

Dated _____ **2016**

LONDON UNDERGROUND LIMITED (1)

and

BRITISH MICA COMPANY HOLDINGS LIMITED (2)

REDACTED VERSION

**FRAMEWORK AGREEMENT
for the overhaul and strengthening of
Negative Shoe Gear and Sleet Brush Beam
Assy for the Central line 92 Train Stock Heavy
Overhaul Project and 92 Train Stock Business
as Usual**

CONTRACT REFERENCE NUMBER: TFL-00687

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THIS AGREEMENT is made on
BETWEEN:

2016

- (1) **London Underground Limited** (company number 01900907) 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) **British Mica Company Holdings Limited** (company number 03028673), whose registered office is at 123, Barkers Lane, BEDFORD, Bedfordshire. MK14 9RS (the “**Supplier**”).

BACKGROUND

- (A) The Supplier carries on the business of manufacture, overhaul, repair and selling the Non Metallic mouldings and other related products.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods and 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 Supplier so agrees, contract with the Supplier 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:

“**Accounting Period**” means the Company’s accounting periods as notified from time to time by the Company to the Supplier each such period being of between 25 and 32 days and one of 13 periods during the Company’s financial year;

“**Additional Goods**” means any goods which the Company requests the Supplier to provide in accordance with the terms of any Contract in addition to those set out in the Specification.

“**Additional Services**” means services which are requested by the Company to be provided by the Supplier 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 any Contract, any agreement or document referred to in such Contract (including for clarity the any standard referenced in any Order), or the Goods and Services.

“BAFO” means ‘best and final offer’.

“Cessation in the Supply of Goods or Services” means any cessation in the supply of the Goods or Services.

“Cessation Plan” means a plan agreed between the parties or determined by the Company in accordance with Clause 41.1 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 Supplier in accordance with each Contract.

“Company’s Representative” means the person set out in the section headed ‘Company’s Representative’ in the relevant Order..

“CompeteFor” has the meaning given to that term in Clause 41.

“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.

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

“Contract Information” means (i) each Contract and the Agreement in its entirety (including from time to time agreed changes to any Contract and/or the Agreement) and (ii) data extracted from the invoices submitted pursuant to Schedule 8 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

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

“Contract Variation Procedure” means the procedure set out in Schedule 3.

“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 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

“Default Interest Rate” means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.

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

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

“Delivery Note” has the meaning given to that term in Clause 9.6.

“Dispute” has the meaning given to that term in Clause 35.1.

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

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as 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).

“Escrow Agent” means such escrow agent as may be approved by the Company from time to time.

“Escrow Agreement” means an escrow agreement in the form attached at Schedule 7.

“Ethical Sourcing Policy” has the meaning given to that term in Clause 24.3.

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

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

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

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

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power,

confiscation, or requisition by or under the order of any government or public or local authority;

- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (h) 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;
- (i) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (j) strikes, lock outs or other industrial action being in each case industry-wide.

“Goods” means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 6.

“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.

“Initial Period” means the number of years from the Commencement Date stated in Schedule 2.

“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), registered designs, design rights, patent application, 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.

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

"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 Supplier).

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

"Nominated Representatives" has the meaning given to that term in Clause 35.2.

"Notice to Proceed" has the meaning given to that term in Clause 17.6(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, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 1, entered into by the Company and the Supplier.

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

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

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

“Payment Application” has the meaning given to that term in Clause 8.4.

“Prescribed Period” has the meaning given to that term in Clause 2

“Prohibited Act” means:

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

“Protected Characteristics” has the meaning given to that term in Clause 40.8.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 1 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.

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

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

“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 Supplier” means any replacement provider of the Goods or Services appointed by the Company from time to time.

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

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

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

“Specification” means the description of the Goods and Services set out in Appendix 1 to the relevant Order (or referenced in the relevant Order) to be provided by the Supplier in accordance with the Agreement.

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

“Supplier Personnel Information” means information about Supplier Personnel including information about the numbers of Supplier Personnel involved in providing the Good and 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 Supplier Personnel reasonably requested by the Company.

“Supplier’s Representative” means the person set out in the section headed ‘Supplier Representative’ in the relevant Order.

“Supplier’s Sub-contractors” has the meaning given to that term in Clause 41.

“Term” means the period specified as such in Schedule 2.

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

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

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

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

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

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

“Variation Proposal” means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 3.

“Warranty Period” the period specified as such in each Order.

“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 Where the Agreement is utilised by another member of the TfL Group or any of the other entities referred to in Recital C of this Agreement, references in a Contract to “the Company” shall, unless the context otherwise requires, be to that member of the TfL Group or other entity (as the case may be).

2 Duration

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of any Contract and each Contract shall continue for the term set out in the relevant Contract. To the extent that any provisions of this Agreement is relevant to the Contract, such provisions shall survive expiry or termination of this Agreement.

3 Supplier’s Primary Obligations

- 3.1 The Supplier shall supply the Goods and shall perform the Services to the Company in accordance with:
- (a) the terms set out in the Agreement (including the Schedules); and
 - (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,
- each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a “**Contract**”, and in the event of any inconsistency between

the terms of the Agreement and the terms of any Order, the terms set out in the Order shall prevail.

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

- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description;
- (b) be of satisfactory quality and fit for the purpose for which they are intended; comply with all Applicable Laws and Standards (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (c) comply with all standards referred to in each Contract;
- (d) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

3.2A The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term in accordance with the requirements set out in the Specification.

3.3 The Supplier 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 each Contract and where standards or methods are not detailed in a Contract, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
- (c) be performed in accordance with the Order Programme;
- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable the Company 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.

