

DATED 03 April 2018

(1) LUL NOMINEE SSL LIMITED

and

(2) THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED

Deed of Amendment and Restatement

to a

Technical Support and Spares Supply Agreement for Neasden Depot Signalling System

(Contract No: TFL 01119)

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THIS AGREEMENT is made as a **DEED** on **03 April 2018**

BETWEEN:

- (1) **LUL NOMINEE SSL LIMITED** a company registered in England and Wales under number 6242508 and having its registered office at 55 Broadway, London SW1H 0BD (“the **Client**”); and
- (2) **THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED** (Company No. 05805963) whose registered office is at 350 Longwater Avenue, Green Park, Reading, RG2 6GF (“the **Supplier**”),

together referred to as the “**Parties**” and individually a “**Party**”.

WHEREAS:

- (A) The Client and the Supplier entered into a contract dated 2 March 2014 for the provision of technical support and supply of spares (reference TFL 01119) (the “**Original Contract**”).
- (B) The Parties have agreed to amend and restate the terms of the Original Contract as set out hereinafter.

NOW IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions in Contract

Unless the context otherwise requires and save as mentioned below, words and expressions defined in the Contract shall have the same meanings when used in this Agreement. In this Agreement:

“**Original Contract**” means the contract referred to in Recital (A) above

“**Restated Contract**” means the Original Contract as amended and restated by this Agreement in the form set out in the Annex to this Agreement.

1.2 Interpretation of Contract

In this Agreement:

1.2.1 references in the Contract to “this Contract” shall, with effect from the Effective Date and unless the context otherwise requires, be references to the Contract as amended and restated by this Agreement and words such as “herein”, “hereof”, “hereunder”, “hereafter”, “hereby” and “hereto”, where they appear in the Contract, shall be construed accordingly.

1.2.2 where there is any inconsistency between this Agreement and the Contract the terms of this Agreement shall prevail.

1.2.3 references to clauses are to clauses of this Agreement;

1.2.4 reference to any statute of statutory provisions shall be construed as a reference to it as it may have been or may in the future be amended, modified or re-enacted and to any statutory instrument, order, bye-law or other provisions that may have been or may in future be made under it.

1.2.5 reference to any document or to any provision of any document is to that document or provision as amended, varied, supplemented, re-stated or novated from time to time; and

1.2.6 headings to clauses are for convenience only and do not affect the interpretation of this Agreement.

2. EFFECTIVE DATE

The amendments to be made to the Contract by this Agreement shall take effect on and from [] 2018 (the "**Effective Date**").

3. AMENDMENTS TO THE CONTRACT

The Supplier and the Client agree that the Contract shall, with effect from the Effective Date be amended and restated in the form set out in Annex 1 to this Agreement so that the rights and obligations of the parties to the Restated Contract shall, on and from that date, be governed by and construed in accordance with the provisions of the Restated Contract.

4. CONTINUATION OF CONTRACT

Save as amended by this Agreement, the provisions of the Original Contract shall continue in full force and effect and the Restated Contract and this Agreement shall be read and construed as one instrument.

5. NOTICES

The provisions of clause 40 of the Restated Contract shall apply to this Agreement as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement and references to "party" or "parties" shall be construed as references to parties to this Agreement.

6. COUNTERPARTS

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

7. PARTIAL INVALIDITY

If any provision of this Agreement or its application is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications of this Agreement are not affected or impaired. If any adjudication, litigation or arbitration determines that any provision of this Agreement is in any way unenforceable, that provision is amended or modified to the extent necessary to give the provision a valid legal and

enforceable effect which is as similar as possible to the ineffective provision and is reasonably consistent with the purpose and intent of this Agreement.

8. FURTHER ASSURANCE

Each of the Parties agrees to perform (or use all reasonable endeavours to procure the performance of) all further acts and things, and execute and deliver (or use all reasonable endeavours to procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable to implement and/or give full effect to this Agreement and the transaction contemplated by it.

9. AMENDMENTS IN WRITING

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by the Client or the Client Representative on its behalf and expressed to be supplemental to this Agreement.

10. THIRD PARTY RIGHTS

10.1 Subject to clause 11.2, the Parties do not intend that any of the terms of this Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

10.2 The Contracts (Rights of Third Parties) Act 1999 applies to this Agreement to the extent that: any member of the TfL Group has the right to enforce any provision contained in this Agreement against the Supplier where such provision confers any benefit or purports to confer a benefit on such member.

11. GOVERNING LAW AND JURISDICTION

This Agreement and all matters arising from it, or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

12. LIMITATION PERIOD

Notwithstanding the execution of this Agreement as a deed, the Parties agree that the limitation period applicable under this Agreement will be six years.

Executed as Deed by the Parties and delivered on the date of this Agreement

The Common Seal of
LUL NOMIMEE SSL LIMITED
was affixed to **THIS DEED**
in the presence of:



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EXECUTED as a **DEED** by
**THALES GROUND TRANSPORTATION
SYSTEMS UK LIMITED**
acting by:

)
)
)
)

Authorised **REDACTED**
REDACTED

Signature:

Name: M. SURRETER

)
)
)
)

Authorised Signatory
REDACTED

Signature: ...**REDACTED**.....

Name: K.L. Hill

and

Authorised Signatory
REDACTED

Signature: ...**REDACTED**.....

REDACTED
Name: D.K. JONES

ANNEX
RESTATED CONTRACT

DATED 2 March 2014, and amended and restated on 03 February 2018

- (1) **LUL NOMINEE SSL LIMITED**
- (2) **THALES GROUND TRANSPORTATION SYSTEMS
UK LIMITED**

**TECHNICAL SUPPORT AND SPARES
SUPPLY AGREEMENT FOR NEASDEN
DEPOT SIGNALLING SYSTEM**

**CONTRACT REFERENCE NUMBER:
TFL 01119**

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THIS AGREEMENT made on 2 March 2014, and amended and restated on 3 February 2018

BETWEEN

- (1) **LUL NOMINEE SSL LIMITED** a company registered in England and Wales under number 6242508 and having its registered office at 55 Broadway, London SW1H 0BD (the "**Client**"); and
- (2) **THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED** (previously named **THALES RAIL SIGNALLING SOLUTIONS LIMITED**), a company registered in England and Wales under number 5805963 whose registered office is at 350 Longwater Avenue, Green Park, Reading, Berkshire, United Kingdom, RG2 6GF (the "**Supplier**")

BACKGROUND

- A. The Client has previously entered into an agreement with the Supplier dated 17th March 2008 for the Design and Construction of Signalling and Control System Works (Neasden Depot Upgrade) (the "**DCSCSW Neasden Depot Upgrade Contract**").
- B. The Supplier has agreed with the Client to provide technical and spares support for the DCSCSW Neasden Depot Upgrade on the terms set out in this Agreement.
- C. For the avoidance of any doubt, this Agreement is not supplemental to, and does not amend or in any way affect, the rights and obligations of the Supplier and the Client under the DCSCSW Neasden Depot Upgrade) Contract.
- D. The Client and the Supplier have agreed to vary the scope and terms of this Agreement, with effect from the Restatement Effective Date, by entering into a deed of amendment and restatement on or around the Restatement Effective Date (the "**Deed of Novation and Restatement**").

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms shall have the following meanings :

"**Access**" means access to the LUL Network;

"**Access Procedure**" means the procedure of that name governing rights of Access to the LUL Network included in the DCSCSW Neasden Depot Upgrade Contract;

"**Accounting Period**" means the Client's accounting periods as set out in Schedule 19 or as notified from time to time by the Client to the Supplier each such period being of between 25 and 32 days and one of 13 periods during the Client's Financial Year;

"**Act**" is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

"**Adjudication Rules**" means the rules referred to in clause 48.3;

"**Assessment Date**" means the last day of each Accounting Period;

"**Associated Company**" means any division or subsidiary of the Supplier or any division or subsidiary of the Supplier's parent company or any other company in the same group as the Supplier and includes Thales UK Limited;

"**Best Industry Practice**" means the standards of performance and care which pertain from time to time in the upper quartile of the rail signalling support services industry;

"**Cessation Plan**" means a plan agreed between the parties or determined by the Client in accordance with clause 9.7 to give effect to a Declaration of Ineffectiveness;

"**Client Representative**" means such person as nominated in writing by the Client or such other person as may replace them in accordance with clause 23A;

"**Computer Viruses**" means viruses, worms, time locks or anything else that would impair performance of any software and/or the Supported Systems as they might reasonably be expected to operate;

"**Confidential Information**" means information not generally available to the public disclosed or caused to be disclosed, either orally or in writing, pursuant to this Agreement (including, without limitation, any financial data, business and other plans, specifications, equipment designs, electronic configurations, design information, product architecture, algorithms, quality assurance plans, inventions (whether or not the subject of pending patent applications but excluding patents or patent applications published by the relevant patent office), ideas, discoveries, formulae, models, requirements, standards, trade, know-how and manufacturing secrets, drawings, samples, devices, computer programs, demonstrations, technical information) which is marked confidential, or otherwise specified as confidential at the time of disclosure or which, in the circumstances, would reasonably appear to be confidential, including any information or records referred to in clause 19.1.

"**Connected Persons**" means all and any of the Supplier's and Associated Company's employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional

advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

"Contract Reference Number" means the number shown on the front page of this Agreement;

"Corporate IPRs" means the trade marks, trade names and other Intellectual Property Rights notified by the Client from time to time;

"COTS" means commercial off the shelf software or hardware which is standard, freely commercially available and not developed or modified by the Supplier;

"Critical Defect" means a Defect in Spares, Materials and Equipment which appears during the applicable Warranty Period and which is:

(a) critical to the operation and safety of the LUL Network;

or

(b) critical to the carrying out the Services and/or the work of Others;

"Date of Commencement" means the date for commencement of this Agreement as specified in Schedule 1 (Agreement Particulars);

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended);

"Defect" means a non-compliance of the Spares, Materials or Equipment with the Spares and Repairs Catalogue, the Specification or any other requirement of this Agreement, in each case being discovered or becoming manifest during the relevant Warranty Period, and to the extent not caused or contributed to by (1) the Client's failure to act in accordance with any express operational and/or maintenance instructions contained in the Documentation or otherwise delivered by the Supplier, or (2) the Client's breach of this Agreement;

"Deliverables" means any Documentation, software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

"Documentation" means the operating manuals, user instructions, technical literature and all other related materials supplied to the Client by the Supplier for aiding the use and application of the Spares, Materials and Equipment and any Software;

"Duty Operations Engineer" means the duty operations engineer named in Schedule 1 (Agreement Particulars) or any other person so appointed from time to time.

"DCSCSW Neasden Depot Upgrade Contract" has the meaning given in Recital A;

"DCSCSW Neasden Depot Upgrade" means the Signalling and Control System at Neasden Depot designed and installed by the Supplier as the Contractor under the DCSCSW Neasden Depot Upgrade Contract;

"Economic and Consequential Loss" means:

- (a) any special, indirect, incidental or consequential damages of any kind; and
- (c) any loss of an economic or financial nature (whether direct or indirect) including but not limited to any loss of use, profit, income, revenue (including but not limited to abatements, adjustments or loss of bonus) business, anticipated savings or reputation, whether actual or prospective, even if foreseeable and/or arising from the indemnifying Party's negligence;

"Expiry Date" means the expiry date of this Agreement, as specified in Schedule 1 (Agreement Particulars);

"Financial Year" means each year commencing on 1st April and ending on 31st March the following calendar year;

"Fixed Price Period" means the period during which the Support Fees will not be adjusted for indexation in accordance with clause 3.6, being the period of three years immediately following the Restatement Effective Date;**"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 of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

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

this Agreement or (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, strikes, lock outs other than where such action is being undertaken by the affected Party's own workforce, or the workforce of Subcontractors or suppliers, an Associated Company or a member of the TfL Group;
- (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 LUL network;
- (d) lightning, earthquake or, subject to the proviso in relation to flooding below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs;

"Information" means information recorded in any form held by or on behalf of the Client;

"Information Request" means a request for any Information under the FOI Legislation;

"Infraco" means any of or all of LUL Nominee BCV, TLL and the Client and their respective successors in title and assigns;

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

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights in any part of the world and shall include: patents (including supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, registered designs, unregistered rights in designs, semiconductor and topography rights, copyrights and neighbouring rights, database rights, trade secrets, know-how, inventions, technical or commercial knowledge, and manufacturing or business processes, methods and procedures and in each case rights of a similar or corresponding character, all applications and rights to apply for the protection of any of these rights and Confidential Information relating to these rights together with any material embodying these rights;

"KPIs" means the key performance indicators set out in the Performance Schedule;

"Licensed Programs" means the systems, applications and computer programs specified in the Specification, and all releases upgrades, updates and versions thereof;

"Losses" means any expense, liability, loss (excluding Economic and Consequential Losses) claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments directly incurred.

"LUL" means London Underground Limited (No. 1900907) whose registered office is at 55 Broadway, London SW1H 0BD, or its successor in title or assignee;

"LUL Network" means the stations and depots (wherever situated), assets, systems, track and other infrastructure which are used at any time in the maintenance and provision of the underground service known as "London Underground";

"LUL Nominee BCV" means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee;

"Modification" means any modification to the Supported Systems acquired by the Client (whether under the DCSCSW Neasden Depot Upgrade Contract or this Agreement or any other agreement between the Supplier and the Client);

"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;

"Optional Service" means any of the services listed in Schedule 4 as optional services with a separate rate for the same;

"Order" means an order for Optional Services referred to in clause 6A and in the form set out in Schedule 5;

"Organisation Chart" means the chart showing the structure and organisation of the Support Staff and other relevant staff as may be updated from time to time in accordance with clause 23.8 and clause 25;

"Others" are people or organisations who are not the Client, the Supplier, an Associated Company (whether working under this Agreement, the DCSCSW Neasden Contract or any other contract related to the Project) or any employee, Subcontractor or supplier of the Supplier or an Associated Company;

"Party" or **"Parties"** are the Client (which expression includes its successors in title and assigns) and the Supplier;

"Pay Less Notice" means the notice referred to in clause 3.11;

"Performance Schedule" means Schedule 8, unless later changed in accordance with clause 31;

"PFI Contract" means, in each case, the main project contract entered into or to be entered into by the Client and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion Order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);

"PFI Contractors" means those contractors who have entered into or will enter into PFI Contracts and as notified in writing from time to time by the Client;

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or the Client or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with LUL or the Client; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with LUL or the Client;
- (b) entering into this Agreement or any other contract with LUL or the Client in connection with which commission has been paid or has been agreed to be paid by the Supplier or an Associated Company or on its behalf or to its knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Client;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - (ii) under any law or legislation creating offences in respect of fraudulent acts,
 - (iii) at common law in respect of fraudulent acts, or
 - (iv) as defined in parts a) and b) above, in relation to this Agreement or any other contract with LUL or the Client; or
- (d) defrauding or attempting to defraud LUL or the Client;

"Project" means the provision of Signalling and Control System at Neasden Depot;

"QUENSH" means the Client's Quality, Environmental, Safety and Health conditions (as updated and amended from time to time) and the associated QUENSH Conditions Menu attached at Schedule 11;

"Release Event" means an event the occurrence of which shall entitle the Supplier to apply to the third party for release of the Source Code Material from escrow in accordance with the provisions of the software escrow agreement referred to in clause 32.13;

"Repair/Replacement Date" REDACTEDREDACTEDREDACTEDREDACTEDREDACTED
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"Responsible Procurement Principles" mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;

"Restatement Effective Date" means the date of amendment and restatement of this Agreement as specified in Schedule 1 (Agreement Particulars); **"Safety Breach"** means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the Supplier or any Subcontractor (or anyone employed or acting on behalf of the Supplier or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the works, the safe operation of the LUL Network and/or the safety of LUL's customers, staff or any other person;

"Services" means the services performed or to be performed under this Agreement as identified in the Specification and elsewhere in this Agreement and includes (as appropriate) the Standard Support Service and any Optional Services or Variations;

"Site" means any location on the LUL Network where the Supplier carries out the Services in accordance with this Agreement;

"Software" means the stand-alone software or the software bundled with or embedded in the Spares, Materials and Equipment;

"Source Code Material" means the source code of any software provided or supplied by the Supplier in relation to Spares, Materials and Equipment (or any component part thereof) that are not included in the Spares and Repairs Catalogue first provided by the Supplier pursuant to the terms of this Agreement and all technical information and documentation required to enable the Supplier to modify and operate such software;

"Spares, Materials and Equipment" means all equipment, goods, materials, software and things of all kinds to be supplied, repaired and/or overhauled by the Supplier to or for the Client under this Agreement including those items specified in the Spares and Repairs Catalogue but excluding Supplier's Equipment;

"Spares and Repairs Catalogue" means a comprehensive catalogue including the information referred to at paragraph 2.9 of the Specification, as may be updated and accepted by the Client Representative from time to time as set out in SCHEDULE 9;

"Specification" means the specification for the Services at Schedule 6;

"Standards" means the various standards documents and associated codes of practice identified in the Specification as applicable to the Services;

"Standard Support Service" means all of the services to be provided under this Agreement which are not Optional Services, including the support service more particularly described in the Specification;

"Subcontractor" is a person or corporate body who has a contract or purchase order with the Supplier or an Associated Company to provide part of the Services, or to supply Spares, Materials and Equipment and/or services specifically for the Services;

"Supplier Representative" means such person as nominated in writing by the Supplier or such other person as may replace them in accordance with the terms of this Agreement;

"Supplier's Equipment" means items provided by the Supplier and used by him to carry out the Services which this Agreement does not require him to provide to the Client in the performance of the Services;

"Support Fees" means the fees payable for the Services under this Agreement, being (where the context so requires) each or any of the following:

- (a) the charges for the Standard Support Service in accordance with the agreed rates set out in Schedule 2;
- (b) any charges for Optional Services in accordance with the agreed rates set out in Schedule 4; and/or
- (e) any Variations;

in each case as the same may be amended from time to time in accordance with clause 30;

"Support Manager" means the person appointed by the Supplier from time to time in order to fulfil the role described in clause 23;

"Support Payment" means the amount payable by the Client in consideration of the due performance of the Services calculated in accordance with this Agreement;

"Supported Systems" has the meaning set out in clause 5;

"Support Staff" means those officers, employees, agents or subcontractors of the Supplier connected with this Agreement, including those individuals who perform the Supplier's obligations under this Agreement and (where the context permits) the Support Manager;

"TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The Client is a member of the TfL Group;

"Technical Support and Spares Plan" means the plan referred to in clause 25;

"TLL" means Tube Lines Limited (No. 03923425) or its successor in title or assignee;

"**Transfer Regulations**" means all or any of the following:

- (a) the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- (b) the Transfer of Employment (Pension Protection) Regulations 2005;
- (c) any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies,

as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations;

"**Variation**" has the meaning given in clause 30 of this Agreement; and

1.2 "**Warranty Period**" means the period of 12 months (or such other period as may be specified in respect of the relevant Spares, Materials and Equipment to the Client in the Spares and Repairs Catalogue) from the Repair/Replacement Date of the relevant Spares, Materials and Equipment (and such period shall continue to apply regardless of whether the Expiry Date has occurred), provided that where Defects in or damage to Spares, Materials and Equipment have been made good by the Supplier under this Agreement, the relevant period shall apply in full to the repaired or replaced Spares, Materials and Equipment from the Repair/Replacement Date. This Agreement shall comprise these conditions of agreement (clauses 1 to 59) together with the Schedules and other documents referred to herein. In the event of any conflict between these conditions of agreement and the Schedules hereto, the terms of these conditions of agreement shall take precedence to the extent of such conflict.

