

Facilities Management Contract (Target Cost)

between

TRANSPORT FOR LONDON or TfL
as Company

and

Engie Services Limited
as Supplier

For the supply of facilities management and related services across TfL

Contract Reference Number TfL-00925 - 1FM Bundle 3 Lot 1 – Mechanical and
Electrical Maintenance (Rail)

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THIS CONTRACT is made on 25th April 2017 2017

BETWEEN:

- (1) **TRANSPORT FOR LONDON or TfL** (the "Company" which expression shall include its successors, transferees and assignees), a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and
- (2) **ENGIE SERVICES LIMITED** (the "Supplier"), a company registered in England and Wales under number 598379 and having its registered office at Shared Services Centre Q3 Office, Quorum Business Park, Benton Lane, Newcastle Upon Tyne, NE12 8EX.

(each a "Party" and together the "Parties")

BACKGROUND

- A) Pursuant to a notice published in the Official Journal of the European Union in August 2015, the Company invited expressions of interest from appropriately qualified organisations for services relating to the provision of the Services.
- B) The Supplier has submitted proposals to the Company setting out how it will perform the Services as required by this Contract.
- C) The Company has selected the Supplier as the most economically advantageous tenderer to provide the Services pursuant to this Contract.
- D) Therefore, the Company has agreed to buy and the Supplier has agreed to provide the Services on the terms and conditions set out in this Contract.
- E) This Contract may be utilised by the Company or any other member of the TfL Group.

THIS DEED WITNESSES as follows:

PART 1: INTERPRETATION

Definitions and Interpretation

1.1 In this Contract, the following definitions shall have the following meanings:

"Abatement" has the meaning given to it in Schedule 12 (Performance Measurement).

"Additional Works" has the meaning given to it in Part 1 of Schedule 6 Part B (Additional Works).

"Affected Party" means the Party affected by a Force Majeure Event.

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006 save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded.

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“Aggregate Annual Additional Works Spend” means, in respect of a given Contract Year, the aggregate amounts paid or to be paid to the Supplier by the Company for Additional Works in that Contract Year.

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

“Asset Management System” means the Company’s asset management system used for the planning, recording and management of maintenance work and any updates to the system from time to time.

“BAFO” means ‘best and final offer’.

“Cessation Plan” means a plan agreed between the Parties or determined by the Company in accordance with Clause 76.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

“Change of Control” when applied to any person, shall be treated as occurring if any other person, or any other persons who together at the date of this Contract, Control such person subsequently ceases or together cease to Control it or if after the date of this Contract any person, or persons together, which did not have Control of that person at the date of this Contract but at any time thereafter acquire(s) Control of that person.

“Commencement Date” means the date specified as such in Schedule 1 (Detailed Terms).

“Company Party” means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Company acting in the course of his office or employment or appointment (as appropriate), but excluding the Supplier and any Supplier Parties.

“Company’s Representative” means the person appointed by the Company and named as such in Schedule 1 (Detailed Terms).

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

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

“Consequential Loss” means in relation to a breach of this Contract or other circumstances in

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which a Party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach.

“Construction Act” means Part II of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

“Contract” means this contract made between the Company and the Supplier.

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

“Contract Information” means (i) this Contract in its entirety (including from time to time agreed changes to this Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 18 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Innovation Efficiency” or “CIE” has the meaning given to it in Schedule 20 (Contract Innovation Efficiency).

“Contract Mobilisation and Transition Plan” means the plan set out in Appendix 1 (Contract Mobilisation and Transition Plan) to Schedule 18 (Mobilisation Requirements).

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

“Contract Variation Procedure” means the procedure set out in Schedule 6 Part A (Contract Variation Procedure).

“Contract Year” means each period of 12 consecutive calendar months starting on the Services Commencement Date.

“Control” means, in relation to a body corporate, the ability of a person (or any persons acting together) to ensure that the activities and business of that body corporate are conducted in accordance with the wishes of that person (or those persons), and a person (or persons) shall be deemed to have Control of a body corporate (amongst other things) if, directly or indirectly, that person possesses or is entitled to acquire (or those persons possess or are entitled to acquire): (i) the majority of the issued share capital in that body corporate; or (ii) the majority of the voting rights in that body corporate; or (iii) the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding-up; or (iv) the right to appoint a majority of the directors to the board of that body corporate, and “Controlling”, “Controlled” and “Controller” shall be construed accordingly.

“Core Team” means those of the Supplier Personnel set out in Matrix 2 of Schedule 2 Part C (Payment).

“CPI” means the Consumer Prices Index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in a no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in

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the event that no such agreement is reached, as may be determined in accordance with the provisions of Schedule 14 (Dispute Resolution Procedure).

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

“Defined Cost” means the cost of components in the Schedule of Defined Cost Components contained in Schedule 2 Part B (Payment) and excluding any Disallowed Cost or Lump Sum Mobilisation Costs or Phased Mobilisation Costs.

“Disallowed Cost” has the meaning given to the term in Clause 18.22.

“Disclosed Data” means information relating to the provision of the Services disclosed to the Supplier and its shareholders and advisers before the date of this Contract including the Invitation to Tender.

“Dispute” has the meaning given to that term in Clause 65.

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

“Emergency” means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services.

“Energy Technology List” means the government-managed list of energy-efficient plant and machinery that forms part of the Enhanced Capital Allowance scheme.

“Enhanced Capital Allowance” means the enhanced capital allowance scheme for energy saving technologies (first published on 15 October 2015) as amended from time to time by the Department for Business, Energy and Industrial Strategy and “Enhanced Capital Allowances” shall be construed accordingly.

“Environmental Claim” means receipt by the Company in connection with any pollution or contamination of the environment of:

- (A) any written claim, demand, suit or notice from a third party, including a Regulatory Authority (“Regulatory Authority” means any government entity or other public or quasi-public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or
- (B) any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).

“Environmental Law” means all and any laws, including common law, legislation, codes of

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practice, notices, judgments, decrees, Regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place.

“Escalation Procedure” has the meaning given to it in Schedule 12 (Performance Measurement).

“ETI Base Code” means the Ethical Trading Initiative Base Code referred to in Clause 35 and set out in Schedule 16 (Responsible Procurement) of the Contract.

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

- (A) any Abatements levied in accordance with this Contract;
- (B) any costs of the Supplier of performing its obligations under this Contract, including but not being limited to the costs of re-performing the Services as required by Clause 20.2(A);
- (C) any compensation on termination amounts pursuant to Clause 45.2;
- (D) any taxes, whether payable under any Applicable Laws or pursuant to this Contract
- (E) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach of or failure to maintain such insurance);
- (F) Losses caused by fraudulent acts, including fraudulent misrepresentation or acts of a criminal nature;
- (G) Losses caused by the Supplier committing a Prohibited Act or Safety Breach;
- (H) loss of or damage to any property (including the TfL Network and Sites and any other property belonging to the Company or for which it is responsible);
- (I) claims made against the Company by third parties (whether under contract, tort, breach of statutory duty or otherwise);
- (J) any Losses against which the Company is indemnified under Clause 31;
- (K) any Losses against which the Company is indemnified under Clause 37.10;
- (L) death or personal injury caused by the Supplier’s negligence or that of its personnel; and
- (M) any interest due as a result of any late payments of any of the Excepted Liabilities.

“Expiry Date” means the date specified as such in Schedule 1 (Detailed Terms), as may be extended pursuant to the provisions of Clause 2.2.

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

“Fee” means the percentage stated in Schedule 2 Part A (Payment) applied to the total amount of the Defined Cost. The Fee is fully inclusive of:

- (A) head office overheads;

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- (B) managerial and supervisory staff costs where required in addition to the Core Team;
- (C) all training costs and time associated with training;
- (D) insurance costs (including employers liability, public liability, professional indemnity, travel insurance and vehicle insurances but excluding medical insurance relating to Supplier Personnel in the performance of the Services);
- (E) profit; and
- (F) all other costs incurred by the Supplier in the delivery of the Services but not recovered through the Defined Cost components.

“Final Warning Notice” has the meaning given to it in Clause 44.3.

“Financial Year” means the period from and including 1st April in a given year to and including 31st March in the immediately following year.

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

- (A) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, civil unrest, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority; or
- (B) 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.

“Free Issue Materials” means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under this Contract.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time from a skilled, competent and experienced contractor seeking in good faith to comply with all its contractual obligations and all Applicable Laws (whether or not binding on the Company), and engaged in the same type of undertaking and under the same or similar circumstances as those envisaged by this Contract.

“GLA Act” means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

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

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“Guarantor” means Engie Services Holding UK Limited.

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

“Intellectual Property Rights” means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

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

“Invitation to Tender” or “ITT” means the invitation to tender as issued through the TfL e-tendering portal under OJEU ID: 2015/S 152-281403 on 27 June 2016.

“JNP Effective Date” has the meaning given to it in paragraph 1.3 (TfL Business Areas and Delivery Units in Scope) of Schedule 3 (Specification).

“JNP Notice” has the meaning given to it in paragraph 1.3 (TfL Business Areas and Delivery Units in Scope) of Schedule 3 (Specification).

“JNP Stations Delivery Unit” means the Delivery Unit identified as “JNP Stations” in Schedule 12b (Performance Measurement Matrix).

“Key Personnel” means Supplier Personnel identified as such in Schedule 19 (Key Personnel) and any changes to the same that are made in accordance with Clause 32.

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

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

“Lump Sum Mobilisation Costs” means the amounts in Schedule 2 (Payment) Part C, Summary that are set out against the headings ‘Mobilisation (General)’, ‘Mobilisation (IT)’ and ‘Cost of Change’.

“Maintenance Operatives” means those of the Supplier Personnel set out in Matrix 1 of Schedule 2 Part C (Payment).

“Maximum Cost” means 105% of the Target Cost for the relevant Contract Year.

“Mayor” means the person from time to time holding the office of Mayor of London as established

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by the GLA Act.

“Necessary Consents” means any permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Supplier’s obligations under this Contract, including those required in order to comply with Applicable Laws, Standards or as a result of the rights of any third party.

“Notice to Proceed” has the meaning given to that term in Clause 48.2(B).

“Occasion of Tax Non-Compliance” means:

- (A) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
- (1) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or
 - (2) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent of similar regime; and/or
- (B) the Supplier’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

“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.

“Payment Assessment Date” means the last day of each Period for the duration of the Contract.

“Payment Notice” has the meaning given to it in Clause 18.9.

“Period” means the Company’s accounting periods as notified from time to time by the Company to the Supplier, each such Period being of between 25 and 32 days and one of 13 periods during the Company’s Financial Year.

“Persistent Breach” means a breach for which a Final Warning Notice has been issued, which has continued for more than ten (10) Working Days or recurred in three (3) or more months within the six (6) month period after the date on which such Final Warning Notice is served on the Supplier.