3.4 The Supplier 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 supply of Goods and 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.

- 3.5 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.6 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.7 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under any Contract.
- 3.8 When Goods and Services are required by the Company, the Company shall give the Supplier an Order for the Goods to be delivered and the Services to be performed and each Order so given shall be final.

3A. Not Used

4 Records and Audit

- 4.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of 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) management accounts, information from management information systems and any other management records;
 - (c) accounting records (in hard copy as well as computer readable data);
 - (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
 - (e) original estimates;
 - (f) estimating worksheets;
 - (g) correspondence;
 - (h) variation and claims files (including documentation covering negotiated settlements);

- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

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

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

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

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

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

- 4.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's request for the same.

5 Company's Obligations

- 5.1 The Company shall pay the Supplier the Order Price for the Goods and Services in accordance with the terms of the relevant Contract.
- 5.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.

6 Additional Goods and Services

The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, the Order and **Error! Reference source not found.** shall be amended to include such Additional Goods and/or Services, the Expected Order Delivery Date and/or Order Completion Date for them and the quoted price.

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 Supplier 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 Goods and Services, shall be the Order Price set out in the Order using the rates and prices set out in Schedule 1 and shall be inclusive of costs of packaging, carriage and insurance. The prices for the Goods and Services in this Agreement or in respect of any Order shall only be changed in accordance with the Contract Variation Procedure.
- 8.2 The Company shall be entitled to the Supplier's standard discount for prompt payment.

- 8.3 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the rates and prices set out in Schedule 1, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Order Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 8.3, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 8.4 The Supplier shall submit an invoice for payment as per the instructions laid out in the individual Purchase Orders issued by the company to the supplier, for the works within this framework, during the duration of this framework.
- 8.5 The Supplier shall submit invoices only after any works covered by that invoice have been delivered to the company under this framework, and during its duration
- 8.6 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.
- 8.7 The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company's Representative receives the Payment Application.
- 8.8 The Company's Representative shall assess the Payment Application and shall notify the Supplier in writing not later than five (5) days after the date of receiving the application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date; and
 - (b) the basis on which the amount was calculated.
- It is immaterial for the purposes of this Clause 8.8 that the amounts referred to in Clause 8.8(a) or Clause 8.8(b) may be zero. A notification given under this Clause 8.8 shall constitute a payment notice for the purposes of section 110A of the HGCRA.
- 8.9 The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application.
- 8.10 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address.

- 8.11 The Order Price will not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Invoice and will be shown as a separate item on all such Invoices.
- 8.12 All Losses which the Company may have paid, suffered or incurred, and for which the Supplier 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 Supplier 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.
- 8.13 Invoices shall be submitted separately for each Contract and all such Invoices shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price. Upon request, the supplier will submit any supporting documentary information to the Company's Representative for any invoice that is queried by the company.
- 8.14 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

8A Supplier Performance

- 8A.1 On the date that the Company's Representative receives the notification that an invoice has been submitted and every 4 weeks after that date, the Company reserves the right to assess the Supplier's performance under the Agreement and any Contract in accordance with Schedule 12.
- 8A.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 12 by way of reducing the costs in any future Purchase Orders for works carried out under this framework; and
 - (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Supplier in its performance of any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 12.

9 Delivery of Goods and Time for Performance of Services

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date at the Delivery Address and within the times stated on the Order. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 9.2 The time of delivery of the Goods shall be of the essence in respect of each Contract
- 9.3 If the Goods are not supplied on the Expected Order Delivery Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of liquidated damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of liquidated damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.
- 9.4 The Supplier accepts that the amount of liquidated damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Delivery Date.
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number, Order number (as indicated on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Order Delivery Date in accordance with Clause 34.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 9.8 The Company shall upon reasonable notice from the Supplier, provide access for the Supplier to the Company's premises and information records and other materials as the Supplier 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.

- 9.9 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 Supplier provided that the Supplier shall be responsible for arranging such access on a day to day basis with the third party.
- 9.10 Not Used
- 9.11 The Supplier shall ensure that the Services are satisfactorily performed by the Order Completion Date. If the Services are not performed by the Order Completion Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Services or to claim from the Supplier by way of liquidated damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 up to a maximum of the percentage stated in Schedule 1 of the price payable for such Services. The Company shall not be entitled to deduct such amount from the price payable for such Services or to claim such amount from the Supplier by way of liquidated damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.
- 9.12 The Supplier accepts that the amount of liquidated damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to perform the Services by the Order Completion Date.
- 9.13 Without limiting any other remedy, if the Services are not performed in accordance with any Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with such Contract at no extra cost within five (5) Working Days.
- 9.14 In the event that all or any of the obligations of the Supplier under any Contract to pay liquidated damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which liquidated damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 9 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay liquidated damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

10 NOT USED

10.1 Not Used.

10.2 Not Used

10.3 *Not used*

11 Not used

12 Environmental Claims

12.1 The Supplier 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 Supplier'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 Supplier, its employees, subcontractors or agents.

12.2 The Supplier 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 Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier 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 Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

12.5 The Supplier 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 provision of the Goods and 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; and

- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.]

13 Risk and Ownership

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

14 Inspection of the Goods

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

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

15 Warranty

- 15.1 **Redacted**
- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of each Contract and the provisions of Clauses 9, 13 and 14 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 9 or, where applicable, re-delivers the Goods in accordance with this Clause 15.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.
- 15.4 If the Supplier 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 Supplier 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.

16 Intellectual Property Rights

- 16.1 Existing Contracts
- The Agreement is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.
- 16.2 Not Used
- 16.3 Not Used

- 16.4 Not Used
- 16.5 Not Used
- 16.6 Not Used
- 16.7 Not Used.
- 16.8 Not Used
- 16.9 Not Used
- 16.10 Not Used

17 Termination and Suspension

- 17.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:
- (a) the Supplier commits a breach of 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 Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
 - (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
 - (c) any limit on the Supplier's liability to pay liquidated damages is reached or exceeded; or
 - (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Agreement and each Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or
 - (e) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12.
- 17.2 Without prejudice to Clause 17.1, 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 thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a “**Suspension Notice**”) to the Supplier.

17.3 In the event that the Company terminates the Agreement or any Contract for any reason under this Clause, the Supplier 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 Supplier’s premises and, solely in respect of the Agreement or any 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; and
- (b) place an order for the remaining Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services by its own workmen.

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

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

17.5 Where the Company exercises its rights under Clause 17.3(b), following a termination in accordance with Clause 17.1 (but not a termination in accordance with Clause 17.2(a)) and in so doing and securing the full provision of the Goods (or equivalent goods) and Services, incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Agreement and the relevant Contract (“**Excess Costs**”), the Supplier 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.

17.6 In the event that any Contract is suspended in accordance with Clause 17.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of those Goods and Services provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension; and

- (b) not carry out any further work in connection with the provision of the Goods and Services under the relevant Contract until such time as the Company issues a notice lifting the suspension (a **"Notice to Proceed"**).

- 17.7 In the event that any Contract is suspended in accordance with Clause 17.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 17.8 In the event that the parties are unable to agree upon the variation requested under Clause 17.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 35.
- 17.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and such Contract(s) as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 17.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision of the Goods and Services at the Company's absolute discretion.

18 Indemnity and Insurance

- 18.1 The Supplier acknowledges that the Company shall in the course of the provision of the Services be relying on:
 - (a) the Supplier's skill, expertise and experience in the provision of the Services;
 - (b) the accuracy of all representations or statements made by the Supplier to the Company;
 - (c) the advice given by the Supplier to the Company in connection with the Services; and
 - (d) the accuracy of all documentation and information agreed to be delivered by the Supplier in accordance with each Contract.
- 18.2 The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers on an after-tax basis against all Losses suffered or incurred by the Company and/or any third party, arising from or in connection with the performance or non-performance of the Supplier under any Contract:

- (a) in respect of sickness, disease, death or injury to any person;
- (b) in respect of loss of or damage to any property (including any rail vehicles and property belonging to the Company or for which it is responsible);
- (c) in respect of any Defect, including, but not limited to, any Defects in the workmanship and materials of the Goods or their packaging or breach of warranty;
- (d) in respect of the presence of the Supplier, its employees or agents on the Company's premises whether such Losses be caused by negligence or otherwise;
- (e) arising out of or in the course of or by reason of any negligence or breach of contract or breach of statutory duty, wilful misconduct or other wrongful act or omission of the Supplier, its employees, agents or subcontractors in manufacturing, supplying, delivering and installing (as the case may be) the Goods or providing the Services, except to the extent that such Losses result solely from the negligence, breach of contract or other wrongful act or omission of the Company, its employees and agents;
- (f) arising out of or in the course of or by reason of the Supplier's performance, non performance or part performance of each Contract; and
- (g) in respect of any liability under the Consumer Protection Act 1987 or any other similar statutory provisions,

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

18.3 The Supplier shall keep the Company indemnified against all claims arising as a result of the Supplier failing to comply with any relevant Applicable Laws and Standards, including but not limited to any liquidated damages claims made against the Company by an operator of a rail vehicle in circumstances where that rail vehicle is taken out of service as a result of the Supplier failing to comply with a relevant Applicable Law and Standard, provided always that the Supplier shall not be required to indemnify the Company for claims directly arising solely out of the wrongful acts or omissions of the Company, its employees or agents, and provided further that the Supplier's liability to indemnify the Company shall be reduced proportionately to the extent that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.

18.4 The Supplier's indemnity under Clause 18.2 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of twelve 12 years after the Order Delivery Date and/or Order Completion Date or earlier termination of each Contract.

- 18.5 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clauses 18.2 to 18.3 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 18.6 Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Agreement or any Contract.
- 18.7 Without prejudice to the obligation to indemnify the Company set out in Clauses 18.2 and 18.3, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost public liability insurance in respect of the Supplier's liability for death or injury to any person or loss or damage to any property arising out of its performance of each Contract in an amount not less than that set out in the relevant Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (c) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person or loss or damage to any property arising out of its performance of each Contract in an amount of not less than that set out in the relevant Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (d) maintain at its own cost professional indemnity insurance (to the extent that the Supplier carries out any design work as part of this contract) to ensure that its activities under each Contract are insured and remain insured in an amount not less than that set out in the relevant Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (e) maintain at its own cost "goods in transit" insurance in an amount not less than that set out in Schedule 1, in respect of the Supplier's liability for theft, loss or damage to property and Goods while in transit from one place to another or being stored during a journey;
 - (f) maintain at its own cost insurance which complies with the Road Traffic Act 1988 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (g) 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 six (6) years after the delivery of the Goods and completion of the Services (whichever is the later);

- (h) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (i) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any Services or the provision of any of the Goods by the Supplier under each 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 18.7.

18.8 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 18.7.

18.9 If the Supplier fails to maintain the insurance policies as provided in this Clause 18, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

18.10 Not used

19 Force Majeure

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 Supplier 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 Supplier.

20 Safety

- 20.1 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 20.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) Not Used
 - (b) the Company's drug and alcohol principles as amended from time to time.
- 20.3 Not used.
- 20.4 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

21 Independent Supplier

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

22 Not Used

23 Confidentiality

- 23.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of his obligations under each Contract.
- 23.2 On the Company's request, the Supplier shall, so far as is reasonably possible:

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

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

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

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

23.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Goods and 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.

24 NOT USED

24.1 Not Used

24.2 Not Used

25 Responsible Procurement

- 25.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries to do all things reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities.
- 25.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with the Responsible Procurement Policy..
- 25.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Supplier shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 25.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 25.5 The Supplier shall not be entitled to any addition to the Order Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 25.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 24 and the provisions of this Clause 24 are included in any subcontract (of any tier).
- 25.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 24.

26 Assignment and Subcontracting

- 26.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 26.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under the Agreement and/or any Contract. The

Supplier shall be responsible for the acts and omissions of its subcontractors.

- 26.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 26.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 5 in favour of any person to whom the Agreement or relevant Contract is being novated.

27 Company's and Supplier's Representative

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

28 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.

29 Severance

- 29.1 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 29 would not negate the commercial interest and purpose of the parties under such Contract.

30 Publicity

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

31 Corrupt Gifts and Payments of Commission

- 31.1 The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 31.2 The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 31.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 31 at any time during performance of each Contract and during the twelve (12) year period following completion of performance.

31A Criminal Record Declarations

- 31A.1 For the purposes of this Clause 31A:

“Relevant Individual” means any servant, employee, officer, consultant or agent of either the Supplier 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.

- 31A.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“Declaration”) or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 31A.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 31A.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 Supplier and its subcontractors and its and their respective

employees and agents in order to confirm and monitor compliance with this Clause 31A at any time during performance of the Agreement and/or any individual Contract.

- 31A.5 If the Supplier fails to comply with the requirements under Clause 31A.2 and/or Clause 31A.3 the Company may, without prejudice to its rights under Clause 17.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 31A.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 31A.2.
- 31A.6 A persistent breach of Clause 31A.2 and/or Clause 31A.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any Contract in whole or in part with immediate effect in accordance with Clause 17.1(a).
- 31A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 31A.8 Nothing in this Clause 31A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 31A.

32 No Waiver

- 32.1 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.

33 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.

34 Notices and Service of Process

34.1 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 Supplier are as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

Company: **London Underground Limited**,
REW - Acton Works, 130, Bollo Lane, LONDON, W3 8BZ

Attn: Miss Michelle Sweeney, Commercial manager

E-Mail: michelle.sweeney@tube.tfl.gov.uk

Supplier: **British Mica Company Holdings Limited**, 123, Barker lane, BEDFORD,
Bedfordshire, MK41 9RR

Attn: Paul Allen – Managing Director

E-Mail: paul@britishmica.co.uk

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 34.1.

34A Not used

35 Dispute Resolution

- 35.1 Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause.
- 35.2 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 Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such

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

- 35.3 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 35.2 (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 Contracts and Procurement Manager and the Supplier's Managing Director]* or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 35.4 If the Dispute has not been resolved within twenty-one (21) days of it being referred to *[the Company's Contracts and Procurement Manager and the Supplier's Managing Director]* or their deputies in accordance with Clause 35.3 either party may refer the matter for resolution in accordance with the provisions of Clause 36.
- 35.5 Clauses 35.1 to 35.4 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 35.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

36 Governing Law and Jurisdiction

The Company and the Supplier submit, subject to the provisions of this Agreement and any Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

37 Not Used

37.1 Not Used

37.2 Not Used

38 Not Used

38.1 Not Used

38.2 Not Used

38.3 Not Used

38.3A Not Used

38.3B Not Used

38.4 Not Used

38.5 Not Used.

38.6 Not Used

39 Default Interest

39.1 If either party fails to pay to the other any amount payable in connection with any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default Interest Rate. Any interest accruing under this Clause 39.1 shall be immediately payable by the paying party on demand.

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

40 Freedom of Information

(a) For the purposes of this Clause 40:

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

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

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

(b) The Supplier 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 Supplier.
- (c) Without prejudice to the generality of Clause 40(b) the Supplier 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 Supplier) each Information Request relevant to the Agreement and/or any Contract, the supply of Goods and 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 Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.
- (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 Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

40A Data Transparency

- 40A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 41, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 40A.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 41A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

40B Survival

40B.1 The provisions of Clauses 4 (Records and Audit), 8.5 (Set-Off), 12 (Environmental Claims), 15 (Warranty), 16 (Intellectual Property Rights), 17 (Termination), 18 (Indemnity and Insurance), 22 (Supplier Personnel), 23 (Confidentiality), 25.2 (Responsible Procurement), 29 (Severance), 30 (Publicity), 31 (Corrupt Gifts and Payments of Commission), 32 (No Waiver), 33 (Entire Contract), 34 (Notices and Service of Process), 35 (Dispute Resolution), 36 (Governing Law and Jurisdiction), 37 (Contracts (Rights of Third Parties) Act 1999), 40 (Freedom of Information), 40A (Data Transparency), 40B (Survival), 41.1 and 41.5 (Transport for London Group) will survive the termination or expiry of this Agreement and/or any Contract and continue in full force and effect, along with any other Clauses or Schedules of this Agreement and/or any Contract necessary to give effect to them. In addition, any other provision of this Agreement and/or any Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

41 Transport for London Group

41.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any Contract under Clause 17.1, Clause 17.2(a) or at common law, the Company may terminate the Agreement and/or any Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 41.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 41.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 17.1 and this Clause 41.1 or the Cessation Plan, the provisions of this Clause 41.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the supply of Goods and Services or (at the Company's request) a transition of the supply of Goods and 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 41.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and/or any Contract in accordance with this Clause 41.1.

