

PRIVATE AND CONFIDENTIAL

TRANSPORT FOR LONDON

and

COLAS RAIL LIMITED

**Elizabeth Line Operation &
Maintenance of Yellow Plants**

TfL CONFIDENTIAL

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OPERATION AND MAINTENANCE AGREEMENT

DATED: JUNE 26TH 2025

BETWEEN:

- (1) **TRANSPORT FOR LONDON**, a statutory corporation established under the Greater London Authority Act 1999 of 5 Endeavour Square, London E20 1JN (the "**Purchaser**");
- (2) **COLAS RAIL LIMITED** (Registered Number 02995525), a company incorporated in England and Wales, whose registered office is at **25 Victoria Street, London, England, SW1H 0EX** (the "**Service Provider**").

WHEREAS:

- (A) The Service Provider is experienced and qualified in providing operation and maintenance services in relation to railway plant and machinery, including services of similar nature and complexity to the Services.
- (B) The Purchaser wishes to appoint the Service Provider to provide the Services on the terms and conditions of this Agreement.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, (including the recitals) unless the context otherwise requires, the following words and expressions have the following meanings respectively:

"Abbey Wood Boundary" means the boundary of the CCOS and the NR Network to the east of Abbey Wood sidings;

"Access Costs" shall have the meaning given to it in Clause 6.4.(b);

"Act" means the Railways Act 1993;

"Additional Equipment" means the following additional equipment:

- (a) locomotive haulage;
- (b) wagons;
- (c) rail cranes (for example, Kirow 250);
- (d) road rail vehicles;
- (e) road rail vehicle trailers;
- (f) small plant (for example, mini diggers, site generators, lighting);
- (g) tampers;

- (h) trolleys;
- (i) mobile elevating work platform; and
- (j) track geometry measurement equipment.

"Additional Contract Management Meeting" shall have the meaning given to it in Clause 23.4.(a)

"Affected Party" shall have the meaning given to it in Clause 28.2;

"Agreement" means this agreement which has been signed and delivered by the Parties as a Deed and includes the Schedules;

"Agreement Duration" means the period commencing upon the date hereof and continuing until the Expiry Date subject to:

- (a) earlier termination pursuant to Clause 16; and/or
- (b) the Purchaser extending the Agreement pursuant to Clause 4.2;

"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) assimilated or modified by or under the EUWA, at any time or from time to time in force in the whole or any part of the United Kingdom and which are or may become applicable to this Agreement or any obligations performed under it, any agreement or document referred to in this Agreement or for the performance of the Services in this Agreement or to the Parts, Spares or Special Tools, including, without limitation, Industry Standards (but excluding the TfL Standards), the Railways (Interoperability) Regulations 2011 (as amended by the RIR Exit Regulations) and ROGS;

"Approved Body" has the meaning given to such term in the RIR Exit Regulations;

"Bond Provider" means a bond provider having a credit rating of at least the Required Rating and having been approved in writing by the Purchaser (in its absolute discretion);

"CBTC Signalling Equipment" means the train-carried signalling equipment installed on certain items of Plant and Machinery as further detailed in the Services Specification and produced by the CBTC Signalling Equipment Contractor pursuant to the CBTC Signalling Equipment Contract;

"CBTC Signalling Equipment Contract" means the contract to be entered into between the Purchaser and the CBTC Signalling Equipment Contractor under which the CBTC Signalling Equipment Contractor agrees to supply the CBTC Signalling Equipment for certain items of Plant and Machinery and related services;

"CBTC Signalling Equipment Contractor" means Siemens Invensys Consortium, an unincorporated joint venture between (1) Siemens PLC and (2) Siemens Rail Automation, having its place of business at Sixth Floor, The Lantern, 75 Hampstead Road, London, England, NW1 2PL;

"CCOS" means the Crossrail central operating section authorised under the Crossrail Act 2008, being the railway between Portobello Boundary, Pudding Mill Lane Boundary and Abbey Wood Boundary;

“CCSL” means the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Purchaser from time to time;

"Change Date" means the date that this Agreement is executed by both Parties;

"Change in Law" means the application to any person of any Applicable Laws and/or TfL Standards which did not apply to them at the Change Date, or any change in the application or interpretation after the Change Date of any Applicable Laws and/or TfL Standards but excluding any Foreseeable Change in Law;

“Change Proposal” means a proposal to change the Services or the delivery processes for the Services as defined in 6.8;

"Commencement Date" means the date specified as such in the Schedule 1 – Detailed Terms or if no date is specified, the date specified in a written notice by the Purchaser to the Service Provider instructing it to commence the provision of the services under this Agreement;

"Competent Authority" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

"Completed Shift" means:

- (a) in respect of the Engineering Trains and the Infrastructure Monitoring Vehicle:
 - (i) arrives at the Starting Point on or prior to the scheduled commencement time for a Shift as set out in the Work Return Form in the correct formation;
 - (ii) leaves the Starting Point on time;
 - (iii) follows the correct route as set out in the Work Return Form;
 - (iv) arrives at the Finishing Point at the scheduled finishing time for a Shift as set out in the Work Return Form; and
 - (v) is in full working condition with no Faults present for the entire Shift (excluding any Purchaser Faults);
- (b) in respect of the Infrastructure Monitoring Vehicle, that the quantity and quality of the data collected during the Shift is satisfactory to the Purchaser (as further described in paragraph 6.3 of the Services Specification);
- (c) in respect of the Rail Milling Machine, that:
 - (i) such Plant and Machinery arrives at the Starting Point on or prior to the scheduled commencement time for a Shift as set out in the Work Return Form in the correct formation;
 - (ii) such Plant and Machinery leaves the Starting Point on time;
 - (iii) such Plant and Machinery completes milling as and where required in accordance with the instructions set out in the Work Return Form and the requirements of the Services Specification;

- (iv) the Rail Head Profiling Measurements collected at the end of the Shift are satisfactory to the Purchaser (further described in paragraph 6.2 of the Services Specification);
- (v) such Plant and Machinery follows the correct route as set out in the Work Return Form;
- (vi) such Plant and Machinery arrives at the Finishing Point at the scheduled finishing time for a Shift as set out in the Work Return Form; and
- (vii) such Plant and Machinery is in full working condition with no Faults present for the entire Shift (excluding any Purchaser Faults);

"Condition" means a condition, as stated in the Detailed Terms as may be further described in the Services Specification;

"Confidential Information" shall have the meaning given to it in Clause 22.1;

"Consequential Loss" means in relation to a breach of this Agreement or other circumstances in which a Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties (other than the Indemnified Parties or any Service Provider Personnel) and/or indirect or consequential 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 indirect or consequential loss would be likely to be suffered as a result of such breach;

"Contract Information" means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Service Provider which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

"Contract Management Meeting" shall have the meaning given to it in Clause 23.4.(a)

"Contract Year" means the calendar year commencing on the date of this Agreement and each anniversary thereof;

"Controlling Interest" shall have the meaning given to it in Clause 16.1.(h)

"Corrective Action" shall have the meaning given to it in Clause 12.7;

"Data Protection Legislation" means in each case to the extent applicable to the parties and as amended, superseded, replaced or updated from time to time:

- (a) the UK GDPR;
- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (d) any statutory codes of practice issued by the Information Commissioner's Office or any other applicable regulator; and
- (e) any other applicable data protection and privacy laws.

"Declaration" shall have the meaning given to it in Clause 36.1;

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement 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);

"Default Interest" means interest on late payment at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time;

"Default Package" means an electronic and hard copy set of the following:

- (a) the Technical Information;
- (b) any On-Train Monitoring Recorder ("OTMR") data currently in the Service Provider's possession as required under the Services Specification;
- (c) any other materials or information reasonably required by the Purchaser in order to ensure continuity of the Services,

(a) to (c) above up-dated by the Service Provider in accordance with the Service Provider's obligations under this Agreement and to include details of any Variations;

"Defect Rectification Period" means, in relation to each item of Plant and Machinery (and those Parts forming part of such Plant and Machinery), the period starting on the Commencement Date for that item of Plant and Machinery and ending on a date as notified in writing by the Purchaser to the Service Provider;

"Designated Depot" means Plumstead depot, or such other location as the Purchaser may notify to the Service Provider from time to time;

"Dispute" has the meaning ascribed to it in Schedule 18 (*Dispute Resolution Procedure*);

"Detailed Terms" means the detailed terms set out in Schedule 1 (*Detailed Terms*);

"Engineering Access Statement" means the engineering access statement for the CCOS, as reviewed and updated from time to time in accordance with Part D of the Rail for London (Infrastructure) Limited CCOS Network Code;

"Engineering Trains" means the ROBEL maintenance trains more particularly described in paragraph 3 of the Services Specification;

"Environmental Damage" means any significant harm to human health, or living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance caused by the Service Provider or Service Provider Personnel;

"EUWA" means the European Union (Withdrawal) Act 2018 as amended by the REUL Act;

"Excepted Liabilities" means:

- (a) the Service Provider's liability for death, personal injury, or fraud, fraudulent misrepresentation or corruption;
- (b) the Service Provider's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is recovered by the Service Provider under any policy of insurance which is maintained by the Service Provider in accordance with the provisions of Clause 20;

- (c) not used;
- (d) not used;
- (e) not used;
- (f) the Service Provider's liability in respect of any IPRs pursuant to Clause 18.5;
- (g) the Service Provider's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (h) any Default Interest on any payments falling within (a) to (g) above;
- (i) Losses recovered under any policy of insurance that the Service Provider is required to maintain under this Agreement (or which would have been recovered but for any breach or failure to maintain such insurance), subject to any limits on such Losses stated in Schedule 19 (*Insurance*) and any deductibles payable under such policies;
- (j) not used;
- (k) not used;
- (l) not used;

"Expiry Date" means the date falling five (5) years after the date that this Agreement is executed by both Parties;

"Extension Limit" means three (3) years;

"Failed Shift" means a Shift that does not meet the criteria for being a Completed Shift;

"Fault" means, in relation to any item of Plant and Machinery, Part, Spare or Special Tool that such item of Plant and Machinery, Part, Spare or Special Tool is defective, damaged, of unsatisfactory quality, is not Fit for Purpose or is not in a condition that will enable it to complete its next scheduled Shift;

"Finishing Point" means the station or other location where a Shift is scheduled to finish, as set out in the Work Return Form;

"Fit for Purpose" means in relation to any item of Plant and Machinery, Part, Spare or Special Tool:

- (a) that it complies with all requirements and provisions of this Agreement (including the Services Specification and the Manuals);
- (b) that it complies with all Applicable Laws, Relevant Consents and applicable TfL Standards, and to the extent that there is non-compliance with an applicable TfL Standard, that there is a valid derogation from that TfL Standard;
- (c) in relation to each Part or Spare, that such Part or Spare, when incorporated into the Plant and Machinery, does not of itself prevent such Plant and Machinery from being Fit for Purpose as defined in (a) or (b) above; and
- (d) in relation to a Special Tool, that such Special Tool is able to perform its specification in accordance with the Manuals;

"FM Affected Party" shall have the meaning given to it in Clause 21.1.(a)

"FM Notice" shall have the meaning given to it in Clause 21.3;

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

"Force Majeure Event" means any:

- (a) fire, earthquake or flood;
- (b) act of terrorism;
- (c) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (d) strikes, lock outs or other industrial action not solely affecting the Service Provider's and/or their Subcontractors' employees or those of any of its Subcontractors,

save to the extent that such event is caused by the Service Provider, any Subcontractor, or their respective agents, officers and/or employees;

"Foreseeable Change in Law" means any Change in Law which:

- (a) is, provided it comes into force in the same or substantially similar form:
 - (i) enacted prior to the Change Date as coming into effect on a specified future date;
 - (ii) in a draft bill or statutory instrument published on or before the Change Date;
 - (iii) in a draft Industry Standard published on or before the Change Date by the Purchaser, the Secretary of State, RSSB or Network Rail;
- (b) a prudent maintainer of plant and machinery should have reasonably known about on or before the Change Date; and/or
- (c) otherwise arises on or before the Change Date;

"Goods" means the Plant and Machinery, Parts, Spares and Special Tools;

"Government Authority" means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the ORR and the Secretary of State;

"Greater London Authority" means the Greater London Authority, a body corporate established under the GLA Act;

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

"Group" means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes "subsidiary" and "holding company" have the meanings respectively given to them by section 1159 of the Companies Act 2006;

"Guarantee" means the parent company guarantee of even date herewith of the Service Provider's obligations under this Agreement provided by the Guarantor in favour of the Purchaser substantially in the form set out in Schedule 9 (Form of Parent Company Guarantee and Performance);

"Guarantee Event" shall have the meaning given to it in Clause 16.1.(d)

"Guarantor" is as defined in Detailed Terms;

"Indemnified Parties" shall have the meaning given to it in Clause 19.1;

"Indemnified Party" shall have the meaning given to it in Clause 19.1;

"Independent Auditor" shall have the meaning given to it in Clause 16.9.(d)

"Indexation Adjustment" shall have the meaning given to it in Schedule 2 – Pricing;

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Parts, Spares or Special Tools which are or have been issued by the Secretary of State, Network Rail, ORR, RSSB, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including and shall include, without limitation, Railway Group Standards, the Rule Book, National Technical Specification Notices and/or National Technical Rules;

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

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

"Infrastructure Monitoring Vehicle" or **"IMV"** means the infrastructure monitoring vehicle which will be connected to an Engineering Train as and when required, and more particularly described in paragraph 3 of the Services Specification;

"Insolvency Event" in relation to any person means:

- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation,

reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;

- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

"Intellectual Property Rights" or "IPRs" means all intellectual property rights in any part of the world, including any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Key Date" means a date, as stated in the Detailed Terms unless later changed in accordance with this Agreement, by which the Service Provider is required to meet a Condition;

"Level 4 Non-Conformance" has the meaning ascribed to it in clause 2.7 of Schedule 11 (*Supplier Performance*);

"Liquidated Damages" means the payments to be made by the Service Provider to the Purchaser under the Supplier Performance;

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

"Losses" means, in the context of the definition of Excepted Liabilities, any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

"Lost Shifts Tracker" means the table set out in the Work Return Form labelled "Lost Shifts Tracker", or other suitable tracker as agreed between the Parties, that tracks the running total of Failed Shifts in each Contract Year;

"Maintenance Activities" means the train maintenance activities set out in paragraph 4 of the Services Specification;

"Maintenance Meeting" shall have the meaning given to it in Clause 23.7.(a)

"Mandatory Modification" means a Modification which is required to be made under any Applicable Laws including, without limitation, any directive of Network Rail or any other Relevant Consents Authority;

"Manuals" means the operation and maintenance manuals relating to the Plant and Machinery and any Spares;

"Manufacturer" means, in respect of each item of Plant and Machinery, Part, Spare or Special Tool, the OEM of such item of Plant and Machinery, Part, Spare or Special Tool;

"Manufacturer Fault" means a Fault that arises solely as a consequence of:

- (a) defective materials, workmanship or design that can attributed to the Manufacturer or the SSA Provider; or
- (b) any act or omission of the Manufacturer or the SSA Provider during the Defect Rectification Period,

but excluding:

- (i) any Fault that arises as a result of the Purchaser and/or the Service Provider failing to use, operate or maintain the Goods in accordance with the Manuals and/or any Applicable Laws and applicable TfL Standards;
- (ii) any Fault that arises as a result of fair wear and tear; and
- (iii) any Fault that arises as a result of vandalism, collision or accidental damage caused by any person other than the Manufacturer, its subcontractors or supplier or the directors, agents, representatives or employees of any of them;

"MMS" means the Maintenance Management System, being the Maximo asset management system or such other asset management system nominated by the Purchaser from time to time;

"Modification" means any variation, modification or addition to the Plant and Machinery;

"National Vehicle Register" has the meaning ascribed to it in the Railways (Interoperability) Regulations 2011 as amended;

"Network Rail" means Network Rail Infrastructure Limited (Registered No: 02904587) a company incorporated under the laws of England and Wales whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW;

"Notice of Default" shall have the meaning given to it in Clause 16.9(a);

"National Technical Rules" means standards, technical specifications and technical rules published by the Secretary of State in accordance with regulation 3C of the Railways (Interoperability) Regulations 2011 as amended;

"NR Network" means the network in respect of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

"O&M Period" means in relation to each item of Plant and Machinery, the period running from the Commencement Date and ending at the time at which the Services cease in accordance with the terms of this Agreement in relation to that item of Plant and Machinery, as the case may be;

"Operational Activities" means those operational activities set out in paragraph 5 of the Services Specification.

"Operations Meeting" shall have the meaning given to it in Clause 23.8(a).

"Optional Services" means the following services, work and activities:

- (a) vehicle fuelling;
- (b) controlled emissions toilet emptying;
- (c) scrap disposal;
- (d) Designated Depot equipment maintenance services;
- (e) Designated Depot cleaning services;
- (f) maintenance of Designated Depot facilities; and
- (g) the provision of additional specialist resources, including:
 - (i) industry experts;
 - (ii) specialist engineers;
 - (iii) additional engineers;
 - (iv) technicians/practitioners; and
 - (v) artisans;

"ORR" means the Office of Rail and Road established pursuant to section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act and includes any successor to all or any of its functions;

"Part" means any component, furnishing or equipment forming part of the Plant and Machinery or Spare;

"Party" means either the Purchaser or the Service Provider;

"Parties" means both the Purchaser and the Service Provider;

"Payment Certificate" shall have the meaning given to it in Clause 11.2.(c)

"Payment Period" means each consecutive 28 day period, the first of which starts on 1 April in each year and, in respect of the first or last such period in any year, as may be varied by the Purchaser;

"Performance Bond" means a performance bond issued by a Bond Provider in favour of the Purchaser in substantially the form set out in Schedule 9 (*Form of Performance Bond*);

"Performance Bond Event" shall have the meaning given to it in Clause 16.1.(i)

"Performance Report" means a report in respect of the Service Provider's performance of the Services in a form agreed between the Parties;

"Performance Specification" means the performance specification set out in paragraph 6.1 of the Services Specification;

"Periodic Review" has the meaning ascribed to it by paragraph 6 of Schedule 12 (*Spares, Special Tools and other equipment*);

"Permissible Change in Law" means a Change in Law which:

- (a) specifically relates to the provision of services the same as or similar to the Services (and not to the provision of any other services) or to the holding of shares in companies whose main business is providing services the same as or similar to the Services (and not to the provision of any other services); and
- (b) is not a Foreseeable Change in Law;

"Persistent Breach" shall have the meaning given to it in Clause 16.4.2;

"Personal Data" has the meaning given to it in the Data Protection Legislation;

"Plant and Machinery" means the plant and machinery to be operated and/or maintained (as the case may be) by the Service Provider in accordance with the Services Specification, and includes the Engineering Trains, Rail Milling Machine and the Infrastructure Monitoring Vehicle;

"Plant and Machinery Condition Report" shall have the meaning given to it in Clause 8.2.1(a);

"Portobello Boundary" means the boundary of the CCOS and the NR Network to the west of Royal Oak portal;

"Proceedings" shall have the meaning given to it in Clause 45.3;

"Processing" has the meaning given to it in the Data Protection Legislation;

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (b) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf or to its knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under the Criminal Finances Act 2017;
 - (iii) under legislation creating offences in respect of fraudulent acts; or
 - (iv) at common law in respect of fraudulent acts,

in relation to this Agreement or any other contract with the Purchaser; or

- (d) defrauding or attempting to defraud the Purchaser;

"Pricing Schedule" means the payments to be made by the Purchaser to the Service Provider in respect of the provision of the Services as set out in Pricing Schedule (Schedule 4);

"Public Procurement Termination Event" means this Agreement 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;

"Pudding Mill Lane Boundary" means the boundary of the CCOS and the NR Network to the east of Pudding Mill Lane portal;

"Purchasers' Designated Store" has the meaning ascribed to it in paragraph 2.1 of Schedule 12 (*Spares, Special Tools and other equipment*).

"Purchaser's Representative" is as defined in the Detailed Terms;

"Purchaser Event of Default" shall have the meaning given to it in Clause 16.8;

"Purchaser Fault" means a Fault that arises as a consequence of:

- (a) the negligence of, or any act or omission of the Purchaser or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;
- (b) (in whole or in part) a failure in the CBTC Signalling Equipment (other than any failure in the CBTC Signalling Equipment caused by an act, omission or the negligence of the Service Provider or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them);
- (c) the Purchaser failing to provide a Spare to the Service Provider in enough time to enable the Service Provider to ensure that an item of Plant and Machinery is ready to perform its next Shift;
- (d) fair wear and tear, which shall, for the avoidance of doubt, exclude any Fault arising from:
 - (i) the Service Provider's negligence; or
 - (ii) any act or omission of the Service Provider or its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;
- (e) vandalism, collision or accidental damage caused by any person other than the Service Provider, its subcontractors or suppliers or the directors, agents, representatives or employees of any of them;

"Purchaser IPRs" means all Intellectual Property Rights that the Purchaser owns and/or has a licence in relation to IPR that the Service Provider requires solely for the purpose of enabling the Service Provider to perform the Services in accordance with this Agreement;

"Purchaser Termination Notice" shall have the meaning given to it in Clause 16.2.(b)

"Qualified Take Over Certificate" means, in relation to each item of Plant and Machinery, a qualified take-over certificate to be issued by the Purchaser to the Manufacturer of such item of Plant and Machinery under the terms of that Manufacturer's manufacture and supply agreement with the Purchaser;

"Quality Plan" means the quality plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.(b)

"Rail Head Profiling Measurements" has the meaning ascribed to it in paragraph 6.2 of the Services Specification;

"Rail Milling Machine" means the Linsinger rail milling train more particularly described in paragraph 3 of the Services Specification;

"Railway Group Standards" means, to the extent applicable to the Plant and Machinery, Special Tools, the Spares and their operation, those standards to which railway assets or equipment used on or as part of railway assets must conform, and operating procedures with which the purchasers of railway assets must comply, in each case as prepared and updated by RSSB;

"Railway Infrastructure" means the stations and depots (wherever situate), assets, systems, track and other buildings comprised in CCOS;

"Relevant Consents" has the meaning ascribed to it in Clause 6.4.(a)

"Relevant Consents Authority" means any or all of the Government Authority, the Notified Body, or any other entity which has the appropriate authority for the granting of a Relevant Consent;

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

"Relevant Individual" means any servant, employee, officer, consultant or agent of the Service Provider or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the Railway Infrastructure and/or the TfL Premises;

"Remedy Notice" shall have the meaning given to it in Clause 16.3.1;

"Remedial Plan" shall have the meaning given to it in Clause 16.3.1;

"Representative" means a representative appointed by the Service Provider, or Purchaser, as the case may be, in accordance with Clause 23.2;

"Required Rating" means a long term, stable credit rating of at least "A+" or better from Standard & Poor's or the equivalent rating from Moody's or Fitch;

"Responsible Procurement Policy" means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2021, and as may be further updated from time to time and which is available from the Purchaser on request;

"REUL Act" means the Retained EU Law (Revocation and Reform) Act 2023;

"Retention Period" shall have the meaning given to it in Clause 12.2.(b)

"RIR Exit Regulations" means The Railways (Interoperability) (Amendment) (EU Exit) Regulations 2019;

"RPIX" means the measure of inflation in the United Kingdom, equivalent to the all items Retail Price Index excluding mortgage interest payments which is, at the date of this Agreement, published on a monthly basis by the Office of National Statistics;

"RfL(I)" means Rail for London (Infrastructure) Limited, (Registered No: 09366341) a company incorporated under the laws of England and Wales whose registered office is at 5 Endeavour Square, London, United Kingdom, E20 1JN;

"ROGS" means Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"RSSB" means the Rail Safety and Standards Board;

"Rule Book" means the Elizabeth Line rule book;

"Safety Plan" means the safety plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.(c)

"Secretary of State" means the Secretary of State for Transport, or any successor to all or part of his functions in relation to the operation of the railways;

"Security Interest" means any mortgage, charge, assignment, pledge, lien, hypothecation, security interest, title retention or other encumbrance;

"Service Payments" means the payments to be made by the Purchaser to the Service Provider in respect of the provision of the Services as set out in Schedule 2 (Pricing);

"Service Provider Event of Default" means any of the events set out in Clause 16.1;

"Service Provider IPR" means any existing or new Intellectual Property Rights owned by the Service Provider, any Subcontractor or other third party that:

- (a) are used for; or
 - (b) arise in connection with,
- the performance of the Services;

"Service Provider Personnel" means any Service Provider employee, servant, agent, Subcontractor, supplier, director, representative or officer;

"Service Provider Public Procurement Termination Event" means the Service Provider has, as at the Commencement Date, 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 those regulations;

"Service Providers' Designated Store" has the meaning ascribed to it in paragraph 4.1 of Schedule 12 (*Spares, Special Tools and other equipment*).

"Service Provider's Representative" is as defined in the Detailed Terms;

"Service Provider's Group" means the Service Provider and any member of its Group from time to time;

"Service Provider's Records" shall have the meaning given to it in Clause 12.2.(a)

"Services" means the services, work and activities to be carried out by the Service Provider in relation to the Plant and Machinery as further described in the Services Specification;

"Services Specification" means the operations and maintenance core services specification set out in Schedule 1 (*Services Specification*);

"Shift" means a defined period of time during which the Service Provider will be required to operate an item of Plant and Machinery, as confirmed to the Service Provider by the Purchaser in accordance with the process set out in the Services Specification;

"Shift Completion Certificate" means a certificate in a form as notified by the Purchaser to the Service Provider from time to time that certifies that a Shift is a Completed Shift;

"Siemens PLC" means Siemens PLC (registered number 00727817), a company incorporated under the laws of England and Wales, whose registered office is at Pinehurst 2 Pinehurst Road, Farnborough, Hampshire, United Kingdom, GU14 7BF;

"Siemens Rail Automation" means Siemens Rail Automation Limited (registered number 0161421), a company incorporated in England and Wales, whose registered office is at Sixth Floor, The Lantern, 75 Hampstead Road, London, England, NW1 2PL;

"Spares" means all spare parts of any description including fluids, parts and assemblies, reasonably required in connection with the Plant and Machinery to perform the Services, to be made available by the Purchaser to the Service Provider in accordance with paragraph 2 of Schedule 12 (*Spares, Special Tools and other equipment*);

"Spares and Support Provider" means the Manufacturer or any other company engaged by the Purchaser to provide Spares and Support, as the case may be;

"Special Tools" means the list of items of special equipment, tools and other materials designed and built specifically for maintenance and repair of the Plant and Machinery, Parts and Spares, as further described in the Services Specification;

"Special Tools and other equipment Condition Report" has the meaning ascribed to it in Clause 8.5.1(a);

"SSA Provider" means, in respect of each item of Plant and Machinery, the third party appointed by the Purchaser to provide spares and technical support in respect of each such item of Plant and Machinery (as notified by the Purchaser to the Service Provider from time to time);

"Starting Point" means the station or other location where a Shift is scheduled to start;

"Sterling" means the lawful currency from time to time of the United Kingdom;

"Subcontract" means any contract awarded by, or to be awarded by, the Service Provider for any work to be performed or for the supply of Parts and Spares or materials as part of, or in connection with, the performance of the Service Provider's obligations under this Agreement, and, unless the context herein requires, includes a subcontractor or supplier of any such person;

"Subcontractor" means any party to a Subcontract other than the Service Provider;

"Support Plan" means the support plan specific to this Agreement produced by the Service Provider and approved by the Purchaser in accordance with Clause 6.3.(a)

"Supplier Performance" means the performance regime set out in Schedule 11 (*Supplier Performance*);

"Take Over Certificate" means, in relation to each item of Plant and Machinery, a take-over certificate to be issued by the Manufacturer of such Plant and Machinery and counter-signed by the Purchaser under the terms of that Manufacturer's manufacture and supply agreement with the Purchaser;

"Taxes", "Tax" and "Taxation" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest thereon;

"Technical Information" means information and materials required by the Purchaser in relation to the Plant and Equipment, Parts, Spares and Special Tools for the purposes contemplated under this Agreement and shall include:

- (a) data, quality plans, quality programmes, quality certification;
- (b) records of maintenance and repairs undertaken (in both electronic and hard copy forms);
- (c) all other documents, information materials and know-how materials whether on paper or magnetic format or in any other form prepared by the Service Provider or any of its Subcontractors and submitted to obtain any Relevant Consents and/or relating to the operation, maintenance and/or repair of the Plant and Machinery, Parts, Spares and Special Tools; and
- (d) all training materials;

"National Technical Specification Notice" means a National Technical Specification Notice published by the Secretary of State pursuant to regulation 3B of the Railways (Interoperability) Regulations 2011 as amended;

"TfL" or "Transport for London" means Transport for London, a statutory body set up by the Greater London Authority Act;

"TfL Group" means Transport for London, and all of its subsidiaries and their subsidiaries; (as defined in Section 1159 of the Companies Act 2006) from time to time, and includes subsidiaries of any tier, and reference to any **"member of the TfL Group"** refers to TfL or any such subsidiary;

"TfL Premises" means any property, including railway infrastructure, owned by or under the control or supervision of the Purchaser and/or any member of the TfL Group;

"TfL Standards" means the various standards documents and associated codes of practice produced by the Purchaser that shall, upon reasonable notice to the Service Provider, apply to the Services from time to time, and includes without limitation any standards documents and associated codes of practice referred to in the Services Specification;

"Transparency Commitment" means TfL's commitment (applying to TfL, the Purchaser and the rest of the TfL Group) to publish contracts, tender documents and data from invoices received; in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments;

"TUPE" means The Transfer of Undertakings (Protection of Employment) Regulations 2006;

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

"Variation" means any addition, omission or other change whatsoever to or in respect of this Agreement including (without limitation) the Services, the Goods, the requirements of the Supplier Performance and/or steps, if any, necessary to implement any change to the scope of the Services resulting from a Mandatory Modification;

"Variation Procedure" means the procedure for amending this Agreement, as detailed in Clause 7;

"Variation Quote" has the meaning given in Clause 7.3;

"Variation Valuation" has the meaning given in Clause 7.5;

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto and any tax replacing, or adding to, the same or of a similar nature;

"Working Day" means a weekday (other than Saturday and Sunday) on which banks are open for domestic business in the City of London;

"Work Return Form" means the work return form that is filled in by the Purchaser prior to a Shift with instructions for the work to be undertaken during that Shift and is then reviewed and finalised by the Purchaser at the end of a Shift by adding in the details of the actual work completed in comparison to the instructions provided for that Shift. The format of the Work Return Form will be notified by the Purchaser to the Service Provider from time to time;

1.2 Construction

Save where the contrary is indicated:

- (a) the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- (b) where appropriate, the singular includes the plural and vice versa;
- (c) a reference to a Clause or to a schedule shall be to a Clause of or, as the case may be, a schedule, to this Agreement and references to this Agreement include its recitals and schedules;
- (d) references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended, supplemented, novated or varied in accordance with the terms hereof or, as the case may be, with the consent of the relevant parties (and where such consent is, by the terms of this Agreement or the relevant document, required to be obtained as a condition to such amendment being permitted, such prior written consent);
- (e) if a period of time is specified as "from" or "within" a given day, or "from" or "within" the day of an act or event, it shall be calculated exclusive of that day;
- (f) a reference to **"includes"** or **"including"** shall mean **"includes without limitation"**;
- (g) or **"including without limitation"**;

- (h) references to a Party or person shall include their successors, transferees, legal, personal representatives and permitted assignees;
- (i) without prejudice to any provision of this Agreement providing for adjustments in the event of a Permissible Change in Law, reference to Applicable Laws or Industry Standards also includes a reference to such Applicable Laws or Industry Standards as from time to time amended, extended or re-enacted;
- (j) references to a "**regulation**" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Authority or Relevant Consents Authority;
- (k) references to a statute shall include any subordinate legislation made from time to time under it and shall be construed so as to refer to such statute as it is amended or modified from time to time;
- (l) a reference to one gender includes other genders;
- (m) references to assets include business, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
- (n) references to this Agreement shall include reference to the Schedules, the Annexures and any document or information contained in electronic format on any CD-ROM dated the date of this Agreement and initialled by each Party to identify that CD-ROM and the documents or information contained in it as forming part of a Schedule or Annexure.

