

# Waste Management Plan (WMP) (Stages 3-6)

Number PD0052  
Issue no: A5  
Issue date: September 2014

- [TfL Facilities: Small Projects Waste Proforma](#)
- Contractors are encouraged to use SMARTWaste template, for which a TfL project licence can be freely assigned. They can use their own waste management template as long as it delivers compliance and improved waste and materials management performance for both TfL and the contractor. The contractor's template must be based on best practice templates, e.g. the [Waste and Resource Action Programme \(WRAP\) WMP template](#), and [WRAP Netwaste Tool](#) or [BRE SMARTWaste tool](#).

## Contents

- Content is defined by the templates.

## Quality criteria

- Contractors, including designers, must be made aware of TfL's objectives and targets relating to waste and materials management during the procurement process. Contractors must be made aware that appropriate waste management targets will be set in the final contract to ensure compliance.
- A DWMP and WMP must be produced before works start on site.
- All design decision taken to reduce waste must be captured within the DWMP.
- The client, designer and principal contractor must sign the document before works commence on site to confirm quality of the document and declare that waste will be managed in line with their legal duty of care obligations.
- The document must be updated to reflect progress of the works (minimum every 6 months) for projects over £250,000 and for all projects on completion.
- The principal contractor must complete the document and return it once the project is complete and be involved with Lesson Learnt, where appropriate.
- Waste management data must be reported on a periodic basis, as instructed by the TfL client.

### Further reference:

- [WRAP's Designing out Waste: a design team guide for Civil Engineering](#)
- [WRAP's Designing out Waste: a design team guide for Buildings](#)
- [WRAP's Netwaste Tool](#)
- Guidance is also contained in the templates above.

## Document Management

WMP must be filed in accordance with the project filing structure described in the [Planning and Controls handbook](#).

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## Roles and responsibilities

<b>Responsible</b> (Responsible for producing all or part of quality product)	<b>Accountable</b> (Accountable for ensuring timely delivery of quality product)	<b>Consult</b> (Must be consulted when product is being produced)	<b>Inform</b> (A copy of the signed-off product must be sent to)
Project Manager	Project Manager	Project Engineer  Designer  LU/LR/Corporate: HSE Manager or Environment Manager  ST: Environment Manager	

## Feedback

If you have any queries, feedback or improvement suggestions about this Product Description then please contact [tflppm@tfl.gov.uk](mailto:tflppm@tfl.gov.uk).

## Document history

<b>Revision</b>	<b>Date</b>	<b>Reason for Change</b>	<b>Author</b>
A2	08/04/2013	Issued for use	IPPM
A3	05/12/2013	Amendments to product description and new template included	TfL HSE SIG
A4	03/09/2014	Amendments to include TfL Facilities works and new template included	TfL HSE SIG
A5	03/12/2015	DRACCT 03483	TfL HSE SIG

**SCHEDULE 8: DEED OF NOVATION**

**THIS DEED** is made [•] day of [•] 20[•]

**BETWEEN:**

**TRANSPORT FOR LONDON** or **TfL**, a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company" which expression shall include its successors, transferees and assignees); 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 [•].
- 2. With effect from the Transfer Date:
  - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a Party to the Contract in lieu of the Company;
  - 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a Party to the Contract at all times in lieu of the Company;
  - 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
    - (A) 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

**BUNDLE 2: FIRE: MARCH 2017**

(B) 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.

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

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

Executed as a deed by affixing the Common Seal of )

Transport for London )

in the presence of: )

.....  
[Authorised Signatory]

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

**SCHEDULE 9: FORM OF PARENT COMPANY GUARANTEE AND PERFORMANCE BOND**

**THIS GUARANTEE** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201[•]

**BETWEEN:**

- (1) [•] a company registered in England and Wales under number [•] and having its registered office at [•] (the "Guarantor");
- (2) [•] a company registered in England and Wales under number [•] and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company" which expression shall include its successors in title and assigns); and
- (3) [•] a company registered in England and Wales under number [•] and having its registered office at [•] (the "Supplier").

**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.

**NOW IT IS HEREBY AGREED** as follows:

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

## BUNDLE 2: FIRE: MARCH 2017

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 the Guarantor);
  - (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

## BUNDLE 2: FIRE: MARCH 2017

- (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 the Company 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

## BUNDLE 2: FIRE: MARCH 2017

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.)]

**BUNDLE 2: FIRE: MARCH 2017**

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 affixing the Common Seal of )  
[COMPANY] )  
in the presence of:–)

.....  
[Authorised Signatory]

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

**SCHEDULE 10: FORM OF ON DEMAND PERFORMANCE BOND WITH APPENDIX 1**

**BOND**

(Letterhead of Guarantor)

To: [Company name] (its successors in title and assigns)

**Contract Bond No. [ • ]**

1. Whereas our clients [ • ] (the "Supplier") have entered into a contract with you dated [ • ] (the "Contract") in respect of [ • ], we [ • ] (the "Guarantor", which term shall include our successors in title and assigns) hereby irrevocably undertake as a primary obligation upon first demand in writing made by you upon us from time to time or at any time to pay to you on each occasion the sum demanded by you within five (5) banking days upon service of your demand.