41.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 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, crime and disorder in its area,

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

41.3 The Company's business

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the supply of Goods and 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 supply of Goods and Services in accordance with the Agreement and/or any Contract;

- (d) is aware of the purposes for which the supply of Goods and Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and/or any Contract due to any misinterpretation or misunderstanding by it of any fact relating to the supply of Goods and Services.

41.4 **Best value**

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

41.5 **Data Protection**

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

41.6 **Conflict of Interest**

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the supply of Goods and 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 Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and/or any Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the supply of Goods and Services under the Agreement and/or any Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the supply of Goods and 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 and/or any Contract.

41.7 Not used.

41.8 **Equality and Diversity**

41.8.1 Without limiting the generality of any other provision of the Agreement, the Supplier:

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

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

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

- (a) eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;

- (b) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a Protected Characteristic and persons who do not.

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

41.8.3 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and/or any 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.

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

41.9 **Cycling Safety**

- (a) For the purposes of this Clause 41.9:

"Approved Driver Training" means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at www.fors-online.org.uk.

"Bronze Accreditation" means 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" means 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.

"Class VI Mirror" means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC.

"Close Proximity Sensor" means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged.

“Collision Report” means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities.

“Driver” means any employee of the Supplier (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while delivering the Goods and Services.

“DVLA” means the Driver and Vehicle Licensing Agency.

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

“FORS Standard” means 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.

“Freight Vehicle” means a Lorry, a Van or a Car-derived Van.

“Fresnel Lens” means a clear thin plastic lens that is pressed fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle’s blind spot.

“Gold Accreditation” means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk.

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“Lorry” means a vehicle with an MAM exceeding 3,500 kilograms.

“MAM” means 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” means 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” means the intermediate level of accreditation within the FORS Standard the requirements of which are more particularly described at: www.fors-online.org.uk.

“Van” means a vehicle with a MAM not exceeding 3,500 kilograms.

(b) **Fleet Operator Recognition Scheme Membership**

Where the Supplier operates Freight Vehicles, it shall within ninety (90) days of executing the Agreement:

- (i) (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to membership of FORS (the “**Alternative Scheme**”); and
- (ii) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.
- (c) The Supplier shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.
- (d) The Supplier shall ensure that those of its subcontractors who operate Freight Vehicles shall comply with Clauses 41.9(b) and 41.9(c) as if they applied directly to the subcontractor.
- (e) **Safety Equipment on Vehicles**

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

- (i) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- (ii) have a close proximity warning system fitted comprising:
 - a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Operator has obtained the Company’s approval to use the Fresnel Lens, which approval the Company may withhold in its unfettered discretion; and
 - a Close Proximity Sensor;
- (iii) have a Class VI Mirror; and
- (iv) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

The Supplier shall ensure that every Van, which it uses to provide the Goods and Services, shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

(f) **Driver Licence Checks**

The Supplier shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Goods and Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last twelve (12) months:

- (i) 0 – 3 points on the driving licence – annual checks;
- (ii) 4 – 8 points on the driving licence – six (6) monthly checks;
- (iii) 9 – 11 points on the driving licence – quarterly checks; or
- (iv) 12 or more points on the driving licence – monthly checks.

(g) **Driver Training**

The Supplier shall ensure that each of its Drivers who has not undertaken:

- (i) Approved Driver Training (or training, which in the reasonable opinion of the Company, is an acceptable substitute) in the last three (3) years, undertakes Approved Driver Training within sixty (60) days of the Commencement Date; and
- (ii) a FORS e-learning safety module in the last twelve (12) months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Company, is an acceptable substitute).

(h) **Collision Reporting**

Within fifteen (15) days of the Commencement Date, the Supplier shall provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report on a quarterly basis and within five (5) Working Days of a written request from the Company.

(i) **FORS Reports**

Within thirty (30) days of it achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Supplier shall provide a written report to the Company at fors@tfl.gov.uk detailing its compliance with Clauses 41.9(e), 41.9(f) and 41.9(g) of this

Agreement (the “**Safety, Licensing and Training Report**”). The Supplier shall provide updates of the Safety, Licensing and Training Report to the Company at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.

(j) **Obligations of the Supplier regarding subcontractors**

The Supplier shall ensure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Agreement as if those subcontractors were a party to this Agreement:

- (i) For Lorries – Clauses 41.9(e), 41.9(f), 41.9(g) and 41.9(h); and
- (ii) For Vans – Clauses 41.9(e)(iv), 41.9(f), 41.9(g) and 41.9(h).

(k) **Failure to Comply with Freight-related Obligations**

Without limiting the effect of Clause 41, if the Supplier fails to comply with Clauses 41.9(b), (c), (d), (e), (f), (g), (h), (i) and (j):

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

42 Not used

42.1 Not used

42.2 Not Used

42.3 Not Used

Schedule 1
Form of Order

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE SUPPLIER PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE AGREEMENT REFERRED TO HEREIN (SEE CONTRACT REFERENCE NUMBER FOR DETAILS).