2 CONFLICTS AND DISCREPANCIES

2.1 Contract Precedence

- (a) Unless expressly stated otherwise, where there is any conflict, error, inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:
 - (a) the schedules to this Agreement;
 - (b) the terms of this Agreement;
 - (c) the Services;
 - (d) the Supplier Performance.

2.2 Service Provider's acknowledgements regarding discrepancies and errors

The Service Provider confirms to the Purchaser that as at the Commencement Date it has considered in detail this Agreement and has satisfied itself:

- (a) that no conflicts, inconsistencies, discrepancies or errors exist within the Agreement;
- (b) that it has:
 - (a) obtained all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the level of payment arising under or in connection with this Agreement; and

- (b) satisfied itself that the performance of its obligations under and in accordance with this Agreement will be in accordance with all Applicable Laws; and
- (c) as to the feasibility of the Services Specification with respect to the performance of the Services.

2.3 Notification of errors and inconsistencies

- (a) Without prejudice to Clause 2.3.(c), the Service Provider shall notify the Purchaser in writing forthwith upon becoming aware of any conflict, inconsistency, discrepancy or error within the Agreement that cannot be resolved in accordance with Clause 2.1 and the Service Provider shall provide with the notice detailed written proposals for resolving such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Service Provider of such decision within fifteen (15) Working Days of the Service Provider's notice of such conflict, inconsistency, discrepancy or error. The Service Provider shall immediately proceed to comply with such decision. The Purchaser's notification under this Clause 2.3.(a) shall constitute a Variation provided that the Service Provider shall not be entitled to any increase in the Service Payment or any other payment, compensation, extension of time or relief in respect of such Variation instructed in accordance with this Clause 2.3.(a).
- (b) Without prejudice to Clause 2.3.(a) and subject to Clause 2.3.(c), whenever a conflict, inconsistency, discrepancy or error appears within this Agreement, the Parties shall consult with each other over, and seek to agree, the manner in which the conflict, error, inconsistency or discrepancy should be resolved.
- (c) Where any conflict, inconsistency, discrepancy or error appears within the TfL Standards, or between a TfL Standard and the equivalent Industry Standard, each Party shall notify the other forthwith in writing upon becoming aware of such conflict, inconsistency, discrepancy or error. The Purchaser shall decide how such conflict, inconsistency, discrepancy or error should be dealt with and shall notify the Service Provider within fifteen (15) Working Days of receiving or issuing the notice (as the case may be). The Service Provider shall comply with such decision in performing the Services. The Purchaser's notification under this Clause 2.3.(c) shall constitute a Variation and the provisions of Clause 7 shall apply.

3 EXERCISE OF RIGHTS AND PERFORMANCE OF OBLIGATIONS BY A THIRD PARTY

- 3.1 The Service Provider acknowledges and agrees that the Purchaser may, after notifying the Service Provider in writing, delegate at any time some or all of its actions in connection with this Agreement to the Purchaser's Representative and may cancel any delegation.
- 3.2 The Purchaser's Representative may, after notifying the Service Provider in writing, delegate at any time some or all of its actions in connection with this Agreement and may cancel any delegation. Any reference to an action of the Purchaser's Representative in this Agreement includes an action by his delegate.
- 3.3 The Service Provider will perform its obligations under this Agreement in accordance with the relevant provisions of this Agreement as if the Purchaser's Representative was, to the extent notified, the Purchaser, and, to that extent, accept the instructions, requests, notifications, claims and demands of the Purchaser's Representative in substitution for the Purchaser accordingly.

3.4 The Service Provider shall be entitled to rely and act upon the exercise by a Purchaser's Representative of any right permitted in accordance with Clauses 3.1 and 3.2 and any performance by a Purchaser's Representative of any obligation on the part of the Purchaser shall constitute good and valid discharge of the Purchaser's obligation in question.

3.5 Except as provided under this Clause 3, no person or entity is authorised to act or give any instruction to the Service Provider in connection with this Agreement on behalf of the Purchaser.

4 AGREEMENT DURATION

4.1 Duration

This Agreement shall continue for the Agreement Duration and the Service Provider shall supply the Services for the duration of the O&M Period in accordance with the provisions of this Agreement. Neither Party shall have any right to terminate this Agreement or any part of this Agreement except in accordance with the express terms of this Agreement.

4.2 Extension

The Purchaser may subject to prior written notice within the notice period for extension stated in Detailed Terms extend the term of this Agreement up to the Extension Limit. The Parties shall agree a suitable process to enable ongoing delivery of the services in the event that the extension is notified.

5 REPRESENTATIONS AND WARRANTIES

5.1 Representation and Warranties by the Service Provider

(a) The Service Provider provides the representations and warranties in Clause 5.1.(b) to the Purchaser. The Service Provider acknowledges and agrees that the Purchaser is relying on the representations and warranties set out below and is entering into this Agreement on the basis of them.

(b) The Service Provider represents and warrants to the Purchaser that as at the date of this Agreement:

- (a) the Service Provider is a company properly organised and validly existing under the laws of England and Wales as a limited liability company. It has the power, capacity and legal right to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Service Provider has power, capacity and legal right to enter into and perform its obligations and exercise its rights under this Agreement and any related ancillary documents to which it is a party, and any necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
- (c) this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
- (d) entering into this Agreement and performing its obligations or exercising its rights under this Agreement will not:

- (i) conflict with the Service Provider's Memorandum and Articles of Association or any equivalent document;
- (ii) conflict with or result in a breach of any existing contract to which the Service Provider is a party or in the creation of any Security Interest over the Service Provider or any of its property;
- (e) to the best of the Service Providers' knowledge and except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Service Provider's knowledge threatened against it which if decided against the Service Provider would have a material adverse effect upon the Service Provider's financial condition or business or its ability to perform its obligations under this Agreement;
- (f) to the best of the Service Provider's knowledge no information is in existence at the time this statement of fact is made which would cause the Purchaser not to enter into this Agreement if the Purchaser were aware of that information; and
- (g) no Insolvency Event has occurred or is reasonably likely to occur in relation to the Service Provider.

5.2 Repetition of Warranties

The Parties agree that the Service Provider's representations and warranties set out in Clause 5.1 shall be deemed to be repeated by the Service Provider on the Commencement Date and every five (5) years thereafter.

6 THE SERVICES

6.1 Service Provision

The Service Provider agrees with the Purchaser that it shall carry out the Services in accordance with the terms of this Agreement.

6.2 Standards of Performance

- (a) The Service Provider agrees with the Purchaser that it shall provide the Services and fulfil its obligations under this Agreement:
 - (a) in accordance with:
 - (i) all Applicable Laws and applicable TfL Standards;
 - (ii) the requirements of:
 - (A) the Supplier Performance;
 - (B) the Services Specification, including the Performance Specification;
 - (C) the Support Plan;
 - (D) the Safety Plan;
 - (E) the Quality Plan; and
 - (F) the Manuals;

- (b) so as to ensure that the Plant and Machinery is Fit for Purpose and is available to perform each Shift as agreed with the Purchaser, and where the Fit for Purpose requirement is subject to the number and type of operations in the Manuals being capable of being undertaken by a competent service provider;
 - (c) with the degree of diligence, care and skill reasonably to be expected of a supplier holding itself out as having the competence, expertise and resources necessary for the proper performance of the Services; and
 - (d) in a safe manner and free (to the extent reasonably possible using the best modern design and engineering principles and practices) from any risk to the health and wellbeing of persons using or maintaining the Purchaser's property or railway infrastructure.
- (b) The Service Provider shall provide the Services in accordance with the Manuals as required by this Clause 6.2.
- (c) The Purchaser acknowledges that the Service Provider has provided pricing in Schedule 4 based on the number and type of operations that an experienced service provider would reasonably expect in order to deliver the Services. If the Service Provider demonstrates to the satisfaction of the Purchaser (acting reasonably) that delivery of the Services in accordance with the Manuals requires a significantly different number or type of operations than would reasonably have been expected, then this shall be considered a change of scope per Clause 6.6.(c).

6.3 Support, Quality and Safety Plans

- (a) The Service Provider shall provide the Purchaser with a draft support plan specific to this Agreement that:
- (a) explains how the Service Provider intends to deliver the Services throughout the Agreement Duration;
 - (b) sets out any specific arrangements that the Service Provider will put in place in order to deliver the Services; and
 - (c) explains the processes and arrangements that the Service Provider intends to put in place during the initial mobilisation phase of the Services,
- by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft support plan within one (1) month of receiving the draft support plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the support plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Support Plan**" as defined for the purposes of this Agreement.
- (b) The Service Provider shall provide the Purchaser with a draft quality plan specific to this Agreement, accordance with BS EN ISO 9001:2015, by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft quality plan within one (1) month of receiving the draft quality plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service

Provider shall provide the Purchaser with the final version of the quality plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Quality Plan**" as defined for the purposes of this Agreement.

- (c) The Service Provider shall provide the Purchaser with a draft safety plan specific to this Agreement that:

- (a) explains how safety will be managed by the Service Provider; and
- (b) sets out the measures that the Service Provider will put in place to ensure compliance with all Applicable Laws in relation to safety,

by no later than the date falling four (4) weeks after the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft safety plan within one (1) month of receiving the draft safety plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the safety plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the "**Safety Plan**" as defined for the purposes of this Agreement.

- (d) The Service Provider shall update the Support Plan, Quality Plan and Safety Plan as required to reflect any changes to arrangements and processes during the Agreement Duration.

6.4 Licences, Consents and Training

- (a) The Service Provider shall obtain and maintain all consents, approvals, authorisations, acceptances, certificates, licences, exemptions, registrations, filings, permits and other matters, give all notices and pay all fees, in each case which are required or necessary for the proper performance of the Service Provider's duties and obligations under this Agreement ("**Relevant Consents**"). In particular:

- (a) the Service Provider shall obtain a non-passenger train licence from the ORR relating to the provision of the Services prior to the Commencement Date;
- (b) the Service Provider shall enter into appropriate access arrangements with:
 - (i) (with respect to the Railway Infrastructure) RfL(I); and
 - (ii) (with respect to the NR Network, if access to the NR Network is required in order to perform the Services) Network Rail,

to ensure that the Service Provider is appropriately authorised to access CCOS and the NR Network in order to perform the Services;

- (c) the Service Provider shall ensure that its drivers hold all appropriate licences and certifications required in order to operate the Plant and Machinery on the Railway Infrastructure and NR Network in accordance with the requirements of the Services Specification; and
- (d) the Service Provider shall be the "entity in charge of maintenance" with respect to the Plant and Machinery for the purposes of regulation 18A of the ROGs and:

- (i) the Service Provider must hold and maintain all relevant approvals, certificates and competencies required in order to fulfil its obligations as the "entity in charge of maintenance"; and
 - (ii) the Service Provider must register itself as the "entity in charge of maintenance" with respect to the Plant and Machinery on the National Vehicle Register.
- (b) Subject to Clause 6.4.(c), the Purchaser shall pay to the Service Provider an amount equal to the direct costs incurred by the Service Provider for the Relevant Consents described in Clause 6.4.(a).(b) (the "**Access Costs**"), and payment shall be made within ten (10) days of receipt by the Purchaser of:
 - (a) a copy of the VAT invoice (which shall be dated) issued to the Service Provider by RfL(I) or Network Rail (as applicable) for the Access Costs;
 - (b) documentation in a form reasonably acceptable to the Purchaser demonstrating payment by the Service Provider of the VAT invoice described in Clause 6.4.(b).(a); and
 - (c) a VAT invoice issued by the Service Provider to the Purchaser for an amount equal to the Access Costs, which shall:
 - (i) correspond with the value of the invoice described in Clause 6.4.(b).(a);
 - (ii) be dated; and
 - (iii) clearly state the purchaser order number.
- (c) The Parties acknowledge and agree that for the purposes of Clause 6.4.(b):
 - (a) the Purchaser shall not be obliged to pay the Service Provider any amount in the absence of receipt of all of the documentation set out in Clause 6.4.(b).
 - (b) the Purchaser shall not be liable to the Service Provider for any costs, expenses or liabilities in connection with any of the Relevant Consents other than those described in Clause 6.4.(a).(b) and on the terms set out in Clause 6.4.(b); and
 - (c) the Purchaser shall not be liable for any expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of the Service Provider's breach of the terms of the Relevant Consents or the Service Provider's failure to maintain the Relevant Consents.
- (d) The Service Provider shall procure that all of its employees or representatives that are involved in the provision of the Services are trained to the appropriate competence in order to carry out the Services.

6.5 Key Personnel

- (a) The Service Provider shall appoint the Key Personnel set out at Schedule 16 (*Key Personnel*).

- (b) The Service Provider shall ensure that each of the Key Personnel devotes substantially their whole time and effort to fulfilment of the Service Provider's obligations under this Agreement and/or the performance of the Services as applicable. The Service Provider shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Purchaser'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.
- (c) The Service Provider agrees to inform the Purchaser 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 their duties for a period of or periods aggregating thirty (30) 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 Service Provider's employment.
- (d) The Service Provider 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 Service Provider shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform their role as soon as reasonably practicable and at least within seven (7) 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-eight (28) Working Days of the termination. 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 Service Provider shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with their replacement to hand over to them for a period of seven (7) Working Days or any shorter period agreed between the Parties.
- (e) A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Service Provider shall provide such information about and access to the relevant individual as the Purchaser may reasonably require. The Purchaser shall notify the Service Provider if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Service Provider shall comply with any request by the Purchaser that a particular person should not become a member of Key Personnel.
- (f) The Purchaser may change the list of Key Personnel on reasonable notice and subject to the consent of the Service Provider, such consent not to be unreasonably withheld or delayed.
- (g) Within a reasonable period of time before an offer of engagement is made to a replacement member of Key Personnel, the Service Provider shall provide such information about and access to the relevant individual as the Purchaser may reasonably require. The Purchaser shall notify the Service Provider if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Service Provider shall, subject to Applicable Laws, comply with any request by the Purchaser that a particular person should not become a member of Key Personnel.

(h) The Service Provider shall, at its own expense:

- (a) ensure that all of the Service Provider'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 this Agreement; and
 - (b) ensure that all of the Service Provider's personnel are in possession of valid work permits if they are non-European Community nationals.
- (i) Without prejudice to the Service Provider's other obligations under this Agreement, where training of any or all of the Service Provider's personnel is required for the purposes of performance of this Agreement, the Service Provider shall not assign any of the Service Provider's personnel to the performance of this Agreement unless and until such Service Provider's personnel have satisfactorily completed such training.
- (j) The Purchaser shall arrange certain training for Service Provider's personnel in accordance with the Services Specification.
- (k) Initial mobilisation of the services will not require any transfer of the Purchaser's staff to the Service Provider under TUPE regulations. The Parties do not intend TUPE regulations to apply to the initial mobilisation. The Purchaser acknowledges that the Service Provider has the right to terminate the contract of employment of any member of the Purchaser's staff who transfers or claims to transfer to the Service Provider under TUPE regulations as part of the initial mobilisation. The Purchaser shall indemnify the Service Provider against any claims or liabilities incurred by it as a consequence of such transfer or purported transfer and/or termination of employment.

6.6 Change in scope of Services

- (a) The Purchaser may at any time request a change of the scope of the Services by instructing a Variation and the provisions of Clause 7 shall apply.
- (b) If the Purchaser makes a request to change the scope of Services pursuant to Clause 6.6.(a), the changed scope of Services becomes effective on the date specified in the Variation (subject to such date being agreed between the Purchaser and Service Provider, or such date being realistically achievable in the view of the Purchaser acting reasonably).
- (c) Where the Service Provider reasonably believes that there has been a change to the scope of the services, then the Service Provider may notify the Purchaser of this fact and provide such details as the Purchaser reasonably requires. The Service Provider must notify the Purchaser of any change of scope within 4 calendar weeks of the Service Provider becoming aware of the change. Where the Purchaser agrees (acting reasonably) that a change of scope has occurred, then the Purchaser shall issue a Variation and the provisions of Clause 7 shall apply. The Purchaser shall issue any Variation within 14 calendar days of receipt of the change of scope notification by the Service Provider.

6.7 Optional Services and Additional Equipment

- (a) The Purchaser may, from time to time, request the Service Provider to provide or procure the provision of the Optional Services or the Additional Equipment and the

parties shall negotiate in good faith for the purposes of attempting to reach agreement regarding the terms of the same.

6.8 **Change Proposals**

- (a) The Service Provider may submit a proposal to change the Services or the processes/systems/staffing associated with the delivery of the Services. Any proposal will need to include key information that the Purchaser requires to reasonably assess whether to proceed, and would include such things as the cost/benefit, risks/opportunities and ease of implementation.
- (b) Where the Employer agrees to proceed with a Change Proposal, then any associated amendment to the Pricing Schedule will be agreed reasonably between the Service Provider and the Purchaser, and this change to the Service Payment shall permit the Service Provider to retain any reasonable overhead and profit relating to any service element that is reduced or removed as a result of the change.
- (c) Each Party bears its own costs in respect of preparing and submitting a Change Proposal (including the reasonable costs of exploring and establishing the merits and feasibility of the same).

6.9 **Changes to Service Provider Organisation**

- (a) Any significant or long term changes to the Service Provider organisation for the management or delivery of the Services must be approved formally by the Purchaser. Where such changes include reduction in staffing levels and/or types of staff made by the Service Provider, then this should be the subject of a Change Proposal and any impact on the Pricing Schedule will be agreed between the Parties. If changes are made without an agreed Change Proposal, then the Employer shall have the right to assess any impact on the Pricing Schedule and to adjust the Pricing Schedule accordingly.

7 **VARIATIONS**

7.1 Any Variation to this Agreement shall be agreed by the Purchaser's Representative and the Service Provider in accordance with the Variation Procedure.

7.2 If:

- (a) a Mandatory Modification is required which gives rise to a change in the scope of the Services; or
- (b) there is a Permissible Change in Law;
- (c) the Purchaser agrees that there has been a change in scope of the Services; or
- (d) the Purchaser agrees to implement a Change Proposal,

the Service Provider shall be entitled to a Variation.

7.3 **Right to request a quote**

- (a) The Purchaser's Representative may, at any time prior to instructing a Variation, request the Service Provider to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Service Payment as a result of implementing the proposed variation (the "**Variation Quote**").

(b) The Service Provider shall:

- (a) provide the Purchaser's Representative with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser's Representative may agree) of a request from the Purchaser's Representative; and
 - (b) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.
- (c) The Purchaser's Representative may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 7.4.(a) and the remaining provisions of this Clause 7.3 shall apply in respect of such Variation.
- (d) The Service Provider shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

7.4 **Right to vary**

- (a) The Purchaser's Representative may at any time instruct the Service Provider in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 7.4.
- (b) Upon instruction of a Variation by the Purchaser's Representative, the Service Provider shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.
- (c) Nothing in this Clause 7.4 shall prevent the Service Provider from making a proposal to the Purchaser's Representative for a Variation but no Variation so proposed shall be carried out by the Service Provider except as directed in writing by the Purchaser's Representative.

7.5 **Valuation of Variations**

- (a) As soon as possible after having received any instruction under Clause 7.4.(a), the Service Provider shall notify the Purchaser's Representative if, in the Service Provider's opinion, the Variation will involve an adjustment to the Service Payment (the "**Variation Valuation**").
- (b) Subject to Clause 7.5.(c), the Variation Valuation shall, if not the subject of a Variation Quote which has been accepted by the Purchaser's Representative in accordance with Clause 7.3.(c), be determined by the Purchaser's Representative on the basis of the prices and rates set out in the Pricing Schedule or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates. Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.
- (c) The Service Provider shall not be entitled to any increase in the Service Payment with respect to any Variation to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Service Provider its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Service Provider has failed to take all reasonable steps to mitigate any actual or potential increase in the Service Payment.

7.6 **Notice of variations**

- (a) When instructing any Variation, the Purchaser's Representative shall, to the extent possible, give the Service Provider such reasonable notice as will enable him to make his arrangements accordingly.

7.7 **Progress with variations**

- (a) The Service Provider shall, on receipt of an instruction from the Purchaser's Representative to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Service Provider shall not, without the prior written consent of the Purchaser, be delayed pending determination of the Variation Valuation in accordance with Clause 7.5.(b).
- (b) The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser's Representative pursuant to Clause 7.4.(b).

8 **PLANT AND MACHINERY, SPARES AND SPECIAL TOOLS**

8.1 **General**

- (a) The Service Provider shall use the Plant and Machinery, Spares, Special Tools and any other equipment provided by the Purchaser solely in connection with the provision of the Services and not for any other purpose without the prior agreement of the Purchaser.
- (b) The Parties shall comply with their respective obligations in respect of the provision of Spares, Special Tools and other equipment as set out in the Services Specification and Schedule 12 (Spares, Special Tools and other equipment).
- (c) The Service Provider shall not remove, deface or cover up any name-plate or identification mark, livery or number on any part of the Plant and Machinery, Spares, Special Tools or other equipment provided by the Purchaser under this Agreement.

8.2 **Provision and return of Plant and Machinery**

- (a) Prior to the Commencement Date, the Purchaser shall:
 - (a) record the condition of the Plant and Machinery (the "**Plant and Machinery Condition Report**"); and
 - (b) provide the Service Provider with the Plant and Machinery Condition Report.
- (b) Upon the termination or expiry of this Agreement, the Service Provider shall promptly return to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable):
 - (a) the Plant and Machinery in the same condition as recorded in the Plant and Machinery Condition Report (fair wear and tear excluded); and
 - (b) all Technical Information in relation to the Plant and Machinery.
- (c) Where the Service Provider fails to return the Plant and Machinery in the condition set out in Clause 8.2.(b), the Service Provider shall procure and bear all costs

associated with the rectification of the Plant and Machinery to the condition set out in Clause 8.2.(b) within either:

- (a) five (5) Working Days of notification by the Purchaser to the Service Provider that the Purchaser reasonably considers that the Plant and Machinery are not in the condition set out in Clause 8.2.(b); or
- (b) a timeframe otherwise agreed between the parties pursuant to a rectification plan.

8.3 **Plant and Machinery: Access, Risk and Title**

- (a) Following issue of a Take Over Certificate or a Qualified Take Over Certificate (as applicable) for an item of Plant and Machinery, the Purchaser shall make such item of Plant and Machinery available to the Service Provider at the Designated Depot for the provision of the Services.
- (b) The Service Provider shall protect any item of Plant and Machinery against loss, theft, damage or destruction whilst that item of Plant and Machinery is in the care, custody or control of the Service Provider. Where any circumstances arise that could affect the security of the Purchaser's assets, the Service Provider shall inform the Purchaser immediately.
- (c) Title to each item of Plant and Machinery shall remain with the Purchaser at all times.

8.4 **Provision and return of Spares**

- (a) Upon the termination or expiry of this Agreement, the Service Provider shall promptly return any unused Spare to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable).
- (b) Upon the Service Provider becoming aware that:
 - (a) it no longer reasonably requires any Spare in order to perform the Services; and
 - (b) the Spare may reasonably possess a scrap value or may be capable of being overhauled or repaired,

the Service Provider shall promptly return the Spare to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable).

8.5 **Provision and return of Special Tools**

- (a) Prior to the Commencement Date, the Purchaser shall:
 - (a) record the condition of all Special Tools and any other equipment to be provided to the Service Provider under this Agreement (the "**Special Tools and other equipment Condition Report**"); and
 - (b) provide the Service Provider with the Special Tools and other equipment Condition Report.
- (b) Upon the termination or expiry of this Agreement, the Service Provider shall promptly return the Special Tools and any other equipment that has been provided by the Purchaser back to the Purchaser:

- (a) at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable); and
- (b) in the same condition as recorded in the Special Tools Condition Report (fair wear and tear excluded).
- (c) Where the Service Provider fails to return the Special Tools or any other equipment provided by the Purchaser in the condition set out in Clause 8.5.(b), the Service Provider shall procure and bear all costs associated with the rectification of the Special Tools to the condition of the same within either:
 - (a) five (5) Working Days of notification by the Purchaser to the Special Tools that the Purchaser reasonably considers that the Special Tools are not in the condition set out in Clause 8.5.(b); or
 - (b) a timeframe otherwise agreed between the parties pursuant to a rectification plan.

8.6 **Spares, Special Tools and other equipment: Title, Risk and Care**

- (a) The Service Provider shall protect any Spare, Special Tool and any other equipment against loss, theft, damage or destruction whilst in the care, custody or control of the Service Provider. Title to each Spare, Special Tool and any other equipment shall remain with the Purchaser at all times, including if any Spare or Part is subsequently removed from the Plant and Machinery.
- (b) The Service Provider shall store, use and maintain (as applicable) the Special Tools, Spares and any other equipment provided by the Purchaser to the Service Provider pursuant to this Agreement and in accordance with the Manuals.

8.7 **Prohibition on Creating Security**

The Service Provider undertakes that it shall not at any time create or purport to create any Security Interest over the Goods, Manuals or any documentation supplied to the Service Provider under and in accordance with the terms of this Agreement.