1.3 Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded. For the avoidance of doubt, nothing in this sub-clause shall prevent or restrict the Supplier from performing the Services or correcting Defects on any day.

1.4 Week means a continuous period of 7 days.

1.5 Unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;

- (b) words importing persons or parties include firms, companies, corporations and any organisations having legal capacity;
- (c) capitalised terms in the recitals have the meanings set out in clause 1.1;
- (d) references to the Supplier and the Client include their permitted successors and assigns;
- (e) references to statutory provisions include those statutory provisions as amended or re-enacted;
- (f) references to clauses, sub-clauses and schedules are references to the clauses, sub-clauses and schedules of this Agreement;
- (g) references to one gender includes a reference to the other genders;
- (h) references to a "Party" mean the Client or the Supplier;
- (i) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.

1.6 The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.

2. **DATE OF COMMENCEMENT AND TERM**

2.1 This Agreement shall commence upon the Date of Commencement and, save in the event of earlier termination, shall continue until the Expiry Date.

3. **SUPPORT FEES**

3.1 In consideration of the Services to be provided by the Supplier under this Agreement, the Client shall pay the Supplier the Support Payment in accordance with SCHEDULE 2 and as otherwise specified in this Agreement.

3.2 Not used.

3.3 The Supplier warrants and undertakes to the Client that the rates included in the Support Fees under this Agreement (including any rates in the Spares and Repairs Catalogue) shall be no less favourable to the Client than any fees for comparable services in comparable volumes carried out by the Supplier for any non-associated company of it from time to time.

- 3.4 The Client shall, to the extent that the relevant activities are not agreed by the parties to constitute Variations to be paid for by way of the Support Fees, reimburse the Supplier its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) for correcting faults not related to the Supported Systems and faults resulting from operation other than in accordance with instructions for use except where the fault has been caused by the Supplier or an Associated Company or by the Client acting with the approval of or in accordance with the Documentation and/or any directions from the Supplier or an Associated Company. The reimbursement of such costs shall be in addition to the Support Fees.
- 3.5 The Support Fees are inclusive of all disbursements, costs, and expenses incurred by the Supplier in the discharge of its obligations hereunder in relation to the Services other than the correction of faults to the extent described in clause 3.4, but exclusive of Value Added Tax. Save as set out in clause 3.6 below and clause 30 (Variations), the Support Fees shall not be adjusted in respect of any increase or decrease of costs to the Supplier in performing the Services or otherwise. The Support Fees are deemed to be inclusive of all ancillary and other works and services necessary to provide the Services, whether separately or specifically mentioned or described in this Agreement or reasonably implied.
- 3.6 Following the expiry of the Fixed Price Period, the Supplier may increase the following agreed rates in accordance with the terms of this clause 3.6 and any such increases shall be calculated with effect from 1 April of each year during the remaining currency of this Agreement (the "**Indexation Date**"):
- (a) the rates for Optional Services referred to in Schedule 4 may be increased by an amount equal to the percentage increase of the 1980 BEAMA Electrical Engineering Labour Index for Main Contract and Sub-Contract Labour (or its successor from time to time) in the 12 month period immediately preceding the relevant Indexation Date; and
 - (b) the rates for any Spares, Materials and Equipment which are listed in the first accepted Spares and Repairs Catalogue may be increased by an amount equal to the percentage increase of the RPIX for Main Contract and Sub-Contract Materials, Equipment and Plant Table RP05, January 1987 = 100 (CHMK) (or its successor from time to time) in the 12 month period immediately preceding the relevant Indexation Date.

For the purposes of this clause 3.6, the versions of the relevant indices to be used for the calculation of any increase in the respective rates will be the versions of each index most recently published prior to, respectively, the commencement and expiry of the relevant 12 month period preceding the Indexation Date

PROVIDED THAT for the purposes of the Indexation Date falling on 1 April 2021 the words "12 month period immediately preceding the relevant Indexation Date" in sub-clauses 3.6(a) and 3.6(b) above shall be deemed to have been substituted with "period from the end of the Fixed Price Period to 1 April 2020" and in those circumstances the versions of the relevant indices to be used for the calculation of any increase in the respective rates will be the versions of each index most recently published prior to, respectively, the third anniversary of the Restatement Effective Date and 1 April 2020.

- 3.7 The Supplier shall submit a VAT invoice quarterly in advance in respect of the Support Payment. Except for the first payment, the quarterly invoice submitted by the Supplier for a Support Payment shall be supported by a report covering the previous quarter's performance and any additional supporting information.
- 3.8 The Supplier shall submit a VAT invoice monthly in arrears in respect of any Optional Services provided under Schedule 5 or Spares and Repairs supplied under Schedule 9 of the Agreement. Such invoices shall be supported with all details of the Optional Services or Spares and Repairs provided and charged against the Tax Invoice.
- 3.9 The due date for payment of correctly presented VAT invoice shall be thirty (30) days from the date of the VAT invoice.
- 3.10 All charges payable under the Agreement unless otherwise stated are exclusive of VAT and VAT where applicable must be shown as a separate charge. For the avoidance of doubt, where the Supplier sub-contracts any part of the Services to a third party, the Supplier is responsible for payments to that third party.
- 3.11 No fee shall be chargeable for time loss due to illness, voluntary leave or statutory, public or local holidays.

4. SPARES AND REPAIRS REQUISITIONS AND THE SPARES AND REPAIRS CATALOGUE

- 4.1 The Supplier agrees to provide the spares and repairs service pursuant to paragraph 2.9 of the Specification for:
- (a) the rates and prices set out in the Spares and Repairs Catalogue (as may be increased for indexation in accordance with clause 3.6); or
 - (b) where the Client requires the repair, overhaul or supply of Spares, Materials and Equipment in connection with the DCSCSW Neasden Depot Upgrade and that service or supply is not priced, or is not referred to, in the Spares and Repairs Catalogue, at competitive, open-market rates and prices,

in each case if requested by the Client in accordance with clause 4.2.

4.2 Whenever the Client requires the provision of the spares and repairs service from the Spares and Repairs Catalogue, it shall issue a written requisition for such spares and repairs service to the Supplier in the form of the purchase order set out in Schedule 3.

4.3 The terms of this Agreement shall apply to any requisition for an item or services from the Spares and Repairs Catalogue. The Supplier shall be entitled to payment for the spares and repairs service properly supplied in accordance with this Agreement at the rates and prices referred to in clause 4.1 provided that the Supplier is in receipt of a written requisition in the form referred to in clause 4.2 signed by the Client Representative or his delegate. The Client shall not be obliged to request any spares and repairs service or any Optional Services.

4.4 The Supplier shall, to the extent necessary, revise the Spares and Repairs Catalogue annually to take into account:

- (a) changes in technology, supply chain and obsolescence; and
- (b) changes in the relevant indices in accordance with clause 3.6,

and shall resubmit it to the Client Representative for acceptance.

4.5 Within three (3) weeks of the Supplier submitting a revised Spares and Repairs Catalogue for acceptance, the Client Representative shall either accept the Spares and Repairs Catalogue or shall notify the Supplier of his reasons for not accepting the document. The reasons which permit the Client Representative to refuse to accept the Spares and Repairs Catalogue are:

- (a) it does not comply with the Specification or this Agreement;
- (b) the prices for the spares and repairs service have changed from those shown in the immediately preceding version of the Spares and Repairs Catalogue (other than in accordance with clause 3.6 above); and/or
- (c) the change in the Spares and Repairs Catalogue has been caused by a failure by the Supplier to comply with this Agreement.

4.6 If the Client Representative does not accept the Spares and Repairs Catalogue he shall confirm why the Spares and Repairs Catalogue is not accepted and shall provide reasons. The Supplier shall then further revise the Spares and Repairs Catalogue to incorporate the Client Representative's comments and resubmit the revised Spares and Repairs Catalogue for acceptance by the Client Representative in accordance with clause 4.4. Once the Spares and Repairs Catalogue is accepted it will supersede the previous accepted Spares and Repairs

Catalogue and shall become the accepted Spares and Repairs Catalogue for the purposes of clause 4.1 and this Agreement.

5. SUPPORTED SYSTEMS

5.1 The Supported Systems are:

- (a) the DCSCSW Neasden Depot Upgrade;
- (b) any Modification; and
- (c) any other software which the Supplier and Client agree should be Supported Systems for the purposes of this Agreement;

6. THE SERVICES

6.1 The Supplier shall supply the following Services:

- (a) the Standard Support Service; and
- (b) such of the Optional Services as are included from time to time within an Order for Optional Services issued to the Supplier and the Client under clause 6A,

as may be adjusted in each case in accordance with clause 30 (Variations).

6.2 In relation to the Standard Support Service:

- (a) the Standard Support Service shall be provided in accordance with this Agreement and the Specification and shall comprise:
 - (i) spares and repairs service as set out in the Specification and priced in the Spares and Repairs Catalogue;
 - (ii) not used;
 - (iii) not used;
 - (iv) obsolescence service as set out in the Specification;
 - (v) not used; and
 - (vi) technical support as set out in the Specification ,

all as more particularly defined in the Specification.

6.3 If the Supplier requires Access to the LUL Network to perform any of the Services, it notifies the Client Representative at the earliest possible opportunity and complies with the Access Procedure.

6A. ORDERS FOR OPTIONAL SERVICES

6A.1 The Client may from time to time at its sole discretion require the Supplier to supply Optional Services of the type set out in Schedule 4 and at the rates set out in Schedule 4. Provided that the Client gives the periods of notice specified in the Specification the Supplier shall use its best endeavours to provide the requested services promptly or at the times requested by the Client.

6A.2 Where the Client requires Optional Services it shall from time to time issue Orders in the form contained in Schedule 5. Each Order for Optional Services shall be made under, and shall incorporate, the terms of this Agreement. No amount shall be payable in respect of Optional Services unless expressly instructed in writing in the form set out in Schedule 5.

6B. COMPUTER VIRUSES, ETC

6B.1 The Supplier acknowledges that there is a risk to the Client's business as a result of damage caused by such hazards as Computer Viruses, dongles, trojan horses or similar programs or parts of programs and hacking generally. The Supplier undertakes to use its best endeavours in performing the Services to minimise the risk to the Client as a consequence of the actions of such hazards.

6B.2 Without prejudice to Supplier's obligations under clause 6B.1 and the other warranties in this Agreement, the Supplier warrants, represents and undertakes to the Client that:

- (a) at the time of installation, any Spares, Materials and Equipment and any software provided by the Supplier in the performance of the Services will be free from Computer Viruses; and
- (b) it will not introduce any Computer Viruses into the Supported Systems or any other software owned or operated by the Client.

7. DISRUPTION

7.1 The Supplier shall provide the Standard Support Services under this Agreement.

7.2 The Supplier shall use all reasonable endeavours to provide the Services so as to cause the minimum disruption to the Client's business operations. Where there is a substantial failure of the DCSCSW Neasden Depot Upgrade that significantly disrupts, or otherwise significantly adversely affects, the delivery of the Client's business operations or the LUL Network, the Client may request support from the Supplier. As soon as reasonably practicable following such a request, the Supplier shall use all reasonable endeavours to apply available internal labour, spares, and materials as may be reasonably necessary to restore the DCSCSW Neasden Depot Upgrade to operation. If and to the extent that the failure of the DCSCSW Neasden Depot Upgrade was caused or contributed to by the Client's breach of this Agreement or the DCSCSW Neasden Depot Upgrade Contract or its negligence then the Supplier shall be entitled to recover from the Client its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) of complying with this clause, to the extent that the costs do not relate to items for which the Supplier is already entitled to payment under this Agreement.

8. **WARRANTIES, INDEMNITIES AND UNDERTAKINGS**

8.1 The Supplier acknowledges that the Client has entered into this Agreement in reliance on the Supplier's expertise in supplying services fit to meet the Client's requirements.

8.2 For the purposes of construing the warranties in clause 8.3, references to Spares, Materials and Equipment or the Services will include any part of the Spares, Materials and Equipment or Services. Each warranty in this Agreement will be construed as a separate warranty and will not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other term of the Agreement.

8.3 Without prejudice to any other warranties expressed elsewhere in this Agreement or any contract or implied by law, the Supplier warrants, represents and undertakes to the Client that:

- (a) the Supplier will provide the Services:
 - (i) in a good and workmanlike manner in accordance with this Agreement;
 - (ii) retaining sufficient skilled resources, spares and materials to ensure that the Services can be delivered without disrupting or delaying the Client;
 - (iii) with the skill, care and diligence to be expected of appropriately qualified and expert professionals with experience in carrying out work of a similar type, nature and complexity to the Services; and

- (iv) in accordance with the Spares and Repairs Catalogue, the Technical Support and Spares Plan and any method statements accepted from time to time by the Client Representative;
 - (v) in such a way as not to cause any fault or malfunction in the Supported Systems (or any related software or system of the Client);
 - (vi) in such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner); and
 - (vii) so that the Supported Systems are capable of being used, operated and maintained in a safe, economic and efficient manner.
- (b) Spares, Materials and Equipment shall conform in all respects with any sample approved by the Client and in the absence of a sample, all the Spares, Materials and Equipment supplied shall be within the normal limits of industrial quality;
- (c) the Services and the Spares, Materials and Equipment supplied under this Agreement shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification, the Standards and with any particulars specified in this Agreement and the DCSCSW Neasden Depot Upgrade Contract;
- (d) the Services and the Spares, Materials and Equipment shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force, and shall conform fully to the Standards and to all relevant applicable British (BS) and International (ISO) standards;
- (e) all obligations of the Supplier pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to Best Industry Practice, in accordance with its own established internal procedures and in accordance with the Specification and Standards (without limiting the generality of this clause);
- (f) the Services and the Spares, Materials and Equipment will be provided using materials and equipment that are of sound and satisfactory design and quality and in accordance with the Specification and the Standards;
- (g) the Services will be provided in a safe manner and free from any unreasonable risk to the health and wellbeing of persons using, operating or subsequently maintaining the

Spares, Materials and Equipment and for this purpose 'unreasonable risk' shall include a risk which the Supplier could reasonably have provided against;

- (h) the Services and Spares, Materials and Equipment will in all respects be fit and sufficient for all the purposes for which they are ordinarily used or for which they are intended (awareness of which purposes the Supplier acknowledges) and for any other purpose stated in this Agreement and in particular but without limitation will be capable of operation as part of the DCSCSW Neasden Depot Upgrade and any other system referred to in the Specification;
- (i) the Spares, Materials and Equipment will have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment;
- (j) not used;
- (k) the possession or use of the Deliverables will not infringe the Intellectual Property Rights of any third party.

With respect to clause 8.3 (c), (d), (h) and (i), the Client shall, and shall ensure that other members of the TfL Group, store, operate and maintain the Spares, Materials and Equipment in accordance with the operation and maintenance manuals issued to the Client by the Supplier as amended from time to time.

- 8.4 The provisions of this clause 8 are without prejudice to the Client's other rights under this Agreement or any contract.
- 8.5 If the Supplier receives written notice from the Client of any breach by the Supplier or an Associated Company of the representation and warranties contained in clause 8.3, the Supplier shall, at its own expense, remedy that breach within 30 days following receipt of such notice, failing which the Client may pursue such rights and remedies as are available to it.
- 8.6 The Supplier shall indemnify the Client, its employees and agents and LUL against all liabilities, costs, expenses, damages and losses (including any interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred in respect of:
 - (a) death or injury to any person whatsoever; and
 - (b) loss or damage to property (including property belonging to the Client or LUL or for which they are responsible including the LUL Network),

arising out of or in connection with the Supplier's breach of this Agreement or any negligent act or omission of the Supplier, its officers, employees, contractors or agents.

- 8.7 The Supplier's indemnity under clause 8.6 is without prejudice to Client's other rights and remedies under or in connection with this Agreement (including the right to damages at common law) and remains in force for the duration of this Agreement and continues to survive expiry or termination along with any other clauses or schedules of the Agreement necessary to give effect to them.
- 8.8 The Supplier is not responsible for, and does not indemnify the Client, its employees and agents and LUL and shall have no liability under any other provision of this Agreement for Losses to the extent that they are caused or contributed to by a breach of this Agreement by the Client or any negligence of the Client or LUL.
- 8.9 For the avoidance of doubt, the Supplier shall not be regarded as the responsibility of the Client (as employer) in the DCSCSW Neasden Depot Upgrade Contract or as agent for the Client when carrying out its role pursuant to this Agreement.

9. **TERMINATION EVENTS**

- 9.1 Subject to clause 59 (Survival), this Agreement shall continue until:
- (a) the Expiry Date; or
 - (b) earlier termination.
- 9.2 Not used.
- 9.3 The Client may at any time give the Supplier 90 days' written notice terminating this Agreement.
- 9.4 The Client may terminate this Agreement forthwith if the Supplier has defaulted in any of the following ways and not put the default right within 30 days of being notified in writing of that default by the Client Representative:
- (a) it is in material breach of any of its obligations under this Agreement, where "material breach" means a breach which materially adversely affects the benefit the Client receives from the provision of the Services, or otherwise materially adversely affects the Client;

- (b) it has appointed a subcontractor for the whole or a substantial part of the provision of the Services without the consent of the Client Representative in accordance with clause 20.2;
- (c) it is in persistent breach of its obligation to perform the Services or any part of them, where "persistent breach" means the breach of the same particular obligation on three separate notified occurrences;
- (d) without reasonable excuse it has failed to commence the provision of the Services or any part of the Services in accordance with this Agreement or has suspended the provision of the Services or any part of the Services;
- (e) it fails to rectify a Defect within the times referred to in clause 28.4 and the Client has not within 30 days of notification of the Defect exercised its option to correct (or employ Other(s) to correct) the Defect under clause 28.3(a).

9.5 The Client may terminate this Agreement on giving seven days' written notice if the Supplier has defaulted in one of the following ways:

- (a) it has substantially breached a health or safety regulation or requirement of this Agreement, committed a Safety Breach or Prohibited Act;
- (b) it has abandoned this Agreement;
- (c) it has assigned the benefit of this Agreement or any part of this Agreement without the written consent of the Client first having been obtained;
- (d) the Supplier's total aggregate liability referred to in clause 35.3 (but excluding the matters referred to in clauses 35.4 and 35.5) has reached or exceeded an amount equivalent to the limitation of liability in that clause;
- (e) the Supplier has breached clause 17 (Confidentiality);
- (f) there has been a conflict of interest which has not been resolved to the Client's satisfaction in accordance with the provisions of clause 53; or
- (g) the Supplier has persistently breached clause 55.2 and/or 55.3 (Criminal Record Declarations), entitling the Client to terminate the Agreement in whole or in part with immediate effect pursuant to clause 55.6, where "persistent breach" shall have the same meaning as in clause 9.4(c) of this Agreement.

9.6 If the Client Representative has notified the Client that a Safety Breach or Prohibited Act has been committed by an employee of the Supplier acting independently of the Supplier, the Client may either require the Supplier to remove the employee from performing Services under this Agreement within one week of the date of receipt of written notice to that effect or may terminate this Agreement on giving seven (7) days' written notice.

9.7 **Declaration of Ineffectiveness**

- (a) Without prejudice to the Client's right to terminate this Agreement under clause 9.3, 9.4 or at common law, the Client may terminate this Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 9.7. In the event that any court makes a Declaration of Ineffectiveness, the Client shall notify the Client Representative and the Supplier in writing.
- (b) The parties agree that the provisions of this clause 9.7 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 9.4 and this clause 9.7 or the Cessation Plan, the provisions of this clause 9.7 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 Client shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the provision of the Services or (at the Client's request) a transition of the provision of the Services to the Client or such other entity as the Client may specify; and
 - (ii) minimal disruption or inconvenience to the Client or to public passenger transport services or facilities, in accordance with the provisions of this clause 9.7 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Client of the Cessation Plan, the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Client shall pay the Supplier's reasonable costs in assisting the Client in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based

on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by the Client. Provided that the Client 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 this Agreement in accordance with this clause 9.7.

9.8 Either Party may terminate if:

- (a) a Force Majeure Event has substantially affected the Services for 26 consecutive weeks and such Party has given not less than 28 days' notice in writing to the other Party; or
- (b) the Parties have, or either of them has, been released under the law from further performance of the whole of this Agreement.

9.9 Either Party may terminate if any of the following or its equivalent occurs in respect of the other Party (including its equivalent in any jurisdiction to which the other Party is subject) (“**Insolvency Events**”):

- (a) a petition is presented, a meeting convened or an effective resolution passed (otherwise than with the other Party’s prior written consent as part of a solvent reconstruction or amalgamation) for its winding-up;
- (b) the Party has a provisional liquidator appointed to it;
- (c) a distress, execution or other legal process is levied against its assets and not discharged or paid out in full within three days;
- (d) an application is made for an administration order or there is a purported appointment of, or the filing at court or issue of any notice of intention to appoint, an administrator in relation to it;
- (e) possession is taken of, or a receiver, sequestrator or similar officer is appointed in respect of the whole or any part of its assets or undertaking;
- (f) the Party's directors make a proposal that it enter into a voluntary arrangement (within the meaning of section 1 of the Insolvency Act 1986) or take any steps to obtain a moratorium under section 1A of that Act or it takes or is subject to any proceedings under the law for the readjustment, rescheduling or deferment of all or any of its debts, or proposes or enters into any general assignment or composition with or for the benefit of its creditors;

- (g) the Party suspends or threatens to suspend payment of its debts as they fall due or is unable to pay its debts, whether within the meaning of section 123 of the Insolvency Act 1986 or otherwise; or
- (h) the Party ceases or threatens to cease to carry on all or a substantial part of its business or operations or sells, transfers or otherwise disposes of the whole or a substantial part of its undertaking or assets either by a single transaction or by a number of transactions.

9.10 This Agreement may not be terminated, rescinded or treated as repudiated other than in accordance with the express provisions of this clause 9.

10. **PROCEDURE ON TERMINATION AND ITS CONSEQUENCES**

10.1 If either Party wishes to terminate, it shall notify the other Party giving details of its reason for terminating.

10.2 On termination or expiry of this Agreement for any reason, the Supplier shall:

- (a) promptly refund such portion of the Support Payment as relates to the period after termination on a pro rata basis;
- (b) subject to any applicable legal or statutory requirements, return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the Client containing, reflecting, incorporating or based on Confidential Information belonging to the Client. If required by the Client, it shall provide written evidence (in the form of a letter signed by its Company Director) no later than six (6) weeks after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 17);
- (c) return all of the Client's equipment and materials;
- (d) assist the Client and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the Services to the Client or the replacement supplier. If termination is by the Client in accordance with clause 9.4, 9.5, 9.6 or 9.9, such co-operation and assistance shall be provided at no cost to the Client. In all other cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;

10.2A The Client shall not in any circumstances be liable to the Supplier for:

- (a) redundancy payments,
- (b) staff termination costs or
- (c) loss of profit (whether direct or indirect) arising from termination or expiry of this Agreement (including in circumstances where the Client terminates for convenience and/or to engage another supplier to perform the Services).

10.3 Termination or expiry of this Agreement shall be without prejudice to any causes of action accrued to the date of such termination and any other accrued rights of the Parties at that date. A final payment shall be made as soon as possible after termination.

10.4 The amount due on termination shall be the amount due assessed as for normal payments in accordance with clause 3 prior to the date of termination (including any deductions or additional payments as may be due in accordance with this Agreement) and:

- (a) in the case of termination by the Client in accordance with clause 9.3 and 9.7:
 - (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
 - (ii) other costs reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement;
 - (iii) the cost of removal of the Supplier's Equipment; and
 - (iv) in respect of each of
 - (A) log analysis events; and
 - (B) technical support hours

requested by the Client and properly provided by the Supplier in the year of termination, a sum calculated by multiplying the excess of the Actual Services Received to Date of Termination over the Budgeted Services to Date of Termination by the relevant rates for such services set out in Schedule 4, such rates to be prorated per event or hour (as the case may be):

where, for the purpose of this clause 10.4(a)(iv) only:

- "Actual Services Received to Date of Termination" means the level of log analysis events or technical support hours (as the case may be) actually requested by the Client as Standard Support Services and properly provided by the Supplier in the Year of Termination in accordance with this Agreement up to the date of termination;
 - "Year of Termination" means the Financial Year in which the Agreement was terminated.
- (b) in the case of termination by the Client for the default of the Supplier in accordance with clauses 9.4, 9.5, 9.6, 9.7A and 9.9, less the Client Termination Losses, where "Client Termination Losses" shall mean the aggregate of:
- (i) the losses reasonably and properly incurred by the Client arising out of the termination including where applicable and where the Supplier has been given reasonable opportunity but refused or failed to remove it within a reasonable time the cost of removing the Supplier's Equipment from the Site; and
 - (ii) the additional cost to the Client of performing or procuring the performance of the Services;
- (c) in the case of termination by the Supplier for the default of the Client in accordance with clause 9.9:
- (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
 - (ii) other cost reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement; and
 - (iii) the cost of removal of the Supplier's Equipment.
- (d) in the case of termination by the Client or the Supplier due to the occurrence of a Force Majeure Event in accordance with clause 9.8:

- (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
- (ii) other cost reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement; and
- (iii) the cost of removal of the Supplier's Equipment.

10.4A If the amount of the Client Termination Losses pursuant to clause 10.4(b) exceeds the amount which would otherwise have been payable to the Supplier, the Supplier shall pay the excess to the Client on demand and the amount of the excess shall be deemed to be a debt due from the Supplier to the Client. For the avoidance of doubt the Client Termination Losses shall count towards and be subject to the limit of liability in clause 35.3.

10.5 The Supplier shall not be entitled to receive payments or compensation other than expressly described in this clause 10 in the event and as a consequence of termination of this Agreement under clause 9.

10.6 The Client shall not be entitled to receive payments or compensation other than expressly described in this clause 10 in the event and as a consequence of termination of this Agreement under clause 9.

11. CORRUPTION, GIFTS AND PAYMENTS OF COMMISSION

11.1 The Supplier does not, and procures that its Associated Company, Subcontractors and agents do not, enter into any business arrangement with employees, officers or agents of the Client other than as a representative of the Client, without the Client Representative's prior written approval.

11.2 The Supplier does not, and shall use reasonable endeavours to procure that its Subcontractors, Associated Company and agents do not, commit any Prohibited Act or cause the Client or the Client Representative to commit any equivalent act.

11.3 The Client has the right to audit any and all records necessary to confirm compliance with sub-clauses 11.1 and 11.2 at any time during the performance of this Agreement and during the 3 year period following the Expiry Date or termination, whichever is the later. In addition the Client also has the right to appoint an independent auditor to audit any and all such records necessary to confirm compliance with clause 11.1 and 11.2 at any time during performance of

this Agreement and during the 6 year period following completion of such performance. If the audit shows that the Supplier, its agents or Subcontractors are in breach of clause 11.1 or 11.2 then the Client shall be entitled to recover its reasonable costs in employing the independent auditor.

- 11.4 Breach of clause 11.2 shall entitle the Client to terminate this Agreement pursuant to clause 9.5. The Supplier acknowledges that if a Prohibited Act has been committed by an employee of the Supplier acting independently of the Supplier, the Client may either require the Supplier to terminate the employee's involvement in the provision of Services under this Agreement or may terminate this Agreement, pursuant to clauses 9 and 10.

12. **DOCUMENTATION**

If requested by the Client Representative, the Supplier shall update and reissue the Documentation and shall issue new Documentation to the extent reasonably necessary. Save where the Documentation requires updating due to an error, act, omission or default by the Supplier, the Client shall pay the Supplier's reasonable costs of updating and reissuing the Documentation. The Supplier shall provide the Client with 1 copy of a set of any revisions to the Documentation and any new Documentation containing sufficient information to enable proper use of Spares, Materials and Equipment and all the facilities and functions set out in the Specification. If requested by the Client Representative, the Supplier shall issue further copies of the Documentation and the Client shall pay the Supplier's reasonable costs for the issue of such copies.

13. **DATA PROTECTION**

- 13.1 Without prejudice to clause 19, the Supplier at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Client from time to time in relation to the processing of data and does not by any act or fault cause the Client to be in breach of these requirements.

13.2 The Supplier:

- (a) takes appropriate technical and organisational security measures satisfactory to the Client against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act 1998) and against accidental loss, destruction of, or damage to such Personal Data,
- (b) provides the Client with such information as it may reasonably require to satisfy itself of compliance by the Supplier with the requirements of this clause 13, and

- (c) cooperates with the Client in complying with requests or enquiries made pursuant to the Data Protection Act.

14. **NOT USED**

15. **AGENCY, PARTNERSHIP**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

16. **AMENDMENTS**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by the Client or the Client Representative on its behalf and expressed to be supplemental to this Agreement.

17. **CONFIDENTIALITY**

- 17.1 Each Party (the “Receiving Party”) undertakes to keep confidential, and not to disclose to any third party without the other Party (the “Disclosing Party”)’s prior written consent any and all Confidential Information disclosed or obtained directly or indirectly, in connection with this Agreement. In doing so, each Party shall use at least the same degree of care as it uses with its own confidential information, but in any case no less than reasonable care.

The Parties shall not disclose the Confidential Information or any part thereof to any other person, corporation or other third party other than to those employees having a "need to know", provided that the Confidential Information is used solely in connection with the Agreement and that such employees are subject to confidentiality obligations at least as stringent as those in the Agreement.

This clause 17.1 shall not apply to any information which:

- (a) is already in the public domain at the time of its disclosure, or thereafter becomes part of the public domain other than in breach of this clause 17.1;
- (b) is required by any applicable law, regulation of a recognised stock exchange, the arbiter of the public private partnership between LUL and the Client pursuant to the Greater London Authority Act 1999, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body;

- (c) was previously known by the Receiving Party without restriction prior to receipt from the Disclosing Party;
- (d) any information disclosed by the Client for the purpose of performing its obligations under or in connection with this Agreement and/or the DCSCSW Neasden Depot Upgrade Contract;
- (e) any Contract Information (as defined in clause 52.3) disclosed by the Client pursuant to clause 52 (Data Transparency);
- (f) any information required to be disclosed by the Client pursuant to clause 54 (Freedom of Information);
- (g) is subsequently received from a third party without restriction on its use and disclosure and without breach of these or other confidentiality undertakings; or
- (h) is independently developed by the Receiving Party, provided that the Receiving Party can demonstrate that such development was carried out by persons without access to information.

Notwithstanding this clause 17.1, the Parties agree that the Client may disclose on a “need to know” basis,

- (i) to LUL, subcontractors to LUL, any other member of the TfL Group, Her Majesty’s Railway Inspectorate and the Client’s financiers, bankers and shareholders from time to time, this Agreement and Confidential Information relating to it; and
- (ii) to any member of the TfL Group or their subcontractors such Confidential Information on technical and operational matters relating to this Agreement as is reasonably required by the Client,

and the Supplier consents to such disclosure provided that such disclosure is in relation to this Agreement and that the recipients of the Confidential Information are subject to confidentiality restrictions similar to those contained in this Agreement.

17.1A On the request of the Disclosing Party, the Receiving Party shall, so far as reasonably possible:

- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Disclosing Party any Confidential Information in its possession or control supplied by the Disclosing Party to the Receiving Party;

- (b) return to the Disclosing Party 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, tax purposes or is held in any archived computer system in accordance with the Receiving Party's security or disaster recovery procedures.
- 17.2 Each Party ensures that all its Subcontractors, suppliers, employees, agents and other third parties to whom Confidential Information is disclosed under the terms of this Agreement (including any Associated Company of the Supplier) agree to terms of confidentiality no less stringent than the terms in clauses 17.1 and 17.1A and do not use or divulge any such information obtained, whether directly or indirectly, in connection with this Agreement or the Project, except for the purposes of this Agreement or as may be required by law.
- 17.3 17.2A The Receiving Party shall notify the Disclosing Party promptly if the Receiving Party becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent of the Receiving Party, and shall give the Disclosing Party all assistance the Disclosing Party reasonably requires in connection with any proceedings the Disclosing Party brings, or other steps the Disclosing Party takes, against that subcontractor, supplier, employee or agent for such breach of confidence. The Supplier does not, either alone or jointly with others, publish any material relating to the Client, LUL or any other member of the TfL Group, this Agreement or the Project without the prior written consent of the Client.
- 17.4 In the event that consent is granted by the Client in accordance with clause 17.3 all material published to the local community should be branded as LUL material.
- 17.5 The Supplier does not, either alone or jointly with Others, make any press, television, radio or other media announcement in connection with this Agreement or the Project, or any dispute arising under or in connection with this Agreement.
18. **ASSIGNMENT**
- 18.1 The Client may assign or transfer this Agreement or all or any of its rights and/or all of its liabilities under this Agreement to any member within the TfL Group at any time without the consent of the Supplier but subject to having provided the Supplier with at least fourteen (14) days' prior written notice containing all relevant details of such assignment or transfer of its rights and/or liabilities. If the Client requires the transfer of its liabilities to another member of the TfL Group, each Party shall enter into a novation agreement in the form set out in Schedule 12 to achieve such a transfer. The Client may not assign or transfer this Agreement or all or any of its rights and liabilities under this Agreement to any other person without the

prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

18.2 The Supplier shall not assign or transfer this Agreement or any of its rights and/or liabilities under this Agreement to any Associated Company without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed). The Supplier shall not assign or transfer this Agreement or any of its rights and/or liabilities under this Agreement to any other person without the prior written consent of the Client.

19. **ACCOUNTS AND RECORDS**

19.1 The Supplier shall maintain a true and correct set of the following records to the extent they relate to all aspects of its performance of this Agreement, in a form and to the extent reasonably appropriate and proportionate to the nature and value of the Services:

- (a) all personnel involved with providing the Services including names, training records and National Insurance numbers,
- (b) all subcontracts (including proposals of successful and unsuccessful bidders, bids, rebids, etc), manufacturer's specifications and details, purchase orders and data relating to procurement of the Services or any part of the Services,
- (c) all necessary information for the evaluation of claims or Variations,
- (d) Not used,
- (e) accounting records (in hard copy as well as computer readable data),
- (f) general ledger entries detailing cash and trade discounts and rebates,
- (g) commitments (agreements and leases) greater than £20,000,
- (h) detailed inspection records,
- (i) in respect of any Spares, Materials and Equipment assessed on the basis of cost incurred by the Supplier, documents prepared in relation to the invitation to tender and subsequent tendering process and the contract extension process prior to the Restatement Effective Date relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Client, and

- (j) all such other information specified in this Agreement but excluding any financial or commercial audits carried out by a third party on the instruction of the Supplier or an Associated Company.
- 19.2 The Supplier shall retain all records referred to in clause 19.1 for the duration of this Agreement and for a period of not less than six (6) years from the Expiry Date in an orderly and logical fashion.
- 19.3 The Client and its authorised representatives and any party legally authorised to inspect any part of the LUL Network, may in good faith inspect and audit any of the records referred to in clause 19.1 at any time during the period referred to in clause 19.2.
- 19.4 The Supplier shall also permit the Client and LUL and its authorised representatives the right in good faith to audit or check any claims brought by or defended by the Supplier, its Subcontractors and subcontractors of its Subcontractors.
- 19.5 The Supplier shall, upon receipt of reasonable prior notice from the Client, promptly provide the Client and/or LUL with 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 during normal working hours to any premises used in performance of this Agreement, whether the Supplier's own premises or otherwise;
 - (b) granting or procuring the grant of access during normal working hours 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 this Agreement, wherever situated and whether the Supplier's own equipment or otherwise;
 - (c) providing a reasonable number of copies of any or all of the information, records and documents listed in clause 19.1 reasonably required by the Company's and/or LUL's auditor and/or granting copying facilities to the Company's and/or LUL's auditor for the purposes of making such copies; and
 - (d) complying with the Company's and/or LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract,

in each case at the Client's cost within thirty (30) days of the Client's request for the same.

