2.1. The Contractor shall provide the Works to the Company in accordance with:

- (a) the terms set out in this Agreement; and
- (b) the terms of any Contract which from time to time may be entered into by the Company and the Contractor.

2.2. The Contractor shall ensure and warrants to the Company that the Works will:

- (a) be performed in accordance with good industry practice and in a good and workmanlike manner and be free from defects;
- (b) be performed with all due skill, care and diligence to be expected of appropriately qualified and experienced professionals with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement and each Contract;
- (c) be performed in accordance with the Contract Programme and in a regular and diligent manner;
- (d) be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement and any Contract having regard to the operation of the Underground Network and/or Site;
- (e) be provided using materials and goods that are of sound and satisfactory design and good quality and that the Contractor will only specify substances and materials for incorporation in the Works and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Specification;
- (f) be provided in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons and be capable of being used in a safe, economic and

efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard;

- (g) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network and/or the Sites);
- (h) be provided in accordance with the best modern principles and practices in the activity concerned and in accordance with the Specification and will comply with all Standards and any additional standards listed in the Specification, or in the Contract; and
- (i) comply with the requirements of the Company set out in this Agreement and each Contract and all lawful and reasonable directions of the Company,

and, for the purposes of construing the warranties of this Clause 2.2, the Works shall for the avoidance of doubt include any part of the Works. Each warranty of this Clause 2.2 shall be construed as a separate warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other term of this Agreement or any Contract.

2.3. Without prejudice to Clause 2.2 the Parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under this Agreement and any Contract.

2.4. The Contractor shall use all prudent and commercial steps necessary to mitigate and minimise:

- (a) any actual or potential increase in the Contract Price pursuant to Clause 18 to the maximum extent reasonably practical; and
- (b) any actual or potential Losses (including but not limited to costs on or relating to termination of this Agreement or any Contract).

2.5. The Contractor warrants to the Company that it has entered into and executed this Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents and that it has full capacity and authority and all necessary licences, permits, permissions, powers, approvals, certificates, authorisations and consents to enter into and perform this Agreement and any Contract.

2.6. The Contractor warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Agreement and each Contract.

2.7. The Contractor warrants to the Company that it is aware of the purposes for which the Works are required and acknowledges that the Company is reliant upon the Contractor's expertise and knowledge in the provision of the Works.

- 2.8. The Contractor shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Works, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 2.9. The Contractor warrants to the Company that as at the date of this Agreement and each Contract that 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 Utilities Contracts Regulations 2016.
- 2.10. Unless otherwise stated in any Order, the Contractor shall:
- (a) provide all plant, equipment, support works and other facilities necessary for the performance of its obligations under this Agreement and each Contract;
 - (b) ensure that all plant used shall conform with the requirements set out in Category 1 and Category 2 Standards and draft Standards and with the relevant International, British and European Standards;
 - (c) ensure that all operators of plant are appropriately licensed and competent to use the plant and equipment in the working environment and make available evidence of such licenses to the Company within three (3) Working Days (or such other period as the Company may acting reasonably specify) of the Company's request for the same;
 - (d) ensure that all plant is appropriately maintained and presented for use in a safe and working condition and make available evidence of corresponding maintenance records to the Company within three (3) Working Days (or such other period as the Company may acting reasonably specify) of the Company's request;
 - (e) ensure that all its plant, tools, equipment and materials shall be removed from the Company's premises or Site at the end of each shift unless prior authority for storage has been obtained in writing from the Company's Representative.
- 2.11. For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Works waives, limits or amends in any way any warranties, liabilities or responsibilities of the Contractor under this Agreement and each Contract.
- 2.12. The Contractor shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Contractor shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.

2.13. If the Contractor becomes aware of any divergence between Applicable Laws and the Contractual Documentation or between the Applicable Laws and any instruction of the Company's Representative, it shall immediately provide to the Company's Representative a written notice specifying the divergence.

2.14. The Contractor shall train at the sole cost of the Contractor any of the Company's employees, TfL employees and any of their contractors or agents as required by the Company in accordance with the Specification.