9 **ACCESS TO TFL PREMISES**

- 9.1 The Purchaser shall grant the Service Provider such access to the Designated Depot and other TfL Premises as is reasonably required by the Service Provider for the performance of the Services.
- 9.2 The Service Provider undertakes that while any of its employees or representatives are located at a Designated Depot or any other TfL Premises, such employees or representatives shall:
 - (a) comply with all rules and/or policies in existence from time to time in relation to the Designated Depot or TfL Premises, including any health and safety rules and security requirements; and
 - (b) not disrupt the commercial and industrial operation of the Purchaser or its subcontractors,

and the Service Provider shall procure that any employees or representatives of any Subcontractors comply with the same.

- 9.3 Save to the extent reasonably required in the performance of the Services or expressly agreed by the Purchaser and with all reasonable mitigation measures in place, when performing the Services the Service Provider shall not interfere with or obstruct any public or private rights or property (including the TfL Premises, any other property belonging to or leased by the Purchaser, the Purchaser's neighbours' property, railway operations and traffic, road traffic and highways).
- 9.4 The Service Provider shall ensure that no person employed on its behalf trespasses beyond the agreed limits of any specified working area(s) or access routes at the Designated Depot or other TfL Premises.
- 9.5 If the Designated Depot is unavailable for any reason, the parties shall work together and make all reasonable efforts to mitigate the effects of the unavailability of the Designated Depot in order to minimise the impact on the Service Provider's delivery of the Services.

10 PERFORMANCE REGIME

10.1 Obligations under the Supplier Performance Schedule

- (a) The Service Provider shall perform the Services in accordance with the requirements of the Supplier Performance schedule.

10.2 Liquidated Damages

- (a) If the Service Provider fails to comply with its obligations under the Supplier Performance Schedule with respect to Shift completion (as set out in Supplier Performance – 6 – Shift Completion, paragraph 1 of the Supplier Performance Schedule), the Service Provider shall pay to the Purchaser Liquidated Damages (as compensation for loss and not as a penalty) calculated in accordance with the Supplier Performance Schedule and payable in accordance with Clause 11.
- (b) All Liquidated Damages shall be subject to:
- (a) an increase per annum as stated in the Pricing Schedule from the date of the first anniversary of this Agreement until and including the Expiry Date; and
 - (b) the application of the Indexation Adjustment set out in the Pricing Schedule for any extension to this Agreement pursuant to Clause 4.2.
- (c) The Parties acknowledge and agree that the amount of Liquidated Damages under the Agreement:
- (a) serves to protect the Purchaser's legitimate business interests, including the need to have the Services performed on-time and to an appropriate standard in accordance with the requirements of the Supplier Performance Schedule; and
 - (b) constitutes a genuine pre-estimate of the loss that would be suffered by the Purchaser as a result of the Service Provider's failure to comply with the requirements of the Supplier Performance Schedule.

- (d) The Purchaser shall be entitled to set-off any undisputed amount payable to it under Clause 10.2.(a) against the next Service Payment payable by it to the Service Provider.

11 PAYMENTS

11.1 Amount of Service Payments

- (a) The Purchaser shall pay Service Payments to the Service Provider in accordance with this clause 11 and Schedule 2 – Pricing.
- (b) The Service Payments in respect of any extension to this Agreement pursuant to Clause 4.2 shall be subject to the Indexation Adjustment.
- (c) Where the Detailed Terms states that a Guarantee or Performance Bond is required, then no Service Payment shall be made unless and until:
 - (a) the Guarantee is in place; and
 - (b) the Performance Bond is in place.

11.2 Payment applications

- (a) At the beginning of each Payment Period the Service Provider shall submit a payment application to the Purchaser's Representative at the address specified in Clause 40.2 which shall show the following amounts separately and in aggregate: the relevant portion of the Service Payment in respect of the Services provided by the Service Provider in the immediately preceding Payment Period (as further described in the Pricing Schedule).
- (b) any amounts due (less any payments already made) pursuant to Clause 7.5, and in accordance with the principles set out in the Pricing Schedule in respect of any properly completed Variation in the immediately preceding Payment Period (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation in the immediately preceding Payment Period) provided that the Service Provider's application sets out details and value of any Variation payment being sought.
- (c) The Service Provider shall ensure that each payment application is dated and issued no earlier than the first day of the subsequent Payment Period to which the Services relate and/or the date on which the Variation to which it relates has been completed.
- (d) The Purchaser's Representative shall consider the Service Provider's payment application, and assess and verify the amount due (the "Invoice Amount") in a timely manner. The Purchaser shall certify the Invoice Amount (the "Payment Certificate") within seven (7) days of receipt of the payment application and shall give the Service Provider details of how the Invoice Amount due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 11.2.(b) and there is an undue delay in considering and verifying the Invoice Amount, the Payment Certificate shall be regarded as issued for the purposes of Clause 11.4 after a reasonable time has passed.

11.3 VAT Invoice

Within ten (10) days of receipt of the Payment Certificate, the Service Provider shall issue a corresponding VAT invoice for the amount of the relevant Invoice Amount, accompanied by a copy of the Payment Certificate, to the Purchaser's Representative in accordance with any instructions received from him. The Service Provider shall ensure that such VAT invoice:

- (a) is dated and issued no earlier than the date when the Payment Certificate was issued; and
- (b) clearly states the purchase order number.

11.4 Payment due date

Subject to Clauses 11.5 and 11.9, the Purchaser's Representative shall, on receipt by it of an appropriate VAT invoice in accordance with Clause 11.3, pay to the Service Provider within ten (10) days of receipt by it of such VAT invoice the relevant Invoice Amount calculated in accordance with Clause 11.2.(b). If the Service Provider fails to issue a VAT invoice that complies with the requirements of this Clause 11 within the time period stated in Clause 11.3, then the time period for payment of the relevant Invoice Amount shall be automatically extended by the number of days that the VAT invoice remains outstanding.

11.5 Payments Owed by the Service Provider

Where a payment application shows a net amount owed by the Service Provider to the Purchaser the Service Provider shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser's Representative or, at the option of the Purchaser's Representative, carry forward that amount to the next payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Service Provider.

11.6 Payment recovery

Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Service Provider by mistake of law or fact.

11.7 Method of Payment

All payments required to be made under this Agreement will be made for value on the due date in cleared funds to such account at a bank in the United Kingdom as the payee shall have notified to the payer by not less than three (3) Working Days' notice, free and clear of any deduction, withholding, set off or counterclaim whatsoever except to the extent deduction is required by any Applicable Laws or is in accordance with the express provisions of this Agreement. If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Payment Period, in which case payment shall be made on the immediately preceding Working Day.

11.8 Late Payment

Save where otherwise specifically provided, where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance

with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider is not entitled to suspend its provision of the Services under the Agreement as a result of any sums being outstanding.

11.9 Disputed Payment Applications

The Purchaser's Representative shall notify the Service Provider in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in accordance with Clause 45. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser's Representative in accordance with this Clause 11.

11.10 Payments Inclusive

Save as expressly provided otherwise in this Agreement, the Service Payments payable by the Purchaser are inclusive of all costs, expenses and disbursements incurred by the Service Provider in connection with this Agreement.

11.11 Payments in Sterling

The Service Payments are denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Sterling.

11.12 Value Added Tax

- (a) All amounts payable by one Party to another Party under this Agreement are, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of any amount payable and the Service Provider is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Service Provider to the Purchaser at the rate in force on the date of the relevant payment application and must be shown as a separate amount on such payment application and shall accordingly be paid by the Purchaser to the Service Provider. To the extent that VAT is chargeable in respect of the Pricing Schedule and the Purchaser is liable to account for such VAT to any Competent Authority, the Pricing Schedule shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Service Provider pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.
- (b) Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes).
- (c) Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM

Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

12 ACCESS AND AUDIT

- 12.1 For the purposes of exercising any of its rights under this Clause 12, the Service Provider shall (a) grant the Purchaser access on reasonable prior notice to any of the Service Provider's premises involved in the provision of the Services and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.
- 12.2 The Service Provider shall, and shall (unless the Purchaser's Representative otherwise agrees in writing) procure that its Subcontractors shall:
- (a) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service Provider's obligations under this Agreement (including the Service Provider's compliance with the Manuals) and all transactions and Subcontracts entered into by the Service Provider for the purposes of performing its obligations under this Agreement (in respect of the Service Provider) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Service Provider's Records**"); and
 - (b) retain all the Service Provider's Records until the date six (6) years (or such longer period as may be required by law) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").
- 12.3 The Service Provider shall ensure that its procedures and obligations are regularly audited, tested and/or inspected by an independent auditor.
- 12.4 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Service Provider's performance of and compliance with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:
- (a) audit, inspect or witness any aspects of the provision of the Services;
 - (b) inspect any and all of the Service Provider's Records during the Retention Period as are reasonably necessary to investigate the Service Provider's (and any Subcontractor's) performance of its obligations under this Agreement (including the Service Provider's compliance with the Manuals). Where the Service Provider considers that certain specific information required for the audit is confidential, then the Service Provider shall have the right to redact this information and to disclose in un-redacted form only to an independent agent or representative of the Purchaser bound by non-disclosure, and which agent or representative is acceptable (acting reasonably) to the Service Provider;
 - (c) audit the management systems of the Service Provider and those of any Subcontractor; and
 - (d) inspect and/or audit compliance by the Service Provider and its Subcontractors with the Service Provider's obligations under this Agreement,

and where such inspection reasonably requires the attendance or participation by the Service Provider, the Service Provider shall provide such attendance or participation by appropriately qualified individuals at its own cost.

- 12.5 To the extent necessary for the purpose of exercising any of the rights granted under Clause 12.3 the Service Provider shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser, including:
- (a) upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Service Provider's Records required for the purposes of Clause 12.4.(b) free of charge and within a reasonable time of any request; and
 - (b) making the Service Provider's employees available for discussion with the Purchaser.
- 12.6 No audit and/or inspection testing by the Purchaser pursuant to Clause 12.3 shall relieve the Service Provider (or any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Service Provider.
- 12.7 Any actions found to be reasonably necessary having regard to the Service Provider's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the Service Provider. The Service Provider shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, together with the Service Provider's confirmation of the timescale allocated by the Purchaser for the Service Provider to close out the Corrective Action. The Service Provider shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 12.1 to 12.6.
- 12.8 If the Service Provider (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Service Provider and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Service Provider may refer the dispute for determination in accordance with Clause 46.

Plans for Remedial Action

- 12.9 If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 12.2 and 12.7, the Purchaser reasonably determines that the provision of the Services does not, or is unlikely in the future to, comply with any of the requirements of Clause 6.2 the Purchaser shall notify the Service Provider of such determination. The Purchaser and the Service Provider shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Service Provider, at the Service Provider's cost, to ensure that that the Services do or will conform to the requirements of Clause 6.2. If the Service Provider fails to implement such remedial action within a reasonable period following agreement of a plan pursuant to this Clause 12.9 then the Purchaser may proceed to implement, or procure the implementation, of such remedial action at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 12.9 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement.

13 SECURITY

13.1 Performance Bond

- (a) Where the Detailed Terms states that a Performance Bond is required, then on or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Performance Bond in favour of the Purchaser. The Performance Bond shall:
 - (a) be for the amount stated in the Detailed Terms;
 - (b) substantially in the form set out in Schedule 9 (*Form of Parent Company Guarantee and Performance*)
 - (c) continue in full force and effect for the Agreement Duration; and
 - (d) be duly executed and delivered by a Bond Provider.

13.2 Guarantee

- (a) Where the Detail Terms states that a Guarantee is required, then on or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Guarantee in favour of the Purchaser. The Guarantee shall:
 - (a) be substantially in the form set out in Schedule 9;
 - (b) continue in full force and effect for the Agreement Duration; and
 - (c) be duly executed and delivered by the Guarantor.

13.3 Replacement Bonds

- (a) If at any time:
 - (a) a Performance Bond ceases to be in full force and effect;
 - (b) the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable;
 - (c) the Bond Provider ceases to meet the Required Rating;
 - (d) an Insolvency Event occurs in relation to a Bond Provider,

then the Service Provider shall provide a replacement Performance Bond issued by a Bond Provider and that otherwise complies with this Clause 13 within 10 (ten) Working Days of the Performance Bond ceasing to meet the relevant requirement(s) of this Clause 13.3.

- (b) In the event that the Service Provider does not provide a replacement Performance Bond in accordance with Clause 13.3.(a), the Purchaser may at its option:
 - (a) make a demand upon the full amount (or remaining balance thereof if a demand or demands have already been made) of the Performance Bond, which amount shall be paid to the Purchaser and retained by the Purchaser pending receipt of a replacement Performance Bond meeting the requirements of this Clause 13 (provided that if, prior to receipt of such Performance Bond this Agreement is terminated, the Purchaser may apply such amount towards any sums owing to it under this Agreement); or
 - (b) procure the issue of a replacement Performance Bond meeting the requirements of this Clause 13 and invoice the Service Provider for the cost thereof. The Service Provider shall reimburse the Purchaser for the amount of such cost, together with Default Interest from the date of such invoice until the date on which the invoice is paid.

13.4 Demands

- (a) Where this Agreement is terminated due to the occurrence of a Service Provider Event of Default, the Purchaser shall be entitled to make a demand under the Performance Bond for the Performance Bond amount specified in Clause 13.1.(a).(a), which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Service Provider for application in or towards amounts due to the Purchaser following termination for Service Provider Event of Default as provided for in this Agreement.
- (b) Where this Agreement terminates other than as contemplated by Clause 13.4.(a) (save where it terminates due to a Purchaser Event of Default), or expires, the Purchaser shall be entitled to make a demand under the Performance Bond in respect of any amounts which the Service Provider is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser.
- (c) Clauses 13.4.(a) and 13.4.(b) shall only apply where the Detailed Terms states that a Performance Bond is required.

14 FAULT RECTIFICATION

- (a) The Service Provider is to develop a process that documents the problem diagnosis and rectification activities. This will include the following as a minimum:
 - (b) Nature of the problem requiring diagnosis
 - (c) Date and Time of notification (and for any subsequent actions)
 - (d) Rectification actions required - if any
 - (e) Supporting information, including any photographic or video data. This information can be shared with train and equipment manufacturers where necessary (and may specifically be needed in respect of Manufacturer Faults).
 - (f) It is important that the relevant problem diagnosis and rectification records are created and saved at the earliest opportunity, and that records are kept up to date as actions for a specific problem progress.

15 PURCHASER'S OBLIGATIONS

15.1 The Purchaser shall:

- (a) comply with its express obligations under the Supplier Performance Schedule;
- (b) provide certain training to the Service Provider on a "train-the-trainer" basis as set out in the Services Specification;
- (c) notify the Service Provider of any Faults or damage which occurs or it believes may occur to any of the Goods while the Goods are in the care, custody or control of the Purchaser; and
- (d) comply with its express obligations as set out in this Agreement, including the Services Specification.

16 EVENTS OF DEFAULT

16.1 Service Provider Events of Default

It shall be a Service Provider Event of Default if any of the following occurs:

- (a) the Service Provider fails to pay any sum (including, where applicable, any Liquidated Damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;
- (b) an Insolvency Event occurs in relation to the Service Provider;
- (c) the Service Provider commits a material breach of its obligations under this Agreement;
- (d) the Guarantee either ceases to be in full force and effect or the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable or the Guarantor fails to comply promptly with any of its obligations pursuant to the Guarantee (a "Guarantee Event"), or the Guarantor breaches the Guarantee;
- (e) the Service Provider commits a Persistent Breach as provided for in Clause 16.4;
- (f) the Service Provider fails to take out and/or maintain any of the required insurances in accordance with Clause 20;
- (g) there is a breach by the Service Provider of its obligations under Clause 40;
- (h) without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Service Provider's share capital, and for this purpose, a "Controlling Interest" being either:
 - (a) the ownership or control (directly or indirectly) of more than 30% of the Service Provider's voting share capital or the share capital of the Service Provider's holding company; or

- (b) the ability to direct the casting of more than 30% of the votes exercisable at the Service Provider's general meetings or those of the Service Provider's holding company on all, or substantially all, matters;
- (i) the Performance Bond, where required per Detailed Terms either ceases to be in full force and effect or the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable or the Bond Provider fails to comply promptly with any of its obligations pursuant to the Performance Bond (a "Performance Bond Event"), or the Bond Provider breaches the Performance Bond;
- (j) a Service Provider Public Procurement Termination Event occurs;
- (k) a Level 4 Non-Conformance occurs; or
- (l) the Service Provider's liability to the Indemnified Parties under this Agreement, (excluding for these purposes all Excepted Liabilities) reaches the amount stated in the Detailed Terms;

16.2 Procedures in relation to Termination for a Service Provider Event of Default

- (a) The Service Provider shall notify the Purchaser forthwith on the Service Provider becoming aware of the occurrence of a Service Provider Event of Default.
- (b) Following the occurrence of a Service Provider Event of Default (and notwithstanding that the Service Provider may not have notified it pursuant to Clause 16.2(a), the Purchaser may by notice in writing to the Service Provider, specifying the Service Provider Event of Default in question, terminate this Agreement in relation to the provision of Services ("**Purchaser Termination Notice**"), such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of an Insolvency Event, forthwith), provided that, in respect of a Service Provider Event of Default under Clauses 16.1.(a), 16.1.(c) or 16.1.(j) which is capable of remedy, the provisions of Clause 16.3 shall apply.

16.3 Remedial Plan

- 16.3.1 Where a Service Provider Event of Default that is capable of remedy arises under Clauses 16.1.(a), 16.1.(c) or 16.1.(j) the Purchaser shall by notice in writing to the Service Provider signed on behalf of the Purchaser (a "**Remedy Notice**") require the Service Provider either:
- (a) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice (and in respect of a breach of the type referred to Clause 16.1.(j), the remedy must be the agreement with the Purchaser of an increased limit on the Service Provider's Liability per clause 19.4.(a) to be inserted in Detailed Terms or
 - (b) in respect of Events of Default arising under Clause 16.1.(a) or 16.1.(c), within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in

reasonable detail and the latest date by which it is proposed that that remedy will be completed.

- 16.3.2 Where the Service Provider puts forward a Remedial Plan in accordance with Clause 16.3.1 the Purchaser shall notify the Service Provider in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Service Provider, the Purchaser shall be deemed to have accepted the Remedial Plan.
- 16.3.3 If the Purchaser notifies the Service Provider that it does not accept that Remedial Plan pursuant to Clause 16.3.2, the Purchaser and the Service Provider shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Service Provider Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 16.2 (notwithstanding the proviso thereto). Where the Purchaser and the Service Provider agree the form of the Remedial Plan, the Service Provider shall forthwith implement such Remedial Plan in accordance with its terms.
- 16.3.4 If any breach specified in a Remedy Notice served under Clause 16.3.1 is not remedied:
- (a) within the thirty (30) Working Day period specified in Clause 16.3.1(a) (if applicable); or
 - (b) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Service Provider otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may:

- (i) may proceed to implement, or procure the implementation, of the Remedial Plan at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 16.3.4 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement; and/or
- (ii) exercise its rights under Clause 16.2 as if the Service Provider Event of Default is not capable of remedy.

16.4 **Persistent Breach**

- 16.4.1 If the Service Provider breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Service Provider:
- (a) specifying that it is a formal warning notice;
 - (b) giving reasonable details of such breach; and
 - (c) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three

(3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 16.4.

- 16.4.2 If, following service of such a warning notice pursuant to Clause 16.4.1, the breach specified has continued un-remedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 16.4.1, serve another notice on the Service Provider specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 16.1.(e).

16.5 Consequences of a Service Provider Event of Default

- 16.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 16.2.(b) (and, where relevant, the Service Provider Event of Default has not been remedied pursuant to Clause 16.3) or (b) a notice of termination under Clause 17.4 (*Prohibited Acts*), then:
- (a) the Purchaser will have the right to place the carrying out of the Services with a third party and the Service Provider will, subject to Clause 16.5.3, indemnify the Purchaser for any properly incurred reasonable costs of placing the Services with a third party to the extent they exceed the costs which the Purchaser would have paid the Service Provider for the same Services. Any costs in relation to this clause 16.5.1(a) shall be:
 - (i) subject to an aggregate cap as defined in the Detailed Terms ; and
 - (ii) incurred within a time limit as defined in the Detailed Terms;
 - (b) the Service Provider will provide the Purchaser with the Default Package;
 - (c) the Service Provider shall continue to perform the Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the Services shall become effective and the Purchaser shall continue to pay the Service Provider for performance of such Services;
 - (d) the Service Provider shall co-operate with the Purchaser to minimise the disruption caused to the Purchaser's business due to the termination of this Agreement in relation to the provision of the Services and shall provide any assistance, training or other support required by the Purchaser or any third party taking over the provision of the Services; and
 - (e) the Service Provider will on demand pay the Purchaser:
 - (i) all reasonable costs incurred by the Purchaser as a result of any Service Provider Event of Default and the loss of the provision of the Services;
 - (ii) all reasonable costs incurred by the Purchaser in rectifying Faults arising but not rectified prior to the date of such termination which have not been reimbursed to the Purchaser under any provision of this Agreement; and

- (iii) all amounts outstanding in respect of any accrued obligations or liabilities under this Agreement; and
- (f) the Service Provider shall promptly return to the Purchaser at the Designated Depot or other such location nominated by the Purchaser (which shall not be unreasonable):
 - (i) any unused Spare;
 - (ii) the Special Tools in the same condition as recorded in the Special Tools Condition Report (fair wear and tear excluded); and
 - (iii) any other equipment provided by the Purchaser under this Agreement.

16.5.2 The Purchaser shall use all reasonable endeavours to mitigate all costs claimed by it under this Clause 16.5.

16.5.3 For the avoidance of doubt, the Purchaser's rights upon the occurrence of a Service Provider Event of Default are as expressly set out in this Agreement.

16.6 Voluntary Termination

The Purchaser may terminate this Agreement without cause at any time by giving at least ninety (90) days' notice to the Service Provider of such termination and the date when such termination shall become effective and the termination shall take effect upon such date. In the event that this Agreement is terminated pursuant to this Clause 16.6, then the provisions of Clause 16.9 shall apply.

16.7 Declaration of Ineffectiveness and Public Procurement Termination Event

16.7.1 The Purchaser may terminate this Agreement at any time in the event that:

- (a) there is a Declaration of Ineffectiveness; or
- (b) a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

16.7.2 In the event that this Agreement is terminated pursuant to Clause 16.7.1, the provisions of Clause 16.9 shall apply.

16.8 Purchaser Event of Default

It shall be a Purchaser Event of Default if the Purchaser fails to make payment of any sum in excess of three (3) Service Payments which is due and payable to the Service Provider in accordance with this Agreement and not in dispute and such amount has not been paid within thirty (30) days following a subsequent written demand by the Service Provider for payment.

16.9 Consequences of a Purchaser Event of Default, Voluntary Termination, Declaration of Ineffectiveness or Public Procurement Termination Event

16.9.1 If a Purchaser Event of Default occurs, the Service Provider may deliver to the Purchaser a notice (a "**Notice of Default**") specifying the Purchaser Event of Default which has occurred and the Service Provider may, terminate this Agreement in relation to the provision of the Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of

Default. If, following service of a Notice of Default the relevant Purchaser Event of Default is remedied, then the applicable Notice of Default will be deemed to have been withdrawn and will no longer be outstanding.

- 16.9.2 If this Agreement is terminated in relation to the provision of the Services pursuant to Clauses 16.6, 16.7, or 16.9.1, the Purchaser will pay the Service Provider:
- (a) the aggregate of all Service Payments (including the apportioned element of the period relating to the Payment Period during which the Agreement is so terminated) and other amounts payable to the Service Provider which have then fallen due under this Agreement but remain unpaid;
 - (b) such sum as represents the reasonable cost of labour and materials already incurred or committed by the Service Provider as at the date of termination of this Agreement in respect of Services (including, without limitation, the cost of terminating subcontracts and redundancy of employees);
 - (c) the reasonable costs incurred by the Service Provider in preparing the Default Package; and
 - (d) all other direct losses, costs and claims reasonably incurred in connection with such termination if properly evidenced by the Service Provider.

The Service Provider shall not be entitled to payment of any other loss and/or damage arising from such termination.

- 16.9.3 Subject to payment by the Purchaser to the Service Provider of all sums due and payable under this Agreement the Service Provider will comply with the provisions of Clauses 16.5.1(b) to 16.5.1(e) above.
- 16.9.4 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Service Provider as a direct result of termination of this Agreement and determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Service Provider as a direct result of the termination of this Agreement.
- 16.9.5 Where the Purchaser exercises its rights pursuant to Clause 16.9.4, it shall give written notice to the Service Provider identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Service Provider shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.
- 16.9.6 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Service Provider. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Service Provider as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Service Provider.
- 16.9.7 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by

the Service Provider, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Service Provider.

16.9.8 In the event the Service Provider disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 46.

16.9.9 With effect from the termination or expiry of the Agreement Duration, the Service Provider shall extend to the Purchaser the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Service Provider or which is implied by law in favour of the Service Provider in respect of the Services as provided by the Service Provider during the Agreement Duration, provided that in so doing the Service Provider shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Purchaser.

16.9.10 For the avoidance of doubt, the Service Provider's rights upon the occurrence of a Purchaser Event of Default are as expressly set out in this Agreement.

17 PROHIBITED ACTS

17.1 The Service Provider shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.

17.2 The Purchaser shall have the right to audit any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 17 at any time during performance of this Agreement and during the three (3) years after the Expiry Date or earlier termination of this Agreement.

17.3 If the Service Provider, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Service Provider or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 17.3, Clause 16.5 shall apply.

17.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Service Provider then the Purchaser may serve a warning notice upon the Service Provider instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Service Provider removes or procures the removal of the relevant Subcontractor, employee or agent (as the case may be) from further involvement with any aspect of the performance of this Agreement and (if necessary) procures the provision of the affected works and/or services by another Subcontractor, employee or agent (as the case may be) this constitutes a material breach of this Agreement and entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 17.4, Clause 16.5 shall apply.

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Licence of Service Provider IPR

The Service Provider grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Service Provider IPR for:

- (a) the operation, maintenance, modification, repair, overhaul, refurbishment or sale of the Plant and Machinery, Parts and/or Spares or any related activity, or permitting

the Purchaser to use the Plant and Machinery, Parts and/or Spares for the purposes of performing the Services;

- (b) complying with all Applicable Laws, TfL Standards and all Relevant Consents;
- (c) using and copying the Manuals and any Technical Information in order to perform any of the above;
- (d) training personnel to carry out any of the activities described in Clause 18.1.(a) and 18.1.(c);
- (e) inviting tenders for any of the activities described in Clause 18.1.(a) to 18.1.(d) inclusive;
- (f) in the event of termination of this Agreement other than for a Purchaser Event of Default, procuring fulfilment and performance of the Service Provider's obligations under this Agreement; and
- (g) the Purchaser performing its obligations under this Agreement.

18.2 **Subcontractors**

The Service Provider shall ensure that all Subcontracts entered into by the Service Provider shall permit the Service Provider to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

18.3 **Documentation**

The Service Provider shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 18 at no cost to the Purchaser.

18.4 **Warranties**

The Service Provider represents and warrants to the Purchaser that: the Service Provider IPR constitutes all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;

- (a) it has the right and power to grant the licence set out in Clause 18.1; and
- (b) use of any Service Provider IPR does not infringe any Intellectual Property Rights of another person.

18.5 **Indemnity**

The Service Provider shall indemnify the Purchaser and any member of the TfL Group against any claim for infringement of any Intellectual Property Rights.

18.6 **Remedy for Infringement**

Without prejudice to the provisions of Clause 18.5, if the use of any Service Provider IPR is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Service Provider shall, at its expense, use

all reasonable endeavours to procure for the Purchaser the right to continue to use that Service Provider IPR.

18.7 **Ownership of training material**

- (a) Any training materials that the Purchaser provides to the Service Provider as part of its training obligations under this Agreement shall remain the property of the Purchaser at all times.
- (b) Any training materials developed by the Service Provider for use in connection with the Services shall be the property of the Purchaser and the Service Provider shall provide a copy of such training materials to the Purchaser prior to undertaking any training or assessment of its staff.

18.8 **Licence of Purchaser IPRs**

- (a) The Purchaser hereby grants to the Service Provider (to the extent that the Service Provider has such rights) a worldwide, royalty-free, perpetual, irrevocable, non-exclusive, non-transferable licence (with the right to sub-licence any such rights to any third party) to use the Purchaser IPRs for the Agreement Duration solely to enable the Service Provider to perform the Services in accordance with this Agreement.
- (b) Subject to the licence set out in Clause 18.1.(a) above, the Service Provider is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Purchaser.