- 19.6 The Supplier ensures that its Subcontractors and Associated Companies comply with the requirements in clauses 19.1, 19.2 and 19.3 and uses its best endeavours to ensure that the subcontractors of its Subcontractors and Associated Companies comply with this requirement.
- 19.7 Nothing in this clause 19 shall require the Supplier or any Associated Company, or any Subcontractor or subcontractor of any tier of any of them, to disclose or provide, nor entitle the Client or any other person to inspect or audit, any document, record or any other information that is the subject of legal professional privilege, joint privilege or common interest privilege.
- 19.8 The Client shall treat any documents, records or other information provided, made available or otherwise received pursuant to this clause 19 as Confidential Information in accordance with clause 17.

20. **SUBCONTRACTING**

- 20.1 If the Supplier subcontracts work, it is responsible for carrying out the Services as if it had not subcontracted. This Agreement applies as if a Subcontractor's employees and equipment were the Supplier's.
- 20.2 The Supplier shall not sub-let the whole of the Services. The Supplier shall not sub-let any part of the Services (including to any Associated Company) without the prior written consent of the Client Representative, such consent not to be withheld unreasonably.
- 20.3 The Supplier shall provide the Client Representative with full particulars of the parts of the Services it proposes to sub-let and the proposed subcontractors, so that the Client Representative may investigate the capability, capacity and suitability of the proposed subcontractors. Such investigation and any subsequent consent shall not affect the Supplier's liability to provide the Services in accordance with this Agreement. Particulars to be provided by the Supplier shall include the following:
- (a) the proposed sub-contract terms and conditions,
 - (b) where applicable, specifications, schedules, bills of quantities, drawings, and any other documents which it is proposed will form the sub-contract,
 - (c) details of the proposed subcontractor's relevant experience, resources, head office location, technical ability, financial standing and corporate structure, and
 - (d) a list of previous and existing contracts which the proposed subcontractor has or has had with the Client or any member of the TfL Group.

21. **DEEDS OF WARRANTY**

21.1 Not used.

21.2 Not used.

21.3 Not used

21.4 Not used

21.5 The Supplier shall transfer to the Client the benefit of any product guarantees which it obtains from any Subcontractor or sub-subcontractor or supplier whilst carrying out the Services.

22. **NOT USED**

23. **SUPPORT STAFF**

23.1 The Supplier ensures that at all times a competent and experienced person is appointed to act as the Support Manager.

23.2 The Support Manager acts on behalf of the Supplier under this Agreement and is responsible for coordination of all matters relating to the Services and shall carry out the duties and exercise the authority and powers of the Supplier as specified in or implied from this Agreement. The Support Manager may, after notifying the Client and the Client Representative, delegate any of his actions and may cancel any delegation. A reference to an action of the Support Manager in this Agreement includes an action by his delegate.

23.3 All communications, documentation and materials relating to this Agreement shall be sent as appropriate by the Support Manager to the Client Representative.

23.4 The Support Manager shall not be replaced (except in the event of sickness, incapacity or resignation) without the prior written consent of the Client (which is not to be unreasonably withheld or delayed).

23.5 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this Agreement. The Support Staff shall be suitably trained and experienced in technical support and supply of Spares, Materials and Equipment in relation to the Supported Systems. They shall be familiar with the working of the Supported Systems at the Client's premises and on the LUL Network and in performing the Services they shall conform to the Standards, QUENSH, Best Industry Practice and other standards of behaviour and ability to be reasonably expected of such persons. The Supplier shall take all reasonable steps to maintain continuity in relation to the Support Staff team.

- 23.6 In the absence of the Support Manager or of any other member of the Support Staff for any reason (including the replacement of such person with the consent, or at the request, of the Client), the Supplier shall supply a replacement person who:
- (a) is appropriately trained and competent to fulfil the role required; and
 - (b) has undergone a suitable period of familiarisation with the Services (at no cost to the Client) to enable him to perform the functions of the person whom he is replacing.
- 23.7 Not used.
- 23.8 The Supplier shall provide the Client with an updated Organisation Chart as part of the Technical Support and Spares Plan to be submitted following the Restatement Effective Date, and subsequently if any change is made to it. Changes to the Organisation Chart shall only be made if any member of the Support Staff retires, is dismissed by the Supplier, dies or voluntarily leaves the employment of the Supplier (save for where such person transfers to another division of the Supplier or an Associated Company) or can no longer work due to illness/disability.
- 23.9 Not used.
- 23.10 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Manager and the Support Staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Client.

23A CLIENT REPRESENTATIVE

The Client authorises the Client Representative to act as its representative for all purposes of this agreement and the Supplier shall deal with the Client Representative (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Client may replace the Client Representative at any time by notice to the Supplier. The Client Representative may delegate any one or more of its functions pursuant to this Agreement to any person by notice to the Supplier and may at any time revoke any such delegation. The Client Representative is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

24. QUALITY PLANS AND SAFETY

- 24.1 The Supplier, and such of its Subcontractors and Suppliers as the Client shall consider appropriate, shall submit to the Client for approval quality plans in respect to the provision of the Services in accordance with QUENSH. Such approval does not affect the Supplier's

liability to provide the Services in accordance with this Agreement. The Supplier shall also maintain an effective and economical quality control programme in accordance with the requirements set out in this Agreement and/or as notified from time to time by the Client.

- 24.2 The Supplier shall provide the Services in accordance with:
- (a) Not used;
 - (b) the most recent issue of QUENSH at the time the Services are undertaken (including all health and safety requirements contained therein);
 - (c) all applicable health and safety law; and
 - (d) any reasonable requirements notified to the Supplier from time to time by the Client in accordance with this Agreement.
- 24.3 The Designated Project Manager for the purposes of QUENSH is the individual named in Schedule 1 (Agreement Particulars) or any replacement notified to the Supplier from time to time by the Client. The Designated Project Manager shall delegate authority in accordance with the relevant QUENSH requirements to act on its behalf generally in respect of this Agreement to the Duty Operations Engineer. This delegation shall continue in force unless and until the Designated Project Manager notifies the Supplier in writing that it has ended in accordance with the relevant QUENSH requirements.
- 24.4 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to this Agreement as if the term “LU Premises” means the Site and references to “LU” are references to LUL and the Client.
- 24.5 The Client 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 this Agreement requires the Supplier to carry out where the Supplier has failed to do so. The reasonable cost to the Client of carrying out the testing shall be paid by the Supplier and is not a Variation for the purposes of clause 30.
- 24.6 The Supplier shall not cause the Client to be in breach of any applicable safety requirements, standards or legislation and shall advise the Client if it is aware of the Client being so in breach.
- 24.7 Throughout the duration of this Agreement the Supplier shall take full responsibility and have full regard for the safety of all of the Supplier's persons or other persons to the extent that they are present in the vicinity of the Supplier's operations on the Site and shall keep the Site in an orderly state conducive to the avoidance of danger and hazards to persons and property.

24.8 The Supplier shall be responsible for providing, maintaining and updating all necessary documentation to enable the Client to comply with its obligations under any applicable health and safety law in relation to the Services.

24.9 The Supplier shall co-operate with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities.

25. TECHNICAL SUPPORT AND SPARES PLAN AND METHOD STATEMENTS

25.1 The Supplier shall submit to the Client Representative within 28 days of the Restatement Effective Date a Technical Support and Spares Plan, which shall detail all matters dealt with in this Agreement and as set out further in this clause, updated and revised in accordance with clauses 25.3 and 25.4 to give a high degree of confidence that by complying with such plan the Supplier will achieve, deliver and comply with the Specification and its obligations under this Agreement until the Expiry Date.

25.2 The Technical Support and Spares Plan shall include but not be limited to the following:

- (a) Not used;
- (b) a quality plan that includes references to:
 - (i) specific processes to ensure competence of staff with training and certification details; and
 - (ii) procedures to assure competency of supply chain and details of arrangements;
 - (iii) a process by which the Supplier will notify the Client and keep the Client informed about technical changes to Spares, Materials and Equipment which affect the revision status of any component part or parts of the Spares, Materials and Equipment;
- (c) a current Organisation Chart;
- (d) Not used;
- (e) Not used;
- (f) details of logistics and transportation to and from the Site;
- (g) details of quality control and goods inspection systems to check form, fit and function against order(s) placed;

- (h) Not used;
- (i) Not used;
- (j) Not used;
- (k) Not used;
- (l) Not used;
- (m) the dates and time on which the Supplier will need the following in order to provide the Services:
 - (i) information provided by the Client or Others,
 - (ii) acceptances, approvals, licences and consents,
 - (iii) access to parts of the Site, to be booked in accordance with the Access Procedure and clause 6.3;
- (n) processes (where the same are not already covered in the Specification) for:
 - (i) the return and repair of defective Spares, Materials and Equipment,
 - (ii) the order and supply of on-site technical support,
 - (iii) the order and supply of DCSCSW Neasden Depot Upgrade log analysis,
 - (iv) the order and supply of telephone technical support,
 - (v) the order and supply of Spares, Materials and Equipment,
 - (vi) quality assurance of Spares, Materials and Equipment supplied, and
 - (vii) informing the Client that any Spares, Materials and Equipment are beyond economic repair,

provided always that the Supplier shall ensure that any processes and other information that it includes in the Technical Support and Spares Plan pursuant to this clause 25.2 are consistent with the requirements of the Specification. In the event of any conflict between the Technical Support and Spares Plan and the Specification, the terms of the Specification shall take precedence to the extent of such conflict.

- 25.3 The Technical Support and Spares Plan shall be updated and submitted to the Client Representative for acceptance at intervals no less frequent than every 12 months.
- 25.4 Within 2 weeks of receiving the Supplier's initial Technical Support and Spares Plan and any subsequent Technical Support and Spares Plan, prepared in accordance with clause 25.1 and 25.2, the Client Representative shall advise the Supplier of its consent to the same or otherwise such consent not to be unreasonably withheld. The Client Representative shall notify the Supplier of his reasons for not accepting the initial Technical Support and Spares Plan and the Supplier shall revise the Technical Support and Spares Plan to take account of the Client Representative's comments and re-submit it to the Client Representative for his consent within 2 weeks of receipt of the notification. Once the Technical Support and Spares Plan is accepted by the Client Representative it shall supersede the previous accepted Technical Support and Spares Plan and shall become the accepted Technical Support and Spares Plan for the purposes of this Agreement.
- 25.5 When the Client Representative (acting reasonably) considers it appropriate for specific tasks and notifies the Supplier accordingly, the Supplier shall at its own cost submit and update at such times and in such detail as the Client Representative may reasonably require method statements setting out:
- (a) the Supplier's arrangements for providing the Services,
 - (b) details of Supplier's Equipment, and other resources that the Supplier proposes to use; and
 - (c) such other information pertaining to the Supplier's proposed method of providing the Services.
- 25.6 The method statement referred to in clause 25.5 shall address the specific tasks referred to in the notice by the Client Representative and be in a form and in sufficient detail to enable the Client Representative to decide whether, if the proposed methods are adhered to, the Services can be executed in accordance with this Agreement and without detriment to the safe working of the railway, to the property of the Client and Others or to the DCSCSW Neasden Depot Upgrade.
- 25.7 Within 2 weeks of receiving a Supplier's method statement, in accordance with clause 25.6, the Client Representative shall advise the Supplier of his approval or otherwise. The Client Representative shall notify the Supplier of his reasons for not accepting a method statement and the Supplier shall promptly revise and re-submit the method statement to take account of the Client Representative's comments. The Supplier shall not start an operation until the method statement for that operation has been approved by the Client Representative.

25.8 The Supplier shall submit method statements and detailed programmes at such times as stated in this Agreement or if no times are stated then at such times as to allow the Client Representative to review and comment on the Supplier's proposals, and if necessary for the Supplier to revise the method statements and detailed programmes without delaying or disrupting the provision of the Services.

26. TESTING AND INSPECTION

26.1 All Services to be supplied under this Agreement (including supply of Spares, Materials and Equipment) may be subject from time to time upon first giving reasonable notice to such tests, inspections and process audits as the Client may consider necessary to ensure that the Services are carried out in accordance with this Agreement.

26.2 Testing and inspection may take place at the place of manufacture or fabrication or on Site or at any other place as may be specified in any of the Schedules or approved by the Client Representative.

26.3 The Supplier shall provide the Client Representative with copies of all test results and inspection certificates which it obtains in connection with the tests and inspections referred to in this clause 26.

26.4 The costs of any test ordered by the Client Representative which are not provided for in the Specification, clause 26.1 or clause 26.5 below shall be borne by the Client unless the tests show that Services (including Spares, Materials and Equipment) provided by the Supplier are not in accordance with this Agreement.

26.5 Notwithstanding clause 26.4 all Spares, Materials and Equipment to be supplied by the Supplier under this Agreement shall be inspected or tested before delivery to Site, as provided for in the Specification, or as may be agreed with the Client. The Supplier shall notify the Client in writing when any Spares, Materials and Equipment are ready for inspection or testing and shall agree with the Client on the time and place for the inspection and testing. The Supplier shall bear its own costs in relation to such inspections and tests.

26.6 When any Spares, Materials and Equipment have passed the tests referred to in this clause 26, the Supplier shall provide the Client with an inspection certificate in writing to that effect.

26.7 The Supplier shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be required to carry out efficiently the tests referred to in this clause 26.

26.8 The Supplier shall give to the Client ten (10) days written notice of the date it intends to undertake any of the tests referred to in this clause 26. Unless otherwise agreed, the tests shall

take place within ten (10) days after the said date or at such other time as the Client notifies the Supplier in writing.

- 26.9 If the Client considers that the results of any tests show that the Supplier has not complied with its obligations under this Agreement, the tests shall be repeated, if so required by the Client. The repeated tests shall be made within a reasonable time of the first test and the Client's reasonable expenses in respect of such repetition shall be payable by the Supplier to the Client.

26A DELIVERY, PROPERTY AND RISK

- 26A.1 The Spares, Materials and Equipment shall be delivered at the Supplier's cost on the date or dates and at or within the times and dates specified in the Specification and/or the accepted Spares and Repairs Catalogue.
- 26A.2 Except where otherwise provided in the Agreement, delivery shall include the unloading at the Supplier's sole risk of the Spares, Materials and Equipment by the Supplier or the Supplier's carriers. The delivery location will be the Supplier's stores at Neasden depot unless a different location is specified by the Client in the requisition. Unless otherwise clearly stated in the Specification the point of delivery shall be when the Spares, Materials and Equipment are removed from the transporting vehicle at the delivery location.
- 26A.3 Time of delivery shall be determined in accordance with clause 26A.1 and, subject to any specific extension or alteration by agreement in writing signed by the Client Representative, failure to deliver within the time specified shall enable the Client to make performance related adjustments in accordance with the Performance Schedule.
- 26A.4 Legal and beneficial title in the Spares, Materials and Equipment shall vest in the Client from the earlier of:
- (a) the date they are delivered; or
 - (b) the date the Client makes payment to the Supplier in order to purchase such items.
- 26A.5 Without prejudice to clause 26A.4, the risk of loss or damage to the Spares, Materials and Equipment shall remain with the Supplier until the later of the date of delivery or the date of issue of the inspection certificate referred to in clause 26.6.

27. **FAILURE TO PROVIDE THE SERVICES**

- 27.1 Without prejudice to any other right or remedy of the Client, if the Supplier fails to perform all or any part of the Services in accordance with this Agreement or to the Client's reasonable satisfaction, the Client may give the Supplier not less than fourteen (14) days' notice in writing (except where there is a Critical Defect where no notice is required) requiring the Supplier to remedy such failure. If the Supplier fails to comply with the requirements of the Client specified in such a notice, the Client shall be entitled to perform such Services itself or procure the performance of such Services by Others. All expenditure properly and reasonably incurred by the Client exercising its rights under this clause 27 shall be recoverable by the Client from the Supplier and the Client shall be entitled to deduct such amounts from any amount due or which may become due to the Supplier from the Client pursuant to this Agreement, provided that such amounts that are recoverable or deducted shall count towards the limit of liability in clause 35.
- 27.2 For the purposes of this clause 27 the Supplier shall grant the Client and/or any such third party the right to use any Supplier's Equipment and (to the extent that payment has not already been made for such items, subject to the Client or the third party making reasonable payment to the Supplier for the same) any Spares, Materials and Equipment and (subject to and in accordance with clause 32) any Intellectual Property Rights belonging to the Supplier in connection with this Agreement and provide all co-operation and assistance as may be required by the Client to exercise its rights under this clause 27.