2.15. Design

2.15.1. The Contractor shall carry out his design in accordance with the Specification, Schedule 10 (Design) and the terms of this Agreement and any Contract.

2.15.2. The Contractor shall submit the particulars of his design which the Specification requires to the Company's Representative for acceptance. The Contractor shall not proceed with the performance of the Works until the Company's Representative has accepted his design. Reasons for not accepting the Contractor's design shall include (without limitation):

- (a) it does not comply with the Specification or any other part of this Agreement or any Contract;
- (b) it does not comply with Applicable Laws and Standards;
- (c) it is not integrated and coordinated with the designs of others where the Contractor is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Contractor to perform the Works;
- (d) it is not in a format which is accepted for use by the Company's Representative.

2.15.3. The Contractor shall not be entitled to any changes to the Contract Price or Contract Completion Date by reason of anything in this Clause 2.15.

2.15.4. The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.

2.15.5. The Contractor in designing and specifying the Works which he is required to design and specify, warrants, undertakes and represents to the Company that the design:

- (a) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in this Agreement and each Contract;

- (b) complies with all Applicable Laws and Standards;
- (c) is fit for the purpose defined in the Specification.

2.15.6. The Contractor accepts entire responsibility for the design and specification of the Works which he is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between his design and specification of the Works and the documents which are part of this Agreement and any Contract.

3. Contract Programme

3.1. Contract Programme

3.1.1. If a programme is not included in the Contract, the Contractor shall within the period stated in the Order submit a programme to the Company's Representative for his acceptance showing:

- (a) the Contract Commencement Date and key dates;
- (b) the sequence and timing of activities by which the Contractor proposes to carry out the Contract;
- (c) alignment with the Milestone Payment Plan;
- (d) provisions for float, time risk allowances and environmental and health and safety requirements;
- (e) the respective dates for submission by the Contractor of any documentation;
- (f) the dates by which, in order to carry out the Contract, the Contractor will need (to the extent provided for under the Contract):
 - (i) access to a part of the Site if later than its access date;
 - (ii) acceptances;
 - (iii) plant and materials and other things to be provided by the Company;
 - (iv) information from others;
- (g) the dates when the Company plans to conduct tests and inspections; and
- (h) any other information which the Specification requires the Contractor to show on the Contract Programme.

3.1.2. The Contractor undertakes to carry out the Works in a regular and diligent manner and in accordance with the Contract Programme.

3.1.3. The matters set out in the Contract Programme shall be wholly without prejudice to the Contractor's obligations to meet the Contract Completion Date.

3.2. Form of programme

The programme shall be in such form as may be specified in the Framework Particulars and the Contract or, if not so specified, as may reasonably be required by the Company's Representative.

3.3. Acceptance of programme

Within two (2) weeks of the Contractor submitting a programme for acceptance, the Company's Representative shall either accept the programme or notify the Contractor of his reasons for not accepting it in each case in the Company's Representative's absolute discretion. Reasons for not accepting the programme may include:

- (a) the Contractor's plans shown on it are not practicable;
- (b) it does not show the information which the Contract requires;
- (c) it does not represent the Contractor's plans realistically; or
- (d) it does not comply with the Contract or the Specification.

3.4. Acceptance by the Company's Representative of the programme shall not relieve the Contractor of any of its obligations under the Contract.

3.5. Alterations to Programme

The Contractor shall not without the Company's Representative's prior written consent make any alteration to the Contract Programme.

3.6. Revision of Programme

The Contractor shall submit a revised programme to the Company's Representative for acceptance:

- (a) every four (4) weeks from the Contract Commencement Date; and
- (b) if instructed to do so pursuant to Clause 3.7.

3.7. Rate of Progress

3.7.1. The Company's Representative may notify the Contractor if it assesses that the Works will not be capable of any of the Contract Completion Dates and that this is not due to a circumstance for which the Contractor is entitled to an extension of time under Clause 28.

3.7.2. Following receipt of such notice the Contractor shall take such steps as may be necessary and as the Company's Representative may approve to remedy or mitigate the likely delay, including submitting a revised programme to the Company's Representative for acceptance. The Contractor will not be entitled to additional payment or an extension of time for taking such steps.

4. Key Personnel

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

5. Company's and Contractor's Representative

5.1. The Company and the Contractor shall appoint one or more representatives to act on its behalf under this Agreement and each Contract as the Company's Representative and the Contractor's Representative, respectively as recorded in the Framework Particulars (or, in the case of the Company's Representative, as may otherwise be identified in the applicable Contract). The Contractor shall not appoint a replacement or additional Contractor's 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 Contractor 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.

6. Contractor Personnel

6.1. The Contractor shall be responsible for providing the staff necessary or appropriate to perform its obligations.

6.2. The Contractor warrants that all its staff involved in the Works are entitled to work in the United Kingdom whether as of right or by holding the necessary permits.

6.3. If and when instructed by the Company, the Contractor shall submit to the Company a list of names of all persons who may or do require access to the Site, specifying the capacity in which they are connected with the Works, the reason why they require access to the Site and such other particulars as the Company may reasonably require. The Company may issue Site passes as appropriate, and the Contractor shall comply with any conditions notified by the Company in respect of those Site passes.

6.4. Without prejudice to Clause 26.1(b), if anyone employed by the Contractor, acting independently of the Contractor, commits a Safety Breach or Prohibited Act, then the Company may require the Contractor to exclude that individual from the Works with immediate effect and that individual may only be readmitted to the Works at the Company's absolute discretion.

7. Records and Audit

7.1. The Contractor shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of this Agreement and each Contract and all transactions related to this Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations, variation and claims files (including documentation covering negotiated settlements);

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

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

7.3. The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network and/or Site shall have the right to inspect and audit any of the records referred to in this Clause 7 at any time during the period referred to in Clause 7.2.

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

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Contractor's own premises or otherwise;

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

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

7.6. The Contractor shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Contractor shall provide the Company with a copy of any or all of the records listed in this Clause 7, free of charge within thirty (30) days of the Company's request for the same.

7.7. The Contractor shall and shall ensure that any subcontractor shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to this Agreement and any Contract.

8. Inspections and Tests

8.1. The Contractor shall give the Company's Representative or other authorised representatives of the Company access at all reasonable times to the Contractor's premises and permit such representatives to inspect and examine the materials and equipment to be used in the performance of the Works during the manufacture thereof and the materials and any equipment to be used in their manufacture. If part or the whole of the materials and equipment to be used in the performance of the Works are manufactured or assembled on other premises, the Contractor shall obtain for the Company's Representative or such other authorised representatives of the Company permission and access to inspect and examine on the same basis as if such materials and equipment were manufactured or assembled on the Contractor's premises.

- 8.2. The Company or its authorised representatives shall have the right to reject any such materials and equipment or part(s) thereof which in their opinion fail to meet the Specification and the Contract.
- 8.3. All inspection, tests or analyses of materials and equipment that may be required by the Company's Representative or another authorised representative of the Company shall be undertaken at the Contractor's expense.
- 8.4. The exercise by the Company's Representative or another authorised representative of the Company of its rights under Clauses 8.1 to 8.3 shall not relieve the Contractor from any of its obligations under this Agreement or any Contract.

9. Contract Register

- 9.1. The Contractor shall prepare, submit to the Company and maintain a list of all contracts entered into by the Contractor for the purpose of performing its obligations under this Agreement and any Contract (the "**Contract Register**").
- 9.2. The Contractor shall ensure that:
 - 9.2.1. all documents listed on the Contract Register shall be kept in good order and shall be available for inspection by the Company and the Contractor shall use reasonable endeavours to make available to the Company such items of clarification or substantiation as may reasonably be required by the Company in relation thereto; and
 - 9.2.2. the Contractor and any subcontractor shall provide to the Company within fourteen (14) Working Days of the Company's request, a copy of such part of the documents referred to in the Contract Register which the Company reasonably requires for auditing the Contractor's compliance with this Agreement and any Contract.
- 9.3. The Contractor shall retain all documents referred to in the Contract Register for a period of not less than eight (8) years after the expiry date of the relevant Contract or shall deliver up such records upon earlier expiry of this Agreement. The Company shall have the right to audit any and all such registers and records.

10. Contract Completion

- 10.1. The Company's Representative shall certify the date when in its opinion the Works have been completed in accordance with the following procedure:
 - 10.1.1. where the Contract Completion Criteria are satisfied in respect of the Works under the Contract, the Contractor shall be entitled to submit to the Company's Representative a Contract Completion Certificate for such Works signed by a duly authorised representative of the Contractor certifying that the Contract Completion Criteria have

been satisfied. Following receipt of a Contract Completion Certificate from the Contractor in accordance with this Clause 10.1.1, the Company's Representative shall within ten (10) Working Days of receipt of such Contract Completion Certificate, counter-sign and date that Contract Completion Certificate and Completion shall occur, or refuse to do so under Clause 10.1.2;

10.1.2. the Company's Representative may refuse to sign a Contract Completion Certificate for the Works if it, acting reasonably, believes the Contract Completion Criteria have not been satisfied in full in which case it shall within [twenty (20) Working Days] of such refusal, notify the Contractor in writing setting out which of the Contract Completion Criteria have not been satisfied;

10.1.3. if the Contractor, acting reasonably, disputes any of the reasons set out in the notice issued by the Company's Representative pursuant to Clause 10.1.2, it shall notify the Company of this in writing within [five (5) Working Days] of receipt of such notice and the Parties shall resolve the matter in accordance with Clause 34 (Dispute Resolution);

10.1.4. where the Works have not achieved Completion by the Contract Completion Date, Liquidated Damages shall become payable in accordance with Clause 11.1.

11. Liquidated Damages

11.1. Without limiting any other remedy, the Contractor shall pay or the Company may deduct from the price payable for the Works (or any other amounts due to the Contractor under or pursuant to this Contract) by way of Liquidated Damages:

11.1.1. the amounts stated in or calculated pursuant to the Framework Particulars in respect of failure to complete the Works by the Contract Completion Date or such revised date or dates as may substituted in accordance with Clause 22 or Clause 28; or

11.1.2. such sums as may be identified and calculated in accordance with the Framework Particulars in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof that is caused by a failure of the Contractor to perform the Works or a breach of its obligations under this Contract,

from the commencement of the event, effect, delay or failure in question to the cessation of the event, effect, delay or failure in question (irrespective of the intervention of a termination event).

11.2. The Company shall not be entitled to deduct or the Contractor shall not be liable to pay such Liquidated Damages amounts to the extent that such amounts are due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Contractor) or (ii) a Force Majeure Event or (iii) a Permitted Delay Event.

- 11.3. The Contractor shall not be liable to meet the Company's claim for Liquidated Damages pursuant to Clause 11.1 to the extent that the aggregate of Liquidated Damages accrued in that Accounting Period exceed the sum specified in the Framework Particulars.
- 11.4. The Contractor accepts that the amount of Liquidated Damages under this Agreement and any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Contractor's failure to perform the Works by the Contract Completion Date.
- 11.5. In the event that all or any of the obligations of the Contractor under this Agreement and any Contract to pay Liquidated Damages are held to be unenforceable, the Contractor agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production, loss of savings. The damages payable by the Contractor in accordance with this Clause 11 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Contractor that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

12. Licences and Consents

- 12.1. The Contractor shall obtain at its own cost all licences, consents, permits, notices and approvals necessary for the performance of the Works (including, without limitation, those required by any Applicable Laws or Standards) except those stated in the Specification as being the responsibility of the Company.
- 12.2. The Contractor shall ensure that the conditions or requirements of licenses and consents and other approvals are complied with by its employees, representatives, agents, subcontractors and suppliers.
- 12.3. Where the Specification states that the Contractor will be required to contribute to the preparation of submissions for licences and consents and other approvals by the Company the Contractor shall afford all necessary assistance to achieve such licences and consents within the timescales stated in the Specification.

13. Title

- 13.1. Without prejudice to any rights of rejection the Company may have, property in and title to any Plant and Materials shall pass to the Company upon the earlier of their delivery to the Site and the time when the Company makes payment (partial or otherwise) for them. The Contractor

shall ensure that such Plant and Materials are clearly identified as belonging to the Company and are set aside for the Company.

- 13.2. If requested by the Company, the Contractor shall provide proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under any Contract.

14. Defects

- 14.1. Any defects in the Works (including, without limitation, excessive shrinkages or any failure to comply with the terms of the relevant Contract) which appear within the Defects Liability Period and arising out of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors shall be notified by the Company to the Contractor who shall immediately make good such defects entirely at its own cost unless the Company shall otherwise instruct. The Company shall certify the date when in its opinion the Contractor's obligations under this Clause 14 have been discharged. The Contractor shall carry out any work required under this clause at such time and in such manner as will minimise any disruption to the operation of the Underground Network and/or Site and shall comply with the reasonable requirements of the Company in relation to access for, and the timing and method of execution of any such works.
- 14.2. Acceptance of Works by the Company shall be without prejudice to the Contractor's liability for defective works, which shall expire twelve (12) years following the date of acceptance of the relevant Works.
- 14.3. If the Contractor fails to fulfil its obligations under Clause 14 or if the Company elects in its absolute discretion, the Company may itself or instruct a third party to make good the defect in either which case the Company shall be entitled to recover from the Contractor all costs, expenses, charges, loss and damages reasonably incurred by the Company as a result of such defect and its making good.

15. Safety

- 15.1. The Contractor shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 15.2. The Contractor shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):

- i. the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in Schedule 6 ("QUENSH") as amended from time to time; and
 - ii. the Company's drug and alcohol principles as amended from time to time.
- 15.3. Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to this Agreement and each Contract as if the term "LU Premises" means any of the Company's property and as if references to "LU" are references to the Company.
- 15.4. The Company may at its discretion carry out on the Contractor's behalf any testing of the Contractor's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Contractor to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Contractor.
- 15.5. Works on and Adjacent to the Railway

The Contractor shall carry out the Works in such a manner as not to endanger or interfere in any way with the Underground Network, railway or any railway operator. The Contractor shall strictly observe all rules and regulations set out or referred to in this Agreement and each Contract and any further instructions, rules and regulations which it may receive from the Company from time to time and the precautions and requirements stated or referred to in the Schedules for the working, protection and return of the railway or for the protection of persons on or adjacent to the Underground Network, railway or railway operations.

16. Construction (Design and Management) Regulations 2015

Where the CDM Regulations apply to the Works and the Company appoints the Contractor to act as the principal contractor and/or principal designer in accordance with the CDM Regulations, the Contractor shall comply with all the duties of a principal contractor and/or principal designer as set out in the CDM Regulations.

17. Environmental Claims

- 17.1. The Contractor shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Contractor's performance, non-performance or part performance of each Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Contractor, its employees, subcontractors or agents.
- 17.2. The Contractor shall notify the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's Site.

17.3. Where the Contractor discovers or suspects that the Site has been contaminated or polluted by another party, the Contractor shall notify the Company of the identity of the other party, where known. The Contractor shall not without the prior written consent of the Company undertake any environmental investigations on Site or commission or undertake any Remediation. The Contractor shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

17.4. In the event that the Contractor commissions an environmental assessment, the Contractor shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

17.5. The Contractor shall provide to the Company:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Works (for the purposes of this Clause 17, the “**authorisations**”);
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

18. Pricing

18.1. The prices for the Works shall be the Contract Price set out in the Order using the rates and prices set out in Schedule 4. The prices for the Works or any Contract Price shall only be changed in accordance with the Contract Variation Procedure.

18.2. The Parties agree that the rates and prices stated in Schedule 4 shall be the maximum rates and prices for each Contract during the term of this Agreement and any Contract.

19. Payment

19.1. The Contractor shall submit an application for payment (a “**Payment Application**”) for the Milestone Payment on completion of the relevant Milestone, to the Company’s Representative at the address stated in the Framework Particulars by the Wednesday of the fourth week of the Accounting Period corresponding to that relevant Milestone.

- 19.2. Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company to check the Payment Application and set out in reasonable detail a description of the Milestone achieved.
- 19.3. The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("HGCRA") on the date on which the Company receives the Payment Application.
- 19.4. The Company shall assess and verify the Payment Application in a timely manner and shall notify the Contractor in writing not later than five (5) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
 - (b) the basis on which the amount was calculated,
- a Contract Payment Approval Form ("CPAF"). It is immaterial for the purposes of this Clause 19.4 that the amounts referred to in Clauses 19.4(a) or 19.4(b) may be zero. A notification given under this Clause 19.4 shall constitute a payment notice for the purposes of section 110A of the HGCRA. Where the Company fails to comply with its obligations under the Clause 19.4 and there is an undue delay in considering and verifying the Contractor's Payment Application, the CPAF shall be regarded as issued for the purposes of Clause 19.6 after a reasonable time has passed.
- 19.5. The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application except if the Contractor fails to issue a VAT invoice in accordance with the timescales set out in Clause 19.7 (and such failure is not due to any failure by the Company to comply with its obligations under Clause 19.4), then the final date for payment shall be extended by the additional number of days taken by the Contractor to issue the VAT invoice.
- 19.6. Subject to Clauses 19.7, 19.8 and 19.9, the Company shall pay the Contractor the sum referred to in the Company's Representative's CPAF pursuant to Clause 19.4 (the "**Notified Sum**") on or before the final date for payment.
- 19.7. Within six (6) days of receipt by the Contractor of the CPAF, the Contractor shall issue a corresponding VAT invoice for the amount of the relevant CPAF and attach one (1) copy of the CPAF to the said invoice and send the invoice to the Company's Representative at the address stated in the Framework Particulars. The Contractor shall ensure that such VAT invoice:

19.7.1. is dated and issued no earlier than the date when the CPAF was issued; and

19.7.2. clearly states the purchase order number.

If the Contractor's VAT invoice does not comply with the requirements of this Clause 19.7 then the Company shall be under no obligation to pay the same. The final date for payment of each VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.

19.8. 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 Contractor in writing not later than one (1) day (the "**Prescribed Period**") 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 19.8 that the amounts referred to in Clause 19.8(a) or Clause 19.8(b) may be zero. Where a notice is given under this Clause 19.8, the Company's obligation to pay the Notified Sum under Clause 19.6 applies only in respect of the sum specified pursuant to this Clause 19.8.

19.9. Notwithstanding Clauses 19.6 and 19.8, if the Contractor is subject to an event set out in Clause 26.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment of the relevant VAT invoice.

19.10. The Contract Price shall be fixed and inclusive of all expenses and disbursements and shall only be changed in accordance with the Contract Variation Procedure.

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

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

(a) any sum of money is recoverable from or payable by the Contractor; 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 Contractor under this Agreement or any Contract.

- 19.13. Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Contract Price and any associated Variation Order and, unless the Company directs otherwise, be in the format set out in Appendix 1 of Schedule 4. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.
- 19.14. Failure on the part of the Contractor to submit a Payment Application in accordance with Clause 19.13 may lead to delays in processing the Payment Application and subsequent payment of invoices. Any loss or additional expenses incurred by the Contractor in the correction or re-submission of a Payment Application or invoice shall be at the Contractor's own expense.
- 19.15. All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor 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.
- 19.16. No payments made by the Company hereunder, including final payment under any Contract, shall prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company:
- (a) any amount in respect of which there exists a bona fide dispute; and
 - (b) any amount that on the basis of the Company's bona fide estimate the Company considers due to it from the Contractor. Such estimates shall be binding on the Contractor unless and until varied by agreement between the Parties or any award, order or judgement.
- 19.17. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or

will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of this Agreement and any Contract or otherwise.

20. Contractor Performance

20.1. On the date that the Company receives the first Payment Application and every four (4) weeks after that date, the Company will assess the Contractor's performance under this Agreement and each Contract in accordance with Schedule 12.

20.2. The Company shall have the right to:

- (a) abate the Contractor for failure to meet the key performance indicators stated in Schedule 12; and
- (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Contractor in its performance of this Agreement and any Contract or any failure by the Contractor to meet the performance standards set out in Schedule 12.

21. Bonds, Warranties and Guarantees

21.1. Where stated in the Framework Particulars, the Contractor shall at its own expense provide within seven (7) days of the Framework Commencement Date:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Contractor (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

21.2. The Contractor shall ensure that any bond required under Clause 21.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Contract Price (or such other amount as may be stated in the Framework Particulars) at all times until the expiry of the Defects Liability Period; and
- (b) is renewed every twelve (12) months until the expiry of the Defects Liability Period.

21.3. If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 21.1 and 21.2 then the Contractor shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

21.4. If requested by the Company, the Contractor shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 21.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

21.5. If any performance bond and/or parent company guarantee required by any Contract is not procured by the Contractor and delivered to the Company in accordance with Clause 21.1, one quarter of the aggregate of the Contract Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Contractor until such documents have been delivered.

21.6. If required by the Company, the Contractor shall procure that the terms of any Subcontract require the Subcontractor, within seven (7) days of a written request by the Company to the Subcontractor, to enter into:

- (a) a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Contractor shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company;
- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the Subcontractor's obligations under any collateral warranty required under this Clause 21.6.

21.7. If any warranty (including any accompanying parent company guarantee) required under Clause 21.6 is not delivered to the Company in accordance with Clause 21.6 one quarter of the aggregate of the Contract Price relative to the Works provided by the relevant Subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

22. Variation

22.1. The Company may, at any time during the term of any Contract, instruct or authorise (as the case may be) a Variation in accordance with the Contract Variation Procedure in which case the relevant parts of the Contract shall be amended accordingly.

22.2. Any other variation to the terms of this Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

23. Transfer Regulations

23.1. For the purposes of this Clause 23:

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

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

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

“Subsequent Relevant Employee” means a person employed or engaged by the Contractor or relevant subcontractors from time to time in respect of any part of the Works who would transfer to a Replacement Employer by virtue of the Transfer Regulations.

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

“Transferring Employees” means those employees of or those engaged by the Current Services Provider who transfer or have the right to transfer to the Contractor under the Transfer Regulations; and

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

23.2. The Contractor shall comply and procure that its subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon expiry of the Term or earlier termination of this Agreement.

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

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

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

23.4. The Contractor shall provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 23 may be addressed. The Contractor will if required by the Company warrant that any information provided under Clause 23 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

23.5. The Contractor shall not and shall procure that its subcontractors shall not in the eleven (11) months prior to the expiry of the Term or termination of this Agreement (or where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's consent:

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

23.6. The Contractor shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Contractor, its servants or agents in connection with or arising from or incurred by reason of the employment of the

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

23.7. The Contractor shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Contractor or relevant subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (c) In this Clause 23.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Contractor shall not be required to indemnify the Company or the Relevant Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

23.8. The provisions of this Clause 23 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Contractor of any provision of this Clause 23 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

24. Intellectual Property Rights

24.1. Existing Contracts

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

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

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

24.3. Ownership of the Contractor's Intellectual Property Rights

Without prejudice to Clause 24.2, all Intellectual Property Rights owned by the Contractor or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 24.2 shall remain or be vested in the Contractor, its subcontractors (of any tier) or other third party (as the case may be).

24.4. Company's Licence to use the Contractor's Intellectual Property Rights

The Company shall have and the Contractor hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 24.3 for the purposes of:

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

24.5. Provision of Supporting Documentation and Other Materials

The Contractor shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Contractor, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Contractor's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Contractor's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way