18.9 **Survival**

Each licence granted under this Clause 18 and/or any liability arising in connection with the same shall survive the termination or expiry of this Agreement and continue in full force and effect, along with any other Clauses or Schedules of this Agreement necessary to give effect to them. In addition, any other provision of this Agreement which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

19 **LIABILITY, INDEMNITIES**

19.1 **General Indemnity**

- (a) Subject to Clause 19.1.(b), the Service Provider shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and any member of the TfL Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:
 - (a) death or personal injury to any person;
 - (b) any loss of, or damage to, any property or assets (including the TfL Premises, the Railway Infrastructure and the Plant and Machinery or any other item of Goods);

- (c) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- (d) breach of statutory duty;
- (e) any Environmental Damage;

arising from or in connection with:

- (i) the performance or non-performance (including any negligent performance) of the obligations of the Service Provider, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
 - (ii) any acts or omissions, breach, negligence or wilful misconduct by the Service Provider.
- (b) The Purchaser does not require the indemnity to apply in relation to physical damage to the Plant and Machinery or injury to third parties or damage to third party property whilst the Plant and Machinery is under the care, custody or control of the Service Provider.
 - (c) The remedy of Liquidated Damages set out in Clause 10.2 is the sole and exclusive remedy of the Purchaser in relation to breaches of the Supplier Performance Schedule.
 - (d) The Service Provider shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 19.1.(a) in the case of any loss referred to in Clauses 19.1.(a), 19.1.(a).(b) and 19.1.(a).(e) to the extent that it results from negligence, breach of duty or breach of Applicable Law on the part of any Indemnified Party.
 - (e) The provisions of this Clause 19 shall survive termination or expiry of this Agreement for whatever reason.

19.2 Notification of claims procedures and assistance in defending claims

- (a) The Service Provider shall, as soon as reasonably practicable, notify the Purchaser of any actual or threatened claim (of whatever nature) in respect of which the Purchaser may seek to be indemnified and held harmless by the Service Provider under the provisions of this Agreement.
- (b) The Purchaser shall give to the Service Provider and any of its advisers such co-operation, access and assistance as any such person may reasonably require in defending claims in respect of which the Purchaser seeks to be indemnified by the Service Provider under this Agreement.

19.3 Consequential Breach and Loss

- (a) Neither Party shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.
- (b) Neither Party shall be liable to the other for any matter howsoever arising out of or in connection with this Agreement (including in Clause 19.1.(a)) in respect of any

Consequential Loss. Each Party respectively undertakes not to sue the other Party (or make a claim against that Party), TfL or any member of the TfL Group in respect of Consequential Loss. The Service Provider shall remain liable for any costs under clause 16.5.1(a) and which costs shall not be regarded as Consequential Loss for the purposes of this clause 19.3.(b).

19.4 **Limit on Service Provider's Liability**

- (a) Subject to Clause 19.4.(b), the Service Provider's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited to the amount stated in the Detailed Terms.
- (b) The Service Provider's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 19.4.(a).

19.5 **No Double Recovery**

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

19.6 **Service Provider's Personnel**

- (a) For the purposes of this Clause 19.6:
 - (a) **"Current Service Provider"** means any person, company or other legal entity which on or before the Commencement Date employed or engaged any of the Transferring Employees, and which (for the avoidance of doubt) may include the Purchaser and any of the persons listed on the Final Staff List;
 - (b) **"Final Staff List"** has the meaning set out in Clause 19.6(i);
 - (c) **"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;
 - (d) **"Replacement Employer"** means any person to whom a Subsequent Transferring Employee may or does transfer under the Transfer Regulations on expiry or termination of the contract (or part of it);
 - (e) **"Staff List"** has the meaning set out in Clause 19.6(c);
 - (f) **"Subsequent Transfer Date"** means the time and date on which a Subsequent Transferring Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;
 - (g) **"Subsequent Transferring Employee"** means a person employed or engaged by the Service Provider or relevant Subcontractor from time to time in respect of any part of the Services who would transfer (in whole or

in part) to a Replacement Employer by virtue of the Transfer Regulations on the expiry or termination of the contract (or part of it);

- (h) **“Transfer Regulations”** means all or any of the following: TUPE; 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
 - (i) **“Transferring Employees”** means those employees or workers of the Current Service Provider who transfer (in whole or in part) or have the right to transfer (in whole or in part) to the Service Provider under the Transfer Regulations.
- (b) The Service Provider will comply and procure that its subcontractors comply with any obligations which may arise out of a transfer to the Purchaser or another person under the Transfer Regulations upon the Expiry Date or earlier termination of this Agreement.
- (c) When requested by the Purchaser (but not more than twice in any 12 month period) and at any time during the last twelve (12) months of this Agreement and/or during any period of notice terminating this Agreement, the Purchaser may require the Service Provider to provide, within a specified period of being requested, to the Purchaser (or to any other person or persons nominated by the Purchaser) such information as is reasonably required by the Purchaser or such other persons relevant to the potential liabilities of the Purchaser or any other person arising under the Transfer Regulations including but not limited to information on the following:
- (a) an anonymized or pseudonymized list of employees or workers (of the Service Provider or its Subcontractors) engaged in providing the Services, their salaries, benefits (including pension entitlements) and other conditions of employment, ages and length of service (the **"Staff List"**);
 - (b) the method of organisation of the employees or workers (of the Service Provider or its Subcontractors) engaged in providing the Services and documentary evidence relating to such organisation;
 - (c) the proposals for informing and consulting with affected employees or workers;
 - (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 Purchaser upon request of any communication with any potential or intended new consultant or the Service Provider's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

The Service Provider will provide the Purchaser upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 19.6 may be addressed. The Service Provider will if

required by the Purchaser warrant that any information provided under this Clause 19.6 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

- (d) The Service Provider will if requested notify the Purchaser as soon as practicable and in any event within 5 days of the Service Provider becoming aware of any additional or new information and any changes to any information already provided under Clause 19.
- (e) The Service Provider agrees that the Purchaser will be permitted to disclose any information provided to it under this Clause 19 in anonymised or pseudonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Purchaser to review the provision of the Services and to any Replacement Employer.
- (f) The Service Provider will not and will procure that its Subcontractors will not in the six (6) months prior to the expiry or termination of this Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Purchaser's prior written consent:
 - (a) re-organise or substantially alter the number or method of organisation (including proportion of working time spent) or identity of the employees or workers engaged in providing the Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees or workers engaged in providing the Services or relates to the expected Expiry Date or termination of this Agreement; or
 - (b) make any increase to the salaries or any change to the terms and conditions of employment or engagement of the employees or workers engaged in providing the Services, except where such increases or changes would have arisen in the ordinary course of the Service Provider's or the relevant Subcontractor's business and are not related to the Expiry Date or termination of this Agreement (either because they are applied to all of the Service Provider's or the relevant Subcontractor's employees or workers, whether or not engaged in providing the Services (or otherwise) or are the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees or workers engaged in providing the Services or to the Expiry Date or termination of this Agreement.
- (g) The Service Provider will and will procure that any Subcontractor will co-operate with the Purchaser and any Replacement Employer in the orderly management of the transfer of employment or engagement of any Subsequent Transferring Employees.
- (h) The Service Provider will and will procure that any Subcontractor will provide the Purchaser and any Replacement Employer with a final Staff List (the "Final Staff List") and staffing information relating to persons on that list not less than 28 days before any Subsequent Transfer Date, or if the Agreement is terminated by the Purchaser in accordance with Clause 16, then the Final Staff List will be provided by the Service Provider to the Purchaser as soon as reasonably practicable and in any event no later than 14 days after the termination of the Agreement.

- (i) The Service Provider shall indemnify the Purchaser against all Relevant Claims and Liabilities arising from or related to:
 - (a) any failure by the Service Provider (or its subcontractors) to comply with the Transfer Regulations in relation to any Transferring Employee;
 - (b) the employment or engagement or termination thereof by the Service Provider (or its subcontractors) of any Transferring Employee or any person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Service Provider or its Subcontractors;
 - (c) any actual or proposed changes by the Service Provider (or its subcontractors) to the terms and conditions or working conditions of any Transferring Employee which are alleged to be to their detriment;
 - (d) the employment or engagement or termination thereof of any Service Provider Personnel by the Service Provider or its Subcontractors.
- (j) The Service Provider shall indemnify the Purchaser and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:
 - (a) any claim by a Subsequent Transferring Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment or engagement before a Subsequent Transfer Date in respect of which the Purchaser or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
 - (b) any claim by any former or existing employee or worker of the Service Provider or relevant Subcontractor (other than a Subsequent Transferring Employee) in respect of which the Purchaser or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
 - (c) any claim or demand or other action taken against the Purchaser or any Replacement Employer by any Subsequent Transferring Employee who continues to be employed or engaged in part by the Service Provider after the Subsequent Transfer Date and which arises directly or indirectly out of or in connection with that retained employment or engagement or its termination.
- (k) For the avoidance of doubt, the Service Provider shall continue to have full liability for the matters set out in Clause 19.6(k) above if it is held or alleged that: (i) the contract of employment or engagement of any of the Subsequent Transferring Employees does not transfer in its entirety to the Purchaser and/or any Replacement Employer (and/or its/their Subcontractors) and/or (ii) liability for any such contract of employment or engagement of any such Subsequent Transferring Employees does not transfer in its entirety to the Purchaser and/or any Replacement Employer (and/or its/their subcontractors).
- (l) In this Clause 19.6 **“Relevant Claims and Liabilities”** include those incurred by the Purchaser by reason of any contract term between the Purchaser and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which

the Purchaser may incur to a Replacement Employer, the Service Provider shall not be required to indemnify the Purchaser 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 Purchaser in providing an indemnity to the Replacement Employer on the same terms set out in Clause 19.6(k) above.

20 INSURANCE

The Service Provider and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 19 (*Insurance*).

21 FORCE MAJEURE EVENTS

21.1 Notice of Force Majeure Event

Neither Party shall be in breach of its obligations under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

- (a) if any Party seeks to rely on this Clause 21.1.(a) (the "FM Affected Party"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and
- (b) within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 21.2 below.

21.2 Mitigation

- (a) An FM Affected Party shall:
 - (a) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Service Provider, complying with the requests of the Purchaser's Representative), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
 - (b) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
 - (c) shall provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.

- (b) The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 21.2.(a) above.

21.3 **Grounds for Termination due to a Force Majeure Event**

Either Party shall be entitled to terminate this Agreement by notice in writing (a "**FM Notice**") to the other Party if one or more Force Majeure Event persists for a continuous period of six (6) months. The provisions of Clause 21.4 shall apply in respect of such termination.

21.4 **Consequence of Termination due to a Force Majeure Event**

In the event of termination of this Agreement pursuant to Clause 21.3 each Party shall bear its own costs arising out of such termination and the Service Provider shall comply with its obligations under Clauses 16.5.1(b) to 16.5.1(e) inclusive, but excluding Clauses 16.5.1(e)(i) and 16.5.1(e)(iii), subject in each case to payment of an appropriate amount by the Purchaser to the Service Provider in respect of the Services provided and provided that, in the case of Clause 16.5.1(e)(ii), the Service Provider shall not be obliged to perform obligations from which it is excused under Clause 21 or to make payments to the Purchaser in respect of non performance of such obligations to the extent that such non performance was caused by the occurrence of the Force Majeure Event.

21.5 **Effect on payments**

If a Force Majeure Event results in the Service Provider being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have been due on fulfilment of that obligation until and to the extent that the Service Provider has performed that obligation.

21.6 **Cessation of Force Majeure**

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated in accordance with Clause 21.3.

21.7 **Continuing Obligations**

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 21.3, remain in effect for the duration of a Force Majeure Event.

22 **CONFIDENTIALITY**

22.1 **Obligations of Confidentiality**

Subject to Clause 22.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Service Provider or by the Service Provider to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Service Provider shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of its subcontractors and suppliers shall not) without the prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

- (a) disclose Confidential Information to any person whomsoever;
- (b) use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or
- (c) use Confidential Information otherwise than for the purpose for which it was provided.

22.2 Permitted Disclosure

The restrictions in Clause 22.1 shall not apply to the disclosure of Confidential Information:

- (a) in accordance with any requirement under any Applicable Law (including pursuant to Clause 29) or TfL Standard to do so;
- (b) to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;
- (c) to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- (d) to any Competent Authority;
- (e) in the case of the Purchaser, to the Mayor of London and/or the Greater London Authority and/or the Secretary of State;
- (f) in the case of the Purchaser, to any member of the TfL Group;
- (g) to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- (h) which was made available to the disclosing Party on a non-confidential basis;
- (i) which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- (j) which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- (k) to any member of the Service Provider's Group for the purposes of the performance by the Service Provider of its obligations under this Agreement.

22.3 Confidentiality Undertaking

Where disclosure is permitted under Clause 22.2, other than Clauses 22.2.(a), 22.2.(b), 22.2.(g) or 22.2.(h), the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligations of confidentiality as that contained in this Agreement.

22.4 Prior Notice of Disclosure

If a Party becomes required in circumstances contemplated by Clauses 22.2.(a) to 22.2.(k) to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other

Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to co-operate with, have due regard to the views of, and take steps as reasonably required by the Service Provider.

22.5 Standard of Care

In fulfilling its obligations under this Clause 22, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

22.6 Announcements

The Service Provider shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the provision of technical support and material supply services for the Goods.

22.7 Reputation

The Service Provider shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

22.8 Survival

The obligations of the Parties under this Clause 22 shall survive the expiry or the termination of this Agreement for whatever reason.

23 CONTRACT MANAGEMENT

23.1 General

The Purchaser and the Service Provider agree to comply with their respective obligations as set out below.

23.2 Representatives

Each Party shall appoint (after consultation with the other Party) one or more Representatives to act on its behalf under this Agreement. Both Parties shall advise the other Party in writing prior to the date hereof of the name(s) and contact details of its Representative(s). Either Party may, on giving reasonable notice to the other Party, appoint an additional Representative or replace an existing Representative. Each Party shall be responsible for the acts, omissions, neglects and defaults of its Representative as if such acts, omissions, neglects and defaults were the acts, omissions, neglects and defaults of that Party itself. Both Parties warrant that their Representative(s) has full authority to bind it in respect of any decision made or action

taken by such Representative(s). For the avoidance of doubt "Representatives" shall include, the Service Provider's Representative and the Purchaser's Representative.

23.3 **Communication**

- (a) The Parties shall ensure that at all times the authorised Representative, or any other authorised representative, is available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Plant and Machinery and day to day operational and incident management.
- (b) The Parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication.
- (c) The Purchaser may use the ASITE Contract Administration Management System ("**ASITE**") in order to support the commercial administration of this Agreement. If the Purchaser elects to use ASITE:
 - (a) the Parties shall use ASITE for all notices required to be issued under this Agreement, including Variation Quotes, Variation Valuations and payment applications made by the Service Provider pursuant to Clause 11.2;
 - (b) the Purchaser shall provide the Service Provider with access to ASITE at no additional cost to the Service Provider; and
 - (c) the Purchaser shall provide the Service Provider with training on how to use ASITE if required.

23.4 **Contract Management Meetings**

- (a) A contract management meeting shall be held on a monthly basis on a date and time as agreed between the Parties acting reasonably (the "**Contract Management Meeting**"), and whenever any Party reasonably believes that the performance of another Party's obligations has fallen below an acceptable level (the "**Additional Contract Management Meeting**").
- (b) Each Contract Management Meeting shall be attended by the Purchaser's Representative or a delegate of the Purchaser's Representative and the Service Provider's Representative or a delegate of the Service Provider's Representative and one or more Senior Representatives of the Service Provider with relevant expertise to consider the agenda items for the Contract Management Meeting.
- (c) The Purchaser shall take minutes at each Contract Management Meeting which shall be approved by the Service Provider's Representative at the following Contract Management Meeting.
- (d) The agenda for the Contract Management Meeting shall be agreed by the Parties acting reasonably and may include any of the elements set out in Clause 23.4.(f). Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Contract Management Meeting agenda. The final agenda for the meeting shall be published no later than one (1) week prior to the scheduled date of the Contract Management Meeting.

- (e) The location of any Contract Management Meeting shall be notified alternately by the Parties, unless otherwise agreed, with the location of the first meeting to be specified by the Service Provider.
- (f) The agenda for a Contract Management Meeting and/or an Additional Contract Management Meeting may include any of the following:
 - (a) a review of minutes from the previous meeting;
 - (b) review of the content of the relevant Performance Report, including performance risk evaluation;
 - (c) reconciliation of Liquidated Damages claims;
 - (d) a review of costs incurred in the preceding Payment Period;
 - (e) a review of the status of current and proposed Variations;
 - (f) a review of audits and audit plans;
 - (g) a review of safety performance and/or quality performance;
 - (h) a review of completed Work Return Forms;
 - (i) a review of the reliability, availability, maintainability and safety of the Services (including failures and Faults);
 - (j) reporting on past health, safety and environmental compliance;
 - (k) a review of the amendments to the Manuals and training requirements;
 - (l) a review of suppliers and Subcontractors;
 - (m) relationship review;
 - (n) complaints or concerns by the Purchaser regarding alleged underperformance or non-performance by the Service Provider of any of its obligations under this Agreement;
 - (o) any other business; and
 - (p) planning of the date and location of the next Contract Management Meeting.
- (g) Where the Purchaser raises a complaint or concern through a Contract Management Meeting regarding alleged underperformance or non-performance by the Service Provider of any of its obligations under this Agreement, the Service Provider's Representative shall:
 - (a) promptly investigate the possible causes of the complaint or concern;

- (b) at the Contract Management Meeting immediately following the date on which the Purchaser raised the complaint or concern and at each subsequent Contract Management Meeting until the date the Purchaser notifies the Service Provider that the complaint or concern has been resolved to the Purchaser's satisfaction:
 - (i) communicate to the Purchaser's Representative any findings by the Service Provider of the investigation described in Clause 23.4.(g).(a) and
 - (ii) identify the course of action the Service Provider proposes to take or has undertaken (as the case may be) to resolve the Purchaser's complaint or concern; and
- (c) monitor the Service Provider's performance of the obligations under this Agreement relevant to the Purchaser's complaint or concern until the date the Purchaser notifies the Service Provider that the complaint or concern has been resolved to the Purchaser's satisfaction.

23.5 **Performance Reports**

- (a) No later than two (2) Working Days prior to each Contract Management Meeting, the Service Provider shall ensure that the Purchaser receives two copies of the Performance Report relating to the period (to be agreed by the Parties) immediately preceding that Contract Management Meeting.
- (b) The Service Provider shall provide the Purchaser, within a reasonable time following a request, any additional performance and other reports as are required by the Purchaser.

23.6 **Mobilisation Programme**

- (a) The Service Provider shall, within the period stated in the Detailed Terms submit a mobilisation programme to the Purchaser for acceptance.
- (b) The programme shall be provided in the format stated in the Detailed Terms;
- (c) The mobilisation programme shall make clear the activities (and showing sufficient detail) by which the Service Provider proposes to achieve the start of services, and which activities include: obtaining regulatory permissions or licenses, recruitment and deployment of staff, training of staff, design and deployment of systems and processes;
- (d) The mobilisation programme shall include the following dates: Commencement Date, train delivery dates, end of train testing and trial running.
- (e) The programme shall make clear the start date, end date and duration of activities and any linkages or dependencies between activities.
- (f) The programme shall make clear any dependencies on activities undertaken by the Purchaser or any third party.

23.7 **Maintenance Meetings**

- (a) A maintenance meeting shall be held:
 - (a) during the period between the date of this Agreement and the date that is the three (3) month anniversary of this Agreement, on a weekly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Maintenance Activities under this Agreement;
 - (b) during the period between the date that is the three (3) month anniversary of this Agreement and the termination or expiry of this Agreement, on a monthly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of the Maintenance Activities under this Agreement; and
 - (c) on an ad-hoc basis from time to time when requested by either of the Parties, on a date and at a time as agreed between the Parties acting reasonably, in order to address any urgent issues in relation to the delivery of the Maintenance Activities under this Agreement which cannot be deferred until the next meeting described in Clauses 23.7.(a).(a) and 23.7.(a).(b) above takes place,
 (together, a "**Maintenance Meeting**").
- (b) The Maintenance Meeting shall be held at the Designated Depot or such other location as agreed between the Parties acting reasonably.
- (c) Each Maintenance Meeting shall be representatives nominated by each Party with relevant expertise to consider the agenda items for the Maintenance Meeting. The Purchaser shall take minutes at each Maintenance Meeting which:
 - (a) the Purchaser shall circulate to the Service Provider in a reasonable period of time following the Maintenance Meeting;
 - (b) shall set out in detail any actions to be performed by either Party that were agreed between the Parties during the Maintenance Meeting; and
 - (c) shall set out any timeframe agreed between the Parties at the Maintenance Meeting for delivering the actions described in Clause 23.7.(c).(b) above.
- (d) The agenda for the Maintenance Meeting shall be issued by the Purchaser acting reasonably and may include any of the elements set out in Clause 23.7.(e). Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Maintenance Meeting agenda. The final agenda for the meeting shall be published no later than one (1) week prior to the scheduled date of the Maintenance Meeting.
- (e) The agenda of the Maintenance Meetings may include any of the following:
 - (a) a review of minutes from the previous meeting;
 - (b) a review of maintenance issues in relation to the delivery of the Services identified by the Service Provider or the Purchaser;
 - (c) a review of the use, storage and condition of Spares, Special Tools and other equipment provided by the Purchaser;

- (d) ideas for the improvement of the use and storage of Spares, Special Tools and other equipment provided by the Purchaser;
- (e) costs to be incurred in the next Payment Period in relation to the performance of the Services;
- (f) planning for future Shifts (including issue of Shift Confirmation Notices);
- (g) planning for the Service Provider's future Spares, Special Tools and other equipment requirements;
- (h) ideas to improve the delivery of Maintenance Activities under this Agreement;
- (i) health, safety and environmental compliance planning;
- (j) potential changes affecting this Agreement;
- (k) amendments to the Manuals and training requirements;
- (l) planning for the date of the next Maintenance Meeting; and
- (m) any other business.

23.8 Operations Meetings

- (a) An operations meeting shall be held:
 - (a) during the period between the date of this Agreement and the date that is the three (3) month anniversary of this Agreement, on a weekly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Operational Activities under this Agreement;
 - (b) during the period between the date that is the three (3) month anniversary of this Agreement and the termination or expiry of this Agreement, on a monthly basis on date(s) and at time(s) agreed between the Parties acting reasonably, in order to discuss the delivery of Operational Activities under this Agreement; and
 - (c) on an ad-hoc basis from time to time when requested by either of the Parties, on a date and at a time as agreed between the Parties acting reasonably, in order to address any urgent issues in relation to the delivery of Operational Activities under this Agreement which cannot be deferred until the next meeting described in Clauses 23.8.(a).(a) and 23.8.(a).(b) above takes place,

(together, an "**Operations Meeting**").
- (b) The Operations Meeting shall be held at the Designated Depot or such other location as agreed between the Parties acting reasonably.
- (c) Each Operations Meeting shall be attended by representatives nominated by each Party with relevant expertise to consider the agenda items for the Operations Meeting.

- (d) The Purchaser shall take minutes at each Operations Meeting which:
 - (a) the Purchaser shall circulate to the Service Provider in a reasonable period of time following the Operations Meeting;
 - (b) shall set out in detail any actions to be performed by either Party that were agreed between the Parties during the Operations Meeting; and
 - (c) shall set out any timeframe agreed between the Parties at the Operations Meeting for delivering the actions described in Clause 23.8.(d).(b) above.
- (e) The agenda for the Operations Meeting shall be issued by the Purchaser acting reasonably and may include any of the elements set out in Clause 23.8.(f). Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Operations Meeting agenda. The final agenda for the Operations Meeting shall be published no later than one (1) week prior to the scheduled date of the Operations Meeting.
- (f) The agenda of the Operations Meeting may include any of the following:
 - (a) minutes of the previous meeting;
 - (b) operational issues in relation to the delivery of the Services identified by the Service Provider or the Purchaser; a review of upcoming work and progress on any planned activities, for example in relation to any possessions;
 - (c) a review of ideas to improve the delivery of Operational Activities under this Agreement;
 - (d) reporting on health, safety and environmental compliance;
 - (e) planning of the date of the next Operations Meeting; and
 - (f) any other business.

23.9 Exceptional planning activities

The Purchaser may require the Service Provider to attend ad-hoc planning meetings from time to time on the date(s) and time(s) notified to the Service Provider by the Purchaser for the purpose of planning any large scale activities (such as week-52 possessions). The Service Provider may be required as part of such meetings to produce any planning submissions that may be required by the Purchaser in connection with such large scale activities.

24 WAIVER AND VARIATION

Except as expressly stated in this Agreement no failure or delay by either Party to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it, the respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing.

25 SURVIVAL

25.1 **Consequence of termination or expiry**

Upon termination or expiry of this Agreement:

- (a) the obligations of the Parties under this Agreement shall cease except for:
 - (a) any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and
 - (b) the provisions of Clauses 1, 5, 11, 16.5, 16.9, 18, 19, 20, 21.4, 22, 23.9, 25, 26, 27, 28, 29, 33, 40, 41, 42, 43, 44, 46 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

26 **LANGUAGE**

All documentation or information required or produced in the course of or in connection with a Party's performance of this Agreement shall be in English.

27 **ENTIRE AGREEMENT**

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the Parties hereto. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be a breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this Clause 27 "this Agreement" includes all documents entered into pursuant to this Agreement.

28 **SEVERABILITY AND ILLEGALITY**

28.1 **Severance**

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

28.2 **Performance unlawful etc**

If, at any time after the date of this Agreement, the introduction, imposition, variation or change of any Applicable Laws or TfL Standards makes it unlawful or impossible without breaching that Applicable Laws or TfL Standards for a Party (an "**Affected Party**") to give effect to its obligations under this Agreement, then the Affected Party shall notify the other Party of the nature of the circumstances on becoming aware of them.

28.3 **Mitigation**

- (a) Without prejudice to any other terms of this Agreement, the Parties shall discuss in good faith any reasonable methods of avoiding the effects of any such introduction, imposition, variation or change referred to in Clause 28.2. including, subject to obtaining any necessary consents, transferring its rights and obligations under the relevant document to any other person, acceptable to the other Parties (at such other party Party's absolute discretion) not affected by that introduction, imposition, variation or change of any Applicable laws or TfL Standards.
- (b) The Service Provider and the Purchaser shall be under a duty to mitigate any damages and losses in respect of which they make a claim under an indemnity or otherwise pursuant to this Agreement.

28.4 **Failure to avoid illegality**

If, notwithstanding the provisions of Clause 28.3, the Affected Party is unable to avoid the matters contemplated by Clause 28.2, or the Parties hereto fail to agree on a proposal to avoid its effects, this Agreement in relation to the provision of Services may be terminated by the Affected Party and each Party will bear its own costs.

29 **FREEDOM OF INFORMATION**

29.1 The Service Provider acknowledges that the Purchaser:

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

29.2 Without prejudice to the generality of Clause 29.1, the Service Provider agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

- (a) transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Service Provider each Information Request relevant to this Agreement or any member of the TfL Group that the Service Provider or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and
- (b) in relation to Information held by the Service Provider on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

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

- 29.4 The Service Provider acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

30 RESPONSIBLE PROCUREMENT

- 30.1 The Service Provider and the Purchaser acknowledge and agree that the Mayor of London, in accordance with section 155 of the GLA Act has directed the Purchaser and its subsidiaries (including the Purchaser) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.
- 30.2 The Service Provider shall and shall procure that its Subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Purchaser to enable the Purchaser to comply with, the Responsible Procurement Policy.
- 30.3 The Service Provider acknowledges and agrees that the 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 Service Provider shall and shall procure that all of its Subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.
- 30.4 Where applicable to the Service Provider, the Service Provider shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.
- 30.5 The Service Provider acknowledges and agrees that it (and its Subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).
- 30.6 The Service Provider shall not be entitled to any addition to the Service Payments 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).
- 30.7 The Service Provider shall procure that any Subcontractor (of any tier) is required to comply with the provisions of this Clause 30 and the provisions of this Clause 30 are included in any subcontract (of any tier).
- 30.8 The Service Provider shall not, and shall procure that any Subcontractor shall not, without the prior written consent of the Purchaser, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 30.