Notes: 1. Please confirm receipt of this Order immediately by signing and dating where indicated and returning to the Company's Representative. 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all applications for payment. 3. Please address all correspondence and enquiries to the Company's Representative.
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Company:	London Underground Limited
Supplier:	British Mica Company Holdings Limited
Contract Reference Number:	TFL-00687
Order Number:	
Order Title:	
Company's Representative: Address for service of notices: Telephone: Fax:	Miss Michelle Sweeney – Commercial Manager London Underground Ltd, REW – Acton Works, 130 Bollo Lane, LONDON, W3 8BZ michelle.sweeney@tube.tfl.gov.uk
Supplier Representative: Address for service of notices: Telephone: Fax:	Paul Allen – Managing Director British Mica Company Holdings Ltd, 123 ,Barker Lane, BEDFORD, Bedfordshire. MK41 9RR paul@britishmica.co.uk
Delivery Address	
Expected Order Delivery Date (Goods) and times for delivery:	
Order Completion Date:	
Standards	
Specification	<i>As set out in Appendix 1</i>
Order Programme:	
Warranty Period	
Key Personnel:	

Order Price (exclusive of VAT):			
Order Payment Profile			
Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity	
Product and Public Liability Insurance All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Contract.	Supplier	£10,000,000 for each and every claim or series of claims arising out of one event (and in the aggregate per annum in respect of product liability insurance only).	
Employer's Liability Insurance Liability for death of or bodily injury or illness sustained by employees of the Supplier arising out of or in the course of their employment in connection with the Contract.	Supplier	Not less than £5,000,000 for each and every claim or series of claims arising out of one incident.	
Professional Indemnity Insurance Negligence omission or default in respect of the design of the Supply or other professional services for which the Supplier or its sub-contractors is responsible.	Supplier	£1,000,000 for each and every claim and in the aggregate per annum.	
Transit Insurance Transit Insurance to cover Goods, Materials, materials supplied by the Supplier until safe receipt at the Premises by the Company.	Supplier	Not less than £25,000 for each and every claim or series of claims arising out of one incident.	
Additional Comments/Special Instructions:		Total liability of Supplier under this contract shall be limited to the total contract value.	
		Liquidated Damages to be capped at 10%	

Signed by:
Title:
On behalf of:
London Underground Limited
.....
Date:.....

Signed by:
Title:
On behalf of:
British Mica Holdings Limited
.....
Date:.....

Appendix 1

Specification

Overhaul Schedule of Works

Negative Shoe Beam Assy – LU SAP Number 00136/0668

Mica Ref	Description	Supplementary Operaton
000428002R	NEGATIVE SHOE ARC BARRIER	
	Clean & Assess	000428002001
	Repair of Chips + Dents + Strengthening	004280020002
	Fixing Bolt Hole Modification	000428002003
	Brush Fixing & Sleet Brush Bolt	
	Drill For Collector Assembly	
	Fit New Bolt	

Negative Sleetbrush Assy – LU SAP Number 00127/2450

Mica Ref	Description	Supplementary Operaton
001018001R	NEGATIVE SLEET ARC BARRIER	
	Clean & Assess	001018001001
	Repair of Chips + Dents + Strengthening	001018001002
	Fixing Bolt Hole Modification	001018001003
	Brush Fixing & Sleet Brush Bolt	
	Fit New Bolt	

Bolts to be held in Stock at British Mica Holdings Limited, 123, Barkers Lane, BEDFORD MK41 9RR

Consigments to be delivered back to the nominated London Underground Depot, as instructed on each individual Purchase Order, at the agreed delivery schedule/day of the week. As the consignment is delivered, a fresh consignment to be repaired is collected and returned to British mica Holdings Limited, 123 Barker Lane, BEDFORD MK14 9RR

Schedule 2
Framework Particulars

Term:	24 Months with an option for up to a further 24 months, if mutually agreed Note, this term covers both the 92 Train Stock Heavy Overhaul Project, and 92 Train Stock Business As Usual
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Schedule 3

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a **"Variation Order"**) and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the quantity of Goods to be supplied and extent of 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.

- 8 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the each Contract, including, but not limited to the Specification and the Order Programme.
- 9 Strict adherence to the procedure described in this Schedule 3 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 3 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

Appendix 1

Form of Variation Proposal/Variation Order

To:	From:
------------	--------------

Contract Reference Number:
Order Number:
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:		
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">Variation Proposal Authorised by:</td> <td style="width: 40%; padding: 5px;">Proposal Date:</td> </tr> </table>	Variation Proposal Authorised by:	Proposal Date:
Variation Proposal Authorised by:	Proposal Date:	

PART B (TO BE COMPLETED BY THE SUPPLIER)

Price Breakdown Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Delivery Date:	
Supplier's Representative: Print Name: Signature: Date:	
Completed document to be returned to the Company's Representative	

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

Comment on Parts A and B:
Variation Authorisation Company's Representative: Print Name: Signature: Date: *

Schedule 4
Not Used

Schedule 5

Deed of Novation

[NOVATION / TRANSFER] AGREEMENT

THIS DEED is made day of 201[]

BETWEEN:

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

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

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

WHEREAS:

- (A) The Company has an agreement dated [] and referenced [insert contract number] with the Supplier 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 Supplier and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:
- 1.1 "**Transfer Date**" means [].

With effect from the Transfer Date:

- 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
- 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;
- 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
 - 2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and
 - 2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier.
- 2.4 the Company transfers its rights and obligations under the Contract to the New Company.
- 2. 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 and delivered the day and year first above written.

THE COMMON SEAL of)
LONDON UNDERGROUND LIMITED)
was hereunto affixed in)
the presence of:-)

Authorised Signatory

Signature:

Name:

EXECUTED as a deed)
for and on behalf of)
[SUPPLIER])
acting by)

Authorised Signatory

Signature:

Name:

Authorised Signatory

Signature:

Name:

EXECUTED as a deed)
for and on behalf of)
[NEW COMPANY])
acting by)

Authorised Signatory

Signature:

Name:

Authorised Signatory

Signature:

Name:

Schedule 6
Not Used

Schedule 7

Prices

Overhaul Schedule Prices

Negative Shoe Beam Assy – LU SAP Number 00136/0668

The repair work carried out by the Supplier may have carry out any one, or combination, of operations listed below. Each operation is individually priced in the procong schedule below, and each repair may cost anything from £20.00 per repair upto £265.00 per repair depedent on what operation or combination of operations below are required on that specific repair.

Mica Ref	Description	Supplementary Operaton	Supplementary Operation Cost
000428002R	NEGATIVE SHOE ARC BARRIER		
	Clean & Assess	000428002001	£40.00
	Repair of Chips + Dents + Strengthening	004280020002	£95.00
	Fixing Bolt Hole Modification	000428002003	£45.00
	Brush Fixing & Sleet Brush Bolt		£65.00
	Drill For Collector Assembly		£20.00
	Fit New Bolt		£30.00 – Material Price Excluded – Previously Ordered and held in Stock At British Mica

Negative Sleetbrush Assy – LU SAP Number 00127/2450

The repair work carried out by the Supplier may have to carry out any one, or combination, of operations listed below. Each operation is individually priced in the procong schedule below, and each repair may cost anything from £40.00 per repair upto £245.00 per repair depedent on what operation or combination of operations below are required on that specific repair.

Mica Ref	Description	Supplementary Operaton	Supplementary Operation Cost
001018001R	NEGATIVE SLEET ARC BARRIER		
	Clean & Assess	001018001001	£40.00
	Repair of Chips + Dents + Strengthening	001018001002	£95.00
	Fixing Bolt Hole Modification	001018001003	£45.00
	Brush Fixing & Sleet Brush Bolt		£65.00
	Fit New Bolt		£30.00 – Material Price Excluded – Previously Ordered and held in Stock At British Mica

Transportation cost of £125 for Each Collection/Delivery Cost.

Schedule 9

Not Used

Schedule 10
Not Used

Schedule 11
Not Used

Schedule 12

Supplier Performance

1. SUPPLIER PERFORMANCE

1.1 KEY PERFORMANCE INDICATORS

1.1.1 Redacted.

Late Delivery Loss Days	Abatement Attracted on Full Value of delivery for that day
Redacted	Redacted
Redacted	Redacted
Redacted	Redacted
Redacted	Redacted
Redacted	Redacted
Redacted	Redacted
Redacted	Redacted

“Business Days” applies to the above table.

1.1.2. The above Abatements will not be applied if the delay, in any way, was caused by the company in either dispatching the goods to the supplier late, or if the company request any sort of delay in delivery. Such requested delays must be in writing from the company, either the form of an amended purchase order or e-mail..

1.1.3 If any additional works identified, outside of the scope/specifications detailed in Schedule 1, (appendix 1); causes a delay in the delivery back to the company, by the supplier, then the above abatments will not be applied

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

1.2.1 QUALITY – The Supplier will supply the overhauled Goods with target 0% Defects. In the event Defects are found the escalation process will begin in the following circumstances:

1.2.1.1 Non Safety Critical Goods

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

1.2.1.2 Safety Critical Goods

- Any single Defect

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

Where the stock holding is:

- below 100% for 4 or more Accounting Periods over a rolling six Accounting Periods;
- below 90% for 2 or 3 Accounting Periods over a rolling six Accounting Periods; or
- below 75% in any single Accounting Period the escalation process shall begin.
- Stock holding to be measured by review of the agreed delivery schedules, Contract Programme and in line with London Underground's Material Team.

1.3. **LUL Investigation**

If London Underground Limited reasonably considers that the numbers of Rejection Claims and/ or Warranty Claims, shortages, missing and damaged in general for any category of Goods are materially or unreasonably high, then the Supplier shall if requested by London Underground Limited undertake a reasonable investigation to identify the reasons for this and which Goods in particular are affected, propose for agreement with London Underground Limited an action plan with a view to achieving improvements within 3 periods, and implement any such action plan. If improvements cannot be achieved due to circumstances beyond the Supplier's control, the Supplier shall inform London Underground Limited within one period of any investigation being requested of the reasons for this, the parties will review the position, and if reasonable agree an exception any affected Spares. This neither affects nor replaces the Escalation Process in 2.

1.4. **Specific Trends**

Where London Underground Limited considers that it has identified a trend (taking into account rejections and/ or warranty claims, shortages and missing and damaged for Spares supplied at any time historically under any previous agreements) with respect to Rejection Claims for a given Spare or group of Spares, such that of those Spares are being rejected for the same or similar reasons, and as a consequence of which it is experiencing genuine and material operational or service quality problems, then:-

- (a) the Supplier shall monitor such Spares and their failures over an agreed period relative to the Spares, but normally 3 periods, and report on such trend;
- (b) if there is a genuine trend, then London Underground Limited may notify this as a Performance Issue.

This neither affects nor replaces the Escalation Process in 2.

1.5. **Obsolescence Report**

Following each period the Supplier shall provide a report detailing those Spares with known obsolescence issues. This neither affects nor replaces the Escalation Process in 2.

1.6. **Liquidated Damages**

Following each period end the Supplier shall provide a report showing the following details for that period and the 12 periods up to and including that period:-

- Liquidated Damages claims made in that period.
- Liquidated Damages claims made prior to that period but still outstanding at any point in that period.
- For each of those claims, details of those accepted, rejected, and in dispute.
- For each of those claims a financial summary covering value of the claims and any other associated costs payments between the parties.