28. **WARRANTY**

- 28.1 Subject to clause **Error! Reference source not found.**, the Supplier shall, at its own expense and within two weeks (or such longer period as agreed by both Parties, acting reasonably having regard to the nature of the activities required and of the affected Spares, Materials and Equipment), upon a request by the Client to do so, repair or replace any Spares, Materials and Equipment in which a Defect has occurred, provided that such request is made during the applicable Warranty Period.
- 28.2 For the avoidance of doubt, where any Spares, Materials and Equipment are replaced or repaired in accordance with this clause **Error! Reference source not found.**, such repaired or replaced items shall be redelivered to the Client in accordance with the terms of this Agreement, and the provisions of clause 26A and of paragraph 2.8 of Schedule 6 shall apply to such re-delivered Spares, Materials and Equipment. The Warranty Period for these purposes shall commence on the Repair/Replacement Date that applies in respect of the Supplier's re-delivery of the Spares, Materials and Equipment in accordance with this clause **Error! Reference source not found.**

- 28.3 Subject to sub-clause 28.6, the Client shall notify the Supplier of each Defect in Spares, Materials and Equipment as soon as it finds it during any applicable Warranty Period, and the Supplier shall notify the Client of each Defect as soon as it finds it. In each case, the notifying party shall provide details of the Defect.
- 28.4 If any Defect notified, or of which the Supplier was aware or ought reasonably to have been aware, during the applicable Warranty Period is not corrected by the Supplier within the time stated therefor in Schedule 1 or such longer time as the Client may (acting reasonably and having regard to all relevant circumstances) agree, the Client shall be entitled, after giving written notice to the Supplier, to:
- (a) correct the Defect itself or employ Others to correct the Defect, in which case clause 28.5 shall apply; or
 - (b) terminate the Agreement pursuant to clause 9.4(e).
- 28.5 Where the Client employs Others to correct the Defect in accordance with clause 28.4, the Client shall be entitled to recover the cost of the materials and labour reasonably and properly incurred by Others in correcting such Defect as a debt due from the Supplier to the Client. Where the Client corrects the Defect itself, the Client may recover from the Supplier the cost of materials and labour reasonably and properly incurred by the Client. Where the Client's own staff are used to carry out the remedial works, the Client Representative shall assess the value of such labour reasonably expended in correcting the Defect and the Supplier shall pay such amount in lieu of labour costs. If any Spares, Materials or Equipment are found to contain a Defect during the applicable Warranty Period then, without prejudice to any other rights and remedies, the Client shall be entitled to recover from the Supplier its reasonable costs and expenses in recovering and returning such defective Spares, Materials and Equipment to the Supplier. Such costs and expenses shall include the value of the time reasonably incurred by the Client's own staff in recovering and returning the defective Spares, Materials and Equipment. To avoid doubt, any liability of the Supplier under or pursuant to this clause 28.5 shall count towards and be subject to the limit of liability in clause 35.3.
- 28.6 Where it is not possible to allow the Supplier an opportunity to rectify a Critical Defect, the Supplier acknowledges and agrees that the Client may correct or may arrange for a Critical Defect to be corrected by Others, instead of by the Supplier. Without prejudice to any other right or remedy of the Client, the Supplier shall pay to the Client all costs of labour and materials reasonably and properly incurred by the Client and proportionate in all the circumstances and/or paid by the Client to such Others for correcting a Critical Defect. Where the Client's own staff are used to correct a Critical Defect, the Client Representative shall assess the value of such labour reasonably expended in correcting the Critical Defect and the Supplier shall pay such amount in lieu of labour costs. The Client notifies the Supplier of a Critical Defect as soon as reasonably practicable. To avoid doubt, any liability of the Supplier

under or pursuant to this clause 28.6 shall count towards and be subject to the limit of liability in clause 35.3

- 28.7 If the Spares, Materials and Equipment or any part of them has a Defect, is damaged in transit or is otherwise not in accordance with this Agreement when delivered, as identified by the Client, the Client Representative may reject such Spares, Equipment and Materials or affected part of them by giving the Supplier notice of such rejection no later than fourteen (14) days after delivery, stating the grounds upon which the decision is based. Following receipt of any such rejection the Supplier shall, at its own expense, as soon as practicable make good or otherwise repair or replace the rejected Spares, Materials and Equipment and the provisions of clause 26A and of this clause 28 shall apply to such redelivered Spares, Materials and Equipment. All expenses incurred by the Client in consequence of any re-testing or inspection of such Spares, Materials and Equipment shall be recoverable by the Client from the Supplier and shall count towards and be subject to the limit of liability in clause 35.3.
- 28.8 Any activities under this clause 28 in respect of Defects notified to the Supplier within the applicable Warranty Period will be at the sole cost of the Supplier, including removal and reinstallation from service, shipment to and from the Client and any necessary repairs and/or further tests and inspections required. The Supplier shall not be entitled to payment or any relief for Defects or the consequences thereof and neither shall the same be deemed to form part of any pre-agreed quota for the Services set out in Schedule 6.
- 28.9 The Supplier and the Client may each propose to the other that this Agreement should be changed so that a Defect does not have to be corrected.
- 28.10 If the Supplier and the Client are prepared to consider the change, the Supplier submits a quotation for an amount to be deducted from the Support Fees to the Client for acceptance. If the Supplier accepts the quotation, the Client gives an instruction to change the Agreement and the Support Fees accordingly.
- 28.11 Nothing in this clause **Error! Reference source not found.** shall prejudice any rights or remedies in respect of Defects appearing after the Warranty Period or other express rights and remedies under this Agreement.
29. **NOT USED**
30. **VARIATIONS**
- 30.1 The Client Representative may at any time before the expiry or earlier termination of this Agreement, request and/or order any Variation to be made to the Services or this Agreement. Variations shall be requested and processed through the process described in clauses 30.2 and/or 30.5 and/or 30.7. Such Variations may include the following:

- (a) the addition, omission or substitution of any Services;
- (b) changes in the type, standard or quality of the Services;
- (c) changes to the order, sequence or timing of the provision of the Services or any part of the Services;
- (d) the postponement of any part of the Services desired by the Client; and/or
- (e) suspension of the Services or any part of the Services.

For the avoidance of any doubt, orders for Optional Services and requisitions for Spares, Materials and Equipment are not Variations.

- 30.2 In any case where the Client is considering the introduction of a Variation, whether at the request of the Supplier or not, but does not wish to proceed until the effect, if any, of the proposed Variation on the Support Fees is known, the Client Representative will complete the top portion of a Notification of Proposed Variation to Contract (“NPVC”) in substantially the form set out in Part 1 of Schedule 14 and send two copies to the Supplier. Within five (5) days of receipt of such NPVC or such longer period as the Parties may agree (acting reasonably, given the nature and complexity of the proposals and all other relevant circumstances) the Supplier shall complete the form detailing the additional Support Fees, if any, and any other proposed changes or implications for each Variation, and shall return one copy to the Client Representative.
- 30.3 The Supplier shall be entitled to reject a proposed Variation on the grounds that it would or could reasonably be expected to:
- (a) be technically not achievable; or
 - (b) be legally impermissible.
- 30.4 If the Supplier’s proposed valuation pursuant to either clause 30.2 or clause 30.5 is acceptable then the Client Representative shall issue an Authority for Variation to Contract (“AVC”) in substantially the form set out in Part 3 of Schedule 14 and the Support Fees (and other items set out in the Supplier's response under clause 30.2 or request under clause 30.5) shall be varied on the basis set out in such NPVC or SRVC (as the case may be) as completed by the Supplier and the Supplier shall immediately proceed with the Variation. Alternatively, if the proposed valuation of the Variation and/or the other items set out in the Supplier's response under clause 30.2 or request under clause 30.5 are not acceptable to the Client Representative it shall either:

- (a) withdraw or reject (as the case may be) the proposed Variation and in such circumstances the Supplier shall not proceed with the proposed Variation and shall not be entitled to any costs in relation to the completion of the NPVC or the SRVC (as the case may be); or
 - (b) determine a valuation of the Variation (including any other items set out in the Supplier's response under clause 30.2 or request under clause 30.5 as the case may be) in accordance with clause 30.10 and notify this to the Supplier pursuant to an AVC whereupon the Supplier shall immediately, subject to the Supplier's agreement of the valuation proposed, proceed with the Variation and the Support Fees (and other items set out in the Supplier's response under clause 30.2 or request under clause 30.5) shall be varied as set out in the AVC.
- 30.5 In any case where the Supplier wishes to recommend a Variation, the Supplier shall complete and send to the Client Representative one copy of a Supplier's Recommended Variation to Contract ("SRVC") in a form to be agreed between the Parties, detailing the proposed Variation and any other proposed changes or implications for such Variation, including its effect, if any, on the Support Fees.
- 30.6 Subject to clause 30.7 below, the Supplier must not implement any Variation until it has been duly authorised by the Client Representative by the issue of an AVC.
- 30.7 In cases where the Client requires a Variation to be implemented by the Supplier, whether at the suggestion of the Supplier or not, as soon as possible and before the effect on the Support Fees is established (such cases being limited to circumstances where that Variation has become necessary to comply with any applicable Law or for safety reasons or because of a Critical Defect or other emergency situation) the Client Representative will complete the top portion of a Notification of Required Variation to Contract ("NRVC") in substantially the form set out in Part 2 of Schedule 14, and send two copies to the Supplier. The Supplier will take the same action as detailed in clause 30.2 above in respect of the completion and return of the form but shall immediately proceed to implement such Variation and the consequences of such Variation for the Support Fees shall either be agreed with the Supplier or, in the absence of such agreement, shall be determined by the Client Representative in accordance with clause 30.10. In either case the Client Representative shall notify the agreement reached or determination made by notification of an AVC.
- 30.8 All forms referred to in this clause 30 shall be completed and returned by the Supplier to the Client Representative as soon as possible and in any event within twenty-eight (28) days of receipt by the Supplier from the Client Representative.
- 30.9 Any NRVC issued by the Client Representative may be issued to the Supplier with an express limitation in financial amount. The express limitation in the NRVC shall be replaced by a sum

either agreed or determined as described in clause 30.5 and 30.7 in due course. Prior to issue of an AVC notifying the agreement reached or determination made in respect of the Variation described in the NRVC the Supplier shall only implement such a Variation to the extent that the Supplier's costs in respect of such Variation remain below such express financial limitation. Until the financial limit in the NRVC is replaced the Supplier shall not incur costs in excess of the financial limit in respect of such Variation and, if it does so, the Client shall have no liability for payment of any costs in excess of the limitation specified in the NRVC in respect of such Variation. When the AVC is issued in respect of the Variation described in the NRVC the Supplier shall (if it has ceased implementation of the Variation) immediately complete the implementation of the Variation in full and the Support Fees shall be varied as set out in the AVC.

- 30.9A Where agreed between the Parties that a Variation is to be valued on a rates basis, the Parties shall use the rates and prices as set out in this Agreement (including, where applicable, the Specification and/or the Spares and Repairs Catalogue) (and such rates and prices are deemed to be inclusive of overheads and profit).
- 30.10 In the absence of agreement the valuation of Variations ordered by the Client Representative shall be determined by the Client Representative in accordance with the following principles:
- (a) to the extent that the effect of the Variation includes activities which are similar to the Services then so far as is possible the effect of the Variation is assessed using the rates and prices as set out in this Agreement (including, where applicable, the Specification and/or the Spares and Repairs Catalogue); and
 - (b) in all other cases the change to the Support Fees in respect of the Variation is assessed based upon a fair valuation (and such assessment is deemed to be inclusive of all overheads and disbursements).

If the Supplier disagrees with the determination it may subject the matter for resolution in accordance with clause 48.

- 30.11 For clarity the Parties acknowledge that the Client's power to order and/or request a Variation under clause 30 includes the power to omit any Services from this Agreement, provided that such Services have not been carried out or any Spares, Materials and Equipment have not been supplied on the date that any such omission is ordered, and subject to clause 30.3. The Client may contract with another person to provide any such omitted Services. The reduction in the Support Fees shall be agreed by the Parties (or in the absence of agreement determined in accordance with clause 48) in accordance with clause 30.10 to reflect a proportional reduction in the relevant charge set out at SCHEDULE 2 and the Supplier is not entitled to claim loss of profit or breach of contract for not providing the Services in their entirety regardless of whether or not the Client engages another person to provide the omitted Services.

30.12 The Support Fees (and any other matters set out in the completed Variation notices and documents) shall be adjusted to take into account the valuation (agreed or determined) of any Variations and the Supplier shall make payment in accordance with clause 3.

31. KEY PERFORMANCE INDICATORS

31.1 Performance shall be measured against the KPIs and on the basis set out in Schedule 8 (Performance Schedule).

32. INTELLECTUAL PROPERTY RIGHTS

32.1 (a) Intellectual Property Rights owned by the Supplier at the Date of Commencement shall continue to vest in and remain the sole property of the Supplier. Intellectual Property Rights owned by the Client at the Date of Commencement shall continue to vest in and remain the sole property of the Client. Intellectual Property Rights created by or on behalf of either Party in respect of this Agreement at any time after the Date of Commencement shall vest in and shall continue to vest in remain the sole property of the Party that created the Intellectual Property Rights, who shall grant the licence referred to in clause 32.3.

(b) Without prejudice to any other rights which each Party may have against the other, to the extent relevant, if, notwithstanding sub-clause (a), either Party does acquire any proprietary rights in or to any Intellectual Property Rights referred to in sub-clause (a) which should, in accordance with that sub-clause, vest in and remain the sole property of the other Party, the acquiring Party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other Party, or to its nominee, and to deliver to the other Party such materials as it may reasonably require in this regard.

(c) Each Party shall reproduce on all copies of material embodying the other Party's Intellectual Property Rights such copyright, proprietary or confidentiality notices and legends as appear on material embodying such Intellectual Property Rights at the time such material was provided to that Party by the other Party.

32.2 Notwithstanding clause 32.1, the Client shall not be entitled to use the Supplier's trade marks, service marks, trade names and get-up other than as agreed by the Supplier. The Supplier hereby agrees to the use by the Client of those trademarks, service marks, trade names and get-up provided with the Spares, Materials and Equipment for the purposes of the Agreement. For the avoidance of doubt, nothing in this Agreement shall permit the Client to use the Supplier's trade marks other than in connection with the Client's use of the Spares, Materials and Equipment and/or the Software as contemplated by the Agreement.

32.3

- 32.4 The Supplier indemnifies the Client at all times during and after termination or expiry of this Agreement against any and all Losses incurred or suffered by the Client in relation to any infringement, alleged infringement or unauthorised use of its or any Other's Intellectual Property Rights by the Supplier or any person under its control in connection with the Services, the Spares, Materials and Equipment or the Agreement, provided that the Client:
- (a) gives the Supplier written notice of any claims being made or actions threatened to be brought as soon as reasonably practicable thereafter;
 - (b) makes no admission in respect of infringement of any Other's Intellectual Property Rights which may be prejudicial to the defence of such claim or action without the prior written consent of the Supplier;
 - (c) gives the Supplier the authority to conduct any litigation in that regard, at its cost; and
 - (d) provides the Supplier with all reasonable assistance in respect of such litigation.
- 32.5 The indemnity in clause 32.4 shall not apply to the extent such Losses were caused by:
- (a) the Client's design;
 - (b) the Client's design instructions;
 - (c) modification of the Spares, Materials and Equipment or Software by the Client;
 - (d) combination of the Spares, Materials and Equipment or Software with equipment, materials or software not supplied by the Supplier and contrary to the Supplier's instructions; or
 - (e) the negligence of the Client, his employees or agents or Others (other than those Others under the direction and control of the Supplier).
- 32.6 The Supplier notifies the Client as soon as it becomes aware that
- (a) any Intellectual Property Rights used in relation to the Services and/or the Spares, Materials and Equipment are infringed,
 - (b) any Intellectual Property Rights used in relation to the Services and/or the Spares, Materials and Equipment are likely to be infringed, or
 - (c) the Client is prevented from using the Services and/or the Spares, Materials and Equipment as a result of the infringement of any Intellectual Property Rights.

- 32.7 The Client shall give an instruction to obviate any infringement referred to in sub-clause 32.4 and the Supplier:
- (a) obtains from the Client the right to continue using the Services and/or the Spares, Materials and Equipment or any part thereof;
 - (b) modifies or replaces the Services or any infringing parts (including the Spares, Materials and Equipment) to avoid the infringement; or
 - (c) removes the infringing part of the Services and/or the Spares, Materials and Equipment and the Support Fees and/or the relevant rates and prices set out in the Spares and Repairs Catalogue (as the case may be) are adjusted accordingly.
- 32.8 Not used.
- 32.9 Save for the licence granted under clause 32.3, no Intellectual Property Rights or rights in them shall pass from the Client to the Supplier.
- 32.10 The Supplier warrants that as of the Restatement Effective Date, other than COTS, no Intellectual Property Rights owned by any Party other than the Supplier or any Associated Company are used or included in the Spares, Materials and Equipment. In the event that the Supplier uses or includes in the Spares, Materials and Equipment Intellectual Property Rights, other than COTS, owned by any Party other than the Supplier or any Associated Company, then the Supplier shall use its best endeavours to procure from such third parties a right to sublicense to the Client those Intellectual Property Rights on the terms of the licence granted under clause 32.3. Further, if after the Restatement Effective Date, the Supplier, having used its best endeavours, is unable to procure such rights from additional third parties, the Supplier shall notify the Client and shall provide the sublicences on the terms available. The Client agrees that any sublicense provided by the Supplier to the Client under the TBTC Contracts from time to time that pertains to the Spares, Materials and Equipment shall be deemed to satisfy the Supplier's obligations under this clause 32.10.

Corporate IPRs

- 32.11 The Supplier shall use and shall procure that its Subcontractors and suppliers shall use the Corporate IPRs in compliance with any relevant Standards from time to time in force.
- 32.12 The Supplier shall not use and shall procure that its Subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trade marks, trade names and other Intellectual Property Rights without the Client's and LUL's prior written consent.

Software

32.13 The Supplier shall enter into a software escrow agreement in the form of the NCC Group Single Licensee Software Escrow Agreement current at the date of this Agreement with a third party acceptable to the Client for deposit and retention of the Source Code Material by no later than 2 month(s) after the first occasion on which software containing Source Code Material has been supplied pursuant to this Agreement and shall thereafter maintain the software escrow agreement for a minimum period of 12 years from completion of the Services or earlier termination of this Agreement. The Supplier further ensures that all further Source Code Material created by or on behalf of the Supplier after the Date of Commencement is also deposited and retained in the software escrow agreement. The Supplier shall procure that any Subcontractor or supplier providing software for incorporation into or operation of the Supported Systems enters into a software escrow agreement on similar terms and maintains the software escrow agreement for the same period from completion or the Services or earlier termination of the Agreement. The Client shall reimburse the Supplier its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) of complying with this clause 32.13. If the Supplier fails to enter into a software escrow agreement or thereafter ceases to maintain such agreement then, without prejudice to the Client's other rights and remedies, one quarter of the Support Fees is retained in assessments of the amount due until the Supplier has provided the same to the Client.

32.14 If the Supplier or any Subcontractor or supplier providing software for incorporation into or operation of the Services stops trading, is subject to any of the Insolvency Events set out in clause 9.9 or their equivalent (including their equivalent in any jurisdiction to which that Party is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this Agreement the Supplier shall, at no charge to the Client and without prejudice to the Client's rights under clause 32.13, use its best endeavours to transfer or procure the transfer to the Client of all Intellectual Property Rights in that software.

33. **INSURANCE**

33.1 The Supplier undertakes to:

- (a) maintain at its own cost insurance for the Supplier's liability for death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with this Agreement in an amount not less than £10,000,000 (ten million pounds) per occurrence or the amount required by the applicable law, whichever is the greater;
- (b) maintain at its own cost public and product liability insurance in respect of the Supplier's liability for loss of or damage to property and liability for bodily injury to or death of a person (not being an employee of the Supplier) caused by activity or use

of Spares, Materials and Equipment arising out of or in connection with this Agreement in an amount not less than £25,000,000, (twenty five million pounds) for any one occurrence and, in respect of the product liability insurance only, in the annual aggregate;

(c) maintain at its own cost professional indemnity insurance covering negligence, omission or default in respect of design or other professional services for which the Supplier or its Subcontractors are responsible under or in connection with this Agreement in an amount not less than £10,000,000 (ten million pounds) for each and every claim and in the annual aggregate;

(d) ensure that the foregoing insurance policy or policies shall be or are effected:

(i) with a reputable insurer; and

(ii) on terms reasonably available in the European insurance market;

and shall, subject to clause 33.4, be maintained until the Expiry Date or the end of the Warranty Period, whichever is the later;

(e) produce within seven (7) days of any reasonable request by the Client and in any event before the commencement of any of the Services under this Agreement satisfactory evidence, such as a broker's letter, confirming the existence of insurance in accordance with the provisions of this clause 33.