31 CRIME AND DISORDER

- 31.1 The Service Provider acknowledges that the Purchaser is under a duty under Section 17 of the Crime and Disorder Act 1998 (as amended by the Police and Justice Act 2006 and the Policing and Crime Act 2009) to:
- (a) have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser’s duties;
 - (b) where appropriate, identify actions to reduce levels of crime and disorder; and

- (c) without prejudice to any other obligation imposed on the Purchaser, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area:
 - (a) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - (b) the misuse of drugs, alcohol and other substances; and
 - (c) re-offending,

and in the performance of this Agreement the Service Provider shall assist and co-operate, with the Purchaser and relevant members of the TfL Group and shall use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser and relevant members of the TfL Group where possible to enable the Purchaser to satisfy its duty.

32 LONDON LIVING WAGE

- 32.1 The Service Provider acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed that members of the TfL Group (including the Purchaser) to ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Purchaser's estate in the circumstances set out in Clause 32.2 (a).
- 32.2 Without prejudice to the generality of Clause 32.1, the Service Provider shall and shall procure that its Subcontractors (if any) shall:
 - (a) ensure that none of its employees and workers and procure that the employees and workers of its Subcontractors engaged in the provision of the Services or performance of this Agreement:
 - (a) for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and
 - (b) on the Purchaser's estate including (without limitation) premises and land owned or occupied by the Purchaser,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;
 - (b) ensure that none of:
 - (a) its employees and workers; nor
 - (b) the employees and workers of its Subcontractors,

engaged in the provision of the Services or performance of this Agreement be paid less than the amount to which they are entitled in their respective contracts of employment;
 - (c) provide to the Purchaser such information concerning the London Living Wage as the Purchaser or its nominees may reasonably require from time to time, including (without limitation):
 - (a) all information necessary for the Purchaser to confirm that the Service Provider is complying with its obligations under Clause 32; and
 - (b) reasonable evidence that Clause 32 has been implemented;

- (d) disseminate on behalf of the Purchaser to:
 - (a) its employees and workers; and
 - (b) the employees and workers of its Sub-contractors,

engaged in the provision of the Services or performance of this Agreement such perception questionnaires as the Purchaser may reasonably require from time to time and promptly collate and return to the Purchaser responses to such questionnaires; and
- (e) co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):
 - (a) allowing the CCSL to contact and meet with the Service Provider's employees and workers and any trade unions representing the Service Provider's employees and workers; and
 - (b) procuring that the Service Provider's Subcontractors allow the CCSL to contact and meet with the Subcontractors' employees and workers and any trade unions representing the Sub-contractors' employees and workers,

in order to establish that the obligations in Clause 32.2(a) have been complied with.

32.3 For the avoidance of doubt the Service Provider shall:

- (a) implement the annual increase in the rate of the London Living Wage; and
- (b) procure that its Subcontractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

32.4 The Purchaser reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its Subcontractors.

32.5 Without limiting the Purchaser's rights under any other termination provision in this Agreement, the Service Provider shall remedy any breach of the provisions of this Clause 32 within four (4) weeks' notice of the same from the Purchaser (the "**Notice Period**"). If the Service Provider remains in breach of the provisions of this Clause 32 following the Notice Period, the Purchaser may by written notice to the Service Provider immediately terminate this Agreement.

33 DATA TRANSPARENCY

33.1 The Service Provider acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 22 and Clause 29, the Service Provider hereby gives its consent for the Purchaser to publish the Contract Information to the general public.

33.2 The Purchaser 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 Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published

pursuant to Clause 33.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

34 DATA PROTECTION AND CYBER SECURITY

- 34.1 The Service Provider shall comply with all of its obligations under the Data Protection Legislation.
- 34.2 The Service Provider shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

35 CONFLICT OF INTEREST

- 35.1.1 The Service Provider acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.
- 35.1.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the Agreement Duration and in any event not less than once in every six (6) months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 35, Clause 16.5 shall apply.

36 CRIMINAL RECORDS DECLARATION

- 36.1 The Service Provider shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions he has committed. The Service Provider shall confirm to the Purchaser in writing on an annual basis upon request that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the Agreement Duration and the Service Provider shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 36.2 The Service Provider shall not engage or allow to act on behalf of the Service Provider or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 36.3 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 36 at any time during performance of this Agreement.
- 36.4 If the Service Provider fails to comply with the requirements under Clause 36.1 and/or 36.2, the Purchaser may, without prejudice to its rights under Clause 36.5, serve notice on the Service Provider requiring the Service Provider to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with

Clause 36.1) within seven (7) days of receipt of the notice the Service Provider confirms to the Purchaser that it has procured all of the Declarations required under Clause 36.1.

- 36.5 A persistent breach of Clause 36.1 and/or 36.2 by the Service Provider shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 36, Clause 16.5 shall apply.
- 36.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 36.7 Nothing in this Clause 36 in any way waives, limits or amends any obligation of the Service Provider to the Purchaser arising under this Agreement and the Service Provider's obligation to perform this Agreement remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause 36.
- 36.8 The Service Provider confirms that, for the Agreement Duration, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

37 BEST VALUE

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

38 COSTS

Except as otherwise agreed in this Agreement, each Party shall bear its own costs incurred in connection with the execution and implementation of this Agreement.

39 ASSIGNMENT

39.1 Assignment, Transfer and Subcontracting by the Service Provider

Subcontracting

- (a) The Service Provider may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:
 - (a) the written consent of the Purchaser is obtained by the Service Provider prior to the Service Provider entering into any Subcontract; and

- (b) the Service Provider shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractor.
- (b) In granting such consent pursuant to Clause 39.1.(a).(a), the Purchaser may require the Service Provider to procure that a Subcontractor duly executes and delivers to the Purchaser, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 8 (Deed of Novation).
- (c) The Service Provider shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Service Provider or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Service Provider.
- (d) The Service Provider agrees that any Subcontractors who supply safety critical materials or services will be approved by the Purchaser in accordance with all Applicable Laws and all applicable TfL Standards and in accordance with the Safety Plan and the Quality Plan.
- (e) The Service Provider shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 11 (Payments).
- (f) The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser's exercise of its right under this Clause 39.1.f, the Purchaser may request that the information provided by the Service Provider under Clause 39.1.f(b) is accompanied by one (1) or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:
 - (a) shall require the Service Provider to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
 - (b) may require the Service Provider to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

Assignment

- (a) Without prejudice to Clauses 39.1.(a) to 39.1.(c), the Service Provider shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and any purported dealing in contravention of this Clause 39.1 shall be ineffective.

39.2 Assignment and Novation or Granting of Security by the Purchaser

Permitted Transfers

- (a) The Purchaser shall be entitled without the consent of the Service Provider to assign, transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person.

Implementation of Transfers

- (a) If the Purchaser wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clause 40.2(a), the Service Provider shall execute such documents and do such other things as the Purchaser may reasonably request in order to facilitate and perfect such dealing.

40 NOTICES

- 40.1 Any notice or communication to be given under or in connection with this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by personal delivery, or by prepaid recorded delivery or first class prepaid post to the address or, as the case may be, and for the attention of the relevant Party set out in Clause 42. Any such notice or communication shall be deemed to have been received:

- (a) if delivered, on delivery;
- (b) in the case of recorded delivery or first class post, forty eight (48) hours from the date of posting.

provided that if the date of delivery or receipt is not a Working Day such notice or communication shall be deemed to have been delivered or, as the case may be, received, on the opening of business on the next Working Day.

- 40.2 Notices or communications affecting this Agreement shall be addressed (where not specifically required to be addressed to the respective Parties' Representative) to:

- (a) in the case of the Service Provider:

The representative as defined in the Detailed Terms or otherwise as advised by the Service Provider;

- (b) in the case of the Purchaser:

The representative as defined in the Detailed Terms or otherwise as advised by the Purchaser;

41 SET OFF

The Purchaser shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Service Provider, any amounts due or expressed to be due by the Service Provider to the Purchaser. Any payment payable by the Service Provider under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Service Provider under this Agreement.

42 ACCRUED RIGHTS

Termination of the obligations to provide Services under this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

43 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

43.1 Subject to the Replacement Employer's rights under Clause 19.6, no person except any member of the TfL Group may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

43.2 Notwithstanding those rights referred to in Clause 43.1, the Purchaser and the Service Provider may agree to vary or rescind this Agreement without the consent of any third party.

44 COUNTERPARTS

This Agreement to which the Service Provider and Purchaser are a Party may be executed in separate counterparts, each of which, when executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. All signatures need not be contained in the same counterpart.

45 DISPUTES AND GOVERNING LAW

45.1 Disputes

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to 18 (*Dispute Resolution Procedure*).

45.2 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

45.3 Exclusive Jurisdiction

Subject to the terms of Clause 46.1, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

45.4 Forum

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

EXECUTION PAGE:

Contract Commencement Date: 26th June 2025

This Contract has been signed by for and on behalf of the parties on the day and year written above.

Signed by
for and on behalf of

[Redacted signature block]

Signed by
for and on behalf of

.....
[Redacted signature block]




Schedule 1 Detailed Terms

(a) The Key Dates and Conditions are:

| No | Title | Key Date | Condition |
|-----|----------------|--|---|
| (1) | Live Operation | Date to be agreed between the Parties for the purposes of the mobilisation programme | Service Provider holds required licenses. Service Provider staff deployed and trained. |

| | |
|----------------------------|--|
| Contract Start Date | 26 th June 2025 |
| Contract Commencement Date | 1 st December 2025 |
| Expected Delivery Date(s) | 26 th June 2025 – 25 th June 2030 |
| Optional Extension | Up to Three (3) Year(s) at Transport for London's sole discretion |
| Completion Date | 25 th June 2030 |
| Delivery Address | Elizabeth Line Plumstead Depot 65 White Hart Ave Plumstead London SE28 0GW |
| Supplier's Representative: | <div style="background-color: black; width: 100px; height: 15px;"></div> <div style="background-color: black; width: 150px; height: 15px;"></div> |

| | |
|--|---|
| <p>Telephone:</p> <p>[Email address:]</p> <p>Address for service of notices:</p> <p>[Email address:]</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| <p>Company's Representative:</p> <p>Address for service of notices:</p> <p>Email address:</p> | <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> |
| <p>Volume Discount Percentage</p> | <p>Not Used</p> |
| <p>Quantity</p> | <p>Not Used</p> |
| <p>Contract Price</p> | <p>Please refer to Schedule 2</p> |
| <p>Warranty Period</p> | <p>Not Used</p> |
| <p>Initial Period</p> | <p>5 Years</p> |

| | |
|---|---|
| | |
| Specification | Please refer to Schedule 3 |
| Programme | Please refer to |
| Security required pursuant to Clause 13: | |
| Bond | no |
| Parent company guarantee | The credit protection level to be provided by way of a bond for the purposes of Clause 13.1 is [N/A] of the Contract Price. |
| | no |
| Liquidated Damages relating to (o) Rail Milling Machine (Schedule 11 – 6 Shift Completion clause 1.4.1) |  |
| Liquidated Damages relating to an (p) Engineering Train (Schedule 11 – 6 Shift Completion clause 1.4.2) |  |
| The Supplier's total liability for the purposes of Clause 19.4.a is: |  |

| | |
|--|--|
| | |
| The following Supplier Personnel are Key Personnel | |

Schedule 2

Pricing

1 PRICING INTRODUCTION

- 1.1 This Part provides further details with respect to the Service Payments.

2 PRICING CONCEPT

- 2.1 The Service Payments are calculated in accordance with the process set out in Part B of Schedule 2 (*Service Payments*) for the Agreement Duration, adjusted as the case may be in accordance with the Variation Procedure. The VAT treatment of supplies pursuant to this Agreement shall be as set out in Clause [11](#) of this Agreement.
- 2.2 Each Service Payment shall be inclusive of all costs and charges whatsoever and shall be deemed to include all costs, overheads, profit, risk allowances and the like required for the Service Provider's performance of this Agreement.

3 PRICING APPROACH

- 3.1 The Service Payments shall be in Sterling and shall include all applicable taxes including any import/export taxes and all other statutory costs and the like but excluding VAT (which shall be dealt with pursuant to Clause [11](#) of this Agreement).
- 3.2 Notwithstanding paragraph [2.2](#) above, the rates and prices for all items and activities required for the Service Provider's performance of this Agreement are deemed to be fully inclusive, and shall include the costs set out in paragraphs [3.2.1](#) to [3.2.5](#) below.

3.2.1 Preliminaries

The following preliminaries are included:

3.2.1.1 head office, branch office and other premises or offices support

- all head office, branch office and other premises or offices costs directly related to this Agreement including supervisory, liaison, engineering, planning, quality assurance and administrative staff (and includes all associated overheads, communications and data costs, stationery costs, printing costs and postage costs not included in the percentage addition for overheads and profit);

3.2.1.2 all costs of accommodation and sanitary facilities necessary for site staff and all associated costs (including heating, lighting, furniture, first aid, associated consumables and all other safety, health and welfare facilities);

3.2.1.3 site communications - all costs in connection with the provision of telephones and portable telephones including installation costs, rental and calls, costs of usage of public telephones and other communication equipment and consumables required for the Service Provider to perform its obligations under this Agreement;

3.2.1.4 training requirements - course and examination fees, all costs of staff attending medical examinations and training courses to enable the Service Provider to perform its obligations under this Agreement, and all costs of Service Provider-run courses and licensing of staff; and

3.2.1.5 insurance - all costs of complying with the insurance requirements as set out in this Agreement.

3.2.2 Mobilisation

The mobilisation costs shall include staff costs, costs of training, recruitment, establishment of facilities, purchase of equipment, establishment of process and procedures and all other items necessary for the successful commencement of the performance of the Agreement. All costs in connection with mobilisation, set-up and the like and management thereof are deemed to be included.

3.2.3 Overheads and Profit

Overheads shall include corporate overhead contribution, profit recovery, headquarters staff costs, Service Provider offices, yards, depots and other buildings and associated plant, Service Provider's equipment and vehicles, rents, rates, insurances, running, maintenance and replacement costs for the above, general and administrative head and branch office staff salaries and wages, emoluments, expenses and allowances and all other costs of employment (including costs of and allowance for motor cars, subsistence, hotels, accommodation and the like, travel and associated expenses for directors and general and administrative head and branch office staff), legal and accountancy fees and costs, any financing costs and depreciation associated with all of the above, other non-job related costs and other indirect costs incurred by the Service Provider in performing its obligations under this Agreement.

3.2.4 Attendance and Reporting

The Service Payments are deemed to be fully inclusive of the costs that the Service Provider incurs in recording and providing information in accordance with this Agreement, including as requested by the Purchaser's Representative. The Service Payments are also deemed to include the costs of the Service Provider's personnel attending any meetings.

3.2.5 Administration of Change

The Service Payments are deemed to be fully inclusive of the costs that the Service Provider incurs in recording and providing information in accordance with any Variation Quote, or the costing or administration of the Variation Procedure.

3.3 Items provided by the Purchaser shall be 'free-issue' unless stated otherwise.

- 3.3.1.1 training requirements - course and examination fees, all costs of staff attending medical examinations and training courses to enable the Service Provider to perform its obligations under this Agreement, and all costs of Service Provider-run courses and licensing of staff; and
- 3.3.1.2 insurance - all costs of complying with the insurance requirements as set out in this Agreement.

Part B – Payment**1 Service Payments**

- 1.1 The Service Provider will be entitled to submit a payment application in respect of a Service Payment in accordance with the Service Payments Schedule set out in Part C of this Schedule 2 (*Service Payments*).
- 1.2 The Service Provider shall be entitled to receive the Fixed Price element starting from the Commencement Date (where this date is stated in the Contract Particulars).
- 1.3 Payment of the Variable elements shall be due from the actual Live Operation date, where the planned Live Operation date is as stated in the Contract Particulars as Key Date number 1. The parties shall reasonably agree when Live Operation has been achieved.
- 1.4 The Purchaser will be responsible for any training costs in respect of training provided by the Manufacturers of the Plant and Machinery. The Purchaser will also be responsible for training costs in respect of: signalling system training, training due to changes in technical capability, and any specific training that is a requirement of the Purchaser. The Purchaser will reimburse any reasonable attendance costs for the Service Provider's personnel in respect of the training that is the subject of this clause 1.4, and which is expected to include travel, subsistence and accommodation. A margin of 15% may be added to these costs by the Service Provider.
- 1.5 The Service Provider has included for initial driver and operator training (but excluding costs of training provided by the Manufacturers of the Plant and Machinery which costs are the responsibility of the Purchaser), and for safety, designated person and first aid training.
- 1.6 The Parties shall reasonably agree any training that is required and any plans for delivery of training in order to secure best value.

2 Variations

- 2.1 Where a Variation varies the Service Payments, the Variation will be paid by varying the amount due at the relevant Payment Period to which the Variation relates. Where the Variation relates to two or more Service Payments, the value of the Variation will be divided between those Service Payments, based on allocating the value of the Variation between the Service Payments in proportion to the value of the Variation related to each Payment Period.
- 2.2 Where a Variation varies the Service Payments and the Service Payment to which the Variation relates has been paid, payment will be made by varying the amount due in respect of the subsequent Service Payment.
- 2.3 Otherwise Variations will be paid once the instructed Variation has been fully completed, unless it is set out in the Variation that payment may be applied for on an interim basis.
- 2.4 Where a Variation does not relate to a Service Payment, the Service Provider will be entitled to apply for payment in respect of Variations at intervals of not less than one (1) month. The Service Provider may apply for payment of one or more Variations at the same time.

Part C – Service Payments Schedule

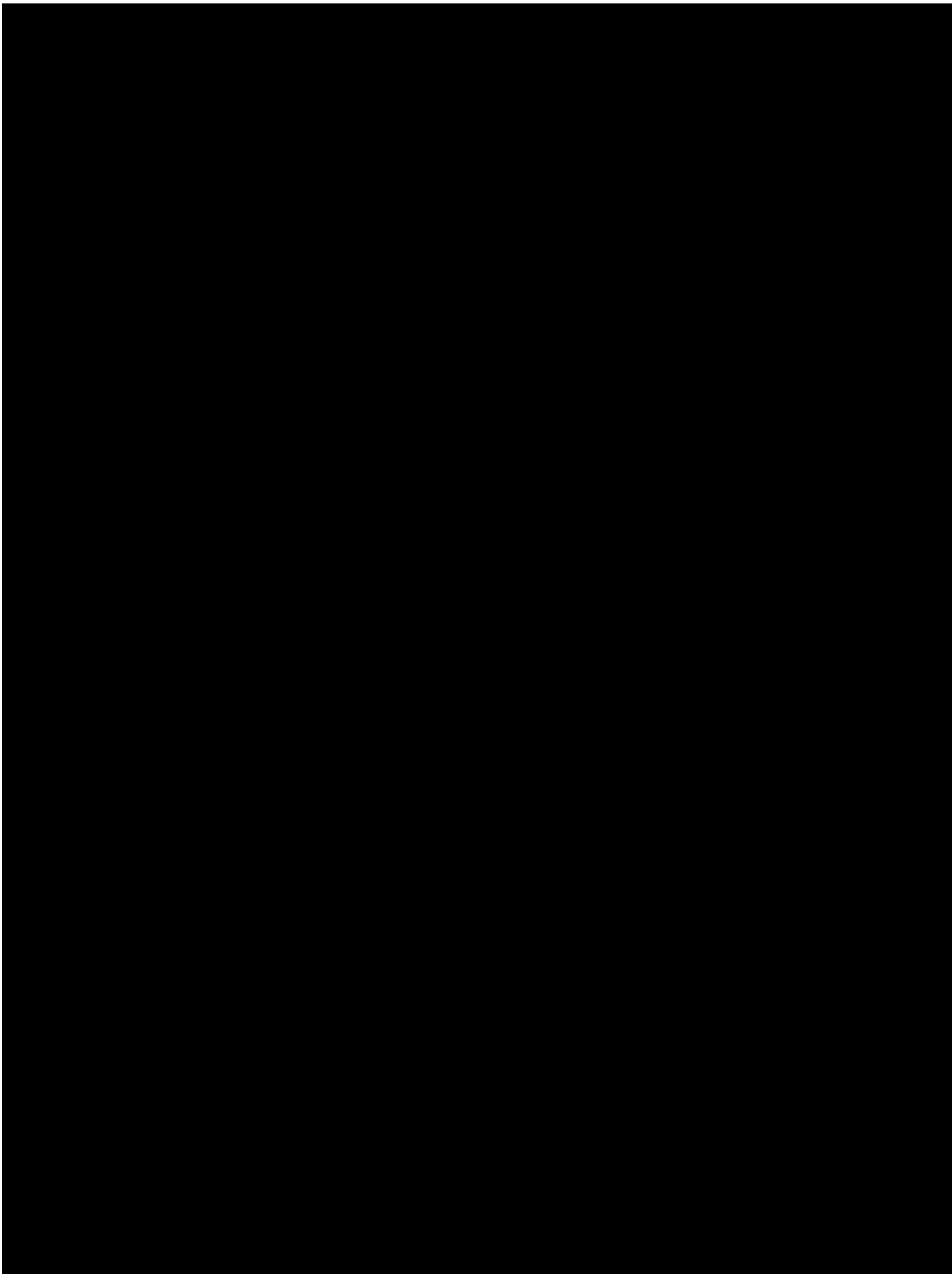
Calculation of Service Payments:

The Service Payments for each Payment Period are to be calculated in accordance with the following formula:

$$\text{£SP} = \frac{(\text{£FC})}{13} + (nE * \text{£VET}) + (nRM * \text{£VRM}) - LD$$

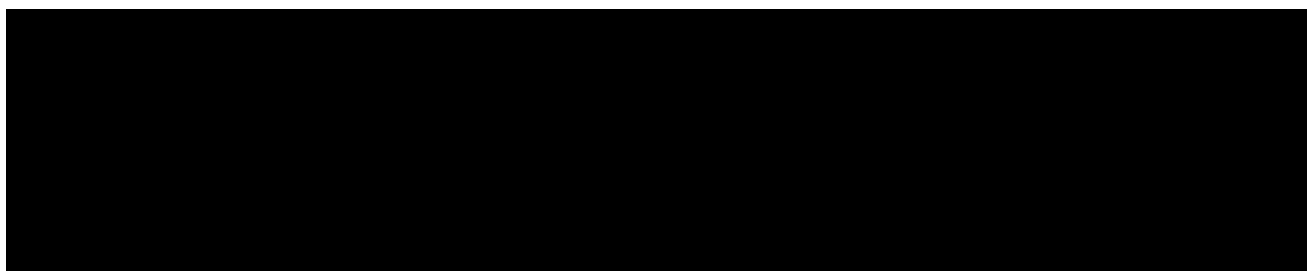
where:

- £SP means the Service Payment for the relevant Payment Period payable by the Purchaser to the Service Provider;
- £FC means the annual fixed price element for the Services, being the price in Sterling for the relevant Contract Year, as particularised in the Pricing Schedule;
- nE means the number of Completed Shifts in the relevant Payment Period in respect of the Engineering Trains (for example if Engineering Train number one completes 20 shifts and Engineering Train number two completes 18 shifts then the number of completed shifts is 38);
- £VET means the variable price element for the Engineering Trains, being the price per Completed Shift in Sterling in respect of the Engineering Trains for the relevant Contract Year, as particularised in the Pricing Schedule;
- nRM means the number of Completed Shifts in the relevant Payment Period in respect of the Rail Milling Machine;
- £VRM means the variable price element for a Rail Milling Machine, being the price per Completed Shift in Sterling in respect of the Rail Milling Machine for the relevant Contract Year, as particularised in paragraph 4 of this Part C to Schedule 4 (*Service Payments*) below; and
- LD means any Liquidated Damages payable by the Service Provider to the Purchaser in accordance with Schedule 11 (*Supplier Performance*) for the relevant Payment Period.



The prices in tables 1 to 3 of this Schedule 4 Part C are fixed during the initial five (5) year term and will be subject to Schedule 4 Part F– Contract Price Adjustment during this initial five (5) year term. If the contract is extended beyond the initial five (5) year term, then indexation shall be applied annually for the extension period as defined in Schedule 4 Part F– Contract Price Adjustment.

4 Additional Information



This document describes how the Service Provider has priced the delivery of the services, and specifically describes the numbers and types of staff included within the build up of the fixed price in Table 2 of this Schedule 4 Part C. This information may need to be consulted when considering any Change Proposals per clause 6.8 or Changes to Service Provider Organisation per clause 6.9.

Part D – Valuation of Variations

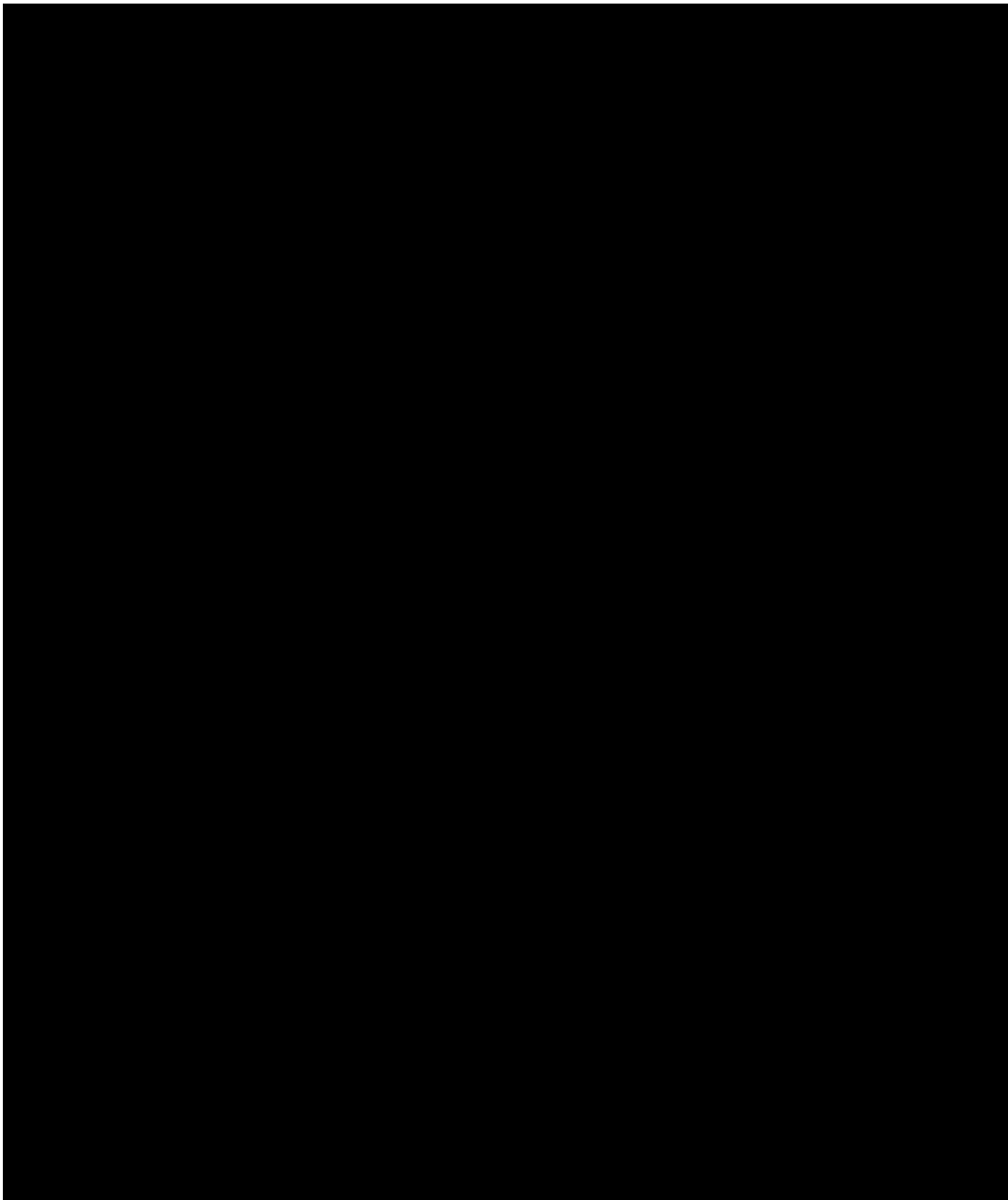
1 Schedule Of Rates And Prices

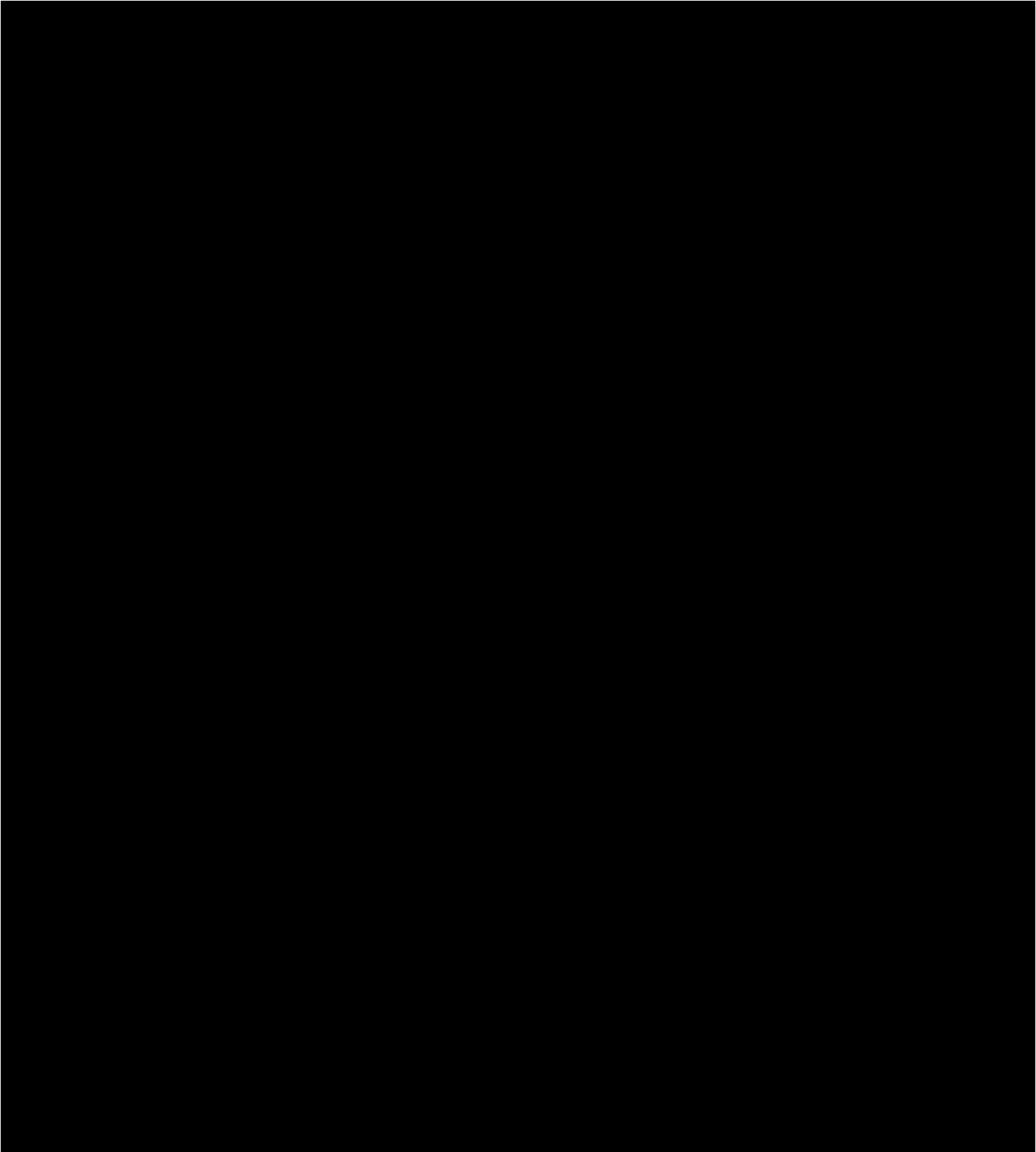
- 1.1 The rates and prices that shall be used to determine the value of Variations in accordance with Clause 7.5.(b) are set out in Part E of this Schedule 2 (*Service Payments*).
- 1.2 In respect of costs incurred / to be incurred by a third party, the basis of the valuation of this element of the Variation shall be a dated quotation from the third party, to which a ten per cent (10%) addition, to cover all overheads and profit, may be added. Where the Variation relates to goods, works or services which are significant in value and may be provided by a number of different organisations, the Purchaser's Representative may request that the Service Provider provides three (3) dated quotations and for the value of the Variation to be based on the one that provided best value.

2 Conversion of Sums into Sterling

- 2.1 Where a sum forming part or all of the value of a Variation is not in Sterling, the following will apply:
- 2.1.1 A dated invoice / quotation from the third party will form the basis of the valuation.
- 2.1.2 A currency conversion will be applied based on the Bank of England's Sterling foreign exchange reference rates as published at:
<http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp>

or such other address as may be used by the Bank of England or other body which takes over its function, as at the same date as that on the invoice / quotation.





Part F - Contract Price Adjustment:

The Contract Price shall be subject to adjustment in line with changed in RPIX excluding mortgage interest payments (RPIX) as published by Office of National Statistics as of **MONTH** (Aligned with Contract Start Date) 2025.

Adjustment Frequency

The Contract Price adjustments is to be carried out annually, starting from **MONTH** (Aligned with Contract Start Date) 2025.

- *New price = Contractual price x (RPI@ **MONTH 2025** (Aligned with Contract Start Date) Year / RPI Base)*
- The Contract Price Adjustment is capped at 3% and limited to -1% and no price increase will be applied should the RPIX track at less than 3%.
- If the calculation results in a >3% but <10%, a joint assessment is to be undertaken by the parties and the Supplier to provide evidence as well as mitigations undertaken to reduce the costs.
- If the calculation results in a >10% increase or <-1% a joint assessment is to be undertaken by the parties and the Supplier to provide evidence as well as mitigations undertaken to reduce the costs.
- If the calculation results in a 10% increase or more, evidence (quotations/supplier invoices/letters) must be provided by the Supplier that outline they incurred/ will incur cost increases that have affected the costs of these items but has not sought to pass these costs onto Transport for London. This does not in any way imply that Transport for London would entertain such additional costs, but this would serve to demonstrate that the Supplier has made efforts not to seek additional costs from Transport for London until such request is unavoidable.

Schedule 3

Specification



Elizabeth Line
Operations and Main

Schedule 4

Contract Variation Procedure

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

- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.
- 8 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with any applicable rates set out in 0.
9. The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Contract, including, but not limited to the Specification and the Programme.
- 10 Strict adherence to the procedure described in this Schedule 4 shall be a condition precedent to any addition to the Contract Price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 4 then the Supplier shall not be entitled to any addition to the Contract Price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

Variation Authorisation

Company's Representative:

Print Name:

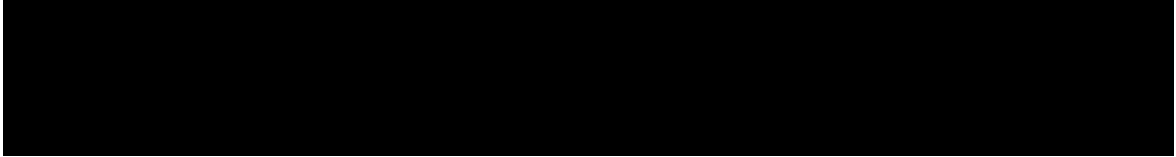
Signature:

Date:

Schedule 5

Programme

Assuming a Commencement Date of 26th June 2025 the Programme shall be:



Completion Date will be 25th June 2030.

Schedule 6

Quality and Safety Plan (QUENSH) Conditions



Elizabeth Line
Operation & Mainten:

Schedule 7

Not Used

Schedule 8

Deed of Novation

THIS DEED is made day of 202[]

day of

202[]

BETWEEN:

TRANSPORT FOR LONDON, a statutory corporation established under the Greater London Authority Act 1999 of 5 Endeavour Square, London E20 1JN (the “**Company**”); and

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

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

WHEREAS:

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

IT IS AGREED AS FOLLOWS:

1. In this Deed:

- 1.1 **"Transfer Date"** means [].

With effect from the Transfer Date:

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

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

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

Executed as a deed by Transport for London)
acting by its attorney [NAME OF ATTORNEY])
) Attorney

in the presence of: -

.....
Name: [NAME OF WITNESS IN BLOCK CAPITALS]
Address: [ADDRESS OF WITNESS]

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

Executed as a Deed by [NEW COMPANY])
acting by)
) Authorised Signatory
and).....
) Authorised Signatory

Form of Parent Company Guarantee and Performance Bond

BETWEEN:

- WHEREAS:**

- (A) This Guarantee is supplemental to a contract (the "**Contract**") for the carrying out of [] at [] made between (1) the Company and (2) the Supplier.
- (B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.
- (C) The Supplier is a party to this Guarantee in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.
3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.

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

8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.
9. The Guarantor:
 - (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
 - (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
 - (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.
10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:
 - (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
 - (b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.
11. The Company is entitled to make any number of demands under this Guarantee.
12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
14. No person other than TfL (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.
16. *[For non-UK resident Guarantors only:*

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

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

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

Executed as a deed by [COMPANY])
acting by its attorney [NAME OF ATTORNEY])
) Attorney

in the presence of: -

.....
Name: [NAME OF WITNESS IN BLOCK CAPITALS]
Address: [ADDRESS OF WITNESS]

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

Schedule 10
Form of Collateral Warranty

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

BETWEEN: -

(1) **Transport for London** registered in England and Wales under number: 01900907 and having its registered office at 5 Endeavour Square, London E20 1JN (the “**Company**”);

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

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

WHEREAS:-

(A) The Company has entered into a contract with the Supplier (the “**Main Contract**”) pursuant to which the Supplier is to undertake and complete the following supply: [] (the “**Supply**”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Execute and complete the Sub-Contract Supply in accordance with the provisions of the Sub-Contract; and

(b) ensure that the Supplier shall not become entitled to any extension of time for completion of the Supply or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.

3. The Sub-Contractor shall from time to time supply the Company and the Supplier with such information as either may reasonably require.

4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:

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

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

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

5. The Sub-Contractor agrees:

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

6. The parties hereby agree that:

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

7. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Supply, he has professional indemnity insurance with a limit of indemnity of not less than *[two million pounds (£2,000,000)]*¹ in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Supply. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Supply provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.²

8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Supply which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "**Related Dispute**") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Supply to the adjudicator, conciliator, arbitrator or other party (the "**Appointed Party**") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such

awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him.

9. (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.

(b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "**Step-in Notice**") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.

(c) With effect from the date of the service of any Step-in Notice:

(i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;

(ii) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;

(iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and

(iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:

(1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and

(2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.

(d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.

10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.

11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.

12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Supply.

14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.

15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

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

Executed as a deed by Transport for London)
acting by its attorney [NAME OF ATTORNEY])
) Attorney

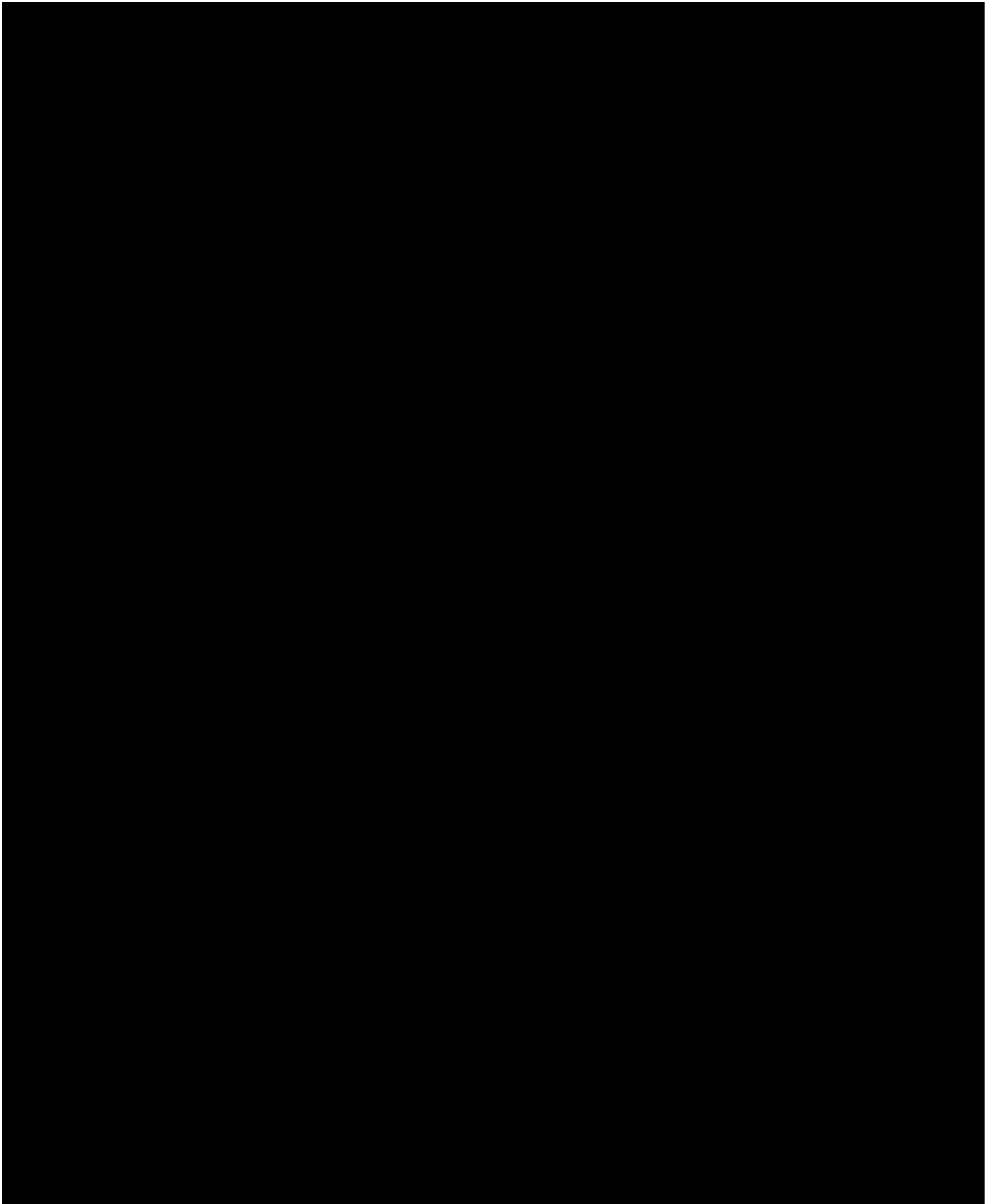
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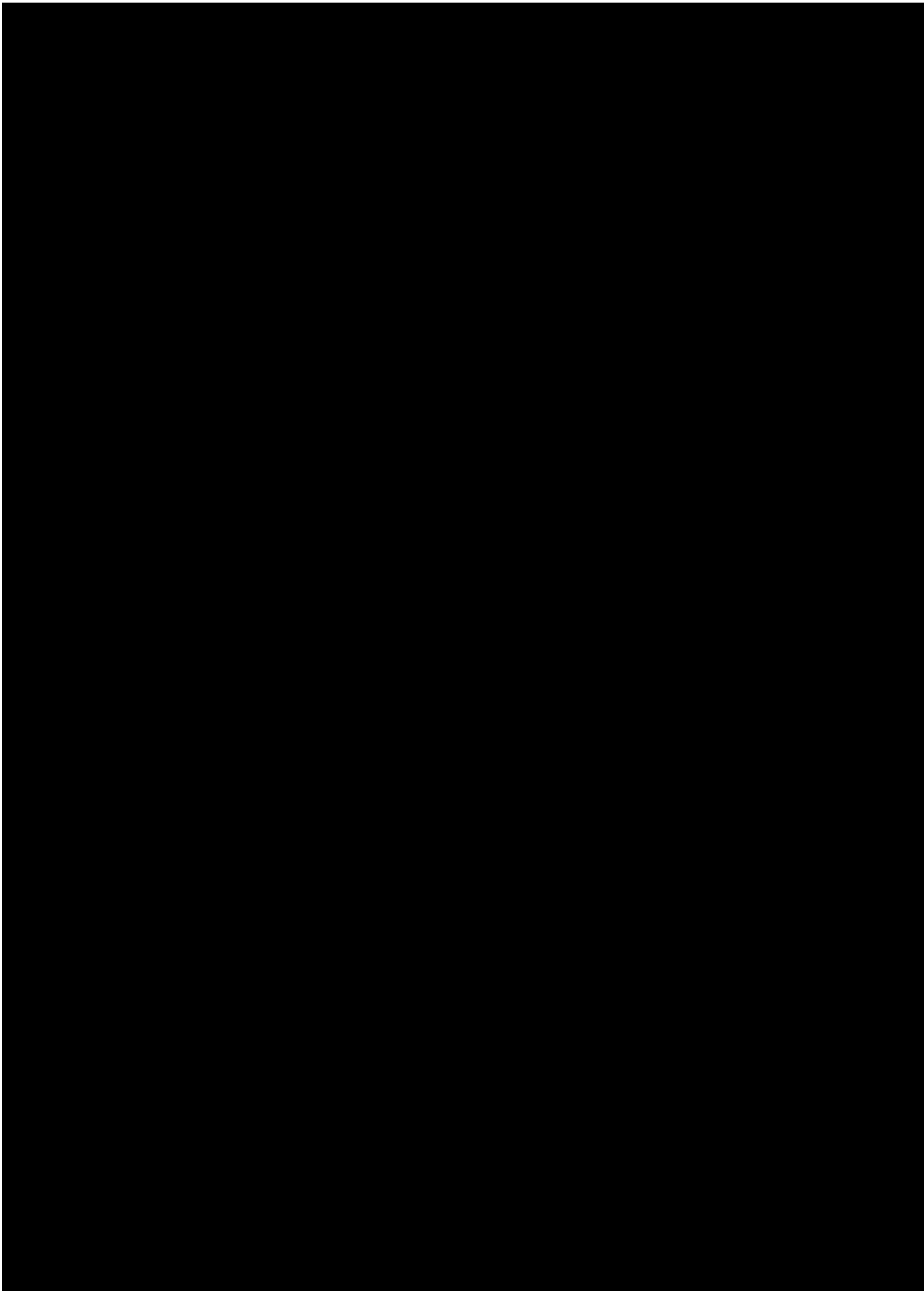
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Address: [ADDRESS OF WITNESS]

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

Executed as a Deed by [SUPPLIER])
acting by)
) Authorised Signatory
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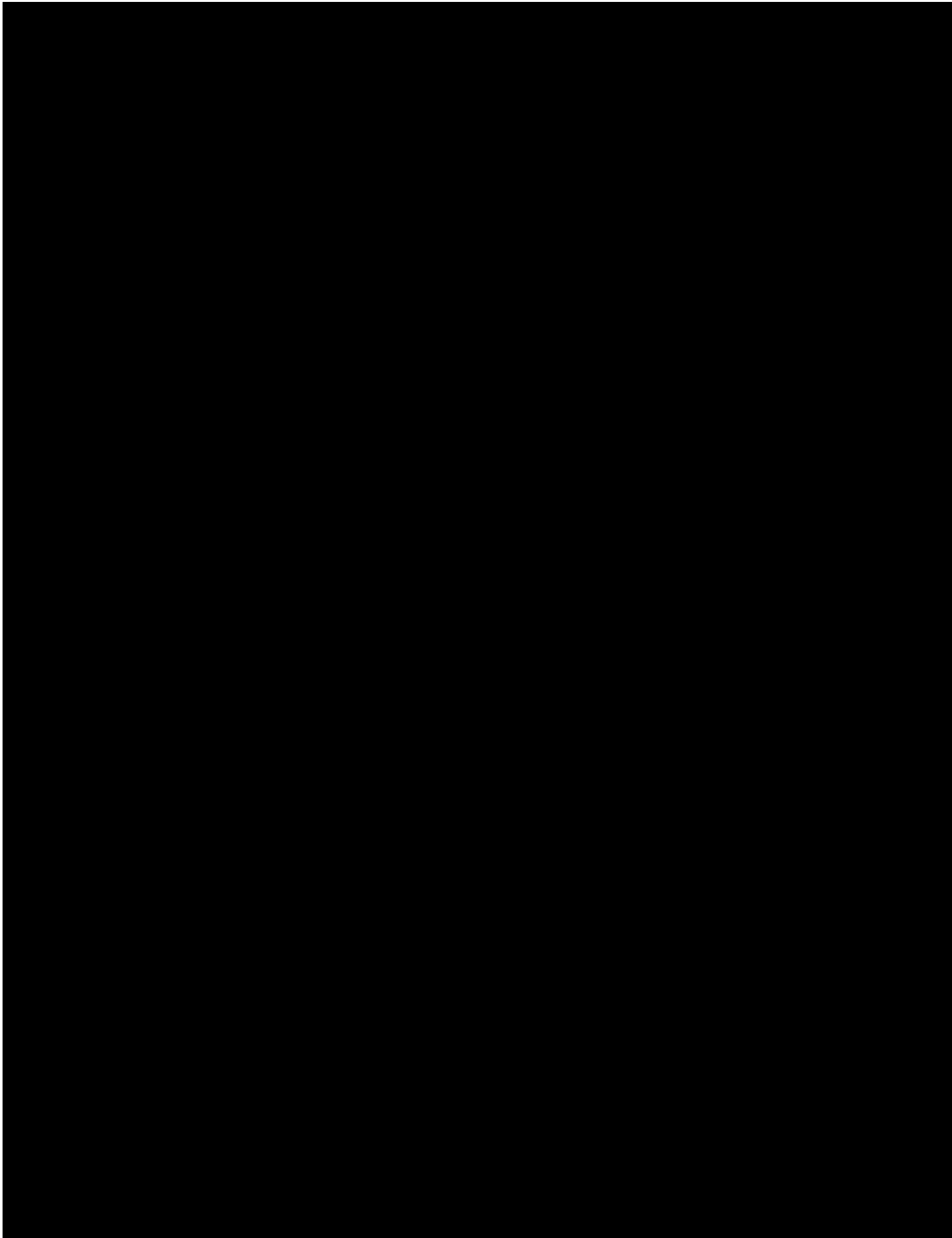
SCHEDULE 11
SUPPLIER PERFORMANCE

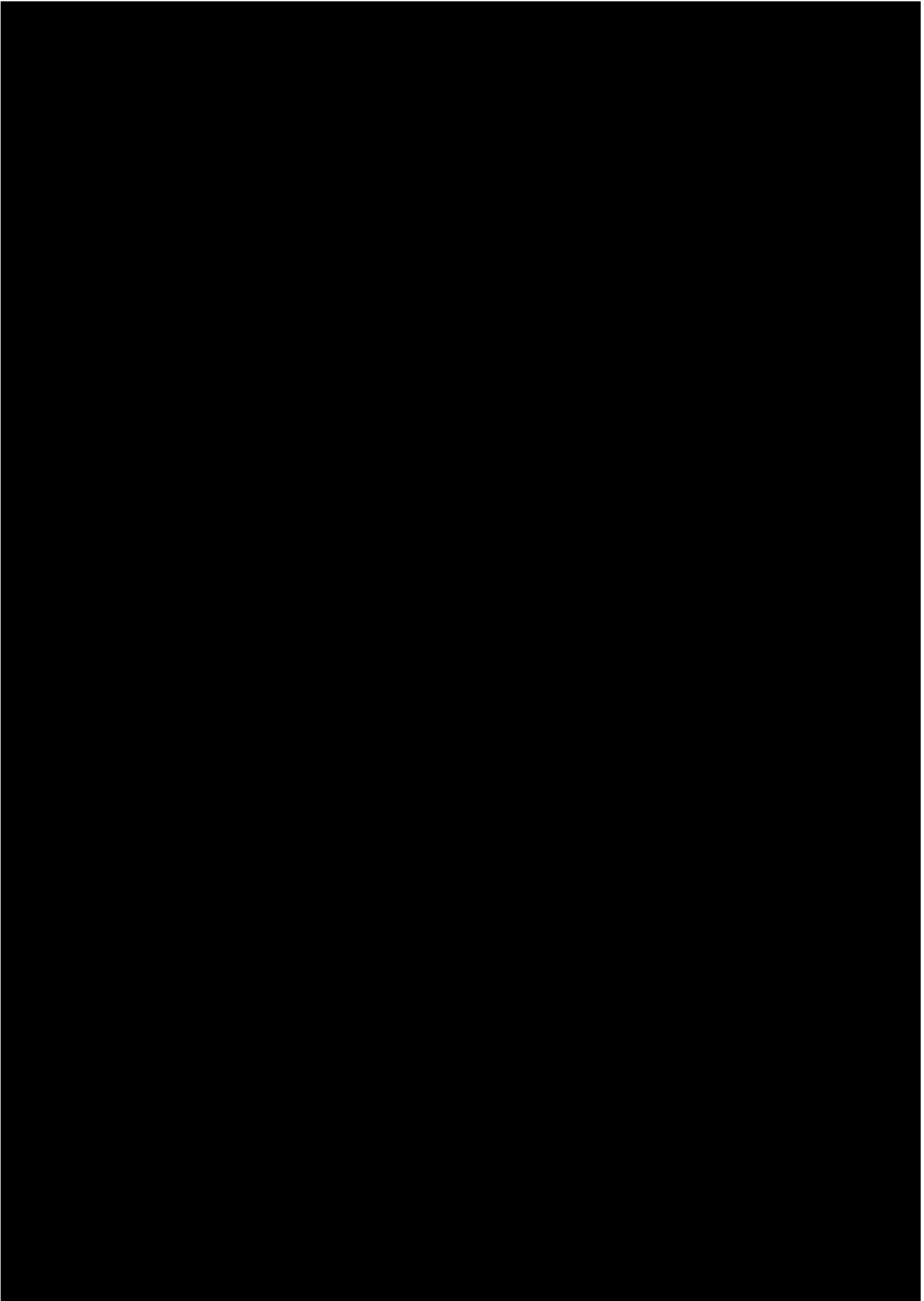


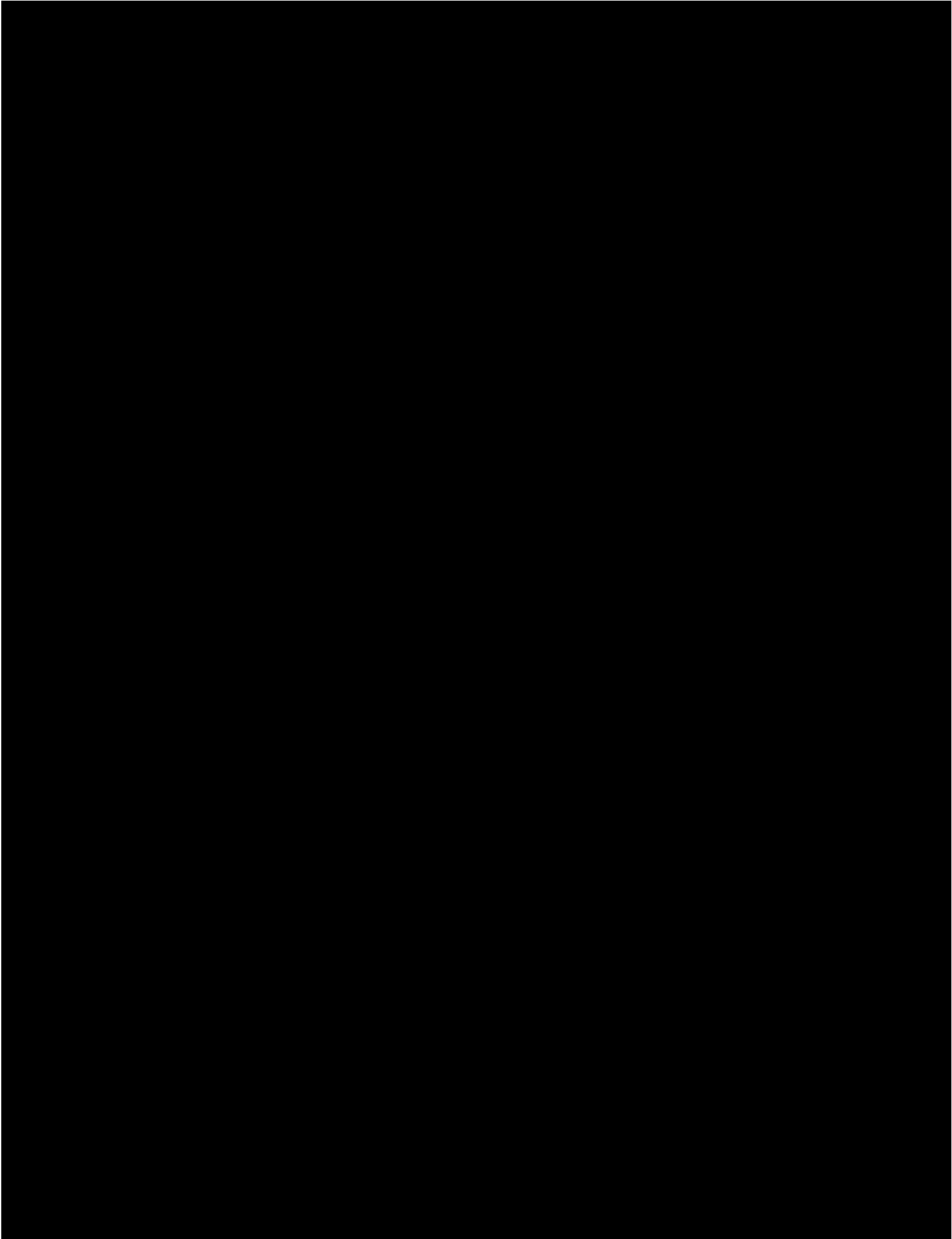


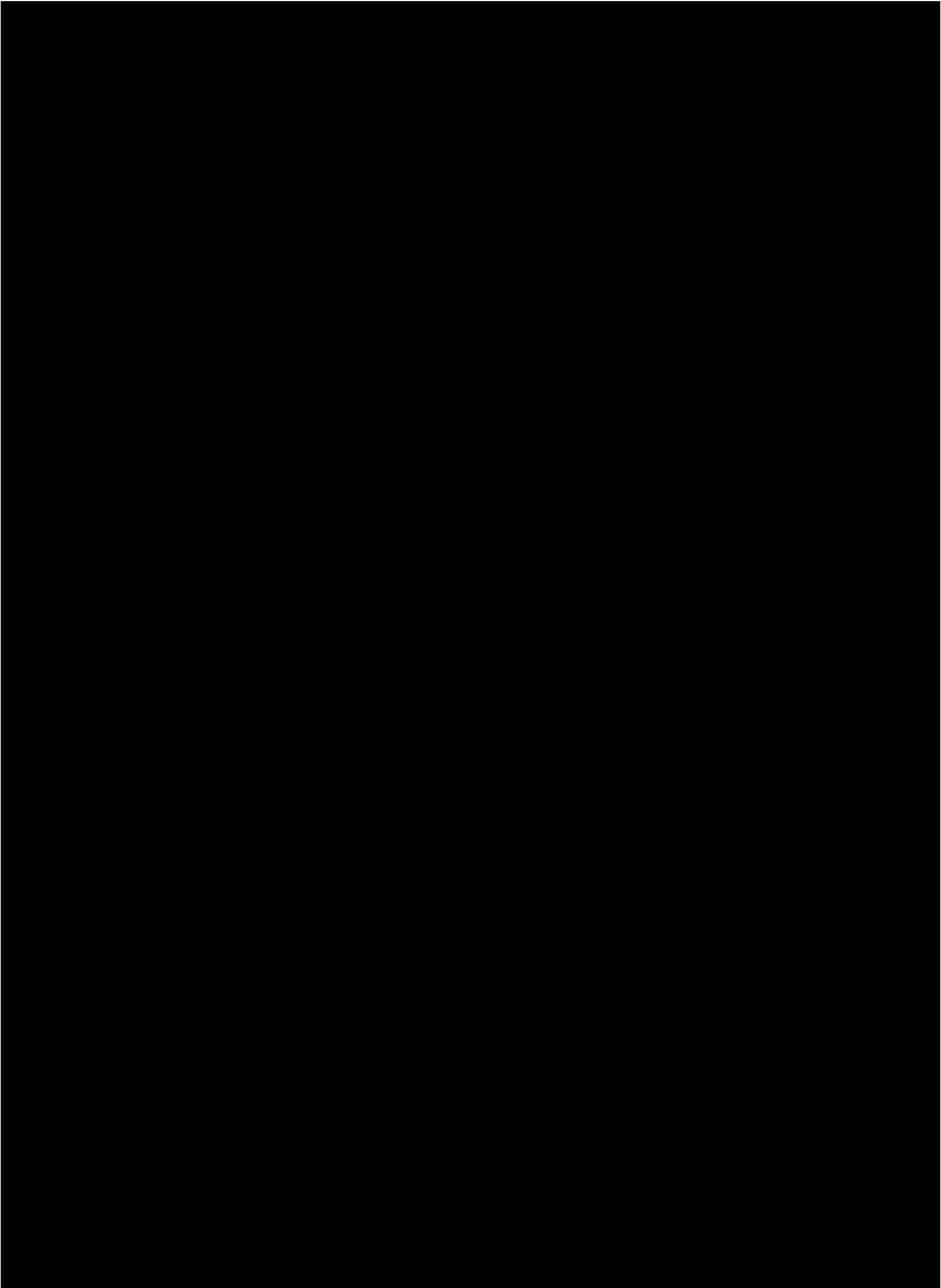
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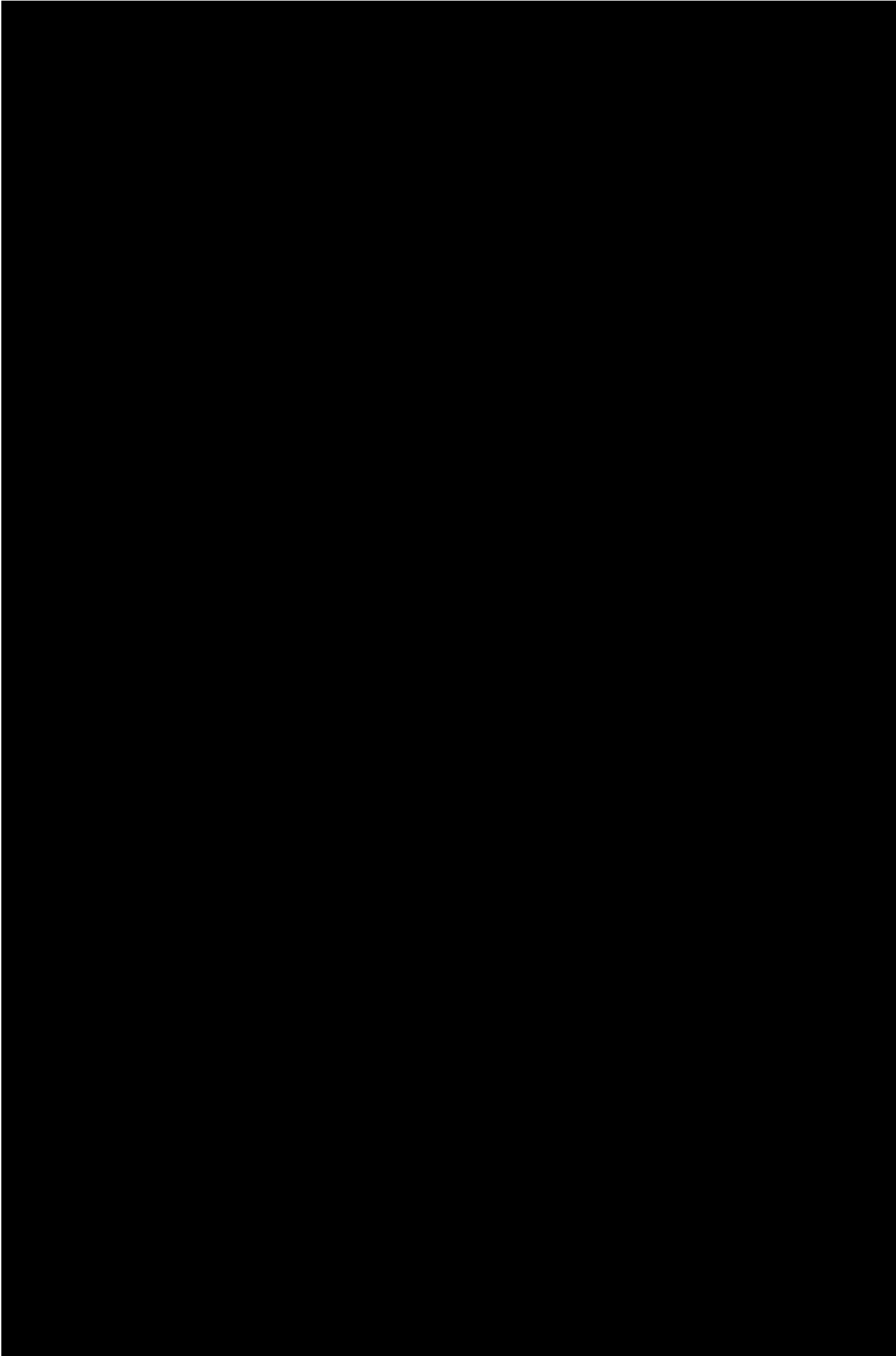




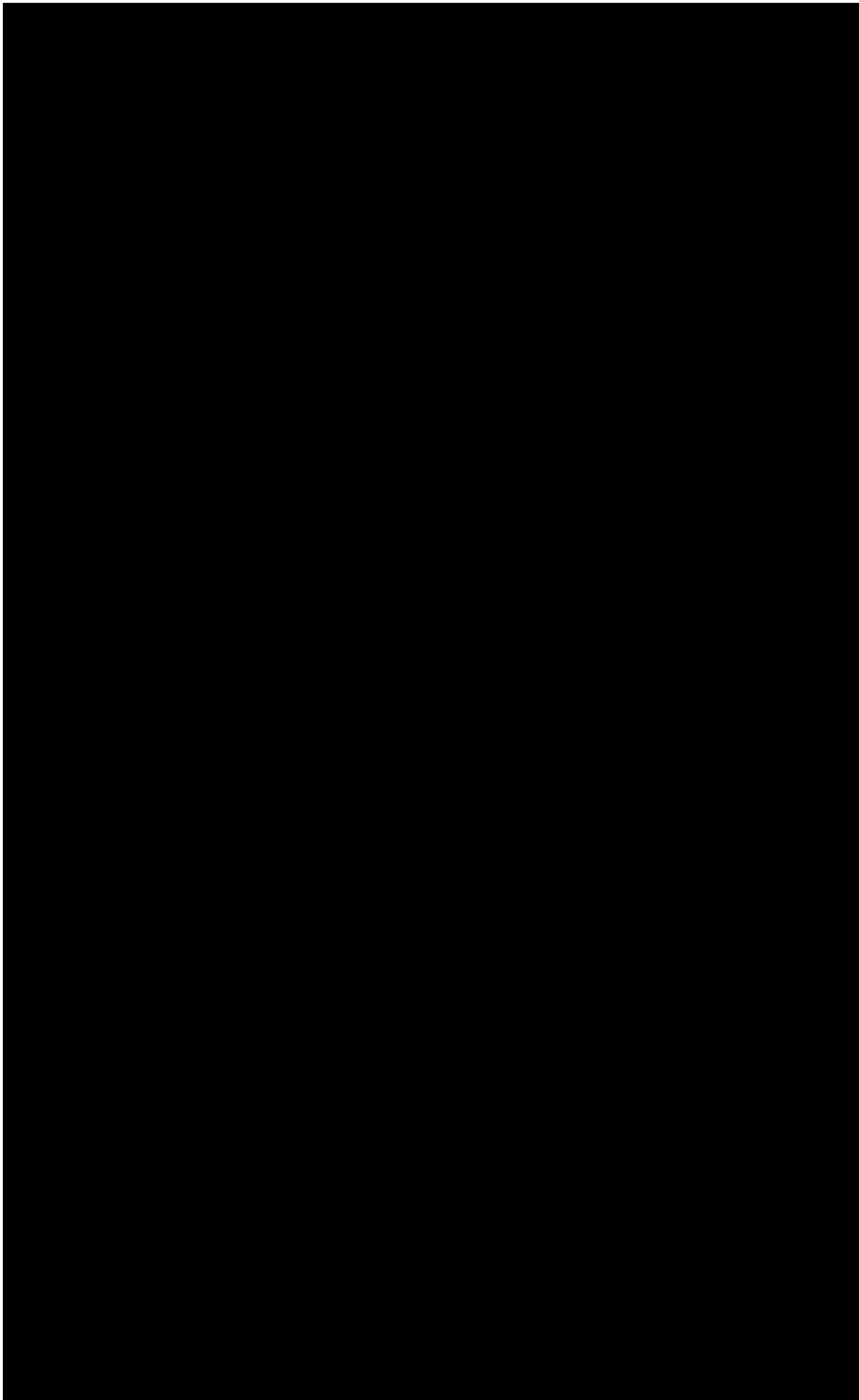


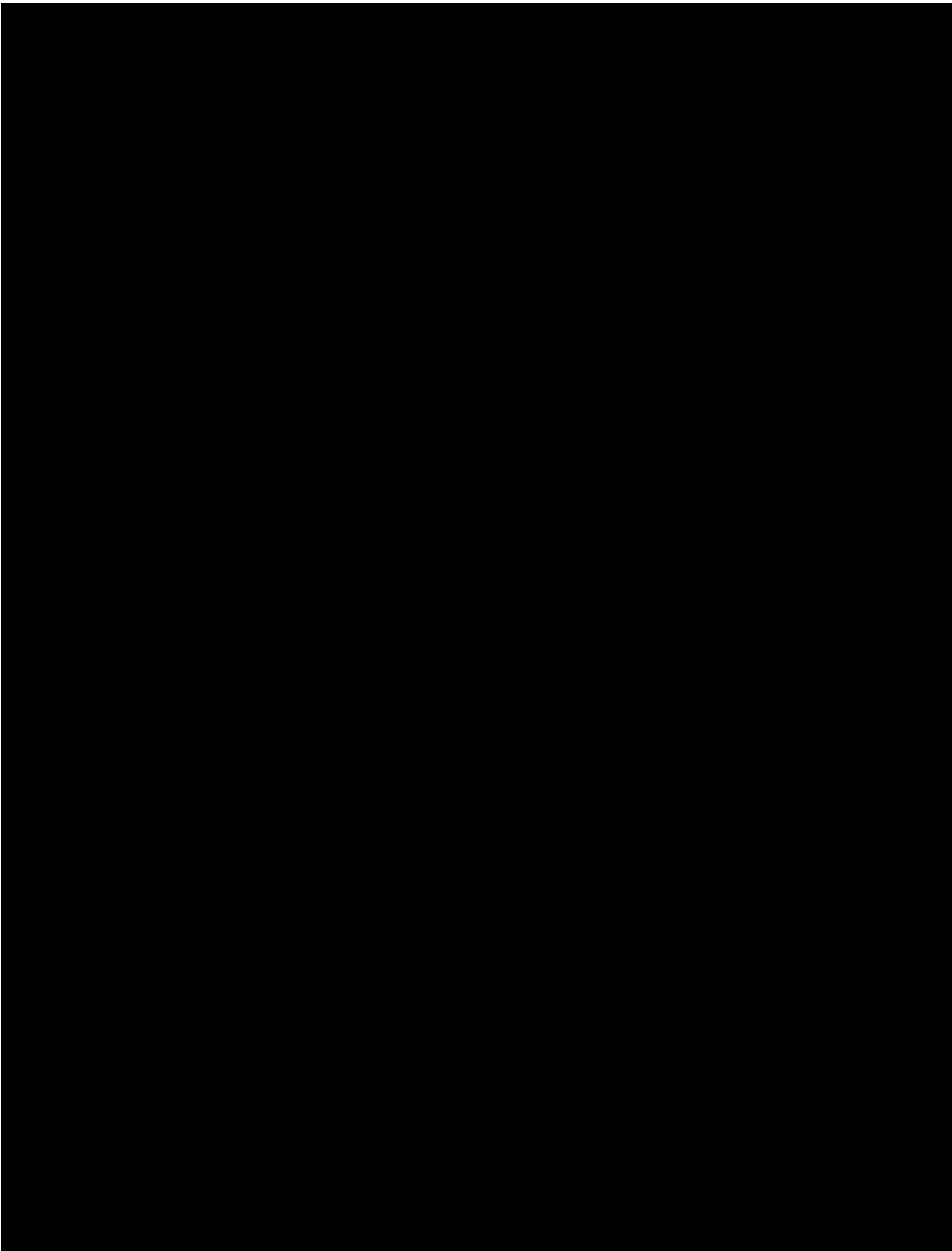


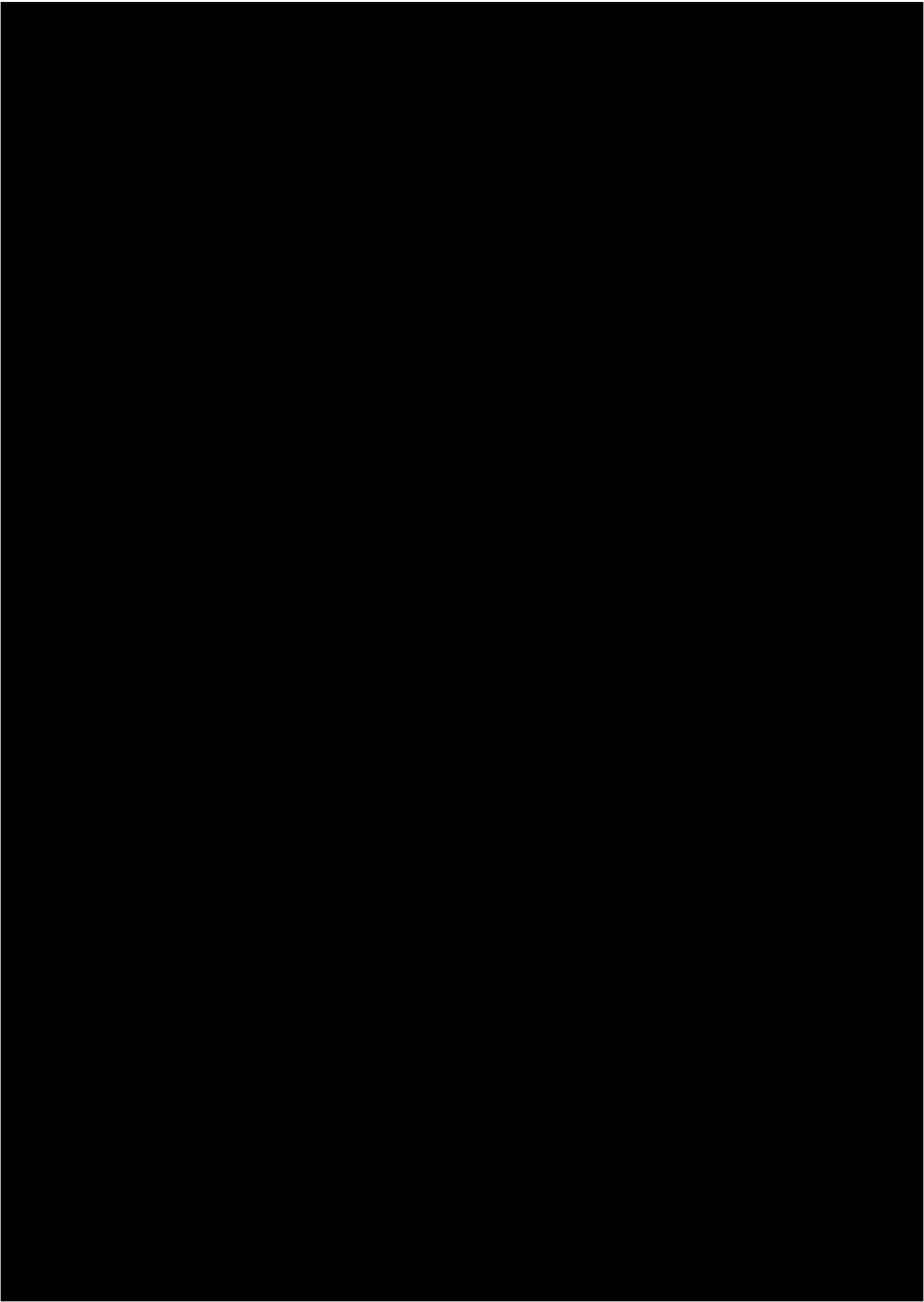












Schedule 12
Spares, Special Tools, and other Equipment

1 General

- 1.1 The Service Provider shall use and store (as applicable) all Spares, Special Tools and other equipment provided to it by the Purchaser under this Agreement in such a way so as to ensure that such Spares, Special Tools and other equipment do not suffer any damage or degradation while in the Service Provider's care, custody or control.
- 1.2 The Parties acknowledge and agree that the Purchaser shall be responsible for the storage of Spares, Special Tools and other equipment until they are provided to the Service Provider in order to deliver the Services. While the Spares, Special Tools or other equipment are in the care, custody or control of the Service Provider, the Service Provider shall comply with the requirements of this Schedule 12 (*Spares, Special Tools and other equipment*).

2 Spares

- 2.1 The Service Provider shall store and manage the Spares at a designated facility within the Designated Depot (the "**Purchasers' Designated Store**" for the purposes of this Schedule 12 (*Spares, Special Tools and other equipment*)).
- 2.2 If the Service Provider determines (acting reasonably) that it requires any Spare in order to perform the Services:
 - 2.2.1 the Service Provider shall complete a stores request, or MMS when available, work order request setting out details of the Spare required and the anticipated usage of the Spare by the Service Provider as soon as the need arises; and
 - 2.2.2 upon receipt of the stores request or MMS work order request described in paragraph 2.2.1 of this Schedule 12 (*Spares, Special Tools and other equipment*), the Purchaser shall procure that such Spare is delivered to the Service Provider from the Purchasers' Designated Store on a "free issue"

basis as soon as reasonably practicable (having regard to any applicable lead time for that Spare).

- 2.2.3 The Service Provider may purchase spares on behalf of the Purchaser at an agreed markup of no more than 10% should they be able to expedite materials quicker and more cost effectively. The Purchaser would welcome innovation, stores improvement initiatives on a joint shared cost/benefit

3 Special Tools

- 3.1 If the Service Provider determines (acting reasonably) that it requires any Special Tool in order to perform the Services:
 - 3.1.1 the Service Provider shall complete a stores request or MMS work order request setting out details of the Special Tool required and the anticipated usage of the Special Tool by the Service Provider; and
 - 3.1.2 upon receipt of the MMS work order request described in paragraph 3.1.1 of this Schedule 12 (*Spares, Special Tools and other equipment*), the Purchaser shall procure that such Special Tool is delivered to the Service Provider from the Purchasers' Designated

4 Storage

Store on a "free issue" basis as soon as reasonably practicable (having regard to any applicable lead time for that Special Tool).

- 4.1 The Service Provider shall store all Spares, Special Tools and other equipment provided to it by the Purchaser under this Agreement at a designated facility within the Designated Depot or such other location agreed between the parties (the "**Service Providers' Designated Store**" for the purposes of this Schedule 12 (*Spares, Special Tools and other equipment*)), and where the designated facility:
 - (a) shall be capable of meeting the full requirements of the service; and

(b) use of the designated facility by the Service Provider shall be provided free of charge by the Purchaser.

- 4.2 The Service Provider shall ensure at all times that the Service Providers' Designated Store is weather proof, safe and secure, and is insured where required in accordance with Schedule 19 (*Insurance*).
- 4.3 The Service Provider shall notify the Purchaser as soon as reasonably practicable where the Service Provider becomes aware or reasonably suspects that the Service Providers' Designated Store is no longer weather proof, safe, secure or covered by requirements of the insurance regime set out in Schedule 19(*Insurance*).
- 4.4 If the Service Providers' Designated Store is not located on the Purchaser's property (where this is agreed between the Parties per clause 4.1), the Service Provider shall ensure in particular that the following security measures are in place with regard to the Service Providers' Designated Store:
- 4.4.1 security staff;
 - 4.4.2 CCTV;
 - 4.4.3 burglar alarms; and
 - 4.4.4 fire alarms.
- 4.5 The Service Provider shall not change the location of the Service Providers' Designated Store without the Purchaser's prior written consent.

5 Access, maintenance and vandalism

- 5.1 The Service Provider shall provide the Purchaser with access to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement on request. The Service Provider shall ensure that no other third party has access to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement at all times.
- 5.2 The Service Provider shall, for the Agreement Duration, ensure that it maintains a stockpile of Spares at the Service Providers'

Designated Store of sufficient quantity for the Service Provider to deliver the Services.

- 5.3 The Service Provider shall take all reasonable steps to prevent vandalism and/or accidental damage to the Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement, while such Spares, Special Tools and other equipment are in the care, custody or control of the Service Provider.
- 5.4 The Service Provider shall ensure that all Spares, Special Tools and other equipment provided to the Service Provider by the Purchaser under this Agreement are regularly maintained and calibrated in accordance with the Manuals.

6 Periodic Review

- 6.1 The Purchaser may, from time to time and in its absolute discretion, conduct a review of the use, storage and condition of Spares, Special Tools and other equipment in the care, custody or control of the Service Provider (which shall be the "**Periodic Review**" for the purposes of this Schedule 12 (*Spares, Special Tools and other equipment*)).
- 6.2 The Service Provider shall cooperate with the Purchaser and provide such access and assistance as the Purchaser may reasonably require in order conduct a Periodic Review.
- 6.3 The Purchaser may raise any complaints or concerns to the Service Provider at the Maintenance Meetings regarding the use, storage and condition of Spares, Special Tools and other equipment as a result of the Periodic Review.

Schedule 13

Equality, Diversity and Inclusion

A29 Equality, Diversity and Inclusion

A29.1 For the purposes of this Clause A29, unless the context indicates otherwise, the following expressions shall have the following meanings:

"Agreed SMART Action Plan" means the SMART action plan agreed or determined in accordance with the provisions of Clause A29.4

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| "Good Work Standard" | means the Mayor of London's accreditation to demonstrate fair and inclusive employment practices found at https://www.london.gov.uk/programmes-strategies/business-and-economy/supporting-business/good-work-standard-gws/how-achieve-good-work-standard |
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| "Minimum Records" | means all information relating to the Service Provider's performance of and compliance with Clause A29, by each subcontractor and, where applicable, subject to the provisions of Clause A29.3, indirect subcontractor, of the Service Provider. |
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| "Workforce Diversity Benchmarking Tool" | means the diversity data tool hosted by the Supply Chain Sustainability School which collects anonymised workforce data between June and September each year. Found at https://diversity.sustainabilitytool.com/home |
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EDI Policy

A29.2 From the Contract Commencement Date, the Service Provider shall provide the Authority with a copy of its EDI Policy. The Service Provider shall keep its EDI Policy under review for the duration of the Contract and shall provide the Authority with any such revised EDI Policy once available.

Mayor's Good Work Standard

A29.3 Within sixty (60) days of the [Contract Commencement Date] the Service Provider shall:

- (a) undertake and complete the Good Work Standard self-assessment at the following website:

<https://www.london.gov.uk/what-we-do/business-and-economy/supporting-business/what-mayors-good-work-standard#acc-i-54389>

and

- (b) submit the results of the self-assessment to the Authority together with a SMART Action Plan outlining the activities the Service Provider proposes to undertake in order to meet the 'Achievement' level of the Good Work Standard.

A29.4 The Service Provider will take into account any comments or recommendations made by the Authority in respect of the Service Provider's proposed SMART Action Plan and the parties will agree (or failing such agreement the Authority will determine) the final content of the SMART Action Plan within ninety (90) days of the [Contract Commencement Date].

Monitoring and Reporting

For the purposes of this clause, “disabled”, “diversity” and “SMEs” have the meanings set out in Appendix 1 to this Clause A29.

A29.5 Every 12 months or such other frequency as the Authority may reasonably request, the Service Provider shall submit its organisational workforce diversity data to the Workforce Diversity Benchmarking Tool and procure that its subcontractors engaged in the performance of the Contract do the same

A29.6 Subject to Clause A29.3, the Service Provider shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from that date or such other frequency as the Authority may reasonably request, with the following information:

A29.6.1an annual report on performance and compliance with the equality, diversity and inclusion provisions as set out in Clause A29.3. The annual report should set out:

(a) the performance of the Service Provider over the past 12 months in relation to the Good Work Standard SMART Action Plan

(b) summarised data from the Workforce Diversity Benchmarking Tool dashboard

(c) the proportion of its employees engaged in the performance of the Contract to the extent reasonably possible, the employees of its subcontractors or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:

of non-white British origin or who classify themselves as being non-white British;

female;

from the local community;

disabled;

(c) expenditure breakdown: a statement broken down by activity and material type of how they have used and how much has been spent with:

- Small and Medium Enterprises;
- Black Asian and Minority Ethnic businesses;
- suppliers from other under-represented or protected groups;
- suppliers demonstrating a diverse workforce composition.

A29.7 Progress and approval (where due) of actions will be monitored via four weekly (or as otherwise agreed) progress meetings with the Authority. The Service Provider shall provide a written update prior to the progress meetings and should request additional meetings (if necessary) with the Authority to discuss progress or seek sign-off for completed actions.

A29.8 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 2018 in the collection and reporting of the information to the Authority pursuant to Clause A29.5.

EDI Audit

A29.9 The Authority or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with Clause A29. The Authority's rights pursuant to this clause shall audit of include any and all documents and records of the Service Provider and its subcontractors and, where applicable, subject to the provisions of Clause A29.3, indirect subcontractors, and shall include the Minimum Records.

A29.10 The Service Provider shall maintain and retain the Minimum Records for a minimum of 6 years from the termination or expiry of the Contract. The Service Provider shall procure that each of its subcontractors and, where applicable subject to the provisions of Clause A29.3, indirect subcontractors, shall maintain and retain records equivalent to the Service Provider's Minimum Records for a minimum of 6 years from the termination or expiry of the Contract. The Service Provider shall procure that each subcontract between it and its subcontractors and, where applicable, subject to the provisions of Clause A29.3, each subcontract between its subcontractors and any indirect subcontractors of the Service Provider, shall contain rights of audit in favour of and enforceable by the Authority substantially equivalent to those granted by the Service Provider pursuant to Clause A29.

A29.11 The Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and each relevant subcontract.

A29.12 The Service Provider shall promptly provide, and procure that its subcontractors and, where applicable subject to the provisions of Clause A29.3, indirect subcontractors, promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

A29.12.1 granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in its relevant subcontractor or indirect subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;

A29.12.2 granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor or indirect subcontractor's obligations specified in Clause A29.3, wherever situated and whether the Service Provider's own equipment or otherwise; and

A29.12.3 complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor or indirect subcontractor's performance of its subcontract.

Gender Neutral Language

A29.13 For the duration of the Contract, the Service Provider shall endeavour to employ gender-neutral language in all communications relating to the Contract, including but not limited to communications with job applicants, employees, apprentices, contractors, customers and members of the public. Gender-neutral language includes avoidance of male or female pronouns and male or female forms of job titles where unnecessary.

Appendix 1 to Clause A29 - Equality, Diversity and Inclusion Definitions

| Definitions and terminology | Meaning |
|---|--|
| Accessibility | This term refers to the design of products, devices, services, or environments that is inclusive of disabled people. |
| Black Asian and Minority Ethnic (BAME) Groups | Ethnic groups who have a common experience of discrimination based on their skin colour or ethnic origin. Individuals may self-identify in different ways. |
| Disability | Physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on a person’s ability to do normal daily activities. |
| Diversity | Recognising, respecting and valuing a wide set of differences and understanding that an individual’s opportunities are impacted by characteristics beyond those protected by legislation, e.g. class, family background, political views, union membership etc. |
| Equality | <p>Recognising and respecting differences, including different needs, to ensure that everyone:</p> <ul style="list-style-type: none"> • can live their lives free from discrimination; • knows their rights will be protected; and • has what they need to succeed in life. <p>Equality is about ensuring equality of opportunity by tackling the barriers that some groups face and making London fairer by narrowing the social and economic divides that separate people. The characteristics protected by equality legislation are age, disability, gender, gender reassignment, ethnicity, pregnancy and maternity, religion and/or belief and sexual orientation.</p> |
| Equality Impact Assessments (EqIA) | As a public body, TfL is bound by the Public Sector Equality Duty (PSED) under the Equality Act 2010. An EqIA is a tool used to demonstrate that TfL has met its PSED duties. Like a risk assessment process, an EqIA is a process that helps TfL to make more inclusive decisions and to make sure that TfL’s |

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| | programmes, policies, projects and the way TfL designs, builds and operates services works well for TfL staff and customers. |
| Ethnicity | An individual's identification with a group sharing any or all of the following: country of origin, cultural origins or practice, language, nationality religion, skin colour. |
| Gender | The social differences between women and men that have been learned are changeable over time and have wide variations both within and between cultures. The term is often used to differentiate from 'sex', a term referring to biological differences. It is important to note that some people consider themselves to be 'gender fluid' (someone whose sense of their gender may vary) or 'gender non-binary' (someone who does not wish to be defined as male or female). |
| Gay | Refers to a man who has a romantic and/or sexual orientation towards men. Also a generic term for lesbian and gay sexuality - some women define themselves as gay rather than lesbian. |
| Inclusion | Removing barriers and taking steps to create equality, harness diversity and produce safe, welcoming communities and cultures that encourage innovative and fresh ways of thinking and allow people to speak up, especially to suggest where things could be done better. |
| Inclusive Design | Creating environments which everyone can use to access and benefit from the full range of opportunities available, confidently, independently, with choice and dignity, which avoids separation or segregation and is made up of places and spaces that acknowledge diversity and difference, meeting the needs of everyone in society. |
| Lesbian | Refers to a woman who has a romantic and/or sexual orientation towards women. |
| Neurodiverse | A concept where neurological differences are recognised and respected in the same way as any other human difference. |
| Non-Binary | An umbrella term for people whose gender identity is not comfortably expressed by 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely. |
| Pay gap | Difference between the average pay of two different groups of people, for example men and women, or groups from different ethnic backgrounds. |

| Sexual Orientation | A person's emotional, physical and/or sexual attraction, and the expression of that attraction. | | | | |
|--------------------|---|--------------|---------------|---------------|-------|
| Supplier Diversity | <p>Diverse suppliers are from one of the following five categories:</p> <p>1. Small and Medium Enterprises (SMEs).</p> <p>A small enterprise is a business which has both 0-49 full-time equivalent employees and either:</p> <ul style="list-style-type: none"> • turnover per annum of no more than £5.6 million net (or £6.72 million gross) in the last financial year; or • balance sheet total of no more than £2.8 million net (£3.36 million gross). <p>A medium enterprise is a business which has both 50-249 full-time equivalent employees and either;</p> <ul style="list-style-type: none"> • turnover per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year; or • balance sheet total of no more than £11.4 million net (or £13.68 million gross). <p>2. A minority-led business is a business which is 51% or more owned by members of one or more BAME groups. Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The minority ethnic classification groups used by TfL for monitoring purposes are those taken from the census:</p> <table border="1"> <tr> <th>Ethnic group</th><th>Racial Origin</th></tr> <tr> <td>White British</td><td>Irish</td></tr> </table> | Ethnic group | Racial Origin | White British | Irish |
| Ethnic group | Racial Origin | | | | |
| White British | Irish | | | | |

| | | |
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| | | Any other White background |
| | Mixed | White & Black Caribbean White & Black African White & Asian Any other Mixed background |
| | Asian or Asian British | Indian Pakistani Bangladeshi Any other Asian background |
| | Black or Black British | Caribbean African Any other Black background |
| | Chinese or other Ethnic Group | Chinese Any other ethnic group |
| | <p>3. A supplier from an under-represented group which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):</p> <ul style="list-style-type: none"> • women; • disabled people; • lesbians, gay men, bisexual people; • trans people; • older people (aged 60 or over); and • younger people (aged 24 or under). | |

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| | <p>4. A supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups or alternatively, ownership by a social enterprise or a voluntary/community organisation).</p> <p>5. Suppliers demonstrating a diverse workforce composition are those with full time equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed above.</p> |
| Trans or transgender | Current terminology for people who do not want to live as the sex they were assigned at birth. |
| Young adults, children and young people | <p>Young adults are people aged 16 to 24, whether in education or employment.</p> <p>Children and young people can be further subdivided into:</p> <p>i) Young children – those that use the transport network escorted by parents or carers.</p> <p>ii) School children – those, usually aged between 11-16 at secondary school, that use the transport network independently or with members of their peer group.</p> |

Schedule 14

Strategic Labour Needs and Training Supporting Requirements

A35 Strategic Labour Needs and Training Supporting Requirements

A35.1 Without prejudice to the other provisions in this Contract relating to the Service Provider's Personnel, this Clause A35 sets out the Service Provider's obligations in respect of:

A35.1.1 supporting the Authority Group

(and third parties nominated by the Authority Group) in the implementation of The GLA Group Responsible Procurement Policy and TfL's Action on Inclusion plan; and

A35.1.2 ensuring that the Service Provider attracts, develops and retains the Service Provider's Personnel with the skills necessary to deliver the Services throughout the Term.

A35.2 In this Clause A35, the following terms shall have the corresponding meanings:

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| “Agreed SLNT Plan” | means the Service Provider's strategic labour needs and training plan set out at Appendix 3 (<i>Initial/Agreed SLNT Plan</i>) to this Clause A35, to be prepared in accordance with the SLNT Plan Template and approved by the Authority; |
| “Apprentice” | means a member of the Service Provider's Personnel who is registered as an apprentice or technician with an industry recognised body; |
| “Initial SLNT Plan” | means the initial strategic labour needs and training plan set out at Appendix 3 (<i>Initial/Agreed SLNT Plan</i>), submitted by the Service Provider prior to the Effective Date and to be agreed between the Parties in accordance with Clauses A35.3 to A35.7; |

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| “Quarterly SLNT Monitoring Report” | means the report to be prepared by the Service Provider in the form set out at Appendix 5 (<i>Quarterly SLNT Monitoring Report Template</i>) to this Clause A35 and submitted to the Authority in accordance with the provisions of this Clause A35; |
| “Relevant Employment Vacancy” | means an employment vacancy within the Service Provider’s organisation for a member of the Service Provider’s Personnel; |
| “SLNT Co-ordinator” | has the meaning set out in Clause A35.8; |
| “SLNT Infraction” | means any breach by the Service Provider of any of its obligations under this Clause A35; |
| “SLNT Output” | means the minimum number of Apprentice positions or equivalent to be delivered by the Service Provider (either directly through its own personnel and the personnel of its sub-contractors) under this Contract, as identified and agreed in the Agreed SLNT Plan; |
| “SLNT Plan Template” | means the template for the SLNT Plan set out at Appendix 2 (<i>SLNT Plan Template</i>) to this Clause A35, to be completed by the Service Provider; and |

Agreed SLNT Plan

A35.3 Based on the Initial SLNT Plan, the Service Provider shall:

A35.3.1 further develop the Initial SLNT Plan to reflect the comments and requirements of the Authority;

A35.3.2 submit a revised copy of the Initial SLNT Plan to the Authority for approval within twenty (20) Business Days of the Effective Date; and

A35.3.3 provide an Implementation Plan as contained in Appendix 4 to this Clause A35 based on the revised copy of the Initial SLNT Plan within forty (40) Business Days of the effective Date.

A35.4 If the Initial SLNT Plan is:

A35.4.1 approved, it shall be adopted immediately and become the Agreed SLNT Plan; or

A35.4.2 not approved, the Service Provider shall amend the Initial SLNT Plan and re-submit it to the Authority for Approval within the time period agreed in writing between the Parties. If the Authority does not Approve the Initial SLNT Plan following its resubmission, the matters preventing such Approval shall be resolved in accordance with the Dispute Resolution Procedure.

A35.5 Without limiting any other provision of this Contract, the Service Provider shall:

A35.5.1 comply with provisions of the Agreed SLNT Plan; and

A35.5.2 at no additional cost to the Authority and subject to the provisions of Clause A35.6 below, review and amend the Agreed SLNT Plan and Implementation Plan:

A35.5.2.1 three (3) months prior to the Service Commencement Date; and

A35.5.2.2 every twelve (12) months following the Services Commencement Date or at other times requested by the Authority, to reflect:

A35.2.2.1 good industry practice;

A35.2.2.2 any changes to the nature of the Services or Authority Assets; and

A35.2.2.3 any amendments proposed by the Authority.

A35.6 Any changes or amendments to the Agreed SLNT Plan shall be subject to the contract variation procedure and shall not be implemented until approved in writing by the Authority.

A35.7 In order to facilitate the efficient implementation of the Service Provider's SLNT requirements as contained in the Agreed SLNT Plan, the Authority will also require the Service Provider to prepare an Implementation Plan as contained in Appendix 4 to this Clause A35. The Implementation Plan:

A35.7.1 will need to be completed three (3) months prior to the Service Commencement Date and either be prepared after the Agreed SLNT Plan has been formed or in conjunction with it.

SLNT Co-ordinator

A35.8 Within twenty (20) Business Days of the Effective Date, the Service Provider shall nominate a member of Service Provider's Personnel with the necessary skills and authority to:

A35.8.1 be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan; and

A35.8.2 act as the single point of contact for personnel of the Authority on all matters concerning the Agreed SLNT Plan,

(the "**SLNT Co-ordinator**").

A35.9 The Parties shall add the SLNT Co-ordinator to the list of Key Personnel set out Schedule 1.

Monitoring and Reporting

A35.10 Subject to Clause A35.13 below, the Service Provider shall provide the Authority with a Quarterly SLNT Monitoring Report within ten (10) Business Days of quarter end date. This will detail the Service Provider's performance against the Agreed SLNT Plan.

A35.11 Failure to provide the Authority with a copy of the Quarterly SLNT Monitoring Report within the timescales set out in Clause A35.10 above shall constitute a failure to meet the [Acceptable Service Level in accordance with Schedule 12].

A35.12 The Service Provider shall ensure at all times that it complies with the requirements of the [Data Protection Act 2018] (as may be amended) in the:

A35.12.1 development and maintenance of Training Plans; and

A35.12.2 collection and reporting of the information to the Authority pursuant to Clause A35.10 above.

SLNT Infractions

A35.13 Failure to:

A35.13.1 ensure that each SLNT Output for the monitoring period is delivered in accordance with Agreed SLNT Plan; and/or

A35.13.2 review the Agreed SLNT Plan in accordance with Clause A35.5,

shall constitute a failure to meet the [Acceptable Service Levels in accordance with Schedule 12].

SLNT Audit

A35.14 The Authority may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance the provisions of this Clause A35.

A35.15 The Service Provider shall maintain and retain records relating to the Agreed SLNT Plan and its compliance with the provisions of this Clause A35 for a minimum of seven (7) years.

A35.16 The Authority shall use reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider is not, without due cause, disrupted or delayed in the performance of the Service Provider's obligations under this Contract.

A35.17 The Service Provider shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

A35.17.1 granting or procuring the grant of access to any:

A35.17.1.1 premises used in the Service Provider's performance of this Contract, whether the Service Provider's own premises or otherwise;

A35.17.1.2 equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's obligations under this Schedule , wherever situated and whether the Service Provider's own equipment or otherwise; and

A35.17.2 complying with the Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of this Contract.

APPENDIX 1 to SCHEDULE 14

A copy of The GLA Group Responsible Procurement Policy can be obtained from:

https://www.london.gov.uk/sites/default/files/gla_group_responsible_procurement_policy_2021.pdf

A copy of TfL's Action on Inclusion plan can be obtained from:

<https://content.tfl.gov.uk/tfl-action-on-inclusion-creating-inclusive-workforce.pdf>



Table 1:

| SLNT Activity Area | Priority Output | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total | Cross Check | |
|-------------------------------------|-----------------|--------|--------|--------|--------|---------------------|-------|-------------|-------------|
| | | | | | | | | SLNT Value | SLNT Totals |
| Apprenticeship Job Starts | | | | | | | | | |
| New Entrant - Level 2-3 (FTE) | Y | | | | | | 0 | 1 | 0 |
| New Entrant - Level 4+ (FTE) | Y | | | | | | 0 | 1.5 | 0 |
| Social Mobility Level 2-3 (FTE) | Y | | | | | | 0 | 1 | 0 |
| Social Mobility Level 4+ (FTE) | Y | | | | | | 0 | 1.5 | 0 |
| Existing Employee Level 2-3 (FTE) | Y | | | | | | 0 | 1 | 0 |
| Existing Employee Level 4+ (FTE) | Y | | | | | | 0 | 1.5 | 0 |
| Apprenticeship Success | | | | | | | | | |
| Completion (FTE) | | | | | | | 0 | 1 | 0 |
| Job Start | | | | | | | | | |
| Social Mobility (FTE) | Y | | | | | | 0 | 1 | 0 |
| Educational/Career Support | | | | | | | | | |
| Targeted Placement Positions (Days) | | | | | | | 0 | 10 | 0 |
| Placement Positions (Days) | | | | | | | 0 | 20 | 0 |
| Educational Engagement (Days) | | | | | | | 0 | 20 | 0 |
| | | | | | | | | | |
| Equivalent Contract Value | | | | | | Total SLNT Activity | | 0 | |
| Services | £0 | | | | | Priority Activities | | 0 | |
| Construction / Manufacturing | £0 | | | | | | | | |

Implementation Plan

| | | | | | | | | | |
|---|--|--|--|--|---|--|--|--|--|
| 1 Contact Information | | | | | | | | | |
| TfL Contract Supplier Name Contract Manager TfL Stakeholder/SRM Reporting Requirements Supplier Skills Manager | | | | | SLNT Coordinator Current Phone Number Contact Email Plan Period Plan Review Date | | | | |
| 2 Overview and Background | | | | | | | | | |
| 2.1 Overview: Please provide an overview of the contract/ project to which the SLNT requirements have been applied | | | | | | | | | |
| | | | | | | | | | |
| 2.2 Method: Please outline how you will deliver your SLNT requirements with particular focus on TfL priority outputs | | | | | | | | | |
| | | | | | | | | | |

| 2.3 - Forecast Outputs: Please indicate in the table below forecasted SLNT outputs | | | | | | | | | | | |
|--|-----------------|----------|----------------|----------|----------------------|----------|--------------|------------------------------|-----------------------|---------------------------|------------------|
| | Apprentices | | | | | | Job Creation | Educational / Career Support | | | |
| | Job Start (FTE) | | Workless (FTE) | | Existing Staff (FTE) | | | Completion | Social Mobility (FTE) | Targeted Placement (Days) | Placement (Days) |
| | Level 2 - 3 | Level 4+ | Level 2 - 3 | Level 4+ | Level 2 - 3 | Level 4+ | | | | | |
| Previous Year | | | | | | | | | | | |
| June | | | | | | | | | | | |
| July | | | | | | | | | | | |
| August | | | | | | | | | | | |
| September | | | | | | | | | | | |
| October | | | | | | | | | | | |
| November | | | | | | | | | | | |
| December | | | | | | | | | | | |
| January | | | | | | | | | | | |
| February | | | | | | | | | | | |
| March | | | | | | | | | | | |
| April | | | | | | | | | | | |
| May | | | | | | | | | | | |
| June | | | | | | | | | | | |
| Annual Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Future Years | | | | | | | | | | | |
| TOTAL | | | | | | | | | | | |

| 2.4 - Milestones: Please detail key milestones related to the delivery of your SLNT outputs | | | |
|---|--|--|--|
| Milestone 1 | | | |
| Milestone 2 | | | |
| Milestone 3 | | | |
| Milestone 4 | | | |
| Milestone 5 | | | |
| Milestone 6 | | | |
| Milestone 7 | | | |
| Milestone 8 | | | |
| Milestone 9 | | | |
| Milestone 10 | | | |

| 2.5 - Partners: Please detail any partner organisations that will assist you in your SLNT delivery (Organisation and Key Contact) | | | |
|---|--|--|--|
| Partner 1 | | | |
| Partner 2 | | | |
| Partner 3 | | | |
| Partner 4 | | | |
| Partner 5 | | | |
| Partner 6 | | | |
| Partner 7 | | | |
| Partner 8 | | | |
| Partner 9 | | | |
| Partner 10 | | | |

| 3. Risks: Please detail any risks and associated mitigation measures for the delivery of your SLNT requirements | | | |
|---|------|------------|--|
| | Risk | Likelihood | |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

| 4. Communications: Please outline any planned SLNT communication, events or publications (internal and external) and how TfL will be notified | | | |
|---|--|--|--|
| | | | |
| | | | |
| | | | |

| 5. Monitoring: You are required to complete the three monitoring templates attached to this document (Sheet 1,2 & 3 of this document) | | | |
|---|--|--|------|
| 1. SLNT Monitoring Form - Outlines SLNT Outputs for each reporting period | | | |
| 2. Job Start/Engagement Monitoring Form | | | |
| 3. Apprentice Monitoring Form | | | |
| 6. Sign Off: | | | |
| | | | |
| Suppliers SLNT Co-ordinator (Name) | | | Date |
| TfL Supplier Skills Manager (Name) | | | Date |
| Implementation Plan Review Date | | | |

Quarterly SLNT Monitoring Report Template

TfL CONFIDENTIAL

Monitoring Forms

(To be Completed and Submitted with the Quarterly SLNT Monitoring Report)

Part 1 - SLNT Outputs (Excluding Apprentices)

[illegible]

Part 2 - SLNT Outputs – Apprentices

[illegible]

Schedule 15
Transfer of Employees to Service Provider

- A18.1 Clause 8.1 shall be deleted and replaced with the following.
- A18.2 For the purposes of this Clause A18 and Clause A19, unless the context indicates otherwise, the following expressions shall have the following meanings:
- A18.2.1 “**Current Service Provider(s)**” means the provider or providers of services substantially similar to the Services immediately before the Service Commencement Date;
- A18.2.2 “**Employment Costs**” means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee or worker, taxation (including all income tax deductible under PAYE) and all other emoluments);
- A18.2.3 “**Employment Liabilities**” means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
- A18.2.4 “**Final Staff List**” has the meaning set out in Clause 19.6.(b)
- A18.2.5 “**Further Transfer Date**” means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Authority or any Replacement Service Provider when (assuming that TUPE applies) the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Authority or any Replacement Service Provider occurs;
- A18.2.6 “**Relevant Period**” means the period starting on the earlier of:
- (a) the date falling 6 calendar months before the date of expiry of the Contract; or
 - (b) if the Contract is terminated by either Party in accordance with Clause 16.1 or by the Authority in accordance with Clause 16.1.(a), 16.1.(b), 16.1.(c), 16.1.(d), 16.1.(e), 16.1.(f), 16.1.(g), 16.1.(h) and 16.1.(i), the date of the relevant termination notice;
- and ending on the Further Transfer Date;
- A18.2.7 “**Replacement Service Provider**” means any replacement supplier or provider to the Authority of the Services (or any part of the Services) and any Sub-Contractor to such replacement supplier or provider;
- A18.2.8 “**Re-Transferring Personnel**” means any Service Provider’s Personnel who are assigned (for the purposes of TUPE) to the relevant Services (or any part of them) immediately before the Further Transfer Date and whose employment contract or engagement (or part thereof) will transfer to the Authority or the Replacement Service Provider pursuant to TUPE with effect from the Further Transfer Date;
- A18.2.9 “**Staff List**” has the meaning set out in Clause 19.6.(c)
- A18.2.10 “**Staffing Information**” has the meaning set out in Clause 19.6.(h);

- A18.2.11 “**Sub-Contractor**” means any subcontractor to the Current Service Provider(s), the Service Provider or the Replacement Service Provider as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them) and includes the sub-contractor of any such sub-contractor;
- A18.2.12 “**Transfer of Services**” means the transfer of the provision of the Services from the Current Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;
- A18.2.13 “**Transferring Staff**” means such employees and workers of the Current Service Provider(s) (and its Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services immediately before the Transfer of Services, the identities of whom as at the date of this Contract are listed in Appendix 1 to this Clause A18; and
- A18.2.14 “**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- A18.3 It is understood and acknowledged by the Parties that TUPE applies to the Transfer of Service and accordingly, pursuant to TUPE, the contracts of employment or engagement (or any relevant part thereof) between the Current Service Provider and any Sub-Contractor and the Transferring Staff will have effect from the Contract Commencement Date as if originally made between the Service Provider (or its Sub-Contractor(s)) and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of Clause A18.4).
- A18.4 [The Service Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Contract Commencement Date]
- A18.5 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:
- A18.5.1 the Current Service Provider(s) will be responsible for any Employment Costs relating to the period up to the Contract Commencement Date; and
- A18.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Contract Commencement Date (provided that if any contract of employment or engagement transfers in part, this shall only apply to the Employment Costs relating to the transferred part),
- and Employment Costs will if necessary be apportioned on a time basis between the Current Service Provider(s) and the Service Provider, regardless of when such sums fall to be paid.
- A18.6 The Authority warrants to the Service Provider that none of the Authority’s employees or workers will transfer to the Service Provider under TUPE as a result of the Transfer of Service.
- A18.7 The Service Provider will indemnify and keep indemnified the Authority and the Current Service Provider(s) (and its Sub-Contractors) from and against all Employment Liabilities which the Authority or the Current Service Provider(s) (or its Sub-Contractors) incur or suffer arising out of or in connection with:
- A18.7.1 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of any person employed or engaged by it (or its Sub-Contractors) (including the Transferring Staff) on or after the Contract Commencement Date;
- A18.7.2 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE in relation to the Transfer of Services;
- A18.7.3 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the Service Provider (or its Sub-Contractors) before the Contract Commencement Date;

- A18.7.4 the employment or engagement or termination of employment or engagement by the Service Provider (or its Sub-Contractors) of any Transferring Staff on or after the Contract Commencement Date;
- A18.7.5 any actual or proposed changes by the Service Provider (or its Sub-Contractors) to the terms and conditions of employment or engagement or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

For the avoidance of doubt, the Service Provider (and/or its Sub-Contractors) shall have full liability under this Clause A18.7 if it is held or alleged that: (a) the contract of employment or engagement at the point immediately prior to the Contract Commencement Date of any of the Transferring Staff does not transfer in its entirety to the Service Provider (and/or its Sub-Contractors) and/or (b) liability for any such contract of employment or engagement of any such Transferring Staff does not transfer in its entirety to the Service Provider (and/or its Sub-Contractors).

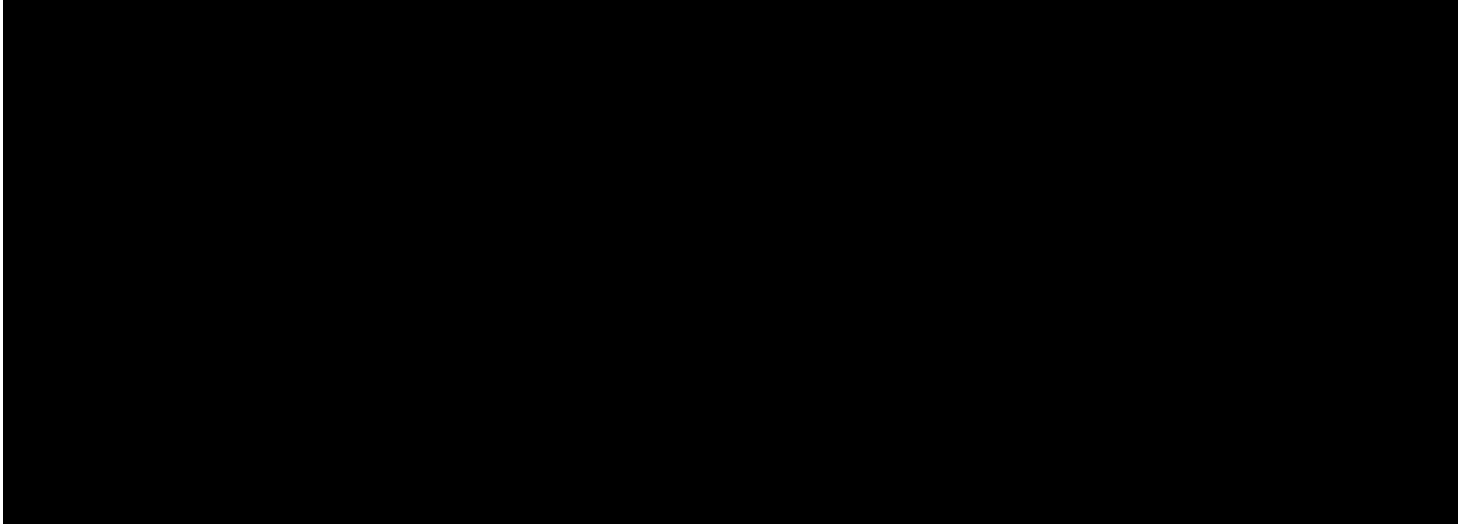
- A18.8 The Service Provider will provide the Current Service Provider(s) (or its Sub-Contractors), as soon as practicable, but in any event in good time before the Contract Commencement Date with all information which the Current Service Provider (or its Sub-Contractors) may reasonably require to enable it to comply with its information and consultation obligations under TUPE and, if requested, will confirm to the Authority when it has done so and provide a copy to the Authority.
- A18.9 The Service Provider warrants and undertakes to the Authority that all information given to the Current Service Provider(s) (or its Sub-Contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
- A18.10 Clause 31.1 shall be amended so that benefits conferred on the Current Service Provider or its Sub-Contractors under this Clause A18 shall be enforceable by them.

Appendix 1 to Clause A18
List of Transferring Staff
[A19]

A19 Transfer of Employees on Expiry or Termination

Schedule 16

KEY PERSONNEL



SCHEDULE 17

NOT USED

Schedule 18

Dispute Resolution Procedure

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule 6 (*Dispute Resolution Procedure*).

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

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

"Notice of Adjudication" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

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

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph 11;

"Senior Representative" means a representative of a Party at senior executive level.

- 1 The Purchaser and the Service Provider shall follow the procedure set out in this Schedule 6 (*Dispute Resolution Procedure*) for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within 14 days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 1.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an

Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–30 and notice has been given in accordance with paragraph 30.

Schedule 19

Insurance