**PROVIDED THAT:**

1. This Bond shall come into force on the date hereof.
2. Any demand hereunder shall be substantially in the form of Annex 1 (Form of Demand from the Company to the Guarantor) to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.

## BUNDLE 2: FIRE: MARCH 2017

3. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
4. For the purpose of this paragraph 5, the expression "Expiry Date" means [●]. Our liability hereunder shall be limited as follows:
  - (A) we shall have no liability in respect of any demand received after the Expiry Date; and
  - (B) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £ [Amount of Bond to be Confirmed].
5. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:
  - (A) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or
  - (B) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or
  - (C) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or
  - (D) any 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; and/or
  - (E) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or
  - (F) the release or waiver of any such other bond, security or guarantee; and/or
  - (G) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or
  - (H) the termination of the Contract; and/or
  - (I) any other event which might operate to discharge a guarantor at law or in equity.
6. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.
7. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, Dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.

**BUNDLE 2: FIRE: MARCH 2017**

- 8. This Bond may be assigned or transferred without our prior consent to any member of the TfL Group. Any other assignment or transfer of this Bond by either Party shall require the consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 9. This Bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.
- 10. Each of the provisions of this Bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Bond, and in such event the remaining provisions of this Bond shall continue to have full force and effect.
- 11. All bank charges and other fees payable in relation to or in connection with this Bond are for the account of the Supplier and you shall have no liability or responsibility therefor.
- 12. Except to the extent it is inconsistent with the express terms of this Bond, this Bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

Executed as a deed by the Parties and delivered on the date of this Bond.

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

Executed as a deed by affixing the Common Seal of )  
[COMPANY] )  
in the presence of:--)  
.....  
[Authorised Signatory]

**APPENDIX 1: FORM OF DEMAND FROM THE COMPANY TO THE GUARANTOR**

Dear Sirs

**[Contract Title]**

**Contract No: [•]** (the "Contract")

We refer to the Bond given by you to us dated [•].

An event has occurred of the type described in Clause [•] of the Contract.

We hereby demand payment from you of the sum of £[•] under the Bond. Please make payment by CHAPS made payable to [Company name / bank account details].

Yours faithfully

.....

[Company name]  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL

**SCHEDULE 11: FORM OF COLLATERAL WARRANTY**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201[ ]

**BETWEEN: -**

- (1) **TRANSPORT FOR LONDON** or **TfL**, a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "Company") which expression shall include its successors, transferees and assignees);
- (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 services: [•] (the "Services").
- (B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the "Sub-Contract Services") of the Services 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 Services 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 Services;
  - (B) reasonable skill and care has been and will continue to be exercised in connection with:
    - (1) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
    - (2) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
    - (3) 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 Services (the "Sub-Contract");

## BUNDLE 2: FIRE: MARCH 2017

- (4) the execution and completion of the Sub-Contract Services;
  - (5) the Sub-Contract Services 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 Services 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-licence) 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 Services shall include any part of the Sub-Contract Services. 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 Services:
- (A) execute, complete the Sub-Contract Services 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 Services 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 Services;
  - (B) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
  - (C) extending, interfacing with, integrating with, connecting into and adjusting the Services;
  - (D) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the TfL Network and/or Sites (as such capitalised terms are defined in the Main Contract);

## BUNDLE 2: FIRE: MARCH 2017

- (E) executing and completing the Services; and
- (F) enabling the Company to perform its functions and duties as Infrastructure Manager and Operator of the TfL Network and/or Sites (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 Services.
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 Services, he has professional indemnity insurance with a limit of indemnity of not less than [two million pounds (£2,000,000)] in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of 12 years from completion of the Services 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.
8. If any Dispute of any kind whatsoever arises between the Parties in connection with this Agreement or the Sub-Contract Services 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

## BUNDLE 2: FIRE: MARCH 2017

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 Services 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 twenty five (25) Working 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 twenty five (25) Working 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:
  - (1) 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;
  - (2) 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;
  - (3) 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
  - (4) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of

**BUNDLE 2: FIRE: MARCH 2017**

the Step-in Notice, but without prejudice to any rights and remedies of:

- (a) 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
  - (b) 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 Services.
  - 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 deed by the Parties and delivered on the date of this Agreement.

Executed as a deed by affixing )  
the Common Seal of )  
Transport for London in the )

\_\_\_\_\_  
Authorised Signatory

**BUