

Dated 29th MARCH 2016

TUBE LINES LIMITED (1)
and
METAL & WASTE RECYCLING LIMITED (2)

FRAMEWORK AGREEMENT
for SCRAP METAL MANAGEMENT
SERVICES
CONTRACT REFERENCE NUMBER:
TLL8131A
VERSION 7

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THIS AGREEMENT is made on

29th MARCH

2016

BETWEEN:

- (1) **Tube Lines Limited** (company number 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Metal & Waste Recycling Limited** (company number 01031503) whose registered office is at Bert Works, Kenninghall Road, Edmonton, London, N18 2PD (the "**Contractor**").

BACKGROUND

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

THIS DEED WITNESSES that:

1 Definitions and Interpretation

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

"**Additional Services**" means services which are requested by the Company to be provided by the Contractor in accordance with the terms of any Contract in addition to those set out in the Specification.

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

"**Applicable Laws and Standards**" 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 each Contract, any agreement or document referred to in each Contract (including for clarity any standard referenced in any Order), or the Services.

“**BAFO**” means ‘best and final offer’.

“**Cessation Plan**” means a plan agreed between the parties or determined by the Company in accordance with Clause 39.1 to give effect to a Declaration of Ineffectiveness.

“**Commencement Date**” means the date of the Agreement.

“**Company Documents**” means any plans, drawings, documents, handbooks, codes of practice or other information provided by the Company to the Contractor in accordance with each Contract.

“**Company’s Representative**” means Gaynor Clancy, Commercial Manager at 15 West Ferry Circus London E14 4HD on (020) 7126 4153 (gaynor.clancy@tubelines.com) or such other person as notified to the Contractor from time to time by the Company.

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

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

“**Consequential Loss**” means in relation to a breach of this 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.

“**Containers**” means containers and skips as described in the Specification in Schedule 1.

“**Contamination**” means where a collection of Scrap is contaminated by other materials as further described in clause 3.5, 3.6, 3.7

“**Contract**” means a contract as defined in Clause 3.1.

“**Contract Information**” means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the Statements submitted pursuant to Clause 8.2 which shall consist of the Contractor’s name, the unique Order Number, the sums due to the Company, the expected date for payment, details of the tonnage of Scrap collected and details of the indexed rate used to calculate the sums due to the Company. t

“**Contractor’s Sites**” means those listed in Schedule 1 Appendix A and other sites as agreed by the Company.

“**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;

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

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

“**Contractor’s Representative**” means the person set out in Clause 32..

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

“**Contract Variation Procedure**” means the procedure set out in Schedule 2.

“**Declaration of Ineffectiveness**” means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

“Dispute” has the meaning given to that term in Clause 33.1.

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

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 or as otherwise amended or replaced).

“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.]

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

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Contract;
- (c) Losses 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; and

- (e) Losses caused by the Contractor committing a Prohibited Act or Safety Breach.

“**Excess Costs**” has the meaning given to that term in Clause 20.5.

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

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

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse as defined in the Tube Lines Contract;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993 in accordance with clause 44 (Railways Act Obligations during Hostilities over Acts of Violence) of the Tube Lines Contract;
- (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.

“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 Services 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.

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

“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

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“Key Personnel” means Contractor Personnel identified as such in the Order (if any) and any changes to the same that are made in accordance with Clause 15.

“Liquidated Damages” means the sums if any identified and calculated in accordance with Schedule 1.

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

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

“**LUL**” means London Underground Limited, whose registered office is at 55 Broadway, London SW1H 0BD, Registered Company Number 1900907.

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

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

“**Nominated Representatives**” has the meaning given to that term in Clause 33.2.

“**Notice to Proceed**” has the meaning given to that term in Clause 20.6(b).

“**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, shall be entered into by the Company and the Contractor.

“**Order Completion Date**” means the date by which the Services are to be performed which has been notified to the Contractor or such other date as may be agreed between the parties in accordance with the terms of each Contract.

“**Order Price**” means the amount the Contractor will pay the Company as agreed in accordance with Clause 3.1A or as detailed in Schedule 5 or as otherwise agreed between the Parties and detailed in the Statement.

“**Order Programme**” means the programme of work set out in each Order for the provision of the Services which has been submitted by the Contractor and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the relevant Contract or otherwise by agreement in writing between the Contractor and the Company.

“Prohibited Act” means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement, any Contract or any other contract with LUL or the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement, any Contract or any other contract with LUL or the Company; or
- (b) entering into the Agreement, any Contract or any other contract with LUL or 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 the Agreement, any Contract or any other contract with LUL or the Company; or
- (d) defrauding or attempting to defraud LUL or the Company.

“Proposal” means the Contractor's offer to provide the Services] in response to a Request Form.

“Quality and Safety Plan” means the Contractor's quality and safety plan set out in Schedule 3 as amended from time to time.

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

“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the

Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

“Replacement Contractor” means any replacement provider of Services appointed by the Company from time to time.

“Request Form” means the request form produced by the Company detailing the Company’s requirements for a Proposal from the relevant Contractor.

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

“Safety Breach” means a material breach of any obligation under any Contract caused by the gross incompetence of or wilful default by the 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 or the safety of LUL’s customers, staff or any other person.

“Scrap” means redundant metals and metal based materials.

“Service Cessation” means the cessation of the Services or part thereof.

“Services” means the services stated in the Specification to be performed by the Contractor and any Additional Services.

“Specification” means the description of the Services set out in Schedule 1 **“Statement”** means the monthly statement submitted by the Contractor to the Company showing the collections made and the amounts payable by the Contractor to the Company

“Step-in Notice” means a notice issued by LUL to the Company if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract advising the Company that it will, from the date specified in the said notice, exercise its rights to step-in under the Tube Lines Contract.

“Step-out Notice” means a written notice served by LUL on the Contractor that it has exercised its right under the Tube Lines Contract to give a step-out notice to the Company.

“Term” means the period of three years.

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

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

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

“**Tube Lines Contract**” means the service agreement dated 31 December 2002 made between LUL and the Company, as subsequently amended by the Company and LUL.

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

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

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

“**Variation Proposal**” means the written proposal put by the Company or the Contractor to vary any Contract or this Agreement or both of them in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 2.

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

1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.

1.3 Where appropriate, the singular includes the plural and vice versa.

1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a

Schedule to, the Agreement and each Contract and references to the Agreement or any Contract include its recitals and Schedules.

1.5 References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the 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 the Agreement and any Contract.

1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.

1.7 References to the “**Company**” shall include its successors, transferees and assignees.

1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.

1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Agreement, the order of priority for the purpose of construction in descending order shall be:

(a) the Clauses of the Contract;

(b) the Schedules and Appendices to the Contract (equal priority, but subject to Clause 1.10); and

(c) any other document referred to in, or incorporated by reference into, the Contract.

1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between the provisions of the Clauses of the Contract and a provision of any other Schedule then the Clauses of the Contract shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Contract.

1.11 Where the Agreement is utilised by another member of the TfL Group, references in a Contract to “the Company” shall, unless the context otherwise requires, be to that member of the TfL Group.

2 Duration, Condition Precedent and Option to Extend

2.1 Subject to Clause 2.5, the Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.

2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or

termination of the Contract and each Contract shall continue for the term set out in the relevant Contract. To the extent that any provisions of this Agreement are relevant to the Contract, such provisions shall survive expiry or termination of this Agreement.

2.3 Not Used.

2.4 The Company shall at its own discretion be entitled at any time prior to the end of the Term to inform the Contractor of its intention to extend the duration of the Agreement by a period of up to two years. The provisions of the Agreement shall continue to apply *mutatis mutandis* to any such extension of the Agreement duration (other than this Clause 2.4 containing the option to extend). On receipt of such notice from the Company by the Contractor the Agreement shall be deemed extended accordingly.

2.5 It is a condition precedent of the obligations of the parties under the Agreement coming into effect that the Contractor (and its subcontractors) holds the following licences for the Term:

- (a) waste carrier licence and/ or waste broker licence
- (b) A waste management permit or exemption disposal site licence
- (c) transport operator's licence
- (d) scrap dealers licences as issued by the relevant local authority as pursuant to the Scrap Metal Act 2013 (site and collection)
- (e) any other permits, registrations and licence required by law to carry out the Services.

The Contractor's sites used for the receipt of Scrap and subsequent re-cycling and onward treatment must satisfy local and legislative requirements of use and be covered by appropriate licences.

3 Contractor's Primary Obligations

3.1 The Contractor shall provide the Services to the Company in accordance with:

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

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

3.2 Not Used

Weighing of Scrap Materials

3.3 The Contractor shall weigh all Scrap collected or delivered as set out below:

- (a) where there are weighing facilities at the Company's Premises the Scrap shall be weighed prior to leaving the Company's Premises;
- (b) where there is no weighing facility at the Company's Premises or Scrap is delivered to the Contractor's Premises the Contractor shall weigh the Scrap at the Contractor's Premises;
- (c) the Contractor shall collect the uniquely numbered tickets printed by the weighing facilities each time a load/container is weighed and this ticket shall be forwarded to the Company's Representative as part of the reporting and invoicing process;
- (d) Where on-board weighing facilities in the Contractor's vehicles are available, then these should be used in addition to (a) or (b) and records retained for the Company's inspection;
- (e) The Company reserves the right to use a public weighbridge for periodic sample checks of the gross vehicle load ;
- (f) Should there be a difference in the weights recorded using the methods detailed in (a), (b) and/or (d), the weight of the Scrap for the purposes of calculating the Order Price shall be deemed to be the higher measure For any unexplained differences, the Company reserves the right to request and conduct, with the Company's full co-operation, an investigation into the discrepancy in weights.

3.4 The Contractor shall be responsible for maintaining the weighing facilities controlled by the Contractor to meet local trading standards and legislative requirements for accuracy and testing.

Contamination of Scrap

- 3.5** Where a collection of Scrap is made and it is subsequently discovered that the load is Contaminated with materials other than metals the Contractor shall be entitled to reject the load by serving a notice on the Company within one Working Day of the date of collection.
- 3.6** The load shall be then quarantined for a period of seven(7) Working Days to allow the Company to review and/or inspect the load. The Contractor shall take photographs or videos at the Company's request to provide documentary evidence of any Contamination. The photos/video shall be sent to the Company.
- 3.7** Where the Contractor believes that the Contamination presents an environmental or health risk, it shall notify the Company in the notice served under Clause 3.6 with proposal with associated costs for dealing with this. The Company shall respond within seven (7) Working Days as to its

acceptance of the proposals. The Contractor shall only incur expenses to deal with such Contamination if they have been approved by the Company.

3A.1 Mini-Competition

3A.1 At any time during the Term, the Company may identify the Services which at its sole discretion it wishes to let under the terms of the Agreement. Any decision by the Company to place a Contract under the terms of the Agreement may be preceded by a Mini-Competition save where the Company, having considered the Applicable Laws and Standards (including the Utilities Contracts Regulations 2006), considers it appropriate to issue an Order to one or more Contractors without holding a Mini-Competition.

3A.2 If pursuant to Clause 3A.1 the Company conducts a Mini-Competition, it will issue to the Contractors a Request Form, specifying the Services it requires.

3A.3 On receipt of the Request Form, the Contractor shall:

(a) within two (2) Working Days of the date of issue of the relevant Request Form, confirm receipt of such Request Form; and

(b) by the date specified in the relevant Request Form (or if no date is specified within one (1) Working Day of the date of issue of such relevant Request Form) or by such other date agreed in writing between the Company and the relevant Contractor:

- a. complete and issue to the Company a Proposal which shall include in full the information requested by the Company in the relevant Request Form *and full details of the basis on which the prices have been calculated* or
- b. notify the Company that it does not intend to submit a Proposal.

3A.4 The Contractor acknowledges and agrees that a Proposal remains valid for at least one week from the specified return date or from the date the Proposal submitted to the Company whichever is the later (or such longer period as may be specified in the relevant Request Form) 3A.5 If the Company accepts a Proposal issued pursuant to Clause 3A.3(b)(i), it shall notify the relevant Contractor of its intention to place an Order for the Services to be performed and each Order so given shall be final.

3A.6 A Request Form and anything prepared or discussed by the Company constitutes an invitation to treat and does not constitute an offer capable of acceptance by the relevant Contractor. The Company is not obliged to consider or accept any Proposal submitted by the Contractor.

3A.7 The Agreement does not oblige the Company to place an Order or enter into any Contract with the Contractor and offers no guarantees regarding the minimum weight or value of Scrap available for processing.

3A.8 Unless otherwise expressly agreed in writing with the Company, the Contractor shall not charge under the Agreement for any work involved in receipt of: any Request Form, any confirmation, or any response to any Request Form as contemplated in this Clause 3A.

3A.9 The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3A (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).

3.8 When Services are required by the Company, the Company may give the Contractor an Order for the Services to be performed and each Order so given shall be final.

3.9 The Contractor shall ensure and warrants to the Company that the Services will:

- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
- (b) be in accordance with the standards or methods (if any) detailed in the Agreement and where standards or methods are not detailed in the Agreement the Services shall be carried out in accordance with best appropriate industry practices. The Contractor shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Contractor shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
- (c) be performed in accordance with timescales agreed between the Parties;
- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable to LUL or the Underground Network); and
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

3.10 The Contractor shall perform its obligations under each Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.

3.11 It shall be the responsibility of the Contractor to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services, including, but not limited to, those required by any Applicable Laws and Standards.

3.12 Unless otherwise stated in the Agreement, the Contractor shall provide all equipment, support services and other facilities necessary for the performance of its obligations. For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Contractor under this Contract.

3.13 The Contractor warrants to the Company that it has entered into the Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.

3.14 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 the Agreement.

3.15 The Contractor shall be responsible for the accuracy of all 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.

Risk and Ownership

3.16 Risk of damage to, or loss of, the whole or part of a collection of Scrap shall pass to the Contractor upon collection from the Company's premises. If the Contractor serves a notice of rejection under Clause 3.5 and the rejected load is returned to the Company's premises, risk of damage to or loss of the whole or part of the rejected load shall pass to the Company on delivery to the Company's premises.

3.17 Title to the Scrap shall remain with the Company until collection of the Scrap from the Company's premises at which point, without further act, the Company shall pass title to the Scrap with full title guarantee to the Contractor. In the event the Contractor rejects a load of Scrap, title in such load of Scrap shall return to the Company either on delivery of the Scrap to

the Company or on collection of the Scrap from the Contractor by the Company or its representative (as appropriate);

4 Records and Audit

4.1 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 each Contract and all transactions related to each Contract and the Agreement. For the avoidance of doubt, such records shall include but are not limited to:

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

4.2 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.

4.3 The Company and its authorised representatives and LUL, its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time during the period referred to in Clause 4.2.

4.4 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 including documentation, on-board weighing equipment;
- (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 and/or LUL's auditor and/or granting copying facilities to the Company and/or LUL's auditor for the purposes of making such copies; and
- (e) complying with the Company and/or LUL's reasonable requests for access to senior personnel engaged in the Contractor's performance of each Contract.

4.5 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.

4.6 The Contractor shall permit the Company's authorised representatives and/or LUL, 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 and/or LUL with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's and/or LUL's request for the same.

4.7 In addition to the obligations under this Clause 4, the Contractor shall maintain records of all collections of Scrap and other materials as defined by the Specification.

5 Contractor's Obligations

5.1 The Contractor shall pay the Company the Order Price for the Services in accordance with Clause 8.

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

5.3 The Agreement is not an exclusive arrangement and nothing in the Agreement and/or any Contract operates to prevent the Company from engaging any other organisation or person to perform services similar to, or the same as, the Services.

6 Additional Services

The Company may, at any time during the term of any Contract, request the Contractor to provide a quotation for the supply of Additional Services in accordance with the Contract Variation Procedure. .

7 Variation

7.1 Unless the parties agree otherwise in writing, any variation to any Contract shall be made under the Contract Variation Procedure.

7.2 The Contractor shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

8 Price and Payment

8.1 The prices for the Services shall be determined by the mechanism detailed in Schedule 5. Each Order Price applicable to any Contract shall be based upon the mechanism set out in Schedule 5. The prices for the Services or any Order Price shall only be changed in accordance with the Contract Variation Procedure.

8.2 The Contractor shall submit a Statement every month (detailing the Services carried out during the previous month) to the Company within 5 Working Days of the end of the previous month. This Statement shall be in accordance with and supported by the documentation specified in Clause 4.7 and shall show the basis upon which the sum is calculated. The Statement and supporting documentation shall be sent, in the form detailed in the Specification, to:

Scrap and Sub-Contract Manager, Tube Lines Limited, Distribution Services, 130 Bollo Lane, London W3 8BZ

The Company will either confirm acceptance of the sums detailed in the Statement or raise any queries within 5 Working Days of receipt of the Statement and all supporting documents

The Contractor shall pay the Company within 30 days from the date the Statement was approved. The payment which is made shall be made by BACs to the account referred to in the Specification.

8.3 All Losses which the Company may have paid, suffered or incurred, and for which the Contractor is liable under any Contract, may be set off against any other amounts payable in respect of that or any other Contract, provided that the Company's Representative informs the Contractor in writing of any deductions made, if possible, prior to and in any event no later than the date upon which any such deduction is made.

8.4 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.

9 Access and Time for Performance of the Services

9.1 The Company shall upon reasonable notice from the Contractor, provide access for the Contractor to the Company's premises and information records and other materials as the Contractor may reasonably require in order to provide the Services, provided that the Company shall only be obliged to procure such access during the normal working hours applicable to the premises/location at which the Services are to be performed and provided that such access shall not cause undue commercial disruption to the Company. The Contractor acknowledges that the Company does not guarantee access to the Company's premises and access is limited in accordance with this Agreement.

9.2 In the event that access is required to the premises of any third party for the purpose of provision of the Services, the Company shall use its reasonable endeavours to secure such rights of access for the Contractor provided that the Contractor shall be responsible for arranging such access on a day to day basis with the third party.

9.3 The Contractor shall ensure that the Services are satisfactorily performed by the Order Completion Date. The time of the performance of the Services shall be of the essence in respect of each Contract.

10 Work on Company's Sites

10.1 During the term of each Contract, the Contractor shall:

- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
- (b) ensure that all employees and agents of the Contractor including any of the Contractor's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
- (c) notwithstanding the terms of Clause 10.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Contractor including any of the Contractor's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, LUL or any railway operator. The Contractor shall strictly observe all rules and regulations set out or referred to in the Agreement and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and
- (g) attend the Company or any third party in order to advise on the effects of the Contractor's actions or proposed actions in respect to the Services on the integrity and functionality of any other aspect of the railway.

10.2 Without prejudice to Clauses 10.1(a) to (g) 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 each Contract.

11 Performance

11.1 From the Start Date and (for the remainder of the Term) every 4 weeks after that date the Company assesses the Contractor's performance under the Contract in accordance with Schedule 10.

11.2 The Company shall have the right to use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Contractor in its performance of the Contract.

12 Environmental Claims

12.1 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.

12.2 The Contractor shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.

12.3 Where the Contractor discovers or suspects that the site has been contaminated or polluted by another party, the Contractor shall notify the Company's Representative and 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.

12.4 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 and LUL can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

12.5 The Contractor shall provide to the Company's Representative:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Services (for the purposes of this Clause 12.5, 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;
- (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

13 Safety

13.1 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 Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.

13.2 The Contractor shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):

- (a) the provisions of the LUL category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in the Specification ("QUENSH") as amended from time to time; and
- (b) the Company's drug and alcohol principles as amended from time to time.

13.3 Section 20.1.1.1 (Alcohol and drugs) of QUENSH shall apply to each Contract as if the term "LU Premises" means any of LUL's and/or the Company's property where the Services are carried out and as if references to "LU" are references to the Company.

13.4 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.

14 Independent Contractor

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

15 Contractor Personnel

Commencement of Services

15.1 The Company and the Contractor agree that the commencement of the Services on the Commencement Date will not constitute a relevant transfer for the purposes of the Employment Regulations.

15.2 If the contract of employment of any individual is found or alleged to have effect on or after the Commencement Date as if originally made with the Company by reason of the Employment Regulations, the Contractor agrees that:

- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the Commencement Date; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Commencement Date; and
- (c) it will do nothing to discourage the acceptance of the offer.

15.3 Upon that offer being made in accordance with Clauses 15.2(a) and 15.2(b) (or after fourteen (14) days, if the offer is not made as requested), the Company may terminate the employment of the person concerned and the Contractor undertakes to indemnify the Company in respect of:
(i) the employment of such person after the Commencement Date until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

Contractor Personnel

15.4 The Contractor will be responsible and liable for the recruitment, training, management, removal and termination of all Contractor Personnel and the acts and omissions of the Contractor Personnel in the provision of the Services and will indemnify the Company on demand in respect of all Losses that may be suffered or incurred by the Company in connection with the acts or omissions of Contractor Personnel in connection with or relating to the provision of the Services and when dealing with any individuals employed or engaged in any capacity by the Company.

15.5 The Contractor will, to the extent required, secure the consent of Contractor Personnel to the disclosure of data falling within the scope of the Data Protection Act 1998.

Contractor Personnel Information and Contractor Personnel Indemnity

15.6 The Contractor:

15.6.1 will, on request at any time (including for the avoidance of doubt after the expiry of the Contract), provide to the Company, the Contractor Personnel Information. Such Contractor Personnel Information shall be provided to the Company as soon as reasonably practicable and in any event no later than twenty eight (28) days after such a request;

15.6.2 warrants and undertakes to the Company that any Contractor Personnel Information disclosed pursuant to Clause 15.6.1 above is complete and accurate; and

15.6.3 will indemnify and hold harmless the Company and any Replacement Contractor from and against all Losses incurred or suffered by the Company and any Replacement Contractor in connection with, or as a result of, any claim or demand:

(i) by any Contractor Personnel which relates wholly or in part to the Contractor Personnel's employment in the period on or after the Commencement Date;

(ii) by any Contractor Personnel which relates to the Contractor's failure or alleged failure to employ such Contractor's Personnel on the terms and conditions which they enjoyed immediately prior to the Commencement Date;

(iii) by or on behalf of any Contractor Personnel which relates to a breach of any of the warranties and undertakings given by the Contractor in this Clause 15; or

(iv) relating to any incomplete or incorrect information relating to the Contractor Personnel which the Contractor has provided to the Company pursuant to this Clause 15 or otherwise and which the Company has relied upon.

15.6A The Company will keep any Contractor Personnel Information confidential although such information may be disclosed to a prospective Replacement Contractor in any tender exercise.

Staff Travel Facilities

15.7 *Not used.*

Surplus Contractor Personnel

15.7.1 The Contractor shall deal with any surplus Contractor Personnel as follows:

- (a) where Contractor Personnel become surplus to requirements and are displaced, the Contractor shall use reasonable endeavours to identify and offer one suitable alternative job to each such Contractor Personnel elsewhere in the Contractor;
- (b) where within one (1) month of the displacement of Contractor Personnel, the Contractor is unable to identify a suitable alternative job within its respective organisation the Contractor shall ask the Company whether there are any suitable vacancies within its organisation or other subcontractor organisations;
- (c) where the Company is asked by the Contractor whether there are any suitable vacancies within its organisation, the Company shall use reasonable endeavours to identify a suitable alternative job and shall notify the Contractor in writing within one (1) month of the request being made whether such an alternative position has been identified;
- (d) where the Contractor is asked by another subcontractor whether there are any suitable vacancies within its organisation, the Contractor shall use reasonable endeavours to identify a suitable alternative job and shall notify the other subcontractor in writing within one (1) month of the request being made whether such an alternative position has been identified; and
- (e) where the Company or another subcontractor has a suitable vacancy for that Contractor Personnel and is prepared to offer that vacancy to such employee, it shall provide full details of that vacancy to the Contractor (together with the notification as to whether the position has been identified and that Contractor Personnel shall upon accepting an offer from the Company or the other subcontractor (as the case may be) transfer on the standard terms and conditions for that organisation unless otherwise agreed between the Contractor Personnel and, as the case may be, the Company or the other subcontractor.

15.7.2

In the event that the Contractor, having complied with its obligations under this Clause 0 is unable to identify a suitable alternative job for the displaced employee or the displaced employee rejects any suitable alternative job offer (including any job offer made by the Company or another subcontractor), then the Contractor may dispense with the services of the displaced employee.

Key Personnel

15.8

Unless otherwise stated in any Order, the following Clauses shall apply in respect of Key Personnel:

- (a) The Contractor shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. 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.

- (b) 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.
- (c) 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 Services). 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.
- (d) 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.
- (e) 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.

Service Cessation

- 15.9** The Company and the Contractor agree that no Service Cessation will constitute a relevant transfer for the purposes of the Employment Regulations.

15.10 If the contract of employment of any Contractor Personnel is found or alleged to have effect on or after a Service Cessation as if originally made with the Company or a Replacement Contractor by reason of the Employment Regulations, the Contractor agrees that:

- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the relevant Service Cessation; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Service Cessation; and
- (c) it will do nothing to discourage the acceptance of the offer.

15.11 Upon that offer being made in accordance with Clauses 15.10(a) and 15.10(b) (or after fourteen (14) days, if the offer is not made as requested), the Company or the Replacement Contractor may terminate the employment of the person concerned and the Contractor undertakes to indemnify the Company and the Replacement Contractor against any Losses in respect of: (i) the employment of such person after the Service Cessation until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company or the Replacement Contractor under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 of the Employment Regulations.

15.12 The Contractor shall indemnify the Company and the Replacement Contractor against any Losses in respect of any claim to the extent that it is in relation to:

- (a) the employment and termination of the employment of any Contractor Personnel up to and including the Service Cessation;
- (b) all emoluments and other benefits of Contractor Personnel arising in respect of the period up to and including the Service Cessation regardless of when they fall due for payment;
- (c) any act, fault or omission up to and including Service Cessation in respect of the employment of Contractor Personnel;
- (d) any claim by any Contractor Personnel relating to that person's employment or its termination after the date of the Service Cessation.

15.13 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 15 at any time during performance of the Contract and during the twelve (12) year period following completion of performance.

15.14 The obligations of the parties under this Clause 15 shall survive the expiry or termination of the Contract for whatever reason.

16 London Living Wage

16.1 The Contractor shall, to the extent each Contract is for the provision of Services to be undertaken within Greater London or on the Underground Network:

- (a) ensure that none of its employees engaged in the provision of services under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 16 and the provisions of this Clause 16 are included in any subcontract (of any tier).

16.2 The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 16.

17 Responsible Procurement

17.1 The Contractor and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including LUL) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities and that LUL is under a duty to comply with that direction and that the Company is similarly under a duty to comply under the Tube Lines Contract.

17.2 The Contractor shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company and LUL to comply with, the Responsible Procurement Policy.

17.3 The Contractor acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy and the Contractor shall, and shall procure that all of its subcontractors shall, comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

17.4 The Contractor acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

17.5 The Contractor shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

17.6 The Contractor shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 17 and the provisions of this Clause 17 are included in any subcontract (of any tier).

17.7 The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 17.

18 Warranty

18.1 If the Contractor has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Contractor to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.

18.2 The provisions of this Clause 18 shall survive the termination of the Agreement and each Contract for whatever reason.

18.3 Without limiting any other remedy, if the Contractor fails to comply with the requirements of Clause 18.1, the Company shall be entitled to perform or procure the performance of the

Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 18.3 is recoverable by the Company from the Contractor and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Contractor under the Contract.

- 18.4** For the purposes of Clause 18.3 the Contractor hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spare belonging to the Contractor or used by the Contractor in connection with the Contract as may be required by the Company to exercise its rights under Clause 18.3 and the Contractor shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 18.3.

19 Intellectual Property Rights

Existing Contracts

- 19.1** The 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.

Vesting of Intellectual Property Rights created under this Contract

- 19.2** All Intellectual Property Rights created wholly or mainly in connection with the performance of, or in order to perform, the 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.

Ownership of the Contractor's Intellectual Property Rights

- 19.3** Without prejudice to Clause 19.2, 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 19.2 shall remain or be vested in the Contractor, its subcontractors (of any tier) or other third party (as the case may be).

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

- 19.4** The Company and LUL shall have and the Contractor hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company and to LUL 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 19.3 for the purposes of:

19.4.1 understanding the Services;

19.4.2 operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and retendering the Services;

19.4.3 extending, interfacing with, integrating with, connecting into and adjusting the Services;

19.4.4 enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;

19.4.5 executing and completing the performance of the Services; and

19.4.6 enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

Provision of Supporting Documentation and Other Materials

19.5 The Contractor shall:

19.5.1 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 for the use and copying of, the Intellectual Property Rights referred to in Clauses 19.2, 19.3 and 19.4 above; and

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

Company's Rights of Retention

19.6 If the Contractor has not complied with its obligations under Clause 19.5.1, the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Contractor under this Contract until the Contractor has complied with its obligations under Clause 19.5.1.

Company's Rights to the Software

19.7 If the Contractor or any of its subcontractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 20.1 (including their equivalent in any jurisdiction to which the Contractor or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Contract then the Contractor, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

Company's Rights in relation to Other Procurement Activities

19.8 For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 19.5 above and anything in which the Intellectual Property Rights referred to in Clauses 19.2, 19.3 and 19.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 19.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

Contractor's Indemnity against Third Party Intellectual Property Rights Infringement

19.9

19.9.1 The Contractor shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Contractor shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.

19.9.2 In the event of a claim of infringement of any Intellectual Property Rights the Contractor shall use all reasonable endeavours to make such alterations or

adjustment to the method of providing the Services as may be necessary to ensure that the use and provision of the Services continues in spite of such claim.

Ownership of the Company's Intellectual Property Rights

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

Company's Intellectual Property Rights

- 19.11** The Contractor is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.

20 Termination and Suspension

- 20.1** The Company may terminate the Agreement or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Contractor if:

- (a) the Contractor commits a breach of any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Contractor and the Company, of the Company serving notice on the Contractor requiring such remedy;
- (b) the Contractor or anyone employed by or acting on behalf of the Contractor (whether or not acting independently of the Contractor when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Contractor's liability to pay liquidated damages is reached or exceeded;
- (d) the Contractor enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Contractor under each Contract) or is deemed unable to pay its debts as they fall due in accordance with [Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any

resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same ;

- (e) a breach of the Contractor's obligations under Clause 36A; or
- (f) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 10.

20.2 Without prejudice to Clause 20.1, the Company shall have the right:

- (a) to terminate the Agreement or any individual Contract (in which case the remaining outstanding Contracts shall survive) at any time by giving notice of not less than three months to the Contractor in writing; or
- (b) at any time to require the Contractor to suspend provision of the Services by giving notice in writing (a "Suspension Notice") to the Contractor.

20.3 In the event that the Company terminates the Agreement or any Contract for any reason under this Clause 20, the Contractor shall, without prejudice to any other rights or remedies which the Company may have under such Agreement or Contract or under general law, permit the Company, at the Company's option, to:

- (a) enter the Contractor's premises and, solely in respect of the Agreement or Contract that has been terminated, take possession of any equipment or goods which are the property of the Company, the Specification and any applicable Company Documents;
- (b) take the provision of the remaining Services wholly or in part out of the Contractor's hands and to place an order for such Services with any other person or persons or complete the provision of such Services by its own workmen; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Contractor or any of its subcontractors have possession.

In either such case, the Company shall be entitled to retain the benefit of any part of the Services already provided by the Contractor in accordance with the Agreement and any Contract, at the material time.

20.4 In the event that the Agreement or any Contract is terminated, the Contractor shall be liable for payment to the Company for those Services provided in accordance with Clause 8 of this Agreement up until the date of such termination.

20.5 Where the Company exercises its rights under Clause 20.3(b), following a termination in accordance with Clause 20.1 (but not a termination in accordance with Clause 20.2(a)) and in so doing and securing the full provision of the Services, incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Agreement and the relevant Contract(s) ("**Excess Costs**"), the Contractor shall be liable to the Company for such Excess Costs in addition to being liable to the Company for any Losses of whatever nature arising out of or in connection with the relevant breach.

20.6 In the event that any Contract is suspended in accordance with Clause 20.3(b), the Contractor shall:

- (a) submit a statement in respect of those Services provided to the Company in accordance with the Agreement clause 8 and each Contract up until the date of such suspension; and
- (b) not carry out any further work in connection with the provision of the Services until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").

20.7 In the event that any Contract is suspended in accordance with Clause 20.3(b), and such suspension continues for a period of twenty-eight (28) days, the Contractor shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Contractor, the Contractor shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.

20.8 In the event that the parties are unable to agree upon the variation requested under Clause 20.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 33.

20.9 Termination of the Agreement or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and such Contract(s) as at the date of termination and in particular but without limitation the right to recover damages against the other party. All provisions which are expressed to survive the Agreement and each Contract shall remain in full force and effect.

20.10 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 Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

21 Indemnity and Insurance

21.1

The Contractor shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or any relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Contractor under the Contract:

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and
- (d) arising under the Company's contracts with third parties.

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

21.2

The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 21.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

21.3

The Contractor's indemnity under Clause 21.1 and all other indemnities under the Contract shall remain in force for the duration of the Contract and for the period of twelve (12) years after the Completion Date or earlier termination of the Contract.

21.4

The Company may withhold from any sum due or which may become due to the Contractor any sum due to the Company as a result of the operation of Clause 21.1 provided that an appropriate notice to withhold payment has been served by the Company on the Contractor.

21.5

Other than in respect of the Losses (i) described in Clauses 21.1(a) and 21.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

21.6

Without prejudice to the obligation to indemnify the Company set out in Clauses 21.1, the Contractor undertakes to

- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof and being not less than £5,000,000 (five million pounds) per occurrence;
- (b) maintain at its own cost an adequate level of public liability insurance in respect of the Contractor's liability for death or injury to any person and loss of or damage to property and being not less than £10,000,000 (ten million pounds) per occurrence;
- (c) maintain at its own cost an adequate level of product liability insurance being not less than £10,000,000 (ten million pounds) per occurrence;
- (d) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;
- (e) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (f) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under the Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 21.6.

21.7 The Contractor's liabilities under the Contract shall not be deemed to be released or limited by the Contractor taking out the insurance policies referred to in Clause 21.6.

21.8 If the Contractor fails to maintain the insurance policies as provided in this Clause 21, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time recover the same as a debt due from the Contractor.

21.9 Not used.

22 Force Majeure

22.1 Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under such Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the

steps taken by it to minimise or overcome the effects of such event. The operation of such Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Contractor to perform its obligations under such Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Contractor.

23 Confidentiality

23.1 The Contractor undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Contractor and shall use such information only for the purpose of the performance of his obligations under each Contract.

23.2 On the Company's request, the Contractor shall, so far as is reasonably possible:

- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Contractor;
- (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.

23.3 The Contractor shall ensure that all his subcontractors, Contractors, employees and agents perform his obligations in Clauses 23.1 and 23.2 as if they were the Contractor, and the Contractor shall be responsible to the Company for any act or omission by his subcontractors, Contractors, employees and agents in breach of such obligations.

23.4 The Contractor shall notify the Company promptly if the Contractor becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.

23.5 The Contractor shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, LUL, any Contract or the Services without the prior written consent of the Company.

23.6 The Contractor shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Services, or any Dispute arising under or in connection with any Contract.

23.7 The provisions of Clauses 23.1 to 23.6 shall not apply:

- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 23.8** The obligations of the parties under this Clause 23 shall survive the expiry or the termination of the Agreement and each Contract for whatever reason.
- 23.9** The Contractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 23 by the Contractor and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

24 Assignment, Subcontracting and LUL Step-In Rights

24.1 The Contractor shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.

24.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Contractor of its obligations to perform the Services under any Contract. The Contractor shall be responsible for the acts and omissions of its subcontractors.

24.3 The Company may novate, assign, transfer or subcontract the Agreement or any Contract (or any parts thereof) to any person at any time without the consent of the Contractor, provided the Company has given prior written notice to the Contractor.

24.4 Within seven (7) days of any written request by the Company to the Contractor, the Contractor shall execute a deed of novation in the form set out in Schedule 4 in favour of any person to whom the Agreement or any Contract is being novated.

24.5 Not used.

24.6 The Supplier acknowledges that if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract then LUL may issue a Step-in Notice to the Company advising the Company that it shall, from the date specified in the Step-in Notice, exercise its rights to step-in. The Supplier acknowledges LUL's rights to step-in under the Tube Lines Contract and accepts the Step-in Notice as conclusive proof of LUL's entitlement to step-in.

24.7 The Supplier acknowledges and accepts that, from the date specified in the Step-in Notice to the relevant date specified in any Step-out Notice served on the Supplier by LUL as referred to in Clause 24.11, it:

- (a) shall comply with the reasonable instructions of LUL or its appointee given in accordance with the Agreement and any Contract; and
- (b) is not in breach of the Agreement or any Contract by complying with the instructions of LUL.

24.8 Subject to Clause 24.9 the Company shall remain liable to the Supplier for all amounts due and payable to the Supplier under each Contract and for all the Company's obligations under each Contract.

24.9 If LUL serves a notice on the Supplier requiring the Supplier to accept instructions from LUL or its appointee in respect of the Agreement or any Contract, then all amounts due and payable to the Supplier, or which may become due to the Supplier under such Contracts without right of retention or set off in respect of any prior breach of such Contracts (and which have not been discharged by the Company or any other person) shall be paid directly to the Supplier by LUL or its appointee.

24.10 The Supplier shall not hinder or prevent LUL or its appointee from exercising its step-in rights under the Tube Lines Contract. The Supplier shall not exercise any Intellectual Property Rights owned by it so as to prevent or hinder LUL or any third party appointed by LUL in accordance with its step-in rights from exercising its step-in rights.

24.11 If LUL serves a Step-out Notice on the Supplier then, if so required by the Step-out Notice, from the relevant date specified in the Step-out Notice, the Supplier shall comply with the instructions of the Company on the terms and conditions of the Agreement and each Contract.

24.12 The Supplier and the Company shall not be in breach of the Agreement or any Contract for complying with the obligations imposed by Clauses 24.6 to 24.12.

25 Company's and Contractor's Representative

Each party shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract. The names and contact details of the representatives shall be as detailed in this Agreement. The Contractor shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the 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.

26 Costs

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

27 Severance

If a provision of any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of such Contract, provided that the operation of this Clause 27 would not negate the commercial interest and purpose of the parties under such Contract. The provisions of this Clause 27 shall survive the termination of the Agreement and each Contract for whatever reason.

28 Publicity

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

29 Corrupt Gifts and Payments of Commission

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

29.2 The Contractor undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.

29.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 29 at any time during performance of each Contract and during the twelve (12) year period following completion of performance.

29A Criminal Record Declarations

29A.1 For the purposes of this Clause 29A:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of either the Contractor or any subcontractor or supplier carrying out, or intended to carry out, any aspect of the Services; and

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

29A.2 The Contractor shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Contractor shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Contractor shall procure that a Relevant Individual notifies the Contractor immediately if he commits a Relevant Conviction and the Contractor shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

29A.3 The Contractor shall not engage or allow to act on behalf of the Contractor or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.

29A.4 The Company shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Contractor and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 29A at any time during performance of the Agreement or any individual Contract.

29A.5 If the Contractor fails to comply with the requirements under Clause 29A.2, or Clause 29A.3, or both of them, the Company may, without prejudice to its rights under Clause 20.1, serve notice on the Contractor requiring the Contractor to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and the

Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 29A.2) within seven (7) days of receipt of the notice the Contractor confirms to the Company that he has procured all of the relevant Declarations required under Clause 29A.2.

29A.6 A persistent breach of Clause 29A.2, or Clause 29A.3 or both of them, by the Contractor shall entitle the Company to terminate the Agreement, or any individual Contract, or both of them, in whole or in part with immediate effect in accordance with Clause 20.1(a).

29A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Contractor shall remove or procure the removal (as the case may be) of such Relevant Individual from any Contract and the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.

29A.8 Nothing in this Clause 29A shall in any way waive, limit or amend any obligation of the Contractor to the Company arising under the Agreement, or any individual Contract, or both of them and the Contractor's responsibilities in respect of performance of the Services remain in full force and effect and the Contractor cannot claim any extra costs or time as a result of any actions under this Clause 29A.

30 No Waiver

30.1 No failure or delay on the part of either party to exercise any right or remedy under any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in any Contract are cumulative and are not exclusive of any rights or remedies provided by law. The provisions of this Clause 30 shall survive the termination of the Agreement and each Contract for whatever reason.

30.2 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Contractor from any obligation or liability imposed upon the Contractor by any provision of the Contract or otherwise.

31 Entire Contract

Each Contract embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the

subject matter of such Contract. Except in the case of fraud, neither party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in such Contract.

32 Notices and Service of Process

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

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

The address and fax numbers of the Company and the Contractor are as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

Company: 15 Westferry Circus, London, E14 4HD

Attn: Company's Representative – Gaynor Clancy

Facsimile: TBC

Contractor: Powke Lane, Midlands, Cradley. B64 5PT

Attn: Stephen Hundal

Facsimile: TBC

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 32.1.

33 Dispute Resolution

33.1 Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 33.

33.2 The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Contractor (together the "**Nominated Representatives**") which shall be convened to discuss

such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.

33.3 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 33.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company's Head of Commercial and the Contractor's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputed to resolve disputes on behalf of their respective companies.

33.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Head of Commercial and the Contractor's Managing Director or their deputies in accordance with Clause 33.3 either party may refer the matter for resolution in accordance with the provisions of Clause 0.

33.5 Clauses 33.1 to 33.4 are subject to the Contractor's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 33.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

33A Counterparts

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

34 Governing Law and Jurisdiction

The Agreement and each Contract and any non-contractual obligations connected with the Agreement and each Contract shall be governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

35 Contracts (Rights of Third Parties) Act 1999

35.1 Subject to:

- (a) LUL's rights under Clause 24;
- (b) LUL's rights in accordance with Clauses 4.3, 4.4 and 4.6;

- (c) LUL's rights in accordance with Clauses 19.5 and 1.1;
 - (d) LUL's rights in accordance with Clause 12.4.; and
 - (e) the Replacement Contractor's rights in accordance with Clauses 15.6.3, 15.13 and 15.14
- no person except any member of the TIL Group may enforce any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

35.2 Notwithstanding LUL's rights referred to in Clause 35.1, the Company and the Contractor may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

36 Bonds, Warranties and Guarantees

36.1 Where stated in Schedule 1, the Contractor shall at its own expense provide within seven (7) days of the Company's request any or all of the following:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 6 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, or A3 by Moody's) in the form set out in Schedule 6 in favour of the Company.

36.2 The Contractor shall ensure that any bond required under Clause 36.1 provides, in aggregate, credit protection for the Company in an amount of not less than £200,000 at all times until the expiry of the Agreement

36.3 If at any time the existing bond or parent company guarantee cease to meet the requirements of Clauses 36.1 and 36.2 then the Contractor shall replace such bond or parent company guarantee with a bond or parent company guarantee that meets the requirements within seven (7) days.

36.4 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:

- (i) the Company;

- (ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Agreement or any Contract;
- (iii) any persons who have acquired or may acquire an interest in or over the Agreement, any Contract or any part of the Services or in relation to any infrastructure or works to which the Services relate; and

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; and

- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 36.4.

36.5 In addition to the obligation to procure warranties as set out in Clause 36.4(a), the Contractor shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Services in favour of any of the parties referred to in Clause 36.4(a)(ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request.

36.6 If any warranty (including any accompanying parent company guarantee) required under Clause 36.4 is not delivered to the Company in accordance with Clause 36.4 one quarter of the Contract Price relative to the Services supplied by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

36A Change of Control

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

37 Interest

37.1 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 37.1 shall be immediately payable by the paying party on demand.

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

38 Freedom of Information

(a) For the purposes of this Clause 38:

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

“**Information**” means information recorded in any form held by the Company or by the Contractor on behalf of the Company; and

“**Information Request**” means a request for any Information under the FOI Legislation.

(b) The Contractor acknowledges that the Company:

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

(c) Without prejudice to the generality of Clause 38(b) the Contractor shall and shall procure that its subcontractors (if any) shall:

- (i) transfer to the Company's Representative (or such other person as may be notified by the Company to the Contractor) each Information Request relevant to the Agreement or any individual Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (ii) in relation to Information held by the Contractor on behalf of the Company, provide the Company with details about and copies of all such Information that the Company requests and such details and copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the

Company may reasonably specify), and in such forms as the Company may reasonably specify.

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

38A Data Transparency

38A.1 The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 38, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.

38A.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 38A.1. The Company shall make the final decision regarding publication and redaction of the Contract Information.

39 Transport for London Group

39.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement, or any individual Contract, or both of them under Clause 20.1, Clause 20.2(a) or at common law, the Company may terminate the Agreement or any individual Contract, or both of them at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 39.1
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Contractor. The parties agree that the provisions of this Clause 39.1 shall apply as from the date of receipt by the Contractor of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 20.1 and this Clause 39.1 or the Cessation Plan, the provisions of this Clause 39.1 and the Cessation Plan prevail.

- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 39.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Contractor's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement or any individual Contract, or both of them or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Contractor for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement or any individual Contract, or both of them in accordance with this Clause 39.1.

39.2 Crime and Disorder Act 1998

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

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area:

- (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
- (ii) the misuse of drugs, alcohol and other substances; and
- (iii) re-offending,

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

39.3 The Company's business

The Contractor acknowledges that it:

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

39.4 Best value

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

39.5 Data Protection

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

39.6 Conflict of Interest

- (a) The Contractor acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Contractor shall undertake on-going and regular checks for any conflict of interest throughout the duration of the Agreement or any individual Contract, or both of them and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement or any individual Contract, or both of them or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company’s satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement or any individual Contract, or both of them..

39.7 Not used.

39.8 Equality and Diversity

- (a) Without limiting the generality of any other provision of the Agreement or any individual Contract, or both of them , the Contractor shall:

- (i) not unlawfully discriminate;
- (ii) procure that its personnel do not unlawfully discriminate; and
- (iii) use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

- (b) within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment. The Contractor acknowledges that the Company is under a duty under Section 149 of the Equality Act 2010 to have due regard to the need to:

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

In performing the Agreement and/or any individual Contract, the [Contractor] shall assist and co-operate with the Company where possible in satisfying this duty.

- (c) The Contractor shall ensure that its staff, and those of its subcontractors who are engaged in the performance of each Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

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

39.9 Work Related Road Risk

39.9.1 For the purposes of Clauses 39.9.2 to 39.9.9 (inclusive) of this Contract, the following expressions shall have the following meanings:

“Bronze Accreditation”

the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:
www.fors-online.org.uk

“Car-derived Vans”

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

“Collision Report”

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

“Delivery and Servicing Vehicle”

a Lorry, a Van or a Car-derived Van;

“Driver”

any employee of the Contractor (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Contractor while delivering the Services;

“DVLA”

Driver and Vehicle Licensing Agency;

“FORS”

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

“FORS Standard”

the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:
www.fors-online.org.uk

“Gold Accreditation”

the highest level of accreditation within the FORS Standard, the requirements of which are more

particularly described at:

www.fors-online.org.uk

“Lorry”

a vehicle with an MAM exceeding 3,500 kilograms;

“MAM”

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

“Side Guards”

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

“Silver Accreditation”

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

www.fors-online.org.uk

“Van”

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

Fleet Operator Recognition Scheme Accreditation

39.9.2 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to FORS (the “Alternative Scheme”); and
- (b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Contractor has attained Silver or Gold Accreditation, the

maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

39.9.3

The Contractor shall ensure that every Lorry, which it uses to provide the Services, shall:

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

Driver Licence Checks

39.9.4

Where the Contractor operates Delivery and Servicing Vehicles to provide the Services the Contractor shall ensure that:

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers' licence; and
- (b) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Contractor's risk scale, provided that the Contractor's risk scale has been Approved in writing by the Company within the last 12 months:
 - (i) 0 – 3 points on the driving licence – annual checks;
 - (ii) 4 – 8 points on the driving licence – six monthly checks;
 - (iii) 9 – 11 points on the driving licence – quarterly checks; or

- (iv) 12 or more points on the driving licence – monthly checks.

Driver Training

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

Collision Reporting

39.9.6 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services, the Contractor shall:

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

Self Certification of Compliance

39.9.7 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Contractor shall make a written report to the Company detailing its compliance with Clauses 39.9.3, 39.9.4 and 39.9.5 of this Contract (the "WRRR Self-certification Report"). The Contractor shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Contractor Regarding Subcontractors

39.9.8 The Contractor shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to provide the Services shall:

- (a) comply with Clause 39.9.2; and
- (b) where its subcontractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Contract:
 - (i) For Lorries – Clauses 39.9.3, 39.9.4, 39.9.5 and 39.9.6; and

- (ii) For Vans – Clauses 39.9.4, 39.9.5, and 39.9.6,

as if those sub-contractors were a party to this Contract.

Failure to Comply with Work Related Road Risk Obligations

39.9.9

Without limiting the effect of any other clause of this Contract relating to termination, if the Contractor fails to comply with any of Clauses 39.9.2, 39.9.3, 39.9.4, 39.9.5, 39.9.6, 39.9.7 and/or 39.9.8:

- (a) the Contractor has committed a material breach of this Contract; and
- (b) the Company may refuse the Contractor, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

40 CompeteFor

40.1

Without prejudice to Clause 24, the Contractor will on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) (“**CompeteFor**”) to make available to other Contractors all appropriate opportunities arising in connection with the Agreement, to supply goods, works or services to the Contractor.

40.2

The Contractor will use all reasonable endeavours to ensure that its subcontracts (for the purposes of this Clause, the “**Contractor’s Subcontractors**”) use CompeteFor, on a non-exclusive basis, to make available to other subcontractors all appropriate opportunities, arising in connection with the Agreement to supply goods, works and services to the Contractor’s Subcontractors.

40.3

The Contractor will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement, made available to other suppliers via CompeteFor, whether by the Contractor or the Contractor’s Subcontractors, as required by this Clause 40.3 and will report this information on a quarterly basis by way of email to the Company’s Representative.

Schedule 1

Specification

1. **Summary of Requirements**

Materials arising as a result of occasional requirements (such as site clearances, one-off projects and other sporadic arisings) will be dealt with as per clause 3A.1.

Whilst collection sites will normally be those shown on Appendix A it is anticipated that there may be a requirement to collect redundant metal from other sites around the LU network – for example, station car parks or railway work sites. Full details of the site location including contact details would be provided at the time of the requirement.

The Contractor shall ensure they provide suitable and competent resources to undertake the collection, including lifting and loading equipment such as cranes and hi-abs.

Any containers provided shall be in accordance with this Schedule 1.

The Company will issue a unique reference number with all work requests, which may be a result of work instructed under clause 3A Mini Competition

Although the majority of collections will be during the working day, there will be occasions, particularly in support of engineering projects, where collections may be required during “Engineering” Hours – 22.00 to 08.00 – and including weekends and bank holidays.

2. **Delivery to Contractor site – Ad-Hoc Requirements**

The Company will occasionally require Contractors to facilitate deliveries of ferrous and non-ferrous metal scrap into an approved site, by way of our own Company vehicles or those of a third party sub-contractor. In the majority of cases deliveries would be during daytime hours (Monday – Friday 07:30 – 17:00) with an occasional need for receipts during “Engineering Hours”. These hours are defined as follows;

- nights – 22.00 and 08:00, Monday to Saturday, including Bank Holidays
- week-ends from 22.00 on Fridays to 08.00 on Mondays, including Bank Holidays

Any arising for this service will be undertaken in accordance with the following detailed requirements;

- A Contractor site such that client vehicles/staff are “back to base” within shift – which varies depending on gang used and work site location which is usually within “M25”
- Unloading can create a noise hazard (vehicles and tipping) for surrounding premises and any proposed site and off loading facilities should take account of this.
- Scrap product will be principally rail (mostly short, 0.45metre (18”) sections, but can be longer – max. 18 metres (60”) with some mixed ferrous (chairs; fishplates; escalator step treads and various train components) from time to time

- Scrap product may be delivered on pallets, in “builder’s bags” or loose.
- Contractor must be able to provide handling equipment and staff to off-load.
- Vehicles are normally rigid of 2 tonne to 7 tonne capacity, but larger vehicles may be required by the client occasionally. Tipper vehicles will also need to be accommodated.
- All vehicles to be weighed at receiving site - tare, gross, net
- Each vehicle registration and net tonnage identified by printed weighbridge ticket
- Weighbridge tickets to be endorsed with Company name, unique job reference number or originating site as provided by client via driver and Waste Transfer Note number or a present despatch note.

3. Safety, Environment and Compliance

The Contractor will ensure,

- cartage, storage facilities, recycling and record retention arrangements are in accordance with the requirements of current legislation and London Underground Safety and Environmental Standards.
- registrations and licences required by law which are necessary to perform the services are held at all times in accordance with Clause 2.5.

The Contractor shall;

- maintain a current list of approved sites, with any adjustments only being made following the agreement of the Company.
- ensure their transport arrangements, in support of this contract, meet the requirements of vehicle standards and maintenance, including environmental and London operational compliance. Please refer to section 11.
- provide details of any sub-contractors that are used or proposed to be used in support of this contract. Please refer to section 12.

4. Records, Reporting and Invoicing

The Contractor will maintain records of all collections, and supply a summary on demand.

The summary will include the following as a minimum:

- Unique return reference for each weekly report
- Booking reference for regular and ad-hoc
- Site of collection/delivery
- Client – as advised
- Vehicle registration number
- Description of scrap product and material classification
- Tare, Gross and Net weights
- Client/Customer weighbridge ticket number, where available. Transplant Ruislip only.
- Respond to any ticket request within 24 hours

- Contractor weighbridge ticket number
- Client Transfer Note number, where available
- Waste Transfer note number
- Current contract price (in accord with Pricing Schedule)
- Value of collection
- Details of any contamination claim including weight and supporting evidence
- Details of any deductions or costs (only permitted if agreed in advance in writing)
- Contractor invoice number

The payment remittance statement (“Statement”) will detail the unique report numbers, the individual reference for each weekly report, the value paid including and excluding vat and the date the payment is to be made.

Each pricing or missing load query raised by the Company shall be allocated a unique reference number. At the end of each calendar month the Contractor will provide a statement outlining the resolution status of each query. For resolved queries the statement will also include the value of any additional payment, a unique remittance references and the payment date.

This information is to be issued to the Company’s Scrap and Sub-Contract Manager.

The statements and summaries will be in an electronic form agreed with the Company’s Scrap and Sub-Contract Manager prior to Contract start date.

Regular contract review meetings will be required to be held and initially will be no less than six monthly from contract start date.

All queries are to be raised with the Company’s Scrap and Sub-Contract Manager. All statements are to be forwarded the Company’s Scrap and Sub-Contract Manager at;

Scrap and Sub Contract Support Manager
Distribution Services
AP JNP
130 Bollo Lane, Acton
London W3 8BZ

5. Weight Recording

The Contractor will record weights of material collected in accordance with the Contractor Primary Obligation in Clause 3 of the Agreement.

6. Wait and Load Services

Where the occasion arises for a “wait and load” requirement, the Company shall give as much reasonable notice as possible of the when and where the requirement is needed as well as the container(s) required to facilitate.

7. Contamination

Whilst every effort will be made by clients to present items in the metal categories agreed, it is possible that some contamination of loads for collection may occur.

If the Contractor rejects a load for any reason, the process and timescales detailed in Contractor Primary Obligations in Clause 3 of this Agreement must be adhered to.

The Contractor must take a pragmatic/sensible approach to contamination and be flexible in meeting client requirements

8. General Notes

Arrangements for collections will normally be made by telephone call from a nominated client representative and confirmed by e-mail with a unique job reference number. Collections are required to be undertaken within 48 hours unless otherwise agreed on a specific job by job basis.

For ad-hoc or short term requirements DSM representative only will authorise exchanges and final collections. Requests from clients not so authorised must be referred to DSM for approval

9. Vehicles

The Company will not be subject to any surcharges for vehicles servicing the requirements of the Contract that are incurred as a result of non-compliance with current road traffic and environmental legislation.

The Contractor shall review collection schedules and transport planning activities at regular intervals and provide evidence to support improvement initiatives aimed at reducing the environmental impact on the service

10. Sub Contractor Management

The Contractor shall maintain suitable management and control of their sub-contractors in accordance with Clause 24 of this Agreement.

The Contractor shall provide the Company with evidence of any duty of care information relating to their subcontractors on request and provide access to any assurance audits. This shall include but not be limited to;

- Carriers/Brokers Registration
- Accreditation to FORS at Bronze Level as a minimum
- Goods Operator Licence
- Public and Employee Liability Insurance
- Risk assessments and method statements

The Company may request the Contractor to carry out assurance audits on any subcontractor in relation to safety, quality or environmental performance or for that audit to be carried out by the Company's own personnel.

The Contractor is required to notify the Company of any investigation, pending or actual prosecution of any of its sub-contractors in relation on health and safety or environmental grounds

In response to any incident, accident or near miss investigation occurring in connection with this Agreement, the Company, Contractor and/or any subcontractors involved are required to provide a nominated representative to attend any investigations meetings and to prepare an immediate investigation response within 24 hours followed by other reports or actions as deemed necessary or appropriate by the company until the matter is resolved to a satisfactory conclusion.

Schedule 1 - Appendix A
GENERAL REFERENCE LIST OF COMPANY SITES

Acton Works	
Cockfosters Depot	
Ealing Common Depot	
Frank Pick House	
Griffith House	
Hainault Depot	
Hearn House	
Lillie Bridge Depot	
Neasden Depot	
Northfields Depot	
Northumberland Park	
Ruislip Depot	
Ruislip Stn Car Park	
Stonebridge Park Dep	
Stratford Market Depot	
Upminster Depot	

Schedule 1

Appendix B

Waste Container Condition Requirements

Tube Lines requires a high quality of service provision to fulfil its waste management requirements. Suppliers shall supply skips and containers that meet the requirements of this document, whether their own or through any sub-contracted arrangement.

However in the interim you are reminded, as a minimum Tube Lines require all skips and containers be:

- Fit for purpose i.e. no corrosion which will give under the weight of a load or holes/ splits or tears in the fabric of the container which could result in the loss of waste material. This includes small fragments. All Doors/ openings must be able to function and be secured where appropriate
- Any holes/ tears/ damage above the normal fill line of the skips, which would not impact on its ability to retain waste should not present risk of injury of damage to staff on site
- All sites must be liveried with your company name
- 3rd Party or subcontracted skips are not permitted without express, prior agreement with Tube Lines
- where applicable, containers will have appropriate covers/lids to ensure they are water-tight

Where defective containers are identified they must be removed, a suitable replacement supplied and repaired effectively within agreed timelines.

Please see below of examples of containers that are not acceptable for use on any of our sites/locations.



Schedule 2

Contract Variation Procedure

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

Appendix 1
Form of Variation Proposal/Variation Order

To:		From:	
Contract Reference: Variation Number: Variation Title:			
PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)			
Description of change:			
Reason for changes and impact (if any) on Contract:			
Variation Proposal Authorised by:		Proposal Date:	
PART B (TO BE COMPLETED BY THE CONTRACTOR)			
Price Breakdown Note: If a further breakdown is needed please append details as a separate sheet.			
Expected Delivery Date:			
Contractor's Representative:		Date:	
Print Name:		Signature: Date:	
Completed document to be returned to the Company's Representative			
PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)			
Comment on Parts A and B:			
Variation Authorisation			
Company's Representative:		Date:	
Print Name:		Signature: Date:	
LUL Representative (if applicable):		Date:	
Print Name:		Signature: Date:	

Schedule 3

Quality and Safety Plan (including QUENSH)

To be agreed with the Company within 1 month of the contract start date.

F0780 Contract Menu

This Contract Menu must be used in conjunction with Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

Issue No.: A16

MAYOR OF LONDON

Issue date:
Review date:

November 2014
November 2019

F0780 Contract Menu

This Contract Menu must be used in conjunction with Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

Issue No.: A16

Issue date: November 2014
Review date: November 2019

MAYOR OF LONDON



Contract Menu

Contract No: _____

Contract Name Scrap Recycling

Client: Distribution Services

Supplier: Metal and Waste Recycling Ltd

Principal Contractor: Yes ☒ No ☐

Guidance

The menu is a tool which is used by the Client to identify conditions that apply to specific contracts and communicate these conditions to the Supplier.

How to complete the menu

1. The Client evaluates the scope of work and enters 'Y' or 'N' in the 'Identified by the Client' column of the menu against each condition selected as applicable or not applicable to the Contract. In the 'Other documents / comments' column the Client can make references to other documents which are supplementary information which is available although not contained within the QUENSH manual but should be considered by the Supplier when they review the conditions. Copies of any additional documents identified in the menu shall be made available to the Supplier. All documents referenced in the Menu shall be current issue, unless otherwise advised. This column can also be used to communicate information (comments) to the Supplier which may be of use to the Supplier when reviewing the conditions.
2. The Client fills in 'Client menu (Invitation to Tender)' section on the last page of the menu and issues the menu as part of the ITT.
 - (1) The Supplier receives the ITT, evaluates the scope of work and, as a requirement of the tendering process, inserts 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable. These selections may be different from those identified by the Client. Where the Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the Supplier. A reference to these explanations shall be put in the 'Reference to explanation' column on the menu.
 - (2) The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.
 - (3) Differences in the Client and Supplier menu selections will be discussed and resolved with the Client at subsequent tender review meetings. The agreed final version of the menu selections shall form a mandatory part of the Contract and shall be complied with by all Suppliers and their sub-contractors.
 - (4) The menu shall be subject to project version and document control.

Queries on the menu

Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative, see contact details/address on last page of the menu.



Contract menu

Requirements in QUENSH

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
4	Agreement of the applicable QUENSH contract conditions				
5	Supplier's selection of sub-contractors		Y	Y	
6	Identification of Safety Critical Activities		N	N	
7	Works Environmental Management		Y	Y	
8	Emergency Plan		N	N	
9	Method Statements		Y	Y	
10	Health, Safety and Environment File		N	N	
11	Pre-start health, safety and environment meeting		N	N	
12	Supplier's site induction		N	N	
13	Site Person in Charge	Non track may be applicable but supplier will be notified	N	n	
14	Staff requirements				
14.1	Behaviours				
14.1.1	Alcohol and drugs		Y	Y	
14.1.2	Control of hours worked		Y	Y	
14.2	Knowledge				
14.2.1	English language		Y	Y	
14.2.2	Access Card and Worksite Briefing	Sentinel cards may be required for some work, supplier to be notified	Y	Y	
14.2.3	Visitors to sites		Y	Y	
14.3	General competence				
14.3.1	Evidencing competence of safety critical staff		N	N	
14.3.2	Identification of safety critical staff		N	N	
14.3.3	Competent external safety critical personnel		N	N	



Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
14.3.4	Training		Y	Y	
14.3.5	Asset specific competence		N	N	
14.4	Medical requirements		N	N	
14.5	Identification of Suppliers staff		Y	Y	
14.6	Clothing		Y	Y	
15	Permits and licences				
15.1	LU specific permits and licences	Unless LU advise differently for specific works	N	N	
15.2	Permits, licences and certificates for Supplier's staff		Y	Y	
16	The Principles of Access				
16.1	Introduction	Managed by local sites	Y	Y	
16.2	Access to Stations		N	N	
16.3	Access to Track		N	N	
16.4	Access to depots		Y	Y	
17	Applying for Planned Access				
17.1	Introduction		N	N	
18	Applying for Generic Access		N	N	
18.1	Constraints that apply to Generic Access		N	N	
19	Access for fault repair		N	n	
20	Operational Assurance		N	n	
21	Closures and possessions				
21.1	Requirements for closures		N	n	
21.2	Requirements for possessions		N	n	
22	Controls at point of access				
22.1	Publication of works		N	n	
22.2	Checks at point of access	We expect to be able to check on staff competence, method statements, PPE etc	y	y	
22.3	Signing-on with the Station Supervisor - The Station Visitors Record Sheet and Person in Charge Evacuation Register (PICER)	Unless mandated by LU for specific jobs	N	n	



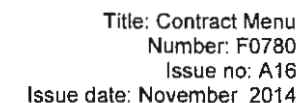
Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
22.4	Track specific requirements				
22.4.1	Protection Master		N	n	
22.4.2	Possessions (Possession Master, Technical Officer, Cable Lineman, Signal Operator, etc.)		N	n	
23	Removal of supplier's personnel from LU Premises		Y	y	
24	Incidents		Y	y	
25	Notification of regulatory concern or action		Y	y	
26	Confidential Incident Reporting and Analysis System (CIRAS)		Y	y	
27	Monitoring				
27.1	LU inspections		Y	y	
27.2	Monitoring the supply chain		Y	y	
27.3	Health, safety and environmental audits, inspection and tours by the Supplier's personnel		Y	y	
27.4	Work location inspection and audit		Y	y	
27.5	Timescales for rectifying non-compliances		Y	y	
28	Radio transmitters and transceivers		Y	y	
29	Mobile phones		Y	y	
30	Knives		Y	y	
31	Site health, safety and environment committee		Y	y	
32	Site housekeeping and security		Y	y	
33	Accidental damage, obstruction or interference with assets		Y	y	
34	Delivery of materials		N	n	
35	Conveyance of loads				
35.1	Conveyance of loads on lifts and escalators		n	n	
35.2	Conveyance of hazardous materials and substances		N	n	
36	Asbestos (non asbestos removal projects)		N	n	
37	Working in or near lifts and escalators		N	n	
38	Work on or adjacent to utilities and High Voltage cables (buried services)	3 rd para would apply. Must be taken into account if working at irregular/unknown sites	Y	y	



Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
39	Working on or about the track		N	n	
40	Access to electrical sub-stations, working equipment, relay and other secure rooms		N	n	
41	Entering areas with gaseous fire suppression systems		N	n	
42	Fire prevention				
42.1	General requirements		Y	y	
42.2	Temporary fire points		Y	y	
42.3	Timber		N	n	
42.4	Composites		N	n	
42.5	Sheeting materials		N	n	
42.6	Gas cylinders				
42.6.1	Use of gas cylinders in below ground locations		N	n	
42.6.2	Storage of gas cylinders (above ground)		N	n	
42.7	Flammable and highly flammable materials				
42.7.1	Use of flammable and highly flammable materials below ground		N	n	
42.7.2	Storage of flammable and highly flammable materials below ground		N	n	
43	Hot work and fire hazards				
43.1	Hot work		N	n	
43.2	Reasonable notice of works		N	n	
43.3	Precautions				
43.3.1	Buildings, assets etc.		N	n	
43.3.2	Gas cylinders		N	n	
43.3.3	Gas detection		N	n	
44	Storage				
44.1	General requirements for storage		N	n	
44.2	Trackside storage		N	n	
44.3	Hazardous materials and substances		N	n	
44.4	Allocation of space on operational property		N	n	
45	Plant and equipment		N	n	



Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
46	Clearance approvals	This would be done in conjunction with LU but be required at irregular/new sites	y	y	
47	Access equipment		N	n	
48	Temporary works		N	n	
49	Temporary fences and hoardings		N	n	
50	Temporary lighting and power supplies				
50.1	General requirements		N	n	
50.2	Lighting in tunnels and shafts		N	n	
51	Screening of lights and positioning	Driver awareness	y	y	
52	Environmental requirements				
52.1	General environmental requirements		Y	y	
52.2	Environmental nuisance		Y	y	
52.3	Water		Y	y	
52.4	Waste management		Y	y	
52.5	Noise and vibration		Y	y	
52.6	Archaeology, historical interest and listed buildings		Y	y	
52.7	Wildlife and Habitats		Y	y	
52.8	Resource Use		Y	y	
52.9	Pest control		N	n	
52.10	Land and water pollution prevention		Y	y	
53	Quality requirements				
53.1	Records		Y	y	
53.2	Retention period		Y	y	
53.3	Availability of records for inspection		Y	y	
53.4	Statistical process control, audit and inspection procedures		Y	y	
53.5	General quality requirements		Y	y	
53.6	Quality Plan		N	n	
53.7	Testing and inspection		N	n	

Other requirements / comments[illegible]



Client/Supplier approval

Client Menu (Invitation to Tender)

Prepared by: Rachelle Huggins Signature: _____

Approved by
(the Client's
representative): Rachelle Huggins Signature: _____

Title: Waste Manager

Address: Distribution Services, Acton Works AC24, 130 Bollo Lane, Acton, London W3 8BZ

Phone No: _____

Email: _____

Revision of this menu: Version 1

Supplier Menu (Tender)

Approved by
(the Supplier's): Metal and Waste Recycling Ltd Signature: _____

Title: Legal and Compliance Director

Address: Albert Works, Kenninghall Rd, Edmonton, London

Phone No: _____

Email: _____

Revision of this menu: _____

Contract Menu (Final Approval of Menu)

Evidence shall be recorded of any amendments to the Client's menu which were agreed in establishing the Contract Menu.

Client's
representative
approval: _____ Signature: _____

Supplier's
representative
acceptance: JOHN RICE Signature: _____

Schedule 4

Deed of Novation

THIS DEED is made day of 201[]

BETWEEN:

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

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

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

WHEREAS:

- (A) The Company has an agreement dated [] and referenced [insert contract number] with the Contractor for the provision of [describe in brief the scope of work/services] (the "**Contract**").
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Contractor and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

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

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

2.3 for the avoidance of doubt, it is hereby expressly agreed that:

2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Contractor against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Contractor against the New Company; and

2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Contractor accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Contractor.

2.4 the Company transfers its rights and obligations under the Contract to the New Company.

3. A person who is not a party to this Deed may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

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

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

.....

[Authorised Signatory]

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

Executed as a Deed by [NEW COMPANY]

acting by

)
)
) Authorised Signatory
)
) Authorised Signatory

and

Schedule 5
Prices for Services

1. Where the Company considers it appropriate to issue an Order without holding a Mini-Competition the material, indexing and classification will be as per table 1. The index price will be applied on the date of the collection and/or delivery.

Table 1

Ref.	Material,	
	Material	Specification Reference
1	Rail - 6ft length and below	Section 3
2	Wheels	Section 4
3	Axles	Section 4
4	Mixed Iron	Section 3
5	Mixed metal	Section 3
6	Steel turnings	Section 4
7	Brake Blocks	Section 2
8	Aluminium Step Treads	Section 2
9	Lead Acid Batteries	Section 2



2. The above ref point formula will be fixed for “as a Minimum” for the duration of the contract. If the opportunity arises to better the formula positively this will be reviewed in the contract review meetings.

3. [Redacted]

4. There will be no transportation cost if TfL transports the load to the Contractor's site.

5. Materials arising as a result of occasional requirements (such as site clearances, one-off projects and other sporadic arising's) - prices to be quoted as per any request form issued as part of a mini competition process in accordance with clause 3A.1.

6. [Redacted]

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

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

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

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

14. No person other than TfL (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

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

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

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

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

Executed as a deed by affixing the Common Seal of)
[COMPANY])
in the presence of: -)

.....

[Authorised Signatory]

Executed as a Deed by [CONTRACTOR])
acting by)

) Authorised Signatory
).....
) Authorised Signatory

and

FORM OF ON DEMAND PERFORMANCE BOND WITH ANNEX 1

BOND

(Letterhead of Guarantor)

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

Contract Bond No. [●]

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

PROVIDED THAT:

2. This Bond shall come into force on the date hereof.
3. Any demand hereunder shall be substantially in the form of Annex 1 to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.
4. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
5. For the purpose of this paragraph 6, the expression “Expiry Date” means [●]. Our liability hereunder shall be limited as follows:
 - (a) we shall have no liability in respect of any demand received after the Expiry Date; and
 - (b) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £ [●].
6. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:
 - (a) any alteration to the terms of the Contract made by agreement between you and the Contractor; and/or

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

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

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

Executed as a deed by affixing the Common Seal of)
[COMPANY])
in the presence of:-)

.....

[Authorised Signatory]

ANNEX 1

Form of Demand from the Company to the Guarantor

Dear Sirs

[Contract Title]

Contract No: [•] (the “Contract”)

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

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

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

Yours faithfully

.....

[Company name]

Windsor House

42-50 Victoria Street

London

SW1H 0TL

Schedule 7

Form of Collateral Warranty

THIS AGREEMENT is made the

day of

201[]

BETWEEN: -

(1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**");

(2) [] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Sub-Contractor**"); and

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

WHEREAS:-

(A) The Company has entered into a contract with the Contractor (the "**Main Contract**") pursuant to which the Contractor is to undertake and complete the following services: [] (the "**Services**").

(B) The Sub-Contractor has submitted a tender to the Contractor for the carrying out and completion of certain parts (the "**Sub-Contract Services**") of the Services referred to above as more particularly described in the tender.

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

1. The Sub-Contractor warrants to the Company that:

- (a) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Services;

(b) reasonable skill and care has been and will continue to be exercised in connection with:

(i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;

(ii) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);

(iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Contractor and the Sub-Contractor in relation to the Sub-Contract Services (the “**Sub-Contract**”);

(iv) the execution and completion of the Sub-Contract Services;

(v) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);

(c) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and

(d) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

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

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Contractor is granted an extension of time under the Main Contract for completion of the Services:

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

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

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

5. The Sub-Contractor agrees:

- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company’s expense to provide copies of any such material; and
- (b) at the Sub-Contractor’s expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. The parties hereby agree that:

- (a) this Agreement shall be personal to the Sub-Contractor;
- (b) the Company may assign the benefit of this Agreement to any third party;
- (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.

7. Not Used

8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the “**Related Dispute**”) between the Company and the Contractor and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other party (the “**Appointed Party**”) appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.

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

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

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

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

.....

[Authorised Signatory]

Executed as a Deed by [SUB-CONTRACTOR])
acting by)
) Authorised Signatory
and)
) Authorised Signatory

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

Schedule 8

Performance Damages

Not Used.

Schedule 9

Employment Regulations

Not Used

Schedule 10 Performance

Performance shall be measured against the following Service Levels which shall be achieved by the Contractor.

Performance shall be reviewed at regular meetings between the Company and the Contractor and actions plans established by the Contractor in the event of failure to meet the required levels.

SERVICE LEVEL	TARGET	METHOD OF MEASUREMENT	STANDARD
1Service Delivery	Achieve response times to target	Complaints made to and logged as a percentage of the orders raised in any calendar month	95% without complaint
3. Recycling Performance	Achieve recycling rates as defined in the Specification	Accurate 4 weekly reporting evidencing recycling rates	100%
4. Reporting	Achieve weekly reporting targets to the Company on Services provided including volumes and weights by location..	Accurate and timely 4 weekly reporting with supporting information including weighbridge tickets being available on request	95%
5. Application and Payment	Present clear payment application supported by appropriate documentation to the Company and process its in line with the Agreement	Application and payment remittance advices received within agreed timescales	95%

6. HSE Reporting	Achieve agreed reporting of direct incidents or near misses	Number of unreported incidents	Nil
7. Incident Management	Achieve management response of any direct incidents.	Acceptable investigation and reporting following any incident	100%
8. FORS compliance	Number of FORS non compliances raised	Non complaint vehicles rejected or reported at TfL sites	Nil

Should the Contractor fail to meet at least 2 or more of the "Standards" for 2 or more consecutive periods then the Contractor will be required to submit an improvement plan detailing the action that will be taken to address the unsatisfactory performance

Failure to meet at least 2 or more of the "Standards" for 3 or more consecutive periods will result in a formal review of performance where the Contractor will be required to submit an improvement plan detailing the action that will be taken to address the unsatisfactory performance. The Contractor will be required to attend further meetings to monitor progress against the improvement plan.

Failure to address unsatisfactory performance could lead to suspension of all or part of the services provided by the Contractor or termination of this Agreement.

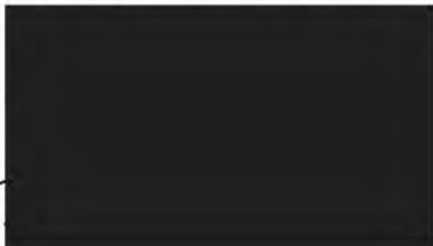
EXECUTION PAGE:

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

Executed as a deed by affixing the Common Seal of

Tube Lines Limited

in the presence of:-



.....
[Authorised Signatory]

Executed as a Deed by Metal & Waste Recycling Limited
acting by

and