“Phased Mobilisation Costs” means the amounts in Schedule 2 (Payment) Part C, Summary that are set out against the heading ‘Investment in Technology to support continuous improvement’.

“Pre-Qualification Questionnaire” or “PQQ” means the pre-qualification questionnaire as issued through the TfL e-tendering portal under OJEU ID: 2015/S 152-281403 on 05 August 2015.

“Prescribed Period” has the meaning given to that term in Clause 18.

“Price for Services Provided to Date” means the amount of Defined Cost which the Supplier can demonstrate that it will have paid or incurred in accordance with this Contract plus the Fee.

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“Programme” means the programme of work set out in Schedule 4 (Programme) as may be superseded by the latest programme approved by the Company in accordance with Clause 7 for the provision of the Services.

“Prohibited Act” means:

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

“Public Procurement Termination Event” means:

- (A) the Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (B) if the Company determines that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement Regulations.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 7 (Health, Safety, Quality and Environmental Requirements) as amended from time to time.

“QUENSH” has the meaning given to it in Schedule 7 (Health, Safety, Quality and Environmental Requirements).

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

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“Relevant Tax Authority” has the meaning given to it in the Cabinet Office Procurement Policy Note: Measures to Promote Tax Compliance - Action Note 06/13 dated 25 July 2013.

“Relief Event” has the meaning given to it in Clause 30.

“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

“Replacement Employer” has the meaning given to it in Clause 31.

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

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

“Services” means all or any part of the services stated in the Specification or any other part of this Contract to be performed by the Supplier under this Contract and any services, functions or responsibilities which may reasonably be regarded as incidental to the supply of the Services and/or anything necessary to comply with them and which may reasonably be inferred from this Contract.

“Services Commencement Date” means the date specified as such in Schedule 1 (Detailed Terms).

“Site” means the work areas detailed in Schedule 1 (Detailed Terms) and/or the Specification and such other work areas as the Company may allow the Supplier to access (subject to and in accordance with Clause 22) in order to perform the Services.

“Specification” means the description of the services to be provided by the Supplier in accordance with this Contract contained in Schedule 3 (Specification).

“Standards” means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to perform the Services in accordance with Good Industry Practice. A full set of current Standards is available for the Supplier’s use on-line at the LU Standards e-library or as notified to the Supplier.

“Sub-Contract” means a contract between the Supplier and a Sub-Contractor.

“Sub-Contractor” means a sub-contractor to the Supplier, being the counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Services (or any part of them).

“Supplier Default” has the meaning given to it in Clause 44.

“Supplier Party” means:

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- (A) an officer, servant or agent of the Supplier or any Affiliate of the Supplier and any officer, servant or agent of such a person;
- (B) any Sub-Contractor of the Supplier, and any of their officers, servants or agents; and
- (C) any person on or at any Site at the express or implied invitation of the Supplier (other than a Company Party).

“Supplier Personnel” means all employees, agents or consultants of the Supplier and the Supplier’s Sub-Contractors from time to time.

“Supplier’s Representative” means the person appointed by the Supplier and named as such in Schedule 1 (Detailed Terms).

“Target Cost” means the amount set out in Schedule 2 Part C (Target Cost and Other Pricing Information), the components of which are set out in Schedule 2 Part B (Schedule of Defined Cost Components), each as may be later adjusted in accordance with the provisions of Clause 15, Schedule 2 Part D (Price Adjustment for Inflation) and Schedule 2 Part F (Target Cost Adjustment for Core Team).

“Target Cost Breakdowns” means the breakdown of the Target Cost based on the quantities of Defined Cost plus the Fee set out in Schedule 2 Part C (Target Cost and Other Pricing Information), as may be later adjusted in accordance with the Contract.

“Termination Notice” means a notice of termination issued in accordance with this Contract.

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

“TfL Network” means the assets owned, or used by, and/or the services provided by or on behalf of, any member of the TfL Group.

“Third Party Licence” means any third party licences, consents and permissions required to permit the Supplier to use the Asset Management System.

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

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

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

“Variation Proposal” means the written proposal put forward by the Company or the Supplier to vary this Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 (Form of Variation Proposal/ Variation Order) to Schedule 6 Part A (Contract Variation Procedure).

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“Volume Rebate Amount” means, in respect of a given Contract Year, the Additional Works expenditure rebate amount calculated in accordance with Clause 18.24(B).

“Volume Discount Percentage” means the applicable percentage in the column headed “Volume Discount Percentage” in Schedule 2 (Payment) Matrix 3 Additional Works Rates Part D Discounts & Value Based Discounts.

“Water Technology List” means the government-managed list of energy-efficient plant and machinery that forms part of the Enhanced Capital Allowance scheme.

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

- 1.2 The headings in this Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and the masculine includes the feminine and vice versa.
- 1.4 Any reference to “writing” means a communication consisting of words in any legible and visible form, including words produced by any form of electrical or mechanical means and in typed, electronic or printed format as well as in manuscript, and “written” shall be construed accordingly.
- 1.5 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to this Contract and references to this Contract include its recitals and Schedules.
- 1.6 References to (or to any specified provision of) this Contract or any other document shall be construed as references to this Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of this Contract or the document in question.
- 1.7 A reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 Any obligation on a Party to do or not do any act, matter or thing includes an obligation to procure that it is done or not done (as the case may be).
- 1.10 Words preceding the words “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words.
- 1.11 In the event that a conflict, ambiguity or inconsistency exists between the Clauses of this Contract and the Schedules or between any of the Schedules, then (save as expressly provided in this Contract) the order of precedence shall be as follows:
 - (A) the Clauses of this Contract;
 - (B) the Schedules to this Contract (equal priority, but subject to this Clause 1.11); and
 - (C) any other document referred to in, or incorporated by reference into, this Contract.
- 1.12 If there is any inconsistency between any diagram and any text, the text shall take precedence.

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- 1.13 In the event of any inconsistency between the Schedules and the Parts, Annexes or Appendices thereto, the Schedules shall prevail.
- 1.14 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Company, nor the failure of the same shall, unless otherwise expressly stated in this Contract, relieve the Supplier of any of its obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.
- 1.15 Where this Contract contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, the Company may make such election, determination, approval, rejection, consent, nomination, appointment, decision, specification, permission or consideration in its absolute discretion without being required to give reasons, unless this Contract expressly requires otherwise.
- 1.16 Where this Contract contemplates that the Company may elect, determine, approve, reject, consent, nominate, appoint, decide, specify, permit or consider any matter or thing, this means in advance and in writing in order for the Supplier to be able to place reliance on it.
- 1.17 This Contract was drafted with the joint participation of the Parties and no provision of this Contract will be construed adversely to a Party solely on the ground that such Party was responsible for the preparation of this Contract or that provision.
- 1.18 Where used in any part of this Contract the phrase “reasonable endeavours” shall be taken to mean an obligation to do whatever could reasonably be done in the circumstances to fulfil the obligation concerned by:
- (A) a responsible and sufficiently funded contractor acting in accordance with Good Industry Practice (in the case of the Supplier); or
 - (B) a responsible customer receiving the Services (in the case of the Company).

PART 2: CONTRACT MANAGEMENT AND COMMENCEMENT

2. Duration and Option to Extend

- 2.1 This Contract and the rights and obligations of the Parties (excluding the obligations of the Supplier to provide the Services but including the Supplier's obligation to comply with Schedule 18 (Mobilisation Requirements) and the Contract Mobilisation and Transition Plan) shall take effect on the Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2. The obligation of the Supplier to provide the Services shall take effect on the Services Commencement Date and (save in the event of earlier termination) shall continue until the Expiry Date unless extended in accordance with Clause 2.2.
- 2.2 The Company shall at its sole option be entitled at any time prior to the date falling no later than twelve (12) months prior to the Expiry Date to serve notice on the Supplier of its decision to extend this Contract for a period of up to thirty six (36) months (the "Extension Period") either in respect of all or part of the Services.
- .3 The provisions of this Contract shall continue to apply mutatis mutandis to any such extension of this Contract (other than Clause 2.2 containing the option to extend and subject to any variations as may be agreed by both Parties).
- 2.4 Save as otherwise may be agreed, the Target Cost at the start of the Extension Period shall be the Target Cost in the immediately preceding year prior to the Extension Period, indexed in accordance with the provisions of Schedule 2 (Payment).
- 2.5 On receipt of notice further to Clause 2.2 from the Company by the Supplier, this Contract shall be deemed extended accordingly.

3. Due Diligence

- 3.1 The Supplier acknowledges and agrees that the Company has delivered or made available the Disclosed Data and that the Supplier has:
- (A) satisfied itself of all details relating to the Specification;
 - (B) satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;
 - (C) gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:
 - (1) information as to the nature, location and condition of all relevant land (including hydrological, geological, geo-technical and sub-surface conditions);
 - (2) information relating to all relevant archaeological finds, areas of archaeological, scientific or natural interest;
 - (3) information relating to local conditions and facilities and the quality of existing structures;
 - (4) obtaining all surveys, information and any and all data and any supporting documentation necessary for carrying out its obligations under this Contract; and

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- (5) raising all relevant due diligence questions with the Company before the date of this Contract.
- 3.2 The Company shall not be liable for any costs arising from the Supplier's failure to perform its obligations under this Clause 3 or from any actual or perceived lack by the Supplier of information or knowledge.
- 3.3 The Supplier shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Company on grounds that any information, whether obtained from the Company or otherwise (including information made available by the Company), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.
- 3.4 The Supplier acknowledges, represents and warrants that:
 - (A) the Company has relied upon the Supplier's expertise and professionalism in the carrying out of all due diligence activities in relation to this Contract including the requesting of and verification of all Disclosed Data; and
 - (B) the Disclosed Data, together with the Supplier's own expertise and knowledge of the Company's operations, are sufficient to enable the Supplier to satisfy itself:
 - (1) as to the scope and nature of the Services to be provided; and
 - (2) that it is able to perform its obligations under this Contract.
- 3.5 The Supplier shall not be entitled to any additional payment nor be excused from any liability under this Contract and has no right to make a claim against the Company as a result of:
 - (A) the Supplier misinterpreting any matter or fact relating to the Specification or this Contract; or
 - (B) the Supplier having failed to review the Disclosed Data or any documents referred to in the Disclosed Data.
- 6 Subject to Clause 3.7, no warranty, representation or undertaking (whether express or implied) is given by the Company as to the relevance, accuracy, completeness, adequacy or fitness for purpose of any Disclosed Data or that such information constitutes all of the information relevant or material to the Specification and the Services. The Supplier represents and agrees that it has placed and will place no reliance on the Disclosed Data and that it has made its own enquiries to satisfy itself as to the accuracy, adequacy and completeness of the Disclosed Data supplied to it in connection with this Contract. Accordingly, the Supplier shall not be relieved from any obligation under this Contract in connection with:
 - (A) the supply and the content of any Disclosed Data; and
 - (B) any representations or statements made in respect of any Disclosed Data, and all liability on the part of the Company in connection with the matters set out at Clauses 3.5(A) and 3.5(B) is excluded to the extent permitted by Applicable Laws.
- 3.7 Nothing in this Clause 3 shall exclude any liability which the Company or any of its agents or employees would otherwise have to the Supplier in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Commencement Date.

4. Supplier Warranties

4.1 The Supplier warrants to the Company that:

- (A) it is properly constituted and incorporated under the laws of England and Wales and has all necessary authority, power and capacity to enter into this Contract, and that this shall remain the case until the Expiry Date;
- (B) it has entered into and executed this Contract by its duly authorised representatives in accordance with all procedures required by its governing laws and constitutional documents and all necessary corporate and other actions required to authorise the execution of, and the performance of its obligations under, this Contract have been taken by the Supplier and this Contract is executed on behalf of the Supplier by a duly authorised representative of the Supplier;
- (C) it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Contract and such Intellectual Property Rights are not infringing upon the Intellectual Property Rights or infringed by the Intellectual Property Rights of any third party;
- (D) it has examined the Specification and all other documents forming this Contract and is not aware of any ambiguity or discrepancy within this Contract or between this Contract and any other documents which it is required to comply with which might adversely affect the carrying out of the Services for the Target Cost in accordance with the terms of this Contract;
- (E) at the Commencement Date there are no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge (having made all due enquiry), threatened against or affecting the Supplier or any of its assets before any court or administrative body or arbitration tribunal that might affect the ability of the Supplier to meet and carry out its obligations under this Contract;
- (F) at the Commencement Date all information, representations and other matters of fact communicated in writing to the Company or its agents or employees in connection with the response of the Supplier to the Pre-Qualification Questionnaire and Invitation to Tender or in the course of negotiations in respect of this Contract are true, complete and accurate in all respects or were at the time they were made with any omissions or inaccuracies being notified to the Company by the Supplier prior to the Commencement Date by way of updating information;
- (G) as at the Commencement Date, the execution, delivery and performance by the Supplier of its obligations under this Contract will comply with Applicable Laws and will not result in a default under any agreement by which the Supplier is bound or any order or decree of any court of competent jurisdiction or arbitrator which is binding on the Supplier, and which could prevent the supplier from entering into and performing its obligations under this Contract;
- (H) it has not (and none of its employees or contractors or agents or any employees of any contractors or agents has) committed any Prohibited Act in relation to this Contract prior to entering into or in entering into this Contract;
- (I) it has and will throughout the duration of this Contract have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons

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associated with the Supplier from bribing any person with the intention of obtaining or retaining business for the Supplier or with the intention of obtaining or retaining an advantage in the conduct of business for the Supplier;

- (J) it has obtained or will obtain, at or before the time such Necessary Consents are required to be obtained, all Necessary Consents from time to time necessary to carry out its obligations under this Contract;
- (K) as at the date of this Contract there are no material facts or circumstances in relation to the financial position or operational constitution of the Supplier which have not been fully and fairly disclosed to the Company and which if disclosed might reasonably have been expected to affect the decision of the Company to enter into this Contract;
- (L) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Supplier, having made all due enquiry, threatened) for the winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of the assets or revenues of the Supplier;
- (M) it has and until the Expiry Date will continue to have the expertise to supply the Services;
- (N) it has and will continue to have in place at all times, both before and after the Expiry Date, sufficient contractual obligations with any Supplier Parties who are directly involved in the provision of the Services and who need to know the Confidential Information to ensure that such Supplier Parties are aware of and comply with the obligations of confidence in Clause 38;
- (O) it is resident for tax purposes in (and only in) the UK, and undertakes that it will, at all times ensure that its affairs are conducted in a way which ensures they are and will remain resident for tax purposes in (and only in) the UK;
- (P) as at the date of this Contract, it has notified the Company in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance; and
- (Q) as at the date of this Contract, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2016.

PART 3: THE SERVICES

5. Supplier's Primary Obligations

- 5.1 The Supplier shall provide the Services to the Company and perform its obligations in accordance with the terms of this Contract.
- 5.2 The Supplier shall ensure that, and warrants to the Company that, it shall perform all of its obligations under this Contract and provide the Services:
- (A) so as to satisfy the requirements of the Specification;
 - (B) in accordance with the Programme;
 - (C) in a regular and diligent manner and in accordance with Good Industry Practice;
 - (D) so as to conform to all Applicable Laws (including but not limited to any law and Regulations applicable to the Company or the TfL Network);
 - (E) so as to comply with all Standards and any additional standards listed in Schedule 1 (Detailed Terms) or in the Specification;
 - (F) so as to comply with this Contract and the requirements of the Company set out in this Contract and all lawful and reasonable directions of the Company provided that those directions are not inconsistent with this Contract;
 - (G) using goods, materials, facilities, vehicles, plant and equipment that are new and of a satisfactory quality, sound and free from defects;
 - (H) in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services and the Quality and Safety Plan, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company;
 - (I) in an economic, efficient, effective and resource and energy efficient manner;
 - (J) in a manner that is safe and not injurious to health and does not create safety hazards and that does not cause a nuisance or damage to property or harm to the environment;
 - (K) so as not to detract from or damage the image and reputation of the Company;
 - (L) so as not to impede the Company in carrying out its functions or increase the cost to the Company of carrying out its functions including so as to accommodate the operations and activities of the Company; and
 - (M) using only personnel who are competent, appropriately qualified and properly trained and supervised, exercising the highest standard of diligence, care and skill and who hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards.
- 5.3 The Supplier shall (at the sole cost of the Supplier) train any of the Company's employees and any of their contractors or agents as required by the Specification.

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5.4 Design

- (A) The Supplier shall carry out any design required as part of the Services in accordance with the Specification and the Contract terms.
- (B) The Supplier shall submit the particulars of any design which the Specification requires to the Company's Representative for acceptance. The Supplier shall not proceed with the performance of the Services until the Company's Representative has accepted his design. Reasons for not accepting the Supplier's design may include (without limitation):
 - (1) it does not comply with the Specification or any other part of the Contract;
 - (2) it does not comply with Applicable Laws and Standards;
 - (3) it is not integrated and coordinated with the designs of others where the Supplier is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Supplier to perform the Services; or
 - (4) it is not in a format which is accepted for use by the Company's Representative.
- (C) The Supplier shall not be entitled to any changes to the Target Cost or the Fee or to relief from any of its obligations under this Contract by reason of anything in this Clause 5.4.
- (D) The Supplier may submit his design for acceptance in parts if the design of each part can be assessed fully.
- (E) The Supplier in designing and specifying the Services which he is required to design and specify, warrants, undertakes and represents to the Company that the design:
 - (1) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in the Contract;
 - (2) complies with all Applicable Laws and Standards; and
 - (3) is fit for the purpose defined in the Specification.
- (F) The Supplier accepts entire responsibility for the design and specification of the Services which it is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between its design and the specification of the Services and the documents which are part of the Contract.

6. Consents

6.1 Subject to Clause 6.2 the Supplier shall:

- (A) (subject to Clause 6.1(B)), in its own name, apply for, obtain, maintain and renew all Necessary Consents which may be required for the performance of the Services;
- (B) use all reasonable endeavours to assist the Company to obtain all Necessary Consents that, as a matter of law, the Supplier is not eligible to obtain;
- (C) be responsible for implementing each Necessary Consent (which it is required to obtain pursuant to Clause 6.1(A)) within the period of its validity in accordance with its terms;

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- (D) supply free of charge to the Company's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
 - (E) comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Supplier to carry out the Services; and
 - (F) not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Company under this Contract (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Supplier with its obligations under this Clause 6.1(F), references in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.
- 6.2 The Supplier shall immediately notify the Company if it becomes aware of any allegation of non-compliance with any Applicable Law or Necessary Consent from time to time by itself or any Sub-Contractor in relation to this Contract.
- 6.3 The Supplier shall promptly provide the Company with such information relating to any Necessary Consent applied for or obtained as the Company may require from time to time.
- 6.4 Where the period of a Necessary Consent would extend beyond the termination or expiry of this Contract, the Supplier shall, before applying for and throughout the process of obtaining such Necessary Consent, consult with the Company about the terms of such Necessary Consent and use reasonable endeavours to ensure that, to the extent the terms would apply after the termination or expiry of this Contract, they do not adversely affect any interest of the Company.

7. Programme

7.1 **Approving the Programme**

- (A) The initial Programme is set out at Schedule 4 (Programme).
- (B) The Supplier shall show on each update to the Programme (which shall subsequently become the Programme after acceptance by the Company's Representative):
 - (1) the starting date, access dates, key dates and Expiry Date;
 - (2) the order and timing of operations which the Supplier plans to do in order to provide the Services;
 - (3) the order and timing of the work of the Company and others as last agreed with them by the Supplier or, if not so agreed, as stated in the Specification;
 - (4) the dates when the Supplier plans to meet each condition stated for any key dates and to complete other work needed to allow the Supplier and others to do their work;
 - (5) provisions for float, time risk allowances and environmental and health and safety requirements;

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- (6) the dates when, in order to provide the Services in accordance with its programme, the Supplier needs:
 - (a) access to a part of the Site if later than its access date;
 - (b) acceptances;
 - (c) plant and materials and other things to be provided by the Company; and
 - (d) information from others;
 - (7) for each operation, a statement of how the Supplier plans to do the work identifying the principal equipment and other resources which it intends to use;
 - (8) for each operation, a cost-loaded programme showing the forecast resources required for that operation;
 - (9) its access requirements in accordance with the Specification; and
 - (10) other information which the Specification requires the Supplier to show on a programme submitted for acceptance.
- (C) Within two (2) weeks of the Supplier submitting a programme for acceptance, the Company's Representative shall either accept the programme or notify the Supplier of his reasons for not accepting it, in each case in the Company's Representative's absolute discretion. A non-exhaustive list of reasons for not accepting a programme may be that:
- (1) the Supplier's plans which it shows are not practicable;
 - (2) it does not show the information which this Contract requires;
 - (3) it does not represent the Supplier's plans (in the reasonable opinion of the Company) realistically; or
 - (4) it does not comply with the Specification.

.2 Revising the Programme

- (A) The Supplier shall demonstrate in detail on each revised Programme:
- (1) the actual progress achieved on each operation and its effect upon the timing of the remaining work;
 - (2) the effects of implemented Relief Events;
 - (3) the effects of decisions reached and approved by the Company's Representative;
 - (4) how the Supplier plans to deal with any delays and to correct notified defects; and
 - (5) any other changes which the Supplier proposes to make to the Programme.
- (B) The Supplier shall submit a revised programme to the Company's Representative for acceptance:

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- (1) within five (5) Working Days after the date on which the Company's Representative has instructed him to do so;
- (2) when the Supplier chooses to; and, in any case
- (3) at no less than four (4) weekly intervals from the Commencement Date until the Expiry Date.

8. **Work on the Site**

8.1 During the term of this Contract, the Supplier shall:

- (A) ensure that all Supplier Parties working on each Site or any third parties' sites comply with the applicable Site or site's local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or applicable third party;
- (B) notwithstanding the terms of Clause 8.1(C), ensure that all Supplier Parties adhere to the terms and conditions of this Contract;
- (C) supply the Company with a list of all personnel working on each Site together with any other related information that the Company may reasonably require and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (D) be responsible for bringing to, erecting and maintaining on and dismantling and removing from the Site its facilities, vehicles, plant and equipment whether of a temporary or permanent nature;
- (E) ensure that no Supplier Parties use the Company's or a third party's site equipment without the prior written consent of the Company or the relevant third party;
- (F) carry out the Services in such a manner as not to endanger or interfere in any way with the TfL Network, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in this Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway;
- (G) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway;
- (H) notify the Company of any circumstances or events of which the Supplier is aware which are likely in the Supplier's reasonable opinion to affect the operation of the TfL Network and/or Sites so as to impact on the services provided to the general public; and
- (I) ensure that the Services are carried out without unreasonable, unnecessary or improper disturbance to the public or, insofar as compliance with the requirements of this Contract permits, without interference with access to and use or occupation of public and private roads and properties, whether in the possession of the Company or of any other person.

8.2 The Company's Representative may require the Supplier to remove or require a Sub-Contractor to remove from any Site any person employed by the Supplier or Supplier Party who in the

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opinion of the Company's Representative:

- (A) misconducts himself or persists in any conduct which is prejudicial to health or safety;
- (B) is incompetent or negligent in the performance of its duties; or
- (C) has had his employment terminated in whatever capacity from any of the Sites, any part of the TfL Network or any other Company premises,

and the Supplier shall comply with the Company's Representative's requirements. Such removal shall not affect the Supplier's obligation to provide the Services in accordance with this Contract. Any such person shall not be employed again by the Supplier or Supplier Party to provide the Services without prior written permission of the Company's Representative.

- 8.3 Any person removed from the Site under Clause 8.2 shall be replaced as soon as reasonably possible by the Supplier and the Supplier shall promptly notify the Company of such replacement and in any event by no later than two (2) Working Days of the replacement.

Co-Operation

The Parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under this Contract.

10. **Non-Exclusivity**

- 10.1 As regards the Company, this Contract is not exclusive and the Company may:

- (A) itself perform any services similar or analogous to any part of or all of the Services; or
- (B) contract with any third party to perform any services similar or analogous to any part of or all of the Services.

- 10.2 In the event that the Company contracts with any third party to perform any services similar or analogous to any part or all of the Services, the Supplier shall provide such information and assistance and within such timescales as the Company may reasonably request in connection with such procurement.

PART 4: LIAISON AND GOVERNANCE

11. Early Warning

The Supplier shall give an early warning by notifying the Company as soon as it becomes aware of any matter which could:

- (A) increase the Target Cost;
- (B) prevent the Supplier from performing its obligations under this Contract or cause the Supplier to be in breach of this Contract or any Sub-Contract;
- (C) cause the Programme to need to be amended;
- (D) adversely affect the Company;
- (E) lead to the Supplier terminating or suspending any Sub-Contract; or
- (F) cause a breach of any Applicable Laws or Standards.

12. Company's and Supplier's Representatives

12.1 Each Party shall appoint one (1) or more representatives to act on its behalf under this 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 Schedule 1 (Detailed Terms). 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.

12.2 Subject to Clause 75, any notice, information, instructions or communication given:

- (A) to the Supplier's Representative shall be deemed to have been given to the Supplier; and
- (B) to the Company's Representative shall be deemed to have been given to the Company.

12.3 The Company shall not be responsible for any notice, communication or other purported instruction required to be given under this Contract given by a person alleging to act for and on behalf of the Company unless such person is one of the Company's Representatives. Accordingly, the Supplier shall not be entitled to rely on any such notice, communication or purported instruction and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Supplier act on or fail to act on it.

13. Records and Audit

13.1 The Supplier shall, and shall procure that its Sub-Contractors shall, maintain a true and correct set of records relating to all aspects of their performance of this Contract and all transactions related to this Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (A) all necessary information for the evaluation of claims or variations;

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- (B) management accounts, information from management information systems and any other management records;
- (C) accounting records (in hard copy as well as computer readable data);
- (D) sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (E) original estimates;
- (F) estimating worksheets;
- (G) correspondence;
- (H) variation and claims files (including documentation covering negotiated settlements);
- (I) general ledger entries detailing cash and trade discounts and rebates;
- (J) commitments (agreements and leases) greater than £5,000;
- (K) detailed inspection records;
- (L) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company; and
- (M) personnel records including all payroll information in respect of any personnel, including personnel of the Supplier, any Sub-Contractor and any agency staff of the Supplier involved in the performance of the Services.

13.2 The Supplier shall, and shall procure that its Sub-Contractors shall, retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under this Contract. In the absence of specific instructions as to the method of storage, the Supplier shall, and shall procure that its Sub-Contractors shall, retain its records in an orderly and logical fashion and in accordance with Good Industry Practice.

3.3 The Company, any party authorised by it and any party legally authorised to inspect any part of the TfL Network and/or Site shall have the right to inspect and audit any of the records required pursuant to Clause 13.1, at any time during the period referred to in Clause 13.2.

13.4 The Supplier shall promptly provide all reasonable co-operation and assistance (and shall procure such co-operation and assistance from any Supplier Parties) in relation to any audit or check including:

- (A) granting or procuring the grant of access to any premises or Sites used in the performance of this Contract, whether the Supplier's own premises or otherwise;
- (B) granting or procuring the grant of access to any assets and equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under this Contract, wherever situated and whether the Supplier's own equipment or otherwise (including whether leased or licensed and whether situated at the Supplier's premises or the Sites);
- (C) making any contracts and other documents and records required to be maintained under

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this Contract available for inspection;

- (D) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies;
- (E) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of this Contract; and
- (F) providing such oral or written information as required by the Company for the purposes of the audit.

14. **Provision of Contractual Documentation and Progress Meetings**

- 14.1 The Supplier shall provide all Contractual Documentation within the times stated in Schedule 1 (Detailed Terms) or the Specification or, if no such times are stated, by no later than ten (10) Working Days from the date on which the Company's Representative requests the same.
- 4.2 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant Contractual Documentation accordingly.
- 14.3 The Supplier shall attend Contract progress meetings, organised, chaired and minuted by the Company's Representative, at the intervals specified in Schedule 1 (Detailed Terms) or the Specification or as otherwise specified by the Company's Representative from time to time. The Supplier shall ensure that its representatives at all meetings have delegated power and authority to act on behalf of the Supplier.

PART 5: CHANGE

15. Variations and Additional Works

15.1 Variations

Unless the Parties agree otherwise in writing, any variation to this Contract shall be made under the Contract Variation Procedure. The Supplier shall not proceed to implement any variation unless there has been a Variation Order.

15.2 Additional Works

Notwithstanding the provisions of Schedule 6 Part B (Additional Works) and the definition of Additional Works as set out in Part 1 of Schedule 6 Part B, in the event that the Company elects the Supplier to deliver any additional or varied works or services (whether or not defined as Additional Works in Part 1 of Schedule 6 Part B), the Company shall have the right to determine, in its sole discretion and in all circumstances, whether the provisions of the Contract Variation Procedure set out in Schedule 6 Part A or the provisions of Schedule 6 Part B shall apply. In the event that Additional Works are deemed to be treated as a variation pursuant to Schedule 6 Part A, the provisions of Schedule 6 Part B shall not apply.

16. Contract Innovation Efficiency

The Supplier is required to identify and implement efficiency savings throughout the duration of the Contract and shall do so in accordance with the requirements set out in Schedule 20 (Contract Innovation Efficiency).

PART 6: PAYMENT AND FINANCIAL

17. Company's Obligations

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

18. Certification and Payment

- 18.1 Unless otherwise expressly provided in this Contract including Clause 18.25 (JNP Stations), the Target Cost remains fixed and shall not be adjusted in respect of any increase or decrease of costs to the Supplier in providing the Services or otherwise.
- 8.2 For the certificate following the final Payment Assessment Date for each Contract Year, the Target Cost and Target Cost Breakdowns for that Contract Year shall be adjusted in accordance with the provisions stated in Schedule 2 Part D (Price Adjustment for Inflation).
- 18.3 The Target Cost is deemed to be inclusive of all ancillary and other works and expenditure necessary to provide the Services, whether separately or specifically mentioned or described in the Contract or reasonably implied.
- 18.4 The Supplier shall prepare forecasts of the total Price for Services Provided to Date in each Contract Year for the whole of the Services in consultation with the Company's Representative and shall submit them to the Company's Representative. Forecasts shall be prepared for each Period from the Services Commencement Date until the Expiry Date. Each Period the forecasts shall be submitted on the Payment Assessment Date for the Period to which the forecast relates and shall include:
- (A) a comparison of the Supplier's forecast assessment of the Target Cost for the Period and the actual Price for Services Provided to Date for the relevant Period;
 - (B) a statement of account for the Contract Year in respect of Disallowed Cost;
 - (C) a forecast of the total Price for Services Provided to Date as at the end of the current and the subsequent Contract Year; and
 - (D) an explanation of the changes made since the previous forecast.
- 18.5 In consideration of the provision of the Services for each Period, the Company shall pay the Supplier the Price for Services Provided to Date as at the relevant Payment Assessment Date less the Price for Services Provided to Date as at the immediately preceding Payment Assessment Date, in accordance with this Clause 18, subject to such deductions and additional payments due under the Contract in respect to:
- (A) performance adjustment in accordance with Clause 20;
 - (B) the sharing mechanism in accordance with Clause 18A;
 - (C) lump sum prices for Additional Works;

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- (D) Disallowed Cost;
- (E) termination payments in accordance with Clause 45;
- (F) other sums that may be payable by the Company to the Supplier or recoverable by the Company from the Supplier under the Contract;
- (G) in respect of the first Period of the first Contract Year after the Supplier has completed all of the tasks set out in the Contract Mobilisation and Transition Plan, the Lump Sum Mobilisation Costs in accordance with Clause 18.23(A); and
- (H) an amount equal to the Phased Mobilisation Costs in respect of the activities set out in the Programme in respect of a given Phase (as identified in the Programme) that has been fully completed before or during that Period, to the extent that such Phased Mobilisation Costs are payable in accordance with Clause 18.23(B).

The Company's Representative shall correct any wrongly assessed amount due in a later Payment Notice.

- 18.6 Within forty (40) Working Days of the end of the Contract Year, the Supplier shall submit to the Company's Representative a statement detailing the Price for Services Provided to Date up to the end of the Contract Year. For the purposes of this Clause 18.6, the Price for Services Provided to Date shall be the gross amount assessed prior to any reductions of the Price for Services Provided to Date pursuant to Clause 20. Within forty (40) Working Days of receipt of the statement the Company's Representative shall advise the Supplier of any corrections to be made to the statement and confirm in writing the agreed amount of the Price for Services Provided to Date up to the end of the Contract Year, such confirmation shall be without prejudice to any further corrections that may be made subsequently by the Company's Representative.
- 18.7 Fourteen (14) days before each Payment Assessment Date, the Supplier shall submit its assessment of the amount due in accordance with Clause 18.5 to the Company's Representative (each, a "Payment Application"). The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Supplier's assessment of the amount due. The Payment Application and supporting documents (if any) shall specify the Supplier's assessment of the amount due to the end of the Period to which the Payment Application relates and the basis upon which that sum is calculated.
- 18.8 The payment shall become due for the purposes of the Construction Act sixteen (16) days after the date on which the Company's Representative receives the Payment Application.
- 18.9 The Company's Representative shall issue a payment notice to the Supplier within twenty-one (21) days of receipt of the Supplier's Payment Application (a "Payment Notice"). The Payment Notice shall notify the Supplier of the amount that the Company's Representative considers to be due to the Supplier at the end of the Period to which the Payment Notice relates, if any, and the basis on which the amount is calculated. It is immaterial for the purposes of this Clause 18.9 that the amount referred to in this Clause 18.9 may be zero. The Payment Notice shall constitute a payment notice for the purposes of Section 110A of the Construction Act.
- 18.10 Within seven (7) days of receipt of a Payment Notice, the Supplier shall deliver to the Company's Representative a VAT invoice in the amount of the Payment Notice, with a copy of the Payment Notice attached.
- 18.11 The final date for payment of each invoice shall be thirty (30) days after the date payment becomes due under Clause 18.8, except if the Supplier fails to issue a VAT invoice in accordance

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with the timescales set out in Clause 18.10 (and such failure is not due to any failure by the Company to comply with its obligations under Clause 18.9) then the final date for payment shall be extended by the additional number of days taken by the Supplier to issue the VAT invoice.

- 18.12 Subject to Clauses 18.13, 18.14, and 18A.2, the Company shall pay the Supplier the sum referred to in the Payment Notice (or, if the Company's Representative has not served a Payment Notice, the sum referred to in the Supplier's Payment Application under Clause 18.7) (the "notified sum") on or before the final date for payment for each invoice.
- 18.13 If the Company intends to pay less than the notified sum, the Company's Representative shall notify the Supplier no later than one (1) day (the "Prescribed Period") before the final date for payment. The notice shall specify:
- (A) the amount the Company considers to be due for the relevant Period on the date the notice is served and any basis upon which that sum is calculated; or
 - (B) if there is more than one basis, each basis and the amount attributed to it.

It is immaterial for the purposes of this Clause 18.13 that the amounts referred to in Clause 18.13(A) or Clause 18.13(B) may be zero. Where a notice is given under this Clause 18.13, Clause 18.12 applies only in respect of the sum specified pursuant to this Clause 18.13.

- 18.14 Notwithstanding Clauses 18.11 and 18.12 and without prejudice to Clause 45.2 if the Supplier is subject to an event set out in Clause 44.1(D) after the Prescribed Period, the Company shall not be required to pay the Supplier the notified sum on or before the final date for payment.
- 18.15 The amount due is exclusive of any VAT. To the extent that any VAT paid by the Company in respect of any goods or services supplied by the Supplier under the Contract has been charged in error, is charged at a higher rate of VAT than is properly applicable, or there is an agreed reduction in the value of the supply between the Supplier and the Company, the Supplier shall without delay (and in any event within one (1) month of the mistake being discovered or a reduction being agreed) issue a valid credit note to the Company in respect of such VAT and the Supplier shall repay to the Company any such VAT paid by the Company to the Supplier in error in respect of supplies made under the Contract.
- 8.16 Any payment made by the Company under the Contract, including any final payment, shall not prevent the Company from recovering any amount overpaid or wrongfully paid, however such payments may have arisen including, but not limited to, those amounts paid to the Supplier by mistake of law or fact. The Company's Representative shall be entitled to withhold from any sums due or which may become due to the Supplier from the Company any amount which the Company's Representative considers to be due or which may become due from the Supplier assessed on the basis of the Company's Representative's bona fide estimate, provided that an appropriate written notice to pay less has been served by the Company's Representative on the Supplier. Such estimates shall bind the Supplier unless varied by agreement between the Parties or by any award, decision, order or judgement, whichever is the earlier.
- 18.17 Not used.
- 18.18 All sums payable to the Company by the Supplier under the Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which

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the Company would have received had no such deduction or withholding been made.

18.19 Not used.

18.20 Without prejudice to its obligations in Clause 13, the Supplier shall keep the following records:

- (A) accounts of payments of Defined Cost;
- (B) proof that such payments have been made;
- (C) communications about and assessments of any compensation events for Sub-Contractors in accordance with any relevant Sub-Contract; and
- (D) any other records as stated in Schedule 2 (Payment).

18.21 The Supplier shall permit the Company and its authorised representatives to inspect at any time the accounts and records the Supplier is required to keep by Clause 18.20. Such accounts and records shall be retained for the period stated in Clause 13.2.

18.22 For the purposes of the Contract, "Disallowed Cost" means cost which the Company's Representative decides:

- (A) is not justified by the Supplier's accounts and records;
- (B) should not have been paid to a Sub-Contractor or supplier in accordance with its contract or was paid to a Sub-Contractor to whom a Sub-Contract had been let in breach of Clause 55.1;
- (C) was incurred only because the Supplier did not:
 - (1) follow an acceptance, procurement or other procedure stated in the Contract; or
 - (2) obtain best value from suppliers or Sub-Contractors;
- (D) was due to reasonably foreseeable Site conditions including, but without limitation to, access and egress routes, climatic, environmental or other physical conditions;
- (E) that the Supplier is unable to demonstrate has been reasonably and properly incurred by the Supplier for the purposes of this Contract,

and the cost of:

- (F) correcting defects caused by the Supplier not complying with a requirement of how to carry out the Services stated in the Contract;
- (G) goods, materials, facilities, and equipment not used to provide the Services (after allowing for reasonable wastage) unless resulting from a change to the Specification;
- (H) resources not used to provide the Services (after allowing for reasonable availability and utilisation) or not taken away from the Site when requested by the Company's Representative;
- (I) preparation for and conduct of any of the procedures contemplated in Clause 65;

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- (J) fines, charges, penalties and fees imposed on or accepted by the Supplier as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Applicable Law;
- (K) strikes, riots and civil commotion confined to the Supplier's employees and/or any Sub-Contractor's employees;
- (L) profit payable to the Supplier's subsidiary, Affiliate or parent company or a company with the same parent company where such parent or other company is a Sub-Contractor; and
- (M) the amount of Price for Services Provided to Date in respect of a Period which was not included in the Supplier's Payment Application for that Period or the following Period in accordance with Clause 18.7.

For the avoidance of doubt, any Disallowed Cost shall be the responsibility of the Supplier and the Supplier shall not be entitled to any reimbursement from the Company in respect of the same.

8.23 Mobilisation Payments

- (A) Subject to the Supplier having completed all of the tasks set out in the Contract Mobilisation and Transition Plan, save for the mobilisation tasks attributable to the JNP Stations Delivery Units set out in the Contract Mobilisation and Transition Plan which the Supplier shall complete in accordance with the Contract Mobilisation and Transition Plan following the delivery of a JNP Notice by the Company, the Company shall pay to the Supplier the Lump Sum Mobilisation Costs. The Lump Sum Mobilisation Costs include the mobilisation tasks set out in the Contract Mobilisation and Transition Plan attributable to the JNP Stations Delivery Units and the Supplier shall not be entitled to any further Lump Sum Mobilisation Costs, or other payments, in connection with such tasks.
- (B) Subject to the Supplier completing the all the activities set out in the Programme in respect of a given Phase (as identified in the Programme) by the relevant dates specified in the Programme and within eighteen (18) months after the Service Commencement Date, the Company shall pay to the Supplier the Phased Mobilisation Costs in respect of such activities for that Phase. The Supplier shall not be entitled to any payment of Phased Mobilisation Costs in respect of activities completed later than eighteen (18) months after the Service Commencement Date, provided that this shall not relieve the Supplier of its obligations to perform such activities in accordance with this Contract.

18.24 Volume Rebate

- (A) Within ten (10) Working Days after the end of each Contract Year, the Supplier shall provide to the Company details of the Aggregate Annual Additional Works Spend for that Contract Year.
- (B) The Company shall calculate the Volume Rebate Amount for that Contract Year by multiplying the Aggregate Annual Additional Works Spend for that Contract Year by the Volume Discount Percentage.
- (C) Within twenty (20) Working Days after receipt of the Aggregate Annual Additional Works Spend further to Clause 18.24(A) the Company shall invoice the Supplier for the Volume Rebate Amount for the relevant Contract Year. The Supplier shall pay such invoiced amount within thirty (30) days of receipt of such invoice unless the Company has notified (which may be in a Payment Notice) the Supplier that, further to Clause 18.5(F), the Company will deduct some or all of such invoiced amount from sums due to the Supplier

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in full or partial (as applicable) satisfaction of such invoice.

18.25 JNP Stations

Until the JNP Effective Date and notwithstanding any other provision of this Contract, the Target Cost for a given Contract Year shall be reduced by an amount equal to the amount of the Target Cost attributable to the Services to be provided to the JNP Stations Delivery Unit as set out in Schedule 2 (Payment) Part C (Target Cost and Other Pricing Information) Matrix 1.1. If the JNP Effective Date is part way through a Contract Year the Target Cost for that Contract Year shall, with effect from the JNP Effective Date, be reduced pro rata to the proportion of that Contract Year having expired before the JNP Effective Date. Within fifteen (15) Working Days after the end of any Contract Year in which the reduction in the Target Cost further to this Clause 18.25 applies the Company shall confirm to the Supplier by notice the Target Cost for that Contract Year. The reduction in the Target Cost referred to in this Clause 18.25 shall not apply in respect of any subsequent Contract Years after the Contract Year in which the JNP Effective Date occurs.

8A. Sharing Mechanism

18A.1 The sharing mechanism shall operate as follows:

- (A) Within five (5) Working Days of agreement of the Price for Services Provided to Date pursuant to Clause 18.6, the Company's Representative shall assess the Supplier's share of the difference between the Target Cost for that Contract Year (as adjusted in accordance with the Contract) and the Price for Services Provided to Date for that Contract Year.
- (B) The Company's Representative shall correct any incorrect assessment of the Supplier's share in a later Payment Notice or assessment of the Supplier's share.
- (C) On expiry or termination of the Contract, the Company's Representative shall include in his assessment of the final amount due his assessment of the Supplier's share for the Contract Year in which expiry or termination occurs. The Company's Representative's assessment of the Supplier's share shall be added to the final amount due to the Supplier if there has been a saving, or deducted if there is an excess.

8A.2 (A) If the Price for Services Provided to Date for a Contract Year is less than the Target Cost for that Contract Year, the Supplier shall be paid fifty percent (50%) of the saving.

- (B) If the Price for Services Provided to Date for a Contract Year is greater than the Target Cost but less than the Maximum Cost for that Contract Year, the Supplier shall be responsible for fifty percent (50%) of the excess between the Target Cost and the Maximum Cost and the Supplier shall therefore pay to the Company in accordance with this Contract an amount equal to fifty percent (50%) of such excess.
- (C) If the Price for Services Provided to Date for a Contract Year is greater than the Maximum Cost for that Contract Year, the Supplier shall pay all of the excess above the Maximum Cost in addition to paying fifty percent (50%) of the excess between the Target Cost and the Maximum Cost as set out in Clause 18A.2(B) (above).
- (D) The certificate for the next payment due to the Supplier shall include the Supplier's share of any saving or excess for that year as the case may be, as calculated pursuant to this Clause 18A.2. Should this result in the certification of a negative balance, this shall become a debt due from the Supplier to the Company and be deductible or recoverable

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from any monies due or which may become due to the Supplier under the Contract.

18A.3 Following expiry or termination of the Contract, any outstanding amounts owed from either party to the other party in respect of the Company's Representative's final assessment in accordance with Clause 18A.1 shall be paid within thirty (30) days of receipt of a VAT invoice by the paying party from the receiving party, in respect of any such amount owed.

18A.4 Without limiting Clauses 18A.1 and 18A.2 if the Company's Representative (acting reasonably) assesses prior to the Expiry Date that (having regard to the Price for Services Provided to Date at the relevant time) the Price for Services Provided to Date at the Expiry Date is likely to exceed the Target Cost, the Company's Representative may deduct from sums otherwise due to the Supplier a sum equivalent to the Company's Representative's reasonable assessment of the likely Supplier's share of the excess. Any sum so deducted shall be taken into account in assessing the amounts due under Clauses 34.1, 34.2 and/or Clause 45.

19. **Adjustment to the Target Cost and Defined Cost following Termination**

Where this Contract is terminated in part pursuant to any of Clauses, 43, 44, or 47, the Target Cost and Defined Cost will be adjusted in accordance with Schedule 2 (Payment) to reflect the extent of such termination in part.

20. **Performance Measurement**

20.1 At the end of the Company's first Period after the Services Commencement Date (and for the duration of this Contract), every four (4) weeks after that date the Company shall assess the Supplier's performance under this Contract in accordance with Schedule 12 (Performance Measurement).

20.2 The Company shall have the right to:

(A) levy Abatements as set out in Schedule 12 (Performance Measurement); and/or

(B) use the Escalation Procedure set out in Schedule 12 (Performance Measurement) to rectify any unsatisfactory performance by the Supplier in its performance of this Contract or any failure by the Supplier to meet the performance standards set out in Schedule 12 (Performance Measurement).

20.3 Without limiting any other remedy, if the Services are not performed in accordance with this Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with the Contract at no extra cost to the Company within five (5) Working Days.

21. **Interest**

21.1 If either Party fails to pay to the other any amount payable in connection with this Contract on or before the final date for payment, interest shall accrue on the overdue amount from the final date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 21 shall be immediately payable by the paying Party on demand.

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

PART 7: PROPERTY AND ASSETS

22. Access

- 22.1 The Company shall give the Supplier access to the parts of the TfL Network and/or Sites required for the performance of the Services provided that the Supplier complies with the access requirements set out in Schedule 5 (Access) and otherwise subject to and in accordance with Schedule 5 (Access).
- 22.2 Where the Supplier or any Supplier Party has access to the TfL Network and/or Sites for the carrying out of any of the Services, the Supplier shall and shall ensure that any Supplier Party shall:
- (A) not cause any damage to the TfL Network and/or Sites;
 - (B) not do or permit to be done on the TfL Network and/or Sites anything which is illegal or which may be or become a nuisance (whether actionable or not) or cause damage or disturbance to the Company or to any tenants or occupiers of the TfL Network and/or Sites or any owner or occupier of any neighbouring property;
 - (C) not knowingly do anything that will or might constitute a breach of any Necessary Consent affecting the TfL Network and/or Sites that have been disclosed to the Supplier or which will or might vitiate in whole or in part any insurance effected by the Company in respect of the TfL Network and/or Sites from time to time of which the Supplier has notice;
 - (D) observe any rules and regulations the Company acting reasonably makes in the interests of good estate management and notifies to the Supplier from time to time in writing governing the Supplier's use of the TfL Network and/or Sites and in particular:
 - (1) the lawful requirements and recommendations of the Company's local fire officer and the Company's health and safety representative in respect of the TfL Network and/or Sites or their use; and
 - (2) all regulations and Government establishment regulations, standing orders, any traffic regulations and any other regulations made by the Company; and
 - (E) make good any damage that is wilfully or negligently caused by the Supplier or any Supplier Party to any equipment in the TfL Network and/or Sites as soon as reasonably practicable.

23. Free Issue Materials

- 23.1 In the event of the Company supplying Free Issue Materials to the Supplier the cost of which has been included in calculating the Target Cost or the Defined Cost, the Target Cost and/or the Defined Cost (as the case may be) shall be reduced by the amount included therein for the materials which have been replaced by such Free Issue Materials.
- 23.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 23.3 The Supplier shall check the Free Issue Materials at the time of delivery to ensure that they are in good condition and in accordance with the Specification and shall certify the advice note of the

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supplier of the Free Issue Materials accordingly and return the advice note as soon as reasonably possible to that supplier. The Supplier shall report any loss or damage immediately following inspection of the Free Issue Materials to the Company, the Company's Representative, the supplier of the Free Issue Materials and the carriers of the Free Issue Materials. In the event that such a report is not made, the Supplier shall be responsible for any loss or damage existing at the time of receipt which would have been apparent on a visual check of quantities and condition.

23.4 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss or damage to such Free Issue Materials and other property of the Company whilst the same are in or ought to be in the Supplier's possession or in, or ought to be in, the possession of any Sub-Contractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

24. **Other Materials, Staff and Labour**

4.1 Unless otherwise stated in this Contract, the Supplier shall provide all staff and labour, including management and supervision, and all materials (except Free Issue Materials), vehicles, plant and equipment (whether of a temporary or permanent nature), support services and other facilities necessary for the performance of its obligations under this Contract.

24.2 The Supplier shall be fully responsible for the management of obsolescence in equipment and materials until the Expiry Date in accordance with the requirements stated in the Specification.

25. **Inspection and Testing**

25.1 All goods, materials, facilities, vehicles, plant, equipment, workmanship and systems to be supplied and work to be provided under this Contract may be subject from time to time to such tests as may be provided for in the Specification or as the Company's Representative may consider necessary to ensure that the Services are carried out in accordance with this Contract.

25.2 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 the Specification or approved by the Company's Representative.

25.3 The Supplier shall provide the Company's 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 25.

25.4 The costs of any test ordered by the Company's Representative which are not provided for in the Specification shall be borne by the Company unless the tests show that workmanship, vehicles, plant, equipment or materials provided by the Supplier are not in accordance with this Contract. The costs of any test whether ordered by the Company's Representative or otherwise which are provided for in the Specification shall be borne by the Supplier.

25.5 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 25.

26. **Title**

26.1 Whatever title the Supplier has to materials, plant and equipment to be incorporated into or form part of the Services shall pass to the Company upon the earlier of (i) payment for such materials,

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plant and equipment or (ii) when such materials, plant and equipment are brought within the Site, without prejudice to any rights of rejection the Company may have. Title to materials, plant and equipment referred to in (ii) passes back to the Supplier if it is removed from the Site with the permission of the Company's Representative. Until such time as they are brought within the Site, the Supplier shall be responsible for and insure against the loss, destruction and damage of materials, plant and equipment to be incorporated into or form part of the Services (including while in transit) for their full replacement value, whether or not the property of the Supplier or the Company.

26.2 The Supplier shall label the material, plant and equipment "Property of Tfl" where title has passed to the Company prior to bringing such items within the Site and shall ensure that such items are identifiable as belonging to the Company. The Supplier shall not mortgage, pledge or create a security interest in the material, plant or equipment in favour of any third party.

26.3 The Supplier has no title to an object of value or of historical or other interest within the Site. Without prejudice to the generality of Clause 30, the Supplier shall notify the Company's Representative when such an object is found and the Company's Representative shall instruct the Supplier how to deal with it. The Supplier shall not move the object without instructions.

26.4 The Supplier has title to materials from excavation and demolition only as stated in the Specification.

27. **Asset Management System**

27.1 The Supplier shall use the Asset Management System to record details of work undertaken by the Supplier on the Company's assets as part of the Services and to carry out any other activities in relation to the Asset Management System as set out in the Specification.

27.2 The Supplier shall ensure that all Supplier Personnel attend any training by the Company in relation to the Asset Management System and follow the methods and processes required by the Company, as may be more particularly described in the Specification or notified to the Supplier from time to time.

27.3 The Supplier shall perform its obligations under this Clause 27 so as not to put the Company in breach of any of its obligations under any Third Party Licence and shall comply with the terms of any Third Party Licence as if it were a party to the Third Party Licence.

27.4 The Supplier acknowledges that the Company shall not have any liability to the Supplier in respect of any inaccuracy, error or omission contained in, or any unavailability of, the Asset Management System, and the Supplier shall not be relieved from its obligations under this Contract as a result of the Asset Management System being unavailable or containing any inaccuracies, errors or omissions.

PART 8: ENVIRONMENT, HEALTH AND SAFETY

28. Safety

- 28.1 The Supplier is required to comply with its obligations under Schedule 7 (Health, Safety, Quality and Environmental Requirements) of the Contract.
- 28.2 The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 28.3 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (A) the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to this Contract in the QUENSH menu set out in Schedule 7 Part A (Health, Safety, Quality and Environmental Requirements) as amended from time to time; and
 - (B) the Company's drug and alcohol principles as amended from time to time.
- 28.4 Section 20.1.1 (Alcohol and drugs) of QUENSH (as set out in Schedule Part A Section 3 of Schedule 7) shall apply to this Contract as if the term "LU Premises" means any of the Company's property where the Services are carried out and as if references to "LU" are references to the Company.
- 28.5 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, Sub-Contractors or agents for drugs or alcohol which this Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

29. Construction (Design and Management) Regulations 2015

- 29.1 To the extent that the Construction (Design and Management) Regulations 2015 (the "CDM Regulations") apply to this Contract, the Company appoints the Supplier to act as Principal Designer and Principal Contractor pursuant to Regulation 5(1) of the CDM Regulations, but reserves the right to appoint alternative suppliers to fulfil these roles.
- 29.2 The Supplier shall accept any such appointment made under Clause 29.1 and agrees to carry out all associated obligations imposed by the CDM Regulations. The Supplier and the Company's Representative shall provide each other with all the necessary assistance which they may reasonably require in order to fulfil their respective obligations under the CDM Regulations.
- 29.3 The Supplier warrants to the Company that it:
- (A) is competent to perform such of the duties allocated to it under Clause 29.1;
 - (B) shall allocate adequate resources to enable it to comply with its obligations under the CDM Regulations; and
 - (C) shall co-operate with other parties appointed under the CDM Regulations.

PART 9: RELIEF EVENTS

30. Relief Events

30.1 The following are events which may cause the Supplier delay or disruption and for which the Supplier may be relieved from termination due to a Supplier Default subject to the terms of this Clause 30 ("Relief Events"):

- (A) (subject to compliance by the Supplier with the requirements of Schedule 5 (Access)) the frustration of any access booked by the Supplier in accordance with Schedule 5 (Access);
- (B) the Company's Representative giving an instruction to suspend the Services;
- (C) a breach of this Contract by the Company (except to the extent caused by or contributed to by the Supplier or any Sub-Contractor or person for whom those parties are responsible) that is not one of the other Relief Events;
- (D) flooding caused by rising water table or by weather conditions including extraordinary storm, bursting or overflow of water tanks, apparatus or pipes;
- (E) an interruption in the supply of power or other utility services for which the Supplier is not responsible, if and only to the extent that such failure or interruption is not caused by, and its effects are beyond the reasonable control of, the Supplier and it could not reasonably have avoided or provided against the effects;
- (F) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the TfL Network and/or Site;
- (G) lightning, earthquake or extraordinary storm;
- (H) fire;
- (I) tunnel collapse;
- (J) compliance with the provision of Sections 118 to 121 of the Railways Act 1993;
- (K) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs;
- (L) strikes, lock outs or other industrial action being in each case industry-wide; and
- (M) suspension of any or all of its obligations under this Contract where the Supplier has properly exercised its right to suspend in accordance with the Construction Act.

30.2 The Supplier shall notify the Company's Representative of the occurrence of an event which has happened or which it expects to happen if:

- (A) it believes it to be a Relief Event that is delaying or disrupting (or is likely to delay or disrupt) the Services; and
- (B) the Company's Representative has not notified the event to the Supplier.

The event shall be notified as soon as is reasonably practicable and in any event no later than five (5) Working Days after the Supplier becomes aware or ought reasonably to have become

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aware of the event or the likelihood of its occurrence.

30.3 The Supplier shall submit full and detailed particulars of any Relief Event to the Company's Representative as soon as reasonably practicable after receiving the Company's Representative's notification and in any event no longer than ten (10) Working Days after the occurrence. The particulars shall include full, detailed particulars of the cause and effect of the Relief Event and:

- (A) the extent of the delay, if any;
- (B) details of the measures adopted by the Supplier to mitigate the effects of the Relief Event;
- (C) the likely effects, if any, on access requirements; and
- (D) such further information as may reasonably be required by the Company.

The Company shall be entitled to:

- (A) seek clarification in respect of the particulars provided by the Supplier; and/or
- (B) request further particulars and related information in connection with the occurrence of the Relief Event.

Provided that there shall be no increase to the Target Cost, the Defined Cost or the Fee arising as a result of a Relief Event.

30.4 If the Company's Representative decides that the occurrence is a Relief Event in accordance with this Contract and is delaying or disrupting (or is likely to delay or disrupt) the Services then:

- (A) without prejudice to Clause 30.5, the Supplier shall not be deemed to be in breach of this Contract as a result of its failure to perform and the Company shall not be entitled to apply the provisions of Schedule 12 (Performance Measurement) in respect of any affected Services, to the extent that the same is attributable to the Relief Event; and
- (B) the Supplier shall be entitled to an extension of time for the performance of its affected obligations.

30.5 The Company shall be under no obligation to make any payments to the Supplier of the Target Cost, the Defined Cost or the Fee in respect of any Services affected by the Relief Event during the period in which the Relief Event is subsisting provided that any such non-performance by the Supplier shall be disregarded for the purposes of the Company's right to terminate this Contract pursuant to Clause 44.

30.6 The Supplier shall have no entitlements in accordance with Clause 30.4 to the extent that:

- (A) the event or any of its effects arises from any error, unlawful act or omission, negligence, default, breach of contract, breach of statutory duty and/or failure to comply with this Contract of the Supplier or any of its employees or agents or of any Sub-Contractor or supplier or any of their employees or agents;
- (B) the Supplier has failed to take all reasonable steps to mitigate the actual or potential effect of the event or has failed to use its best endeavours to adjust the order and sequence in which it proposes to provide the Services; and/or

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- (C) the Company's Representative decides that there was no such occurrence, that the occurrence was not one of the Relief Events, or that the occurrence has had no adverse effect on the provision of the Services.
- 30.7 In the event that information is provided after the date referred to in Clauses 30.2 and/or 30.3, then the Supplier shall not be entitled to any extension of time or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.
- 30.8 This Clause 30 shall not give the Supplier any entitlement to an extension of the period of the Supplier's employment under this Contract or any extension to the Expiry Date.
- 30.9 A Relief Event may not be notified after the Expiry Date (or termination if earlier).

PART 10: PEOPLE

31. TUPE

31.1 For the purposes of this Clause 31:

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

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

“Subsequent Relevant Employee” means a person employed or engaged by the Supplier or relevant Sub-Contractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of this Contract (or part of it);

“Transfer Regulations” means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; 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; and

“Transferring Employees” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Supplier under the Transfer Regulations.

1.2 The Supplier complies and procures that his Sub-Contractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the Expiry Date or earlier termination of this Contract.

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

- (A) the names of employees (of the Supplier or its Sub-Contractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;
- (B) the method of organisation of the employees (of the Supplier or its Sub-Contractors) engaged in providing Services and documentary evidence relating to such organisation;
- (C) the proposals for informing and consulting with affected employees;

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- (D) details of collective agreements and union recognition agreements; and
 - (E) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of this Contract.
- 31.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 31 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 31 is accurate, complete and not misleading, including any information supplied in relation to its Sub-Contractors.
- 31.5 The Supplier will not and will procure that its Sub-Contractors will not in the 18 months prior to the Expiry Date (or, where notice of termination is given, during any such period of notice) without the Company's written consent:
- (A) re-organise or substantially alter the number or 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 reorganisation of the Supplier or the relevant Sub-Contractor which is not related or confined to the employees engaged in providing the Services or the expected Expiry Date or termination of this Contract, or
 - (B) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in providing the Services, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant Sub-Contractor's business and are not related to the Expiry Date or termination of this Contract (either because they are applied to all of the Supplier's or the relevant Sub-Contractor'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 Sub-Contractor which is not related or confined to the employees engaged in providing the Services or relates to the Expiry Date or termination of this Contract.
- 31.6 The Supplier shall indemnify the Company 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 Company 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.
- 31.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:
- (A) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and

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- (B) any claim by any former or existing employee of the Supplier or relevant Sub-Contractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (C) In this Clause 31.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company 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 Company in providing an indemnity under this Clause 31.

31.8 The provisions of this Clause 31 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Supplier of any provision of this Clause 31 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

2. Personnel

- 32.1 The Supplier agrees to the appointment of the Key Personnel set out at Schedule 19 (Key Personnel).
- 32.2 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 32.3 The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating twenty (20) Working Days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.
- 2.4 The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within five (5) Working Days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty (20) Working Days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of five (5) Working Days or any shorter period agreed between the Parties.
- 32.5 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to

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the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.

32.6 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.

32.7 At the sole cost of the Supplier, the Supplier:

- (A) undertakes that all the Supplier's Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;
- (B) shall ensure that all the Supplier's Personnel are in possession of valid work permits if they are non-European Community nationals; and
- (C) shall (at its expense) provide or procure the provision of training for the Supplier's Personnel in respect of all aspects of its performance of the Contract and, as the Company may require, for any employees, agents and contractors of the Company in relation to the operation or use of any equipment supplied under the Contract, such training to include, as a minimum:
 - (1) the training activities specified in Schedule 22 (Training);
 - (2) training as required by QUENSH and any TfL Group standards; and
 - (3) such other training as required by TfL Group from time to time.

32.8 Without prejudice to the Supplier's other obligations under the Contract, where training of any or all of the Supplier's Personnel is required for the purposes of performance of the Contract, the Supplier shall not assign any Supplier's Personnel to the performance of the Contract unless and until such Supplier's Personnel have satisfactorily completed such training.

32.9 The Company will arrange safety training for the Supplier's Personnel from time to time at the expense of the Supplier. To the extent that any refresher training of any kind (at any time) is required for any of the Supplier's Personnel, this shall be at the expense of the Supplier. For the avoidance of doubt, the Company will not be responsible for the remuneration, travel, subsistence or other similar costs and expenses of any of the Supplier's Personnel attending any training under this Clause 32.9.

33. **London Living Wage**

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

33.2 The Supplier shall, to the extent this Contract is for the provision of Services to be undertaken within Greater London or on the TfL Network:

- (A) ensure that none of its employees (whether engaged directly or as agency staff employed via an employment agency or similar) engaged in the provision of services under this Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

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- (B) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (C) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (D) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (E) procure that any sub-contractor is required to comply with the provisions of this Clause 33.2 and the provisions of this Clause 33.2 are included in any sub-contract with a sub-contractor.

33.3 The Supplier shall not, and shall procure that any sub-contractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or sub-contract in accordance with the operation of this Clause 33.

33.4 In the event that the Supplier either itself or through a sub-contractor is in breach of this Clause 33, the Supplier shall:

- (A) if notification has not been made by the Company, notify the Company immediately upon becoming aware of the breach; and
- (B) rectify the breach, or procure that the breach is rectified within 7 days of becoming aware of the breach.

33.5 In the event that the Supplier fails to rectify the breach as required by Clause 33.4(B), the Company shall have the right, in its absolute discretion:

- (A) to require the Supplier to terminate the sub-contract or agency agreement of the party in breach; or
- (B) to require the removal of any personnel from involvement with the Services who are not being paid the London Living Wage.

33.6 The Supplier shall, so far as reasonably practicable, mitigate any increase in the amount payable to its employees as a direct result of the increase in London Living Wage. The Supplier shall not be entitled to make any claim in respect of any increases in the London Living Wage.

34. **Criminal Record Declarations and Right to Work in the UK**

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 Sub-Contractor 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

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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 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 has a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has a Relevant Conviction.

- 34.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any Sub-Contractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction or who the Supplier is aware has a Relevant Conviction.
- 34.4 The Company shall have the right in accordance with the audit rights set out in Clause 13 to audit and inspect the records of the Supplier and its Sub-Contractors 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 this 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 44, 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 this Contract and/or 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 five (5) Working 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 this Contract in whole or in part with immediate effect in accordance with Clause 44, as if such persistent breach were a Supplier Default.
- 34.7 In the event the Company becomes aware that a Relevant Individual has a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from this 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.
- 4.8 The Supplier shall ensure that each Relevant Individual has the right to work in the UK and shall comply with its obligations under the relevant immigration legislation including but not limited to the obligation to conduct document checks in respect of Relevant Individuals.
- 34.9 Nothing in this Clause 34 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under this Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier is not entitled to claim any extra costs or time or any relief from its obligations as a result of any actions under this Clause 34.