33.2 The Supplier's liabilities under the Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 33.1.

33.3 If the Supplier fails to maintain the insurance policies as provided in this clause 33, the Client 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.

33.4 The professional indemnity insurance required pursuant to clause 33.1(c) above shall be maintained by the Supplier for the period from the Date of Commencement until 12 years after the date of completion of the Services, provided the coverage is available on reasonable terms and at reasonable rates such that a company operating in the relevant industrial sector could and would procure the insurance.

33.5 The provisions of this clause 33 shall survive the termination of the Agreement for whatever reason.

34. **TRANSFER REGULATIONS**

34.1 **Obligations on the Expiry Date or earlier termination of the Agreement**

For the purposes of this clause 34:

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

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

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

“**Subsequent Relevant Employee**” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods and/or Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it).

34.2 The Supplier shall comply with and procure that its Subcontractors comply with any obligations which may arise out of a transfer to the Client or to another person under the Transfer Regulations on the Expiry Date or earlier termination of the Agreement.

34.3 At any time during the 12 month period before the Expiry Date or during any period of notice terminating this Agreement or at any time after expiry or termination of this Agreement, the Client may require the Supplier to provide, within a specified period of being requested, such information as is reasonably required by the Client or such other persons relating to the potential liabilities of the Client or any other person arising under the Transfer Regulations, including but not limited to information on the following:

- (i) the names of employees (of the Supplier or its Subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service,
- (ii) the method of organisation of the employees (of the Supplier or its Subcontractors) engaged in providing the Services and documentary evidence relating to such organisation,
- (iii) the proposals for informing and consulting with affected employees,

- (iv) details of collective agreements and union recognition agreements, and
- (v) any other employee liability information within the meaning of the Transfer Regulations,

and in addition the Supplier shall provide on request to the Client copies of any communication with any potential or intended new supplier(s) or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

34.4 The Supplier shall provide on request to the Client the name and address of the person within its organisation to whom all queries and requests for information under this clause 34 are to be sent. The Supplier shall warrant that any information provided under clause 34.3 is accurate, complete and not misleading, including any information supplied in relation to its Subcontractors.

34.5 The Supplier shall not (and procures that its Subcontractors do not) in the 10 months prior to expiry or termination of this Agreement (or, where notice of termination is given of less than 10 months, during any such period of notice) without the Client's written consent:

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

34.6 The Supplier shall indemnify the Client against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring

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

34.7 The Supplier shall indemnify the Client and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Client or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Client or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

In this clause 34.7, “**Relevant Claims and Liabilities**” include those incurred by the Client by reason of any contract term between the Client and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Client may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Client or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Client in providing an indemnity under this paragraph.

34.8 The Client shall (1) procure that each Replacement Employer that is a member of the TfL Group, or (2) use its reasonable endeavours to procure that each Replacement Employer that is not a member of the TfL Group, shall indemnify the Supplier against all Relevant Claims and Liabilities arising from or related to any claim by a Subsequent Relevant Employee who transfers to the relevant Replacement Employer on termination of this Agreement (or part of it) in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment on or after a Subsequent Transfer Date, in respect of which the Supplier incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

34.9 The provisions of this clause 34 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Client for any breach by the Supplier of any provision of this clause 34 shall be in addition to and not in substitution for any remedies available to the Client under any provision of the Transfer Regulations.

35. **LIMITS ON LIABILITY**

35.1 Subject to clause 35.2 below, neither Party shall be liable to the other Party for Economic and Consequential Loss.

35.2 The Parties acknowledge and agree that the following categories of loss will be treated for all purposes as direct losses and nothing in this Agreement excludes or restricts liability in respect of the same:

- (a) liability for death or bodily injury;
- (b) loss of or damage to the property of the Client or LUL;
- (c) adjustments or abatements to the Support Fees in accordance with clauses 3, 28.6, 30, 32.7(c), and 36.1;
- (d) amounts due under the indemnities in clauses 8.6 (liability of the Client in respect of the Supplier's breach of this Agreement) and 32 (Intellectual Property Rights) and 34 (Transfer Regulations); and
- (e) amounts due on termination or expiry under clause 10; and
- (f) liabilities to Others, to the extent that such liabilities to Others are due to any negligence, breach of contract, breach of statutory duty, error, act omission or default by the Supplier and provided that the Client has used reasonable endeavours to mitigate the same.

35.3 Notwithstanding any other caps on the liability of the Supplier or anything to the contrary contained in this Agreement, and subject to clause 35.4 and clause 35.5 below, the Supplier's total aggregate liability arising out of or in connection with the performance of its obligations under the Agreement, whether based on breach of contract, statutory warranty or otherwise shall in no event exceed the final total of:

- (a) REDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTED
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REDACTED and any other amounts paid or payable under this Agreement to which the Supplier has or will become entitled during the term of this Agreement; and

(b) REDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTED
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under this Agreement to which the Supplier would have been entitled during the term
of this Agreement but for:

- (i) the Supplier's breach or failure to comply with the terms of this Agreement; or
- (ii) any termination of this Agreement in whole or in part by either Party.

35.4 The Supplier does not exclude or restrict its liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability has been reached or exceeded:

- (a) payments made by the Supplier in relation to its liability under this Agreement to the extent corresponding payments are received by the Supplier pursuant to insurance policies required to be maintained under this Agreement (or would have been received but for any breach or failure by the Supplier to maintain such insurance);
- (b) interest due under this Agreement as a result of late payment of amounts;
- (c) Not used;
- (d) liability directly arising from the Supplier committing a Prohibited Act or Safety Breach or from its breach of health and safety laws;
- (e) liability directly arising from the Supplier's abandonment, with no intent of resuming, of the Services where the Supplier's reasons are disputed by the Client and referred to the courts and the courts' decision is that the Supplier's reasons for abandonment are not due to the actions or omissions of the Client for which the Client is culpable;
- (f) liability directly arising from the Supplier's abandonment, with no intent of resuming, of the Services where the Supplier has not given the Client four (4) weeks' notice; and
- (g) amounts due under the indemnities at clauses 8.6, 32 and 34.

35.5 Nothing in this clause 35 limits the Supplier's obligations under clause **Error! Reference source not found.** to correct notified Defects in the applicable Warranty Period or (save as expressly provided to the contrary in clause 28) its liability for a failure to perform these obligations.

36. **CHANGE OF LAW**

36.1 If the cost to the Supplier of the provision of the Services increases or reduces by reason of the passing into law after the Replacement Effective Date of any Law applicable to the Services, then the amount of such increase or decrease is added to or deducted from the Support Fees as the case may be pursuant to the variation procedure set out in clause 30, provided that in the case of any increase in the Support Fees:

- (a) such passing into law after the Replacement Effective Date of any Law applicable to the Services could not reasonably have been foreseen by a supplier experienced in the provision of Services of a similar size, nature and complexity as the Services at the Replacement Effective Date;
- (b) the Parties shall use reasonable endeavours to mitigate the effect of the passing into law after the Replacement Effective Date of any Law applicable to the Services; and
- (c) such increase does not relate to tax or employment law (including but not limited to the minimum wage, pensions, PAYE or National Insurance).

36.2 In this clause 36:

- (a) "**Law**" means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, other applicable law or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, principle of common law or equity, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body; and
- (b) "**Regulatory Bodies**" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the TFL Group and "Regulatory Body" shall be construed accordingly.

37. **RIGHTS OF THIRD PARTIES**

37.1 Subject to clause 37.2, the Client and the Supplier do not intend that any of the terms of this Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

37.2 The Contracts (Rights of Third Parties) Act 1999 applies to this Agreement to the extent that:
(a) any member of the TfL Group has the right to enforce any provision contained in this Agreement against the Supplier where such provision confers any benefit or purports to confer a benefit on such member; and (b) clause 34.7 (Transfer Regulations) confers a benefit on any new Replacement Employer.

38. **ENTIRE AGREEMENT**

38.1 This Agreement sets out the entire agreement and understanding between the Client and the Supplier and supersedes all other oral and/or written communications and representations. It is agreed that:

- (a) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement; and
- (b) no Party has any remedy in respect of misrepresentation or untrue statement made by any other Party which is not contained in this Agreement, or for any breach of warranty which is not contained in this Agreement.

38.2 This clause does not exclude or limit any liability for fraudulent misrepresentation.

39. **FORCE MAJEURE**

39.1 If either Party is prevented from, hindered or delayed in performing any of its obligations under this Agreement by a Force Majeure Event then:

- (a) that Party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that Party is so prevented, hindered or delayed;
- (b) as soon as reasonably practicable (and in any event within seven days after commencement of the Force Majeure Event) that Party shall notify the other Party in writing of the occurrence of the Force Majeure Event, the date of its commencement and the effect on its ability to perform its obligations under the Agreement;
- (c) that Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement;
- (d) as soon as reasonably practicable but within seven days after the cessation of the Force Majeure Event that Party shall notify the other Party in writing of the cessation

of the Force Majeure Event and shall resume performance of its obligations under this Agreement.

- 39.2 If the Force Majeure Event continues for more than twenty-six (26) weeks after its commencement the other Party may terminate this Agreement pursuant to clauses 9 and 10 of this Agreement by giving no less than twenty-eight days' notice in writing to the other Party.
- 39.3 If any additional costs are incurred by either the Supplier or the Client as a direct result of a Force Majeure Event taking place then such costs will be borne by the Party which has incurred them.

40. **NOTICES**

- 40.1 All notices provided for under this Agreement are to be in writing and delivered by hand or sent by first class pre-paid letter, by facsimile, e-mail or by any other recognised and accepted electronic means accepted by the Parties to the addresses of the Parties set out above or at such other addresses as the Parties may specify from time to time by written notice to each other.
- 40.2 Such notice is deemed to have been received on the date of delivery if delivered by hand, on the second working day after the date of posting if sent by first class pre-paid letter, and on the day if sent by facsimile, e-mail or other recognised and accepted electronic means accepted by the Parties.

41. **SCHEDULES**

The provisions of the Schedules to this Agreement shall form part of this Agreement.

42. **SEVERANCE**

If any provision of this Agreement or its application is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications of this Agreement are not affected or impaired. If any adjudication, litigation or arbitration determines that any provision of this Agreement is in any way unenforceable, that provision is amended or modified to the extent necessary to give the provision a valid legal and enforceable effect which is as similar as possible to the ineffective provision and is reasonably consistent with the purpose and intent of this Agreement.

43. **NOT USED**

44. **NON-WAIVER**

44.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver or forbearance of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

44.2 No term or provision of this Agreement shall be considered waived by any Party to it unless a waiver is given in writing by that Party. No waiver in accordance with this clause by either Party of any default by the other Party in relation to this Agreement operates as or is to be construed as or deemed to be a waiver of further, other or continuing defaults, whether of similar or different nature and whether of a past or future default, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided in this Agreement.

44.3 Each of the Parties' rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate.

45. **COUNTERPARTS**

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

46. **COSTS AND EXPENSES**

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

47. **SET-OFF**

47.1 In addition to any other rights of the Client whether at law or equity under this Agreement, whenever

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

(b) any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the Client arising out of or attributable to this Agreement;

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement.

48. **PROPER LAW, JURISDICTION AND DRP**

48.1 This Agreement and all matters arising from it, or in connection with it or its subject matter or formation and any dispute resolutions referred to below shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

48.2 Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management ('representatives') of each of the parties shall meet in person or communicate by telephone within 7 days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or by telephone, to facilitate an agreement within 10 days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 7 days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

48.3 Notwithstanding clauses 48.1 to 48.2, either Party may at any time refer a dispute under or in connection with the Agreement to adjudication. Any such adjudication shall be in accordance with the Client's Adjudication Rules current on the date of the notice of adjudication. For the purposes of this Clause 48.3, "**Adjudication Rules**" means the Client's adjudication rules as appended to this Agreement at Schedule 20, as the same may be revised and updated with the agreement of the Parties from time to time..

49. **RESPONSIBLE PROCUREMENT**

49.1 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 Client to enable the Client and LUL to comply with, the Responsible Procurement Principles.

49.2 The Supplier acknowledges and agrees that the Client 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 Responsible Procurement Principles, and the Supplier shall and shall procure that all of its subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Principles.

- 49.3 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Principles (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Principles).
- 49.4 The Supplier shall not be entitled to any additional payment in the event of any change to the Responsible Procurement Principles (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Principles) unless the Client issues an instruction and states in its instruction that additional payment is due.
- 49.5 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this clause 49 and the provisions of this clause 49 are included in any subcontract (of any tier).
- 49.6 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Client, who shall not give consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this clause 49.

50. **CRIME AND DISORDER**

- 50.1 The Supplier acknowledges that Transport for London is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 (as amended) 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,
 - (c) without prejudice to any other obligation imposed on the Client, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area:
 - (i) crime and disorder (including anti-social behaviour adversely affecting the local environment);
 - (ii) the misuse of drugs, alcohol and other substances; and
 - (iii) re-offending,

and in the performance of the Agreement the Supplier shall assist and co-operate with the Client and relevant members of the TfL Group, and use reasonable endeavours to procure that

its Subcontractors (and sub-sub-contractors) assist and co-operate, with the Client and relevant members of the TfL Group, to enable TfL to satisfy its duty.

51. **LONDON LIVING WAGE**

51.1 In this clause:

"**GLA Act**" means the Greater London Authority Act 1999;

"**Greater London**" means that term as it is used in the GLA Act;

"**London Living Wage**" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Client; and

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

51.2 The Supplier acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the Client) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.

51.3 Without prejudice to the generality of clause 51.2, the Supplier shall and shall procure that its Subcontractors (if any) shall:

- (a) ensure that none of its employees engaged in the performance of the Services in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
- (b) ensure that none of its employees engaged in the performance of the Services is paid less than the amount to which they are entitled in their respective contracts of employment,
- (c) provide to the Client such information concerning the application of the London Living Wage as the Client or its nominees may reasonably require;
- (d) disseminate on behalf of the Client to its employees engaged in the performance of the Services in Greater London or on the LUL Network (but not otherwise) who are paid no more than the London Living Wage such perception questionnaires in relation to

the London Living Wage as the Client or its nominees may reasonably require and promptly collate and return to the Client responses to such questionnaires;

- (e) co-operate and provide all reasonable assistance to the Client and its nominees in monitoring the effect of the London Living Wage; and
- (f) procure that any subcontractor (of any tier) is required to comply with the provisions of this clause 51 and the provisions of this clause 51 are included in any subcontract (of any tier).

51.4 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Client, who shall not give consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this clause 51.

52. DATA TRANSPARENCY

52.1 The Supplier acknowledges that the Client is subject to the Transparency Commitment. Accordingly, notwithstanding clauses 17 and 54, the Supplier hereby gives its consent for the Client to publish the Contract Information to the general public.

52.2 The Client 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 Client may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Client may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to clause 52.1. The Client shall make the final decision regarding publication and/or redaction of the Contract Information.

52.3 In this clause:

“**Contract Information**” means (i) the Agreement in its entirety (including from time to time agreed changes to the Agreement) and (ii) data extracted from the invoices submitted pursuant to clause 3 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount; and

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

53. **CONFLICT OF INTEREST**

- 53.1 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 carrying out the Services or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Client.
- 53.2 The Supplier undertakes ongoing and regular conflict of interest checks throughout the duration of the Agreement and in any event not less than once in every six months and notifies the Client in writing immediately on becoming aware of any actual or potential conflict of interest with carrying out the Services or any member of the TfL Group and works with the Client to do whatever is necessary (including the separation of staff working and/or data relating to the Services from the matter in question) to manage such conflict to the Client's satisfaction and provided that, where the Client is not so satisfied (in its absolute discretion), the Client shall be entitled to terminate the Agreement.

54. **FREEDOM OF INFORMATION**

- 54.1 Notwithstanding clause 17, the Supplier acknowledges that the Client:
- (a) is subject to FOI Legislation and agrees to assist and co-operate with the Client to enable the Client to comply with its obligations under the FOI Legislation, and
 - (b) may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Supplier.
- 54.2 Without prejudice to the generality of clause 54.1, the Supplier agrees and procures that its Subcontractors will agree to:
- (a) transfer to the Client or such other persons as may be notified by the Client to the Supplier each Information Request relevant to this Agreement, the Services or any member of the TfL Group that the Supplier or its Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
 - (b) in relation to Information held by the Supplier on behalf of the Client, provide the Client with details about and/or copies of all such Information that the Client requests and such details and/or copies are provided within 6 days of a request from the Client (or such other period as the Client may reasonably specify), and in such forms as the Client may reasonably specify.

54.3 The Client (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Client.

54.4 The Supplier acknowledges that the Client (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

55. CRIMINAL RECORD DECLARATIONS

55.1 In this clause:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of the Supplier, an Associated Company or any Subcontractor carrying out, or intended to carry out, any aspects of the Services.

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

55.2 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 he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the Services. The Supplier shall confirm to the Client in writing on request and 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 throughout the duration of this Agreement and the Supplier shall notify the Client in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

55.3 The Supplier is not permitted to 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.

55.4 The Client may in accordance with the audit rights set out in clause 19 audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this Agreement.

55.5 If the Supplier fails to comply with the requirements under clauses 55.2 and/or 55.3, the Client may, without prejudice to its rights under clause 9, serve notice on the Supplier requiring the

Supplier to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the 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 55.2) within 7 days of receipt of the notice the Supplier confirms to the Client it has procured all of the Declarations required under clause 55.2.

- 55.6 A persistent breach of clause 55.2 and/or 55.3 by the Supplier shall constitute a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part with immediate effect in accordance with clause 9.
- 55.7 If either Party 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 the 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 and the performance of this Agreement.
- 55.8 Nothing in this clause 55 in any way waives, limits or amends any obligation of the Supplier to the Client arising under this Agreement and the Supplier's obligation to carry out 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 55.

56. **BEST VALUE**

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Client are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier assists the Client (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Client (and, where appropriate, TfL) to achieve best value.

57. **PROHIBITED ACTS**

- 57.1 The Supplier does not and uses its reasonable endeavours to procure that its Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- 57.2 Without prejudice to its rights under clause 19 the Client may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this Agreement and during the 12 years thereafter.

57.3 If the Supplier, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of the Supplier or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part in accordance with clause 9.5(a).

57.4 If a Prohibited Act is committed by an employee of the Supplier or by any Subcontractor (or employee or agent of such Subcontractor) then the Client may (at its sole discretion) choose to serve a warning notice upon the Supplier instead of exercising its right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Supplier removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected Services by another person or Subcontractor this constitutes a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part with immediate effect in accordance with clause 9.

58. **WORK RELATED ROAD RISK**

58.1 For the purposes of this Clause 58:

“**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.

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

“**Delivery and Servicing Vehicle**” means a Lorry, a Van or a Car-derived Van;

“**Driver**” means any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services.

“**DVLA**” means the Driver and Vehicle Licensing Agency.

“**FORS**” means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate 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.

Delivery and Servicing Vehicle“**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.

“**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.

58.2 **Fleet Operator Recognition Scheme Membership**

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within ninety (90) days of the date of execution of this Agreement:

58.2.1 (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Client, is an acceptable substitute to membership of FORS (the “**Alternative Scheme**”); and

58.2.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

58.3 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.

58.4 The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles in the UK shall comply with Clauses 58.2 and 58.3 as if they applied directly to the subcontractor.

58.5 **Safety Equipment on Vehicles**

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

58.5.1 have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Client that the vehicle will not perform the function for which it was built if Side Guards are fitted;

58.5.2 have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;

58.5.3 have equipment fitted with an audible means of warning other road users of the Lorry’s left manoeuvre; and

58.5.4 have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry. **58.6 Driver Licence Checks**

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

58.6.1 it has a system in place to ensure that all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements or restrictions on the Driver's licence; and

58.6.2 each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery related to the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of DVLA-issued licences only), or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Client within the last twelve (12) months:

- (a) 0 – 3 points on the driving licence – annual checks;
- (b) 4 – 8 points on the driving licence – six (6) monthly checks;
- (c) 9 – 11 points on the driving licence – quarterly checks; or
- (d) 12 or more points on the driving licence – monthly checks.

58.7 Driver Training

Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, the Supplier shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Agreement. **58.8 Collision Reporting**

Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, the Supplier shall:

58.8.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and

58.8.2 within fifteen (15) days of the Client's request, provide to the Client a Collision Report. The Supplier shall provide to the Client an updated Collision Report within five (5) Working Days of a written request from the Client.

58.9 Self-Certification of Compliance

Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, within 90 days of the Restatement Effective Date, the Supplier shall provide a written report to the Client at fors@tfl.gov.uk detailing its compliance with Clauses 58.5, 58.6 and 58.7 of this Agreement (the "**WRRR Self-Certification Report**"). The Supplier shall provide updates of

the WRRR Self-Certification Report to the Client on each three (3) month anniversary of its submission of the initial WRRR Self-Certification Report.

58.10 Obligations of the Supplier regarding subcontractors

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

58.10.1 For Lorries – Clauses 58.5, 58.6, 58.7 and 58.8; and

58.10.2 For Vans – Clauses 58.6, 58.7 and 58.8.

58.11 Failure to Comply for Freight-related Obligations

Without limiting the effect of any other clause of this Agreement relating to termination, if the Supplier fails to comply with any of clauses 58.2, 58.3, 58.4, 58.5, 58.6, 58.7, 58.8, 58.9 and/or 58.10:

58.11.1 the Supplier has committed a material breach of this Agreement; and

58.11.2 the Client may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Client for any purpose (including but not limited to deliveries).

59. SURVIVAL

In this Agreement the provisions of clauses 1, 2, 5, 6, 6B, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20.1, 21, 22, 23A, 26, 27, 28, 32, 33, 35, 37, 38, 40, 41, 42, 44, 45, 46, 47, 48, 50, 52, 53, 54, 57, 58 and this clause 59 and any other clauses or Schedules that are necessary to give effect to those clauses survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement does so.

THIS AGREEMENT has been executed on the date first above written

SIGNED by)
for and on behalf of)
LUL NOMINEE SSL LIMITED)

.....

Name:

Title:

SIGNED by)
for and on behalf of)
THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED)

REDACTED

REDACTED

.....

Name: *Karen L. Hill* .

Title: *Commercial Director*

SCHEDULE 1

AGREEMENT PARTICULARS

Date of Commencement: 2 March 2014

Restatement Effective Date: 03 February 2018.

Expiry Date: 17 February 2022

Client Representative: REDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTED
REDACTEDREDACTEDREDACTED

Supplier Representative: REDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTED
REDACTEDREDACTEDREDACTEDREDACTEDREDACTED
REDACTEDREDACTEDREDACTEDREDACTED

Designated Project Manager: REDACTED

REDACTEDREDACTEDREDACTEDREDACTEDREDACTEDREDACTED

REDACTEDREDACTEDREDACTEDREDACTED

Time for correction of Defects: 2 weeks or such other timescale as the Parties may agree in writing.

SCHEDULE 2

SUPPORT FEES AND PAYMENT PROCEDURE

The Support Fees payable for the Services shall comprise the following rates and charges (in each case as the same may be amended from time to time in accordance with clauses 3.6 and/or 30):

Charges for the Standard Support Service

The rate for the Standard Support Service shall comprise the following elements:

Service	Fee payable Year 1 (10 months 15 days)	Fee payable Year 2	Fee payable Year 3	Fee payable Year 4	Fee payable 2 Months
Mobilisation	REDACTED				
Provision of Service Management in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of Telephone Support PMI in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of Telephone Support AzLM in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of Log Analysis in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of Anti Virus Solution in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of: obsolescence management in accordance with the Specification	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Provision of spares and repairs service in accordance with the Spares and Repairs Catalogue	Charged in accordance with the approved Spares and Repairs Catalogue in force at the time the relevant order is placed or, where the Client requires the repair, overhaul or supply of Spares, Materials and Equipment in connection with the DCSCSW Neasden Depot Upgrade that are not referred to in the Spares and Repairs Catalogue, the Supplier shall repair, overhaul or supply (as the case may be) such items at competitive, open-market rates and prices. Any fees to be paid in respect of such spares and repairs services shall become payable upon delivery of an invoice in				

	accordance with clause 3.8 for the month in which such services have been properly supplied in accordance with this Agreement, provided that the Supplier is in receipt of a written requisition in the form referred to in clause 4.2 of this Agreement signed by the Client Representative or his delegate.				
Total per annum (excluding spares and repairs)	130,729.00	152,281.00	155,572.00	158,930.00	26,488.00

Charges for Optional Services

Any Optional Services ordered pursuant to clause 6A of this Agreement shall be charged in accordance with the rates set out in Schedule 4. For the avoidance of doubt, any Optional Services ordered by the Client may be used by the Client at any time during the term of this Agreement. Any fees to be paid in respect of Optional Services shall become payable following delivery of an invoice in accordance with clause 3.8 for the month in which the Optional Services were ordered in accordance with clause 6A and provided always that the Optional Services in question have been expressly instructed in writing in accordance with clause 6A.2.

Charges for Variations

The treatment of Variations shall be as set out in clause 30 of this Agreement. Any amounts payable in respect of such Variations shall become payable upon the Services to which the relevant Variation relates having been properly supplied in accordance with this Agreement.

NOTE: For the avoidance of doubt, references in this Schedule 2 to sums becoming “payable” are all subject to the terms of clause 3 and the process set out therein for payment of the Support Payment.

SCHEDULE 3

SPARES AND REPAIRS SERVICE PURCHASE ORDER

Government ar

MAYOR

REDACTED
REDACTED
REDACTED


Procurement

SCHEDULE 4

OPTIONAL SERVICES

Optional Service Description	Rate
Call Out Rates - AzLM Axle Counter - Normal Working Hours	REDACTED REDACTED REDACTED
Call Out Rates - AzLM Axle Counter – Weekends and Bank Holidays	REDACTED REDACTED REDACTED
Call Out Rates PMI Interlocking One Working Day (or part thereof) on site	REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED
Call Out Rates - PMI Interlocking – Additional Working Days (or part thereof) on site	REDACTED REDACTED REDACTED

The PMI Interlocking rates above are based upon a Euro to Pound exchange rate from the European Central Bank in January 2014. Should there be material deviation in this exchange rate, the Supplier reserves the right to alter the above prices accordingly provided always that should evidence is provided to the Client.

SCHEDULE 5

ORDER FOR OPTIONAL SERVICES

Software	
Nature of Maintenance and Technical Support and Services	
Date of Commencement	
Identity of key individuals	
Location(s) as may be advised from time to time by the Client	
Specification	
The Support Fees	

SCHEDULE 6

SPECIFICATION

1. SCOPE OF WORKS

The Supplier shall support the signalling system installed at Neasden Depot as part of the DCSCSW Neasden Depot Upgrade. This includes all PMI Interlocking and Axle Counter Evaluator system components installed within the Signalling Equipment room, all PMI workstations and PC equipment installed in the control room and the Electronic Units and Detection Heads installed trackside throughout the depot.

The following are excluded from the scope of support:

1. Uninterruptible Power Supply
2. Low Voltage AC Distribution Systems
3. Relays
4. Text Displays

2. SUPPORT SERVICE PROPOSAL

The Support Service provision comprises of the following elements:

1. Service Management
2. AzLM Axle Counter Telephone Technical Support
3. PMI Interlocking Telephone Technical Support
4. PMI Interlocking Log Analysis
5. AzLM Axle Counter Call Out
6. PMI Interlocking Call Out
7. Provision of Anti Virus & Malware Solution & Updates
8. Returns and Repairs Management
9. Spares Catalogue and Provision
10. Obsolescence Management
11. Annual System Health Check
12. Training Rig

2.1 Service Management

The Supplier will appoint a Service Delivery Manager (SDM), who will act as the single point of contact for the service. The SDM will manage all aspects of the service and ensure that the Supplier discharges its obligations in a timely manner.

Amongst other things the SDM will be responsible for:

- Setting up and rolling out the service, including:
- Agreeing the processes to be followed by the Client and the Supplier to access the services.
- Ensuring that contracts and other means are put in place with the Supplier's supply chain so that it can respond to requests for support and optional services such as Spares and Repairs. This will include other entities of the Supplier in France and Portugal as well as UK suppliers and logistics.
- Ensuring the Service Desk has the necessary information, data structures, contacts and contract specific training to ensure it is able to respond to all requests which are made.
- Fixed and firm priced spares catalogue with prices valid for 12 month periods.
- Ensuring the necessary safety and assurance procedures are in place.
- The regular and timely production of performance reports on a quarterly basis and attendance at quarterly reviews.

The Supplier shall operate a telephone Service Centre, where requests for support will be routed to the competent on-call Engineer for AzLM or PMI, as appropriate.

Additionally, should there be an issue that requires escalation; the Service Centre operator will contact the SDM in order to access other Supplier resources in the event of a serious issue.

All calls to the Service Centre will be logged and recorded for the purpose of audit and record keeping.

2.2 AzLM Telephone Technical Support

In the event of an operating, maintenance or failure scenario, that cannot be resolved by the Client, the Client's TO or signalling manager can contact an AzLM system engineer for guidance and direction, using the dedicated Telephone Technical Support number.

The Service Centre, which will contact the on-call AzLM engineer, who will return the call to the Client.

Telephone Technical support shall be provided by the Supplier during office hours (09:00 to 17:00 hrs), Monday to Friday (excl. Public holidays). The Supplier's Service Centre is UK based and available 24 hrs a day, 7 days a week, via a single UK direct dial telephone number.

The Client's TO will have a response from the Supplier's support engineer within 30 minutes of the call to the Service Centre. A sample process for Telephone Technical Support is provided below. This process will be tailored by the SDM and the Client as appropriate for this Agreement.

2.3 PMI Interlocking Telephone Technical Support

In the event of a PMI operating, maintenance or failure scenario that cannot be resolved or progressed by the Client, the Supplier will facilitate Telephone Technical Support through the Supplier's Centre of Excellence, whereby the Client's TO or signalling manager can talk to a PMI system engineer for guidance and direction.

The Client's TO or signalling manager will contact the Supplier's Service Centre, which will direct the call to the on-call PMI engineer.

Telephone Technical Support will be provided by the Supplier during office hours (09:00 to 17:00 hrs), Monday to Friday (excl. Public holidays). The Supplier's Service Centre is UK based and available 24 hrs a day, 7 days a week via a single UK direct dial telephone number.

The Client's TO will have a response from the Supplier's support engineer within 60 minutes of the call to the Service Centre. A sample process for Telephone Technical Support is provided below. This process will be tailored by the SDM and the Client as appropriate for this Agreement.

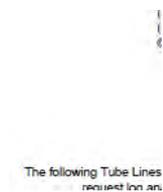
2.4 PMI Interlocking Log Analysis

In the event of a failure mode or operating scenario, which cannot be explained by the Client's maintenance team, Log Analysis can be requested via the Supplier's Service Centre. PMI logs and other system artefacts will be transmitted electronically by the Supplier (using the Supplier's file exchanger) and an analysis requested by a Supplier's PMI System Engineer. The Systems Engineer will be notified of the request by the Service Centre. The Systems Engineer will review the logs/artefacts and provide a detailed written response electronically (using the Supplier's file exchanger) for each analysis request. Initial response will be within 24 working hrs and a more detailed response will be available within 72 working hrs, provided sufficient detail has been provided by the Client.

In addition on a quarterly basis the Supplier will produce a PMI Interlocking Trimester Log Analysis Report synopsis of the logs investigated in the course of the contract which will highlight any systemic failures and where possible recommend corrective action. Corrective action likely to be recommended may take the form of a post design study, a recommendation for equipment modification, a change to maintenance regime, training for operators and / or maintainers.

A sample process for Access to the Log Analysis service is included below, this process will be tailored by the SDM and the Client as appropriate for this

Agreement.

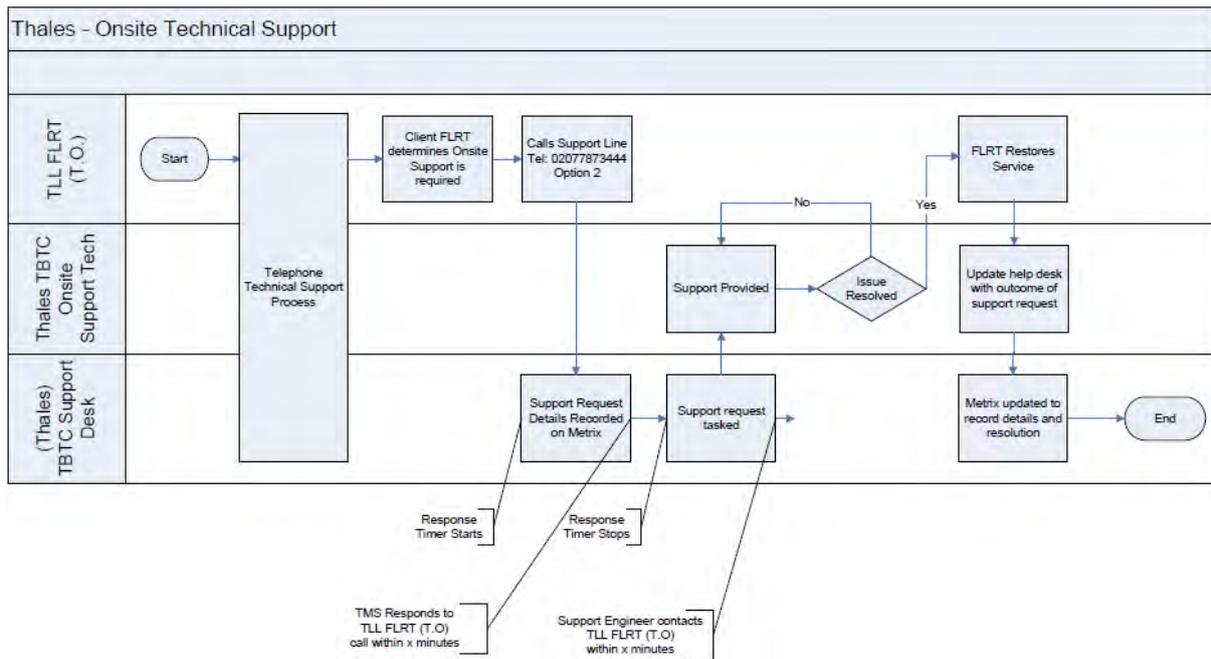


2.5 AzLM Axle Counter Call Out

The DCSCSW Neasden Depot Upgrade Contract has provided a training rig, training material and courses as well as spares for the AzLM system, which should ensure that the Client's teams are able to identify and rectify the majority of faults. However, to further support this, the Supplier will provide for a call out facility, as part of the Support Services.

The call out facility is initiated following a Telephone Technical Support request and is a chargeable event, based on the day rate shown in the pricing schedule.

A suitably qualified person will be on-call during office hours (09:00 to 17:00 hrs). Monday to Friday (excl. Public holidays) and will attend site, within (72) hours of the initial request for call-out. A sample process for on site support is included below:



2.6 PMI Interlocking Call Out

Given the reliability of the PMI system and the training, spares, telephone technical support and log analysis facilities, there is a low probability that a PMI specialist will be required to attend site for normal support purposes. However, in the event that the Client should require support, it can be provided based on a day rate, plus travel and subsistence (this includes return flights from Portugal an overnight stay and meals/snacks). As each incident will vary in terms of effort and complexity, the Supplier will attempt to provide an estimate of the cost to the Client prior to confirmation of the call out, if possible.

A suitably qualified person will be on-call during office hours (09:00 to 17:00 hrs). Monday to Friday (excl. weekends and Portuguese/UK Public holidays) and will attend site within seventy-two (72) hours of the initial request for call-out, where logistics arrangements permit. The process will be similar to the above.

2.7 Provision of Malware & Anti Virus Solution & Updates

To mitigate the risks highlighted in the Supplier’s Malware Threat Analysis document ref TRSUK-NDP-SSL-AUS-2-0127 Rev 2, an Anti Virus and Malware solution will be provided on compact disc media to facilitate the regular scan of PC systems by the Client’s signalling resources. Ten (10) licences will be made available to permit simultaneous scanning in order that efficient use can be made of engineering and maintenance periods.

Updates to the Anti Virus and Malware solution will be issued to the Client in a controlled manner on a monthly basis to ensure that the solution addresses the latest perceived threats.

The Client will provide a written instruction to be used as an addendum to the maintenance manual providing step by step instructions on how to use the Anti Virus and Malware solution.

2.8 Returns and Repairs Management

The Supplier's facility at Crawley is responsible for the processing of returns and repairs regardless of repair cause. The Client can send a defective or damaged part to this facility, where it will be transferred via next day delivery service to the appropriate Original Equipment Manufacturer (OEM) for investigation and repair.

In order to expediently turn around repairs, the Supplier will automatically proceed with diagnosis and repairs where the estimated repair cost is considered to be economically viable compared with the cost of a replacement item.

Repaired items will be returned via the Supplier's Crawley facility, with a detailed report of the actions taken to affect the repair.

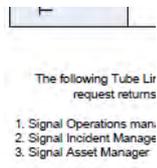
Supplier to provide a log of repairs on a monthly basis.

Where the estimated repair cost is greater than 60% of the replacement cost of the item, the Supplier will recommend the purchase of a new item at the price listed in the current accepted spares catalogue. The Client will choose to either continue with the repair at the estimated cost or purchase a replacement item. Should a new item be purchased it will be dispatched in accordance with the lead time shown in the Spares and Repairs Catalogue.

In accordance with the DCSCSW Neasden Depot Upgrade Contract warranty provisions, repairs (other than third party damage) processed on units still in warranty will not be chargeable to the Client. Repairs arising from third party damage, failure to maintain the environment or when warranty provisions have expired will be subject to the repair charge.

Any items returned for repair that are found to be fully functional (No Fault Found) will be charged at a rate of 60% of the cost of a new item.

A sample process for Return & Repair is provided below.

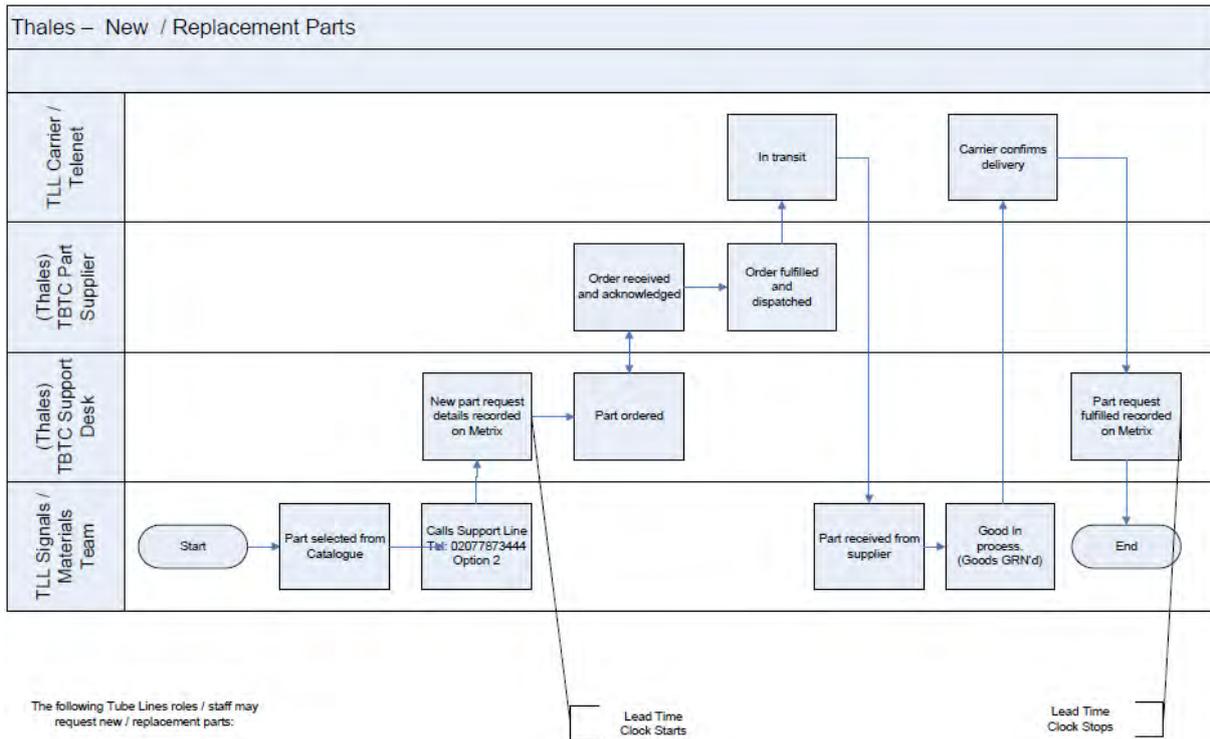


2.9 Spares Provision

The Supplier will provide a Spares and Repairs Catalogue detailing all equipment covered by the support service, with the following details:

1. Description
2. OEM Supplier
3. Part Number
4. Replacement Price
5. Repair Price (nominally 60% of Replacement Price)
6. Repair Lead Time
7. Replacement Item Lead Time

The prices for the spares and repairs detailed within the Spares and Repairs Catalogue will be valid for one year from the date of publication.



2.10 Obsolescence Management

The Supplier will undertake a design review and produce a report to baseline the all of the parts of the PMI system and confirm their obsolescence status. The annual report should include the identification / classification of risk and options for mitigation. Where parts are found to be subject to Diminishing Manufacturing Sources and an alternative is not readily available the Supplier will recommend an all time buy based on the reliability of the system. Should any parts no longer be available the Supplier will endeavour to identify a suitable alternative. Where no direct replacement is available the Supplier will recommend actions to be taken to investigate alternatives such as re-design using daughter boards, the use of FPGA, or updates to elements of the system, subsystems or its constituent parts.

In addition, for the axle counter system, the Supplier will pass any obsolescence notifications it receives to the Client, so that the appropriate actions can be taken by the Client.

This initial baseline activity is an active approach to obsolescence management, following which the Supplier will revert to passive obsolescence monitoring whereby the Client will be notified of any obsolescence as the Supplier becomes aware of it. Depending on the level of obsolescence identified the Client may choose to instruct the Supplier to carry out additional active obsolescence on all or part of the system through the optional services available under this support contract.

2.11 Annual System Health Check on the Neasden PMI Interlocking System

The Health Check will be a collaborative exercise with the existing LU maintenance engineers and Thales Portugal. The check will include:

- Active alarms verification/analysis
- Visual inspection on PMI modules

- MGM
- SCOM
- MEI
- WATCHDOG
- LSCT
- SAM
- SER Room overall verification (temperature, cleaning, humidity, etc.)
- Verification of SAM processes
- PMI Archive Log files backup
- PMI Archive Log files clean-up (deleting) after backup completed
- AzLM Log files backup
- MGM, SCOM, LSCT & SAM modules hard disk capacity verification

- MCCS availability (May require possession)
 - Manual commutation between MCCSs to check the changeover of the MCCSs and the reboot capability.
- PMI relay output fuses verification
- Fan & Dust Filters verification
- LU Maintainers feedback on past preventive & corrective actions

2.12 Training Rig

Technical Support and Spares for the Training Rig at Acton, including the SAM PC, KVM unit, Stimulator cards & SAM software. The level of support will be in line with that provided for the system at Neasden Depot.

SCHEDULE 7

NOT USED

SCHEDULE 8

KEY PERFORMANCE INDICATORS / PERFORMANCE SCHEDULE

The following Key Performance Indicators shall be used to monitor the delivery of the Specification:

- AzLM Telephone Technical Support – response from the Thales support engineer within 30 minutes of the Client’s call to the service centre
- PMI Interlocking Telephone Technical Support – response from the Thales support engineer within 60 minutes of the Client’s call to the service centre
- PMI Interlocking Log Analysis – initial response within 24 hours or receipt by Thales and more detailed response within 72 hours
- AzLM Axle Counter Call Out – attendance at site within 72 hours of the Client’s request for call out
- PMI Interlocking Call Out – attendance at site within 72 hours of the Client’s request for call out
- Provision of Spares and Repairs – in accordance with the lead times stated in the Spares and Repairs Catalogue

SCHEDULE 9

SPARES AND REPAIRS CATALOGUE

The Spares and Repairs Catalogue shall be updated annually, reviewed by the Client and agreed in accordance with Clauses 4.5 and 4.6 of the Agreement. Once accepted in writing, the Spares and Repairs Catalogue shall be deemed to form Schedule 9 of this Agreement.

SCHEDULE 10

NOT USED

SCHEDULE 11

QUENSH MENU

[To be included]

SCHEDULE 12

DEED OF NOVATION

THIS AGREEMENT is made the _____ day of _____ 20[]

BETWEEN : -

- (1) **LUL Nominee SSL Limited** (Company registration number: 6242508) whose registered office is at 55 Broadway, London SW1H 0BD (the “**Company**”); and
- (2) **Thales Ground Transportation Systems UK Limited** (Company registration number: 5805963) whose registered office/principal place of business is at 350 Longwater Avenue, Green Park, Reading, Berkshire, United Kingdom, RG2 6GF (the “**Supplier**”); and
- (3) [] (Company registration number: []) whose registered office is at [] (the “**New Company**”).

WHEREAS:

- (A) The Company has entered into a contract dated 18 August 2013 and referenced TLL 7658 with the Supplier for the provision of technical support and supply of spares for the TBTC System as more particularly described in such contract (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:
 - "Transfer Date" means [].
- 2 With effect from the Transfer Date:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the 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; and

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

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

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

Executed as a deed by affixing the Common Seal of)
LUL NOMINEE SSL LIMITED)
in the presence of)

.....
Authorised Signatory

Executed as a deed by)
THALES GROUND TRANSPORTATION)
SYSTEMS UK LIMITED)
acting by)
) [*Authorised Signatory*]
)
and)
) [*Authorised Signatory*]

Executed as a deed by [**NEW COMPANY**])
acting by)
) [*Authorised Signatory*]
)
and)
) [*Authorised Signatory*]

SCHEDULE 13

NOT USED

SCHEDULE 14

VARIATIONS

Part 1

Form of NPVC

Transport for London LUL Nominee SSL Limited	
--------------------------------------------------------	-------------------------------------------------------------------------------------

TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)

Contract No.: TFL 01119
Variation No.:
Date.:
F.A.O.:
Tel:
Fax:

NOTIFICATION OF PROPOSED VARIATION TO CONTRACT (NPVC)

Price only required - **NOT AN INSTRUCTION TO PROCEED**

THE PROCEDURE SET OUT BELOW MUST BE FOLLOWED IN RETURNING THIS FORM.

- (1) This form constitutes a supplementary tender and must be completed and returned within ten days or other such time as may be expressly agreed in writing by the Company.
- (2) The prices entered onto this form shall be related to the levels of wage rates and material prices ruling at the date of tender, NOT at current price levels. In the event of the price not being affected, "nil" should be entered in the appropriate space(s).
- (3) A copy of the completed form is to be retained by the Supplier and the original returned to the Company's Representative at: LUL Nominee SSL Limited, London Underground, 216 Baker Street, London NW1 5RT

DETAILS OF NOTIFICATION OF PROPOSED VARIATION TO CONTRACT

LUL Nominee SSL Limited, Procurement

LUL Nominee SSL Limited, Company Representative

Authority

TO BE COMPLETED BY THE SUPPLIER - COST OF ABOVE NPVC.

Increase _____

Decrease _____

Signed _____
on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

Part 2

Form of NRVC

Transport for London LUL Nominee SSL Limited	
--------------------------------------------------------	-------------------------------------------------------------------------------------

TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)

Contract No.: TFL 01119
Variation No.:
Date.:
F.A.O.:
Tel:
Fax:

NOTIFICATION OF REQUIRED VARIATION TO CONTRACT (NRVC)

This form constitutes an **INSTRUCTION TO PROCEED** with the Variation on a 'price to be agreed' basis. This form is to be used for documenting the quotation on which price(s) for NRVC's must be notified.

THE PROCEDURE SET OUT BELOW MUST BE FOLLOWED IN RETURNING THIS FORM.

- (1) No price claim shall be accepted unless this form is completed and returned within ten days or other such time as may be expressly agreed in writing by the Company.
- (2) The prices entered on this form shall be related to the rates current within the Contract. In event of the price not being affected, "nil" should be entered in the appropriate space(s).
- (3) A copy of the completed form is to be retained by the Supplier, and the original returned to the Company's Representative at: LUL Nominee SSL Limited, London Underground, 216 Baker Street, London NW1 5RT.

DETAILS OF NOTIFICATION OF REQUIRED VARIATION	AMOUNT	
	(£)	(p)
TOTAL COST TO LUL Nominee SSL Limited £		

 LUL Nominee SSL Limited Procurement Authority

 LUL Nominee SSL Limited Company Representative

TO BE COMPLETED BY THE SUPPLIER - COST OF ABOVE NRVC.

Increase _____

Decrease _____

Signed _____
on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

Part 3

Form of AVC

Transport for London LUL Nominee SSL Limited	
--------------------------------------------------------	-------------------------------------------------------------------------------------

TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)	Contract No.: TFL 01119 Variation No.: Date.: F.A.O.: Tel: Fax:
---------------------------------------------------------------------------	--------------------------------------------------------------------------------

AUTHORITY FOR VARIATION TO CONTRACT (AVC)

Authority is hereby given for the variation in requirement to be made and for the variation in the contract price. A copy of the completed form is to be retained by the Supplier, and the original returned to the Company's Representative at: LUL Nominee SSL Limited, London Underground, 216 Baker Street, London NW1 5RT.

DETAILS OF AUTHORITY FOR VARIATION TO CONTRACT	AMOUNT	
	(£)	(p)
TOTAL COST TO LUL Nominee SSL Limited £		

 LUL Nominee SSL Limited Procurement Authority

 LUL Nominee SSL Limited Company Representative

ACCEPTANCE BY THE SUPPLIER.

Signed _____
on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

SCHEDULE 15

NOT USED

SCHEDULE 16

NOT USED

SCHEDULE 17

NOT USED

SCHEDULE 18

NOT USED

SCHEDULE 19

CLIENT'S PERIOD DATES

Financial Year	Period	Period End Date
2017/18	1	29-Apr-17
	2	27-May-17
	3	24-Jun-17
	4	22-Jul-17
	5	19-Aug-17
	6	16-Sep-17
	7	14-Oct-17
	8	11-Nov-17
	9	09-Dec-17
	10	06-Jan-18
	11	03-Feb-18
	12	03-Mar-18
	13	31-Mar-18

Financial Year	Period	Period End Date
2018/2019	1	28-Apr-18
	2	26-May-18
	3	23-Jun-18
	4	21-Jul-18
	5	18-Aug-18
	6	15-Sep-18
	7	13-Oct-18
	8	10-Nov-18
	9	08-Dec-18
	10	05-Jan-19
	11	02-Feb-19
	12	02-Mar-19
	13	31-Mar-19

Financial Year	Period	Period End Date
2019/2020	1	27-Apr-19
	2	25-May-19
	3	22-Jun-19
	4	20-Jul-19
	5	17-Aug-19
	6	14-Sep-19
	7	12-Oct-19
	8	09-Nov-19
	9	07-Dec-19
	10	04-Jan-20
	11	01-Feb-20

Neasden Depot Signalling Technical Support and Spares Supply Agreement
 Schedule 19 – Client’s Period Dates
 Execution Version

	12	29-Feb-20
	13	31-Mar-20

Financial Year	Period	Period End Date
2020/2021	1	02-May-20
	2	30-May-20
	3	27-Jun-20
	4	25-Jul-20
	5	22-Aug-20
	6	19-Sep-20
	7	17-Oct-20
	8	14-Nov-20
	9	12-Dec-20
	10	09-Jan-21
	11	06-Feb-21
	12	06-Mar-21
	13	31-Mar-21

Financial Year	Period	Period End Date
2021/2022	1	01-May-21
	2	29-May-21
	3	26-Jun-21
	4	24-Jul-21
	5	21-Aug-21
	6	18-Sep-21
	7	16-Oct-21
	8	13-Nov-21
	9	11-Dec-21
	10	08-Jan-22
	11	05-Feb-22
	12	05-Mar-22
	13	31-Mar-22

SCHEDULE 20

CLIENT'S ADJUDICATION RULES

The following rules are incorporated into this Agreement as the “**Rules**”. For the purposes of these Rules the following terms have the meanings set out below:

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph Schedule 2Part B2 of this Schedule 20 (*Client’s Adjudication Rules*);

"Dispute" means any dispute, controversy or claim arising out of or in connection with this Agreement;

"Nominating Authority" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

"Notice of Adjudication" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph Schedule 2Part B1. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought;

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph 6; and

- 1 Either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 1 to 23 by giving a Notice of Adjudication to the other parties to the Dispute.
- 2 Should either Party give a Notice of Adjudication, then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within four (4) days of receiving a request to do so.

- 3 Any person requested or selected to act as the Adjudicator in accordance with paragraph 2:
 - 3.1 shall be a natural person acting in his personal capacity; and
 - 3.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

- 4 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within seven (7) days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator’s remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 2.
- 5 Where the Adjudicator has been selected in accordance with paragraph 2 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 6 within seven (7) days of the date of the Notice of Adjudication or within two (2) days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.
- 6 The Referral Notice shall:
- 6.1 include the facts relied upon by the referring Party in support of its claim(s);
 - 6.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
 - 6.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
 - 6.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and
 - 6.5 include the addresses of all Parties to the Dispute.
- The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 6 to the other Party at the same time as he sends them to the Adjudicator.
- 7 If a matter disputed by the Manufacturer under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Manufacturer may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.
- 8 The parties to the Dispute may jointly terminate the Adjudicator’s appointment at any time. In such a case, or:
- 8.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 11 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 11, or

8.2 if the period referred to in paragraph 11 is extended in accordance with paragraph 12 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 11, or

8.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 8, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

9 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.

10 The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

11 The Adjudicator shall reach his decision and gives notice of the decision to the parties to the Dispute within twenty eight (28) days of the date of receipt of the Referral Notice mentioned in paragraph 5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator’s decision (stating that it is given under this Schedule 20 (Client’s Adjudication Rules)) shall be in writing and shall include a summary of the Adjudicator’s findings and a statement of the reasons for his decision.

12 The Adjudicator may extend the period of twenty eight (28) days referred to in paragraph 11 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.

13 The Adjudicator’s decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 20. If the Adjudicator’s decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.

14 The Adjudicator:

- 14.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 14.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - 14.3 shall reach his decision in accordance with the law applicable to this Agreement;
 - 14.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - 14.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute; and
 - 14.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
- 15 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- 15.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present; and
 - 15.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
 - 15.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
 - 15.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute; and
 - 15.5 inspect any part of the LUL Network or the facilities of any relevant subcontractor.
- 16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 17 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 18 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator’s decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any

legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator’s decision. Neither any form of enforcement of the Adjudicator’s decision nor any form of challenge to the enforcement of the Adjudicator’s decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 20 **Error! Reference source not found.** (*Client’s Adjudication Rules*).

- 19 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 20 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator’s allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator’s direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 20 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator’s allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator’s direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 21 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.
- 22 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 23 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

SCHEDULE 21

DCSCSW NEASDEN DEPOT UPGRADE: SOFTWARE UPGRADE

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