2. ESCALATION PROCESS

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

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

This procedure operates with four levels; the lowest level Non-Conformance being Level 1. Should Non-Conformances escalate they will receive an appropriate level of management intervention from the Company and the Supplier. Level 3 gives final review and opportunity for remedial actions to resolve issues before the Non-Conformance reaches Level 4, which will entitle the Company to terminate in accordance with Clause 39. of the Conditions of Contract.

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

Summary of Escalation Process

TRIGGER	LEVEL	ACTION	BY	RESULT
Failure to rectify identified non- conformance issued as part of KPIs and/ or SDIs	LEVEL 1	Improvement plan with precise end date required. On going review dates specified.	Supplier	Satisfactory - Stop Unsatisfactory - Level 2
Level 1 re-occurrence Consistent failure to meet required requirement Safety Condition infringements.	LEVEL 2	Improvement plan with precise end date required. Ongoing review dates specified.	Supplier	Satisfactory - Stop Unsatisfactory - Level 3
Level 2 re-occurrence	LEVEL 3	Final review. Final opportunity for remedial action. Precise end date required.	Supplier	Satisfactory - Stop Unsatisfactory - Level 4
Level 3 re-occurrence	LEVEL 4	POSSIBLE TERMINATION		

For the avoidance of doubt, a non-conformance includes rejects, warranty, shortages, missing and damaged Goods.

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

Level 1

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

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

Warranty

Following each Period the Supplier shall provide a report showing the following details for that period and the YTD up to that Period:-

- Qty / Value of Warranty Claims made in that period.
- Qty / Value of Warranty Claims made prior to that period on a rolling 12 period basis.
- Details of outstanding Warranty claims.
- For each of those Warranty Claims, details of those outstanding, accepted, rejected, in dispute and no-fault found.

Rejections

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- Qty / Value of Rejection Claims made in that period.
- Qty / Value of Rejection Claims made prior to that period on a rolling 12 period basis.
- For each of those Rejection Claims, details of those accepted, rejected, in dispute and no-fault found.
- For each of those Rejection Claims a financial summary covering value of Rejection Claims.

Shortages

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- Shortages claims made in that period.
- Shortages claims made prior to that period on a rolling 12 period basis.
- For each of those shortages claims, details of those accepted, rejected, in dispute and no-fault found.

Missing and Damaged

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- For each of those claims a financial summary covering value of claims and any other associated costs payments between the parties.

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

Level 2

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

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

- The date and details of the Level 2 Non-Conformance.
- The Level 2 Required Action.
- The Level 2 Rectification Period.

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

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

Level 3

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

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

Level 4

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

REPORTING AND SERVICE LEVELS

The parties acknowledge where any of the reports below are not currently systematised, the Supplier shall have a period of 1 Period from the Commencement Date to establish them.

1. SUMMARY OVERVIEW REPORT

1.1 Scope

For each calendar period the Supplier shall provide to London Underground Limited an overview summarising the position in relation to the supply of Spares to London Underground Limited in that Accounting Period, for benefit of the Supplier and London Underground Limited.

1.2 Content

The overview shall contain such information as the parties have agreed or subsequently agree to enable each party to have a meaningful and useful report on the main issues affecting the supply and performance of Spares, including issues on the Supplier's side and London Underground Limited's side. The overview shall include by exception, details about specific supplier problems which may affect London Underground Limited.

The Supplier is responsible for undertaking a Pre-Production Report on how they will establish, maintain and manage the Supply of Spares during the mobilisation period or phase, up to and including the whole contract duration; including commencement. The Pre-Production Report(s) will form:

2. WARRANTY

2.1 Report

Following each period the Supplier shall provide a report showing the following details for that period and the YTD up to that period:-

- Qty / Value of Warranty Claims made in that period.
- Qty / Value of Warranty Claims made prior to that period on a rolling 12 period basis.
- Details of outstanding warranty claims.

3. REJECTIONS

3.1 Report

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- Qty / Value of Rejection Claims made in that period.
- Qty / Value of Rejection Claims made prior to that period on a rolling 12 period basis.
- For each of those Rejection Claims, details of those accepted, rejected, in dispute and no-fault found.
- For each of those Rejection Claims a financial summary covering value of Rejection Claims.

4. SHORTAGES

4.1 Report

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- Shortages claims made in that period.
- Shortages claims made prior to that period on a rolling 12 period basis.
- For each of those shortages claims, details of those accepted, rejected, in dispute and no-fault found.

5. OBSOLESCENCE REPORT

Following each period the Supplier shall provide a report detailing those Spares with known obsolescence issues.

6. MISSING AND DAMAGED REPORT

Following each period the Supplier shall provide a report showing the following details for that period and the 12 periods up to that period:-

- For each of those claims a financial summary covering value of claims and any other associated costs payments between the parties.

7. LIQUIDATED DAMAGES

Following each period end the Supplier shall provide a report showing the following details for that period and the 12 periods up to and including that period:-

- Liquidated Damages claims made in that period.
- Liquidated Damages claims made prior to that period but still outstanding at any point in

that period.

- For each of those claims, details of those accepted, rejected, and in dispute.
- For each of those claims a financial summary covering value of the claims and any other associated costs payments between the parties.

EXECUTION PAGE:

TO BE SIGNED UNDER HAND

This Contract has been signed by for and on behalf of the Parties by their duly authorised representatives on the day and year written above.

Signed by

.....

[Name and position of authorised signatory]

For and on behalf of London Underground Limited

Signed by

.....

[Name and position of authorised signatory]

For and on behalf of British Mica Holdings Limited