34A. **Offers of Employment (Non-Solicitation)**

For the duration of the Contract and for a period of 6 months after expiry or termination of the Contract, the Supplier shall not employ or offer employment to any TfL Group employees who have been associated with the provision of the Services by the Supplier without the Company's prior written consent. Any breach of this Clause 34A shall render the Supplier liable to pay to the Company a sum equal to the basic salary payable to the employee by the Supplier during the first 6 months of new employment.

PART 11: RESPONSIBLE PROCUREMENT

35. Responsible Procurement

- 35.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with Section 155 of the GLA Act, has directed the Company and its subsidiaries to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.
- 35.2 The Supplier shall and shall procure that its Sub-Contractors shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with, the Responsible Procurement Policy.
- 35.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "Ethical Sourcing Policy") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy and the Supplier shall, and shall procure that all of its Sub-Contractors shall, comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 35.4 The Supplier acknowledges and agrees that it (and its Sub-Contractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 35.5 The Supplier shall not be entitled to any addition to the Target Cost, the Defined Cost or the Fee in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).
- 35.6 The Supplier shall procure that any Sub-Contractor is required to comply with the provisions of this Clause 35 and the provisions of this Clause 35 are included in any sub-contract (of any tier).
- 35.7 The Supplier shall not, and shall procure that any Sub-Contractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or sub-contract in accordance with the operation of this Clause 35.
- 5.8 The Supplier shall at all times comply with the ETI Base Code set out in Appendix 1 to Schedule 16 (Responsible Procurement) of the Contract and shall at all times comply with the provisions of Schedule 17 (Strategic Labour Needs and Training).

36. CompeteFor

- 36.1 Without prejudice to Clause 55, 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 this Contract, to supply goods, works or services to the Supplier.
- 36.2 The Supplier will use all reasonable endeavours to ensure that its Sub-Contractors use CompeteFor, on a non-exclusive basis, to make available to other parties all appropriate opportunities, arising in connection with this Contract, to supply goods, works and services to such Sub-Contractors.
- 36.3 The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with this Contract, made available to other suppliers via CompeteFor,

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whether by the Supplier or its Sub-Contractors, as required by Clause 36.2, and will report this information on a quarterly basis by way of email to the Company's Representative.

PART 12: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

37. Intellectual Property Rights

37.1 Existing Contracts

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

37.2 Vesting of Intellectual Property Rights created under this Contract

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

7.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 37.2, all Intellectual Property Rights owned by the Supplier or its Sub-Contractors or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 37.2 shall remain or be vested in the Supplier, its Sub-Contractors or other third party (as the case may be).

37.4 Company's Licence to use the Supplier's Intellectual Property Rights

The Company shall have and the Supplier hereby grants, and procures that its Sub-Contractors 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 37.3 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 TfL Network and/or Sites;
- (E) executing and completing the Services; and
- (F) enabling the Company to make available the TfL Network to perform its function and duties as Infrastructure Manager and Operator of the TfL Network.

37.5 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 Sub-Contractor's or other third party's possession or control (or which ought reasonably to be in the Supplier's or

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Sub-Contractor's 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 37.2, 37.3 and 37.4 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.

37.6 Company's Rights of Retention

If the Supplier has not complied with its obligations under Clause 37.5(A), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 37.5(A).

37.7 Company's Rights to the Software

If the Supplier or any of its Sub-Contractors 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 the definition of Supplier Default (including their equivalent in any jurisdiction to which the Supplier or any of its Sub-Contractors 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 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.

37.8 Not used.

37.9 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 37.5 and anything in which the Intellectual Property Rights referred to in Clauses 37.2, 37.3 and 37.4 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 37.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

7.10 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 Sub-Contractor or sub-contractor (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 Sub-Contractor 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 and for the avoidance of doubt shall not be entitled to any relief in respect of its obligations to perform the Services as required by this Contract.

37.11 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 this 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.

37.12 Supplier's Licence to the Company's Intellectual Property Rights

The Company hereby grants the Supplier a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the Company (including for the avoidance of doubt the Corporate IPRs as such term is defined in Clause 37.13) which are required by the Supplier for the purposes of performing the Services. Such licence is granted for the duration of this Contract solely to enable the Supplier to comply with its obligations under this Contract and is conditional upon the Supplier using such Intellectual Property Rights in accordance with Applicable Laws and Standards and such other quality standards as the Company may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the Company may be used in conjunction with any other trade-marks without the prior written consent of the Company.

37.13 Corporate IPRs

- (A) The Supplier shall use and shall procure that its Sub-Contractors and suppliers shall use the trade-marks, trade names and other Intellectual Property Rights as amended by the Company from time to time (the "Corporate IPRs") in compliance with any relevant Company standards from time to time in force.
- (B) The Supplier shall not use and shall procure that its Sub-Contractors and suppliers shall not use the Corporate IPRs in combination with any other trade-marks, trade names and other Intellectual Property Rights without the Company's prior written consent.
- (C) On written request from the Company, the Supplier shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company reasonably determines that any use of the Corporate IPRs falls below the quality standards notified to the Supplier in accordance with Clause 37.12, the Company shall give the Supplier written notice of that fact and the Supplier shall correct the use so as to comply with such quality standards taking into account the Company's instructions.

38. Confidentiality

38.1 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 to use such information only for the purpose of the performance of his obligations under this Contract.

38.2 At 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;

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- (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.
- 38.3 The Supplier shall ensure that all Supplier Parties perform the obligations in Clauses 38.1 and 38.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by any Supplier Parties in this regard.
- 38.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a Supplier Party 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 Supplier Party for such breach of confidence.
- 38.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, this Contract or the Services without the prior written consent of the Company.
- 38.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with this Contract or the Services, or any Dispute arising under or in connection with this Contract.
- 38.7 The provisions of Clauses 38.1 to 38.6 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 this 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.
- 38.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 38 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 38.

39. **Freedom of Information**

39.1 For the purposes of this Clause 39:

"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.

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39.2 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.

39.3 Without prejudice to the generality of Clause 39.2 the Supplier shall and shall procure that its Sub-Contractors (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 this 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.

39.4 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.

40. **Data Transparency**

40.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 38 and Clause 39, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

0.2 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 40.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

41. **Data Protection**

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.

PART 13: COMPANY STEP IN, TERMINATION AND SUSPENSION

42. Company Step-in

- 42.1 Without limiting any other remedy, if the Supplier fails to comply with its obligations to perform the Services as required by this Contract, 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 42 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 Contract.
- 42.2 Without prejudice to the provisions of Clause 42.1 if the Company reasonably believes that it needs to take action in connection with the Services:
- (A) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - (B) to discharge a statutory duty,
- then the following provisions shall apply.
- 42.3 The Company shall provide notice to the Supplier in writing of the following:
- (A) the action it wishes to take;
 - (B) the reason for such action;
 - (C) the date it wishes to commence such action;
 - (D) the time period which it believes will be necessary for such action; and
 - (E) to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period such action is being taken.
- 2.4 Following service of the notice required in Clause 42.3, the Company or a third party appointed by the Company for the purpose shall take such action as is notified under these provisions and any consequential additional action as the Company reasonably believes is necessary (the "Required Action").
- 42.5 For so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Services, the Supplier shall be relieved from its obligations to provide such part of the Services and the Company shall not be liable to pay the Target Cost, the Defined Cost or the Fee for such part of the Services.
- 42.6 For the purposes of this Clause 42 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 Contract as may be required by the Company to exercise its rights under this Clause 42 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 this Clause 42.

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43. **Voluntary Termination by the Company**

- 43.1 The Company may terminate this Contract or any part or parts of the Services for convenience at any time on or before the Expiry Date by serving a Termination Notice on the Supplier stating:
- (A) that the Company is terminating this Contract in whole or in part under this Clause 43; and
 - (B) that this Contract will terminate in whole or in part on the date specified in the notice, which must be a minimum of three (3) months after the date of receipt of the notice.
- 43.2 This Contract will terminate in whole or in part as the case may be on the date specified in the Termination Notice referred to in Clause 43.1.

44. **Termination on Supplier Default**

- 44.1 For the purposes of Clause 44, a Supplier Default is any of the following events:
- (A) the Supplier committing a material breach of this 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) a Persistent Breach occurring;
 - (C) 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;
 - (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 this 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 any similar or analogous procedure or step is taken in any jurisdiction;
 - (E) a persistent breach of the Supplier's obligations set out in either or both of Clause 34.2 and 34.3;
 - (F) a breach of the Supplier's obligations under Clauses 55 or 56;
 - (G) any parent company guarantee or bond required pursuant to Clause 54 becoming invalid and/or the Supplier being in breach of Clause 54.3;
 - (H) a breach by the Supplier of its obligations to take out and maintain any of the insurances required pursuant to Clause 51;
 - (I) the occurrence of a conflict of interests such that the circumstances set out in Clause 76.5(B) occur;
 - (J) the Company becomes entitled to terminate in accordance with the escalation procedure

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set out in Schedule 12 (Performance Measurement);

- (K) a persistent breach of the Supplier's obligations under Schedule 20 (Contract Innovation Efficiency); or
- (L) the Supplier has, at the date of this Contract, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with regulation 80(2) of the Utilities Contracts Regulations 2016.

44.2 If a breach, that is not a Supplier Default, has continued for more than ten (10) Working Days or occurred more than three (3) times in any six (6) month period then the Company may serve a notice on the Supplier:

- (A) specifying that it is a formal warning notice;
- (B) giving reasonable details of the breach; and
- (C) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

44.3 If, following service of a warning notice, the breach specified in a warning notice given further to Clause 44.2 has continued beyond twenty (20) Working Days or recurred in three (3) or more months within the six (6) month period after the date of service, then the Company may serve another notice (a "Final Warning Notice") on the Supplier:

- (A) specifying that it is a Final Warning Notice;
- (B) stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and
- (C) stating that if the breach continues for more than ten (10) Working Days or recurs in three (3) or more months within the six (6) month period after the date of service of the Final Warning Notice, such breach shall constitute a Persistent Breach and this Contract may be terminated further to Clause 44.5.

4.4 A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

44.5 If a Supplier Default has occurred and the Company wishes to terminate this Contract in whole or in part, the Company must serve a Termination Notice on the Supplier.

44.6 The Termination Notice must specify the type of Supplier Default which has occurred entitling the Company to terminate and whether the Company is terminating this Contract in whole or in part and if in part, the extent of the termination, and the date on which the termination shall become effective.

44.7 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then, without prejudice to the Company's rights pursuant to this Clause 44, 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.