

include re-performing the Services and/or replacing or (at the Company's option) repairing any Defective parts and materials within the time period that the Company shall specify, provided that the Company notifies the Supplier of the requirement during the applicable Warranty Period.

- 21.2** Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 21.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 21.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Agreement.
- 21.3** For the purposes of Clause 21.2 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Agreement and any Contract as may be required by the Company to exercise its rights under Clause 21.2 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 21.2
- 21.4** For the avoidance of doubt, where the Maintenance Services are rectified by the Supplier pursuant to Clause 21.1 the applicable Warranty Period for the rectified part of the Maintenance Services (including any, parts or materials supplied or installed in connection therewith) shall re-commence on the date that the Maintenance Services are rectified in accordance with Clause 21.1 and any Company requirements specified pursuant thereto.

## **22 Intellectual Property Rights**

### **22.1** *Existing Contracts*

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

### **22.2** *Vesting of Intellectual Property Rights created under the Agreement or any Contract*

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

### **22.3** *Ownership of the Supplier's Intellectual Property Rights*

Without prejudice to Clause 22.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 22.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

**22.4** *Company's Licence to use the Supplier's Intellectual Property Rights*

The Company shall have and the Supplier hereby grants, and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 22.3 for the purposes of:

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

**22.5** *Provision of Supporting Documentation and Other Materials*

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 22.2, 22.3 and 22.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3)

months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

**22.6** *Company's Rights of Retention*

If the Supplier has not complied with its obligations under Clause 22.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under each Contract until the Supplier has complied with its obligations under Clause 22.5(a).

**22.7** *Company's Rights to the Software*

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 23.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Agreement and each Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

**22.8** *Company's Rights in relation to Other Procurement Activities*

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 22.5 and anything in which the Intellectual Property Rights referred to in Clauses 22.2, 22.3 and 22.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 22.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

**22.9** *Supplier's Indemnity against Third Party Intellectual Property Rights Infringement*

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

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

#### **22.10** *Ownership of the Company's Intellectual Property Rights*

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

### **23 Termination and Suspension**

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

- (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded; or
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under each Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or
- (e) a breach of the Supplier's obligations under Clause 44; or,
- (f) *the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 1.*

**23.2** Without prejudice to Clause 23.1, the Company shall have the right:

- (a) to terminate the Agreement or any individual Contract (in which case the remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend provision of the Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

**23.3** In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 23, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law, at the Company's option:

- (a) permit the Company to enter the Supplier's premises and take possession of any equipment, goods or Documentation which are the property of the Company;
- (b) permit the Company to place an order for the remaining Services with any other person or persons or complete the provision of such Services by its own workmen; and
- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

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

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

**23.5** Following a termination in accordance with Clause 23.13.1 (but not a termination in accordance with Clause 23.2(a)) the Supplier shall be liable for:

- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
- (b) where the Company exercises its rights under Clause 23.3(b) and in doing so incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Agreement and the relevant Contract(s) by the Supplier ("**Excess Costs**"), such Excess Costs.

- 23.6** In the event that the Agreement and/or any Contract is suspended in accordance with Clause 23.2(b), the Supplier shall:
- (a) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension; and
  - (b) not carry out any further work in connection with the provision of the Services until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").
- 23.7** In the event that the Agreement and/or any Contract is suspended in accordance with Clause 23.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.
- 23.8** In the event that the parties are unable to agree upon the variation requested under Clause 23.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 38
- 23.9** Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 23.10** If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

## **24 Co-operation in Handover**

- 24.1** The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and in the three (3) months after the expiry of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the performance of the Services and in such a manner so as not to unduly disrupt or hinder the Company's business.

**24.2** Without prejudice to the generality of Clause 24.1 above, the Supplier shall on or prior to the expiry of the Term transfer to the Company such Documentation relating to the Services or full copies thereof as the Company may request.

## **25 Indemnity and Insurance**

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

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

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

**25.2** The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 25.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

**25.3** The Supplier's indemnity under Clause 25.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of [twelve (12)] years after the Order Completion Date or earlier termination of each Contract.

**25.4** The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 25.1 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.

**25.5** Other than in respect of the Losses (i) described in Clauses 25.1(a) and 25.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each

Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

**25.6** Without prejudice to the obligation to indemnify the Company set out in Clauses 25.1, the Supplier undertakes to:

- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
- (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £10,000,000 (five million pounds) per occurrence;
- (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence and in the aggregate per annum;
- (d) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;
- (e) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (f) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under any Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 255.

**25.7** The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 25.6.

**25.8** If the Supplier fails to maintain the insurance policies as provided in this Clause 255, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

## 26 Force Majeure and Permitted Delay Events

### 26.1 *Force Majeure*

Neither party shall be in breach of its obligations under the Agreement or any Contract if there is any total or partial failure of performance by it of its duties and obligations under the Agreement or any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the Agreement or any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the relevant Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Supplier to perform its obligations under the relevant Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

### 26.2 *Permitted Delay Events*

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Order Completion Date, within seven (7) days after the cause of any delay has arisen.
- (b) For the purposes of the Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
  - (i) any act of prevention, omission, default neglect or breach by the Company of an express obligation under the Agreement or any Contract; or
  - (ii) any variation of the Agreement or any Contract under Clause 8; or
  - (iii) any denial of access under Clause 11.13; or
  - (iv) the suspension of the Agreement or any Contract in accordance with Clause 233 (other than where the suspension is necessary by reason of default of the Supplier).
- (c) Where any delay in achieving the Order Completion Date arises, the Supplier shall be entitled to an extension to such Order Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a

direct and material adverse effect on the Supplier's ability to perform the Services by the Order Completion Date and provided that the Supplier:

- (i) notifies the Company of the Permitted Delay Event in accordance with Clause 26.2(a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
- (ii) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
- (iii) uses its reasonable endeavours to mitigate the delay to the Order Completion Date; and
- (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of the Agreement or any Contract by the Supplier, its subcontractors or employees.

## **27 Confidentiality**

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

**27.2** On the Company's request, the Supplier shall, so far as is reasonably possible:

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

**27.3** The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 27.1 and 27.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.

- 27.4** The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 27.5** The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, any Contract or the Services without the prior written consent of the Company.
- 27.6** The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Services, or any Dispute arising under or in connection with any Contract.
- 27.7** The provisions of Clauses 27.1 to 27.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
  - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 27.8** The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 27.7 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

## **28 Assignment and Subcontracting**

- 28.1** The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 28.2** The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under any Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 28.3** The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any part thereof) to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.

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

## **29 Company's and Supplier's Representative**

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

## **30 Costs**

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

## **31 Severance**

If a provision of the Agreement or any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Agreement or any Contract, provided that the operation of this Clause 31 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.

## **32 Publicity**

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

## **33 Corrupt Gifts and Payments of Commission**

**33.1** The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or

agent of the Company other than as a representative of the Company without the Company's prior written approval.

- 33.2** The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 33.3** The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 333 at any time during performance of the Agreement and each Contract and during the twelve (12) year period following completion of performance.

## **34 Criminal Record Declarations**

- 34.1** For the purposes of this Clause 34:

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

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

- 34.2** The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 34.3** The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 34.4** The Company shall have the right in accordance with the audit rights set out in Clause 5 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 34 at any time during performance of the Agreement and/or any individual Contract.

- 34.5** If the Supplier fails to comply with the requirements under Clauses 34.2 and/or 34.3 the Company may, without prejudice to its rights under Clause 23.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 34.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 34.2.
- 34.6** A persistent breach of Clause 34.2 and/or Clause 34.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any individual Contract in whole or in part with immediate effect in accordance with Clause 23.1(a).
- 34.7** In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 34.8** Nothing in this Clause 344 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any individual Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 344.

## **35 No Waiver**

- 35.1** No failure or delay on the part of either party to exercise any right or remedy under the Agreement or any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Agreement or any Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 35.2** No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement or otherwise.

## **36 Entire Contract**

The Agreement embodies and sets forth the entire contract and understanding of the parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of the Agreement or any Contract. Except in the case of fraud, neither party shall be

entitled to rely on any contract, understanding or arrangement which is not expressly set forth in the Agreement or any Contract.

## **37 Notices and Service of Process**

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

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

The address and fax numbers of the Company and the Supplier are set out in Schedule 1.

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 37.1.

## **38 Dispute Resolution**

**38.1** Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 38.1.

**38.2** The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Supplier (together the "**Nominated Representatives**") which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.

**38.3** If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 38.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to *[the Company's Contracts and Procurement Manager and the Supplier's Managing Director]* or in the absence or unavailability of

these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.

**38.4** If the Dispute has not been resolved within twenty-one (21) days of it being referred to *[the Company's Contracts and Procurement Manager and the Supplier's Managing Director]* or their deputies in accordance with Clause 38.3 either party may refer the matter for resolution in accordance with the provisions of Clause 41.

**38.5** Clauses 38.1 to 38.4 are subject to the Supplier's rights (if any) under the HGCR to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 38.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

## **39 Counterparts**

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

## **40 Partnerships and Joint Ventures**

**40.1** If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement are joint and several. The Agreement and the liabilities of the partners under the Agreement shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Agreement.

**40.2** If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement are joint and several.

**40.3** Nothing in the Agreement shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

## **41 Governing Law and Jurisdiction**

**41.2** This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

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

## **42 Contracts (Rights of Third Parties) Act 1999**

**42.1** Subject to the Replacement Employer's rights under Clause 18 no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

**42.2** Notwithstanding those rights referred to in Clause 42.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

## **43 Bonds, Warranties and Guarantees**

**43.1** Where stated in Schedule 1, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in 08 in favour of the Company.

**43.2** The Supplier shall ensure that any bond required under Clause 43.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1; and
- (b) is renewed every twelve (12) months until expiry of the Term (or date of termination if earlier).

**43.3** If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 43.1 and 43.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

**43.4** If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 43.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

**43.5** If any performance bond and/or parent company guarantee required by the relevant Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 43.1, one quarter of the aggregate of the Order Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.

**43.6** If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

(a) a collateral warranty in the form set out in 09 in favour of the Company and if requested by the Company, the Supplier shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and

(b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 43.6.

**43.7** If any warranty (including any accompanying parent company guarantee) required under Clause 43.6 is not delivered to the Company in accordance with Clause 43.6, one quarter of the aggregate of the Order Price relative to the Services supplied by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

## **44 Change of Control**

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

## **45 Interest**

**45.1** If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the

intérest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accruing under this Clause 45.1 shall be immediately payable by the paying party on demand.

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

## **46 Freedom of Information**

**46.1** For the purposes of this Clause 46.1:

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

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

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

**46.2** The Supplier acknowledges that the Company:

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

**46.3** Without prejudice to the generality of Clause 46.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

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

from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

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

## **47 Data Transparency**

**47.1** The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 277 and Clause 466, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

**47.2** The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 47.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

## **48 Survival**

The provisions of Clauses 5 (Records and Audit), 9.11 (Set-Off), 10 (Supplier's Personnel), 20 (Responsible Procurement), 433 (Bonds, Warranties and Guarantees), 22 (Intellectual Property Rights), 21 (Failure to Perform), 233 (Termination and Suspension), 255 (Indemnity and Insurance), 277 (Confidentiality), 31 (Severance), 32 (Publicity), 333 (Corrupt Gifts and Payments of Commission), 355 (No Waiver), 366 (Entire Contract), 377 (Notices and Service of Process), 388 (Dispute Resolution), 41 Governing Law and Jurisdiction), 42 (Contracts (Rights of Third Parties) Act 1999), 466 (Freedom of Information), 47 (Data Transparency), 488 (Survival), 49.1 and 49.5 (Transport for London Group) will survive the termination or expiry of the Agreement and each Contract and continue in full force and effect, along with any other Clauses or Schedules of the Agreement and each Contract necessary to give effect to them. In addition, any other provision of the Agreement and each Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

## **49 Transport for London Group**

**49.1 Declaration of Ineffectiveness**

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any individual Contract under Clause 23.1, Clause 23.2(a) or at common law, the Company may terminate the Agreement and/or any individual Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 49.1
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 49.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 23.1 and this Clause 49.1 or the Cessation Plan, the provisions of this Clause 49.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
  - (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
  - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 49.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any individual Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and/or any individual Contract in accordance with this Clause 49.1.

## **49.2 Crime and Disorder Act 1998**

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

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, in its area:
  - (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
  - (ii) the misuse of drugs, alcohol and other substances; and
  - (iii) re-offending,

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

#### **49.3 The Company's business**

The Supplier acknowledges that it:

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

#### **49.4 Best value**

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

#### **49.5 Data Protection**

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

#### **49.6 Conflict of Interest**

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.

- (b) The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and/or any individual Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement and/or any individual Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and/or any individual Contract.

## 49.7 Equality and Diversity

**49.7.1** Without limiting the generality of any other provision of the Agreement and any Contract, the Supplier

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

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

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

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

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

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

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

## **49.8 Work Related Road Risk**

**49.8.1** For the purposes of Clauses 49.8.2 to 0 (inclusive) of this Agreement, the following expressions shall have the following meanings:

<b>"Bronze Accreditation"</b>	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>"Car-derived Vans"</b>	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;
<b>"Collision Report"</b>	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
<b>"Delivery and Servicing Vehicle"</b>	a Lorry, a Van or a Car-derived Van;
<b>"Driver"</b>	any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;
<b>"DVLA"</b>	Driver and Vehicle Licensing Agency;

<b>“FORS”</b>	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
<b>“FORS Standard”</b>	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Gold Accreditation”</b>	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Lorry”</b>	a vehicle with an MAM exceeding 3,500 kilograms;
<b>“MAM”</b>	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
<b>“Side Guards”</b>	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;
<b>“Silver Accreditation”</b>	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:  <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Van”</b>	a vehicle with a MAM not exceeding 3,500 kilograms.

### **Fleet Operator Recognition Scheme Accreditation**

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

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

### **Safety Equipment on Vehicles**

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

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

### **Driver Licence Checks**

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

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

### **Driver Training**

**49.8.5** Where the Supplier operates Delivery and Servicing Vehicles to provide 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 and each Contract.

### **Collision Reporting**

**49.8.6** Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, the Supplier shall:

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

## **Self Certification of Compliance**

**49.8.7** Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 0, 0 and 0 of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

## **Obligations of the Supplier Regarding Subcontractors**

**49.8.8** The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles to provide the Services shall:

- (a) comply with Clause 49.8.2; and
- (b) where its subcontractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Agreement:
  - (i) For Lorries – Clauses 49.8.3, 49.8.4, 0 and 0; and
  - (ii) For Vans – Clauses 49.8.4, 0, and 0,

as if those subcontractors were a party to this Agreement.

## **Failure to Comply with Work Related Road Risk Obligations**

**49.8.9** Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Supplier fails to comply with any of Clauses 49.8.2, 49.8.3, 49.8.4, 0, 0, 0 and/or 0:

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

## **50 CompeteFor**

**50.1** Without prejudice to Clause 288, the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Agreement and each Contract, to supply goods, works or services to the Supplier.

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

**50.3** The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Agreement and each Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier’s Subcontractors, as required by this Clause 50.3, and will report this information on a quarterly basis by way of email to the Company’s Representative.

## **51 Inspection and Testing**

**51.1** All goods, materials, facilities, plant, equipment, workmanship and systems to be supplied and work to be provided under a Contract may be subject from time to time to such tests as may be provided for in the Schedules, the applicable Order or as the Company’s Representative may consider necessary to ensure that the Services are carried out in accordance with the Agreement and each Contract.

**51.2** 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 the applicable Order or approved by the Company’s Representative.

**51.3** The Supplier shall provide the Company’s Representative with copies of all tests results and inspection certificates which it obtains in connection with the tests and inspections referred to in this Clause 51.

**51.4** The costs of any test ordered by the Company’s Representative which are not provided for in the Schedules or the applicable Order shall be borne by the Company unless the tests show that workmanship, plant, equipment or materials provided by the Supplier are not in accordance with the Agreement and the applicable Contract. The costs of any test whether ordered by the Company’s Representative or otherwise which are provided for in the Schedules or the applicable Order shall be borne by the Supplier.

**51.5** All plant and equipment to be supplied by the Supplier and incorporated in the Maintained Items shall be inspected or tested before delivery to Site, as provided for in the Schedules or the applicable Order, or as may be agreed with the Company’s Representative. The Supplier shall notify the Company’s Representative in writing when plant and equipment is ready for inspection or testing and shall agree with the Company’s Representative on the time and place for the inspection and testing.

- 51.6** When plant and equipment which is to be incorporated into the Maintained Items has passed the tests referred to in this Clause 51, the Company's Representative shall provide the Supplier with an inspection certificate in writing to that effect.
- 51.7** 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 51.
- 51.8** The Supplier shall give to the Company's Representative ten (10) days' written notice of the date it intends to undertake any of the tests referred to in this Clause 51. Unless otherwise agreed, the tests shall take place within ten (10) days after the said date or at such other time as the Company's Representative notifies the Supplier in writing.
- 51.9** If the Company's Representative considers that the results of any tests show that the Supplier has not complied with its obligations under the Agreement or the applicable Contract, the tests shall be repeated, if so required by the Company's Representative. The repeated tests shall be made within a reasonable time of the first test and the Company's reasonable expenses in respect of such repetition shall be payable by the Supplier to the Company.

**Schedule 1**  
**Detailed Terms**

Commencement Date	<i>February 6<sup>th</sup>, 2017</i>
Term	<i>3 years</i>
Framework Specification	<b>See Schedule 3</b>
Additional standards pursuant to Clause 3.3(e):	<i>Not Applicable</i>
Security required pursuant to Clause 43.1:  Bond Parent Company Guarantee	<i>Not Applicable</i>
Site	Greenwich Generating Station Old Woolwich Road London SE10 9NY
Company's Representative	██████████
Supplier's Representative	██████████
The Warranty Period(s) is/are:	<ul style="list-style-type: none"> <li>• Field Service Activities, i.e. inspections, defect/fault investigation/rectification carried out</li> </ul>

	<p>on clients site – Warranty covering works conducted and any parts repaired/replaced for a period of [REDACTED] from the date the Maintenance Services were performed.</p> <ul style="list-style-type: none"><li>• Spare Parts, i.e. supply of new or overhauled/refurbished component parts – Warranty for a period of [REDACTED] from delivery</li></ul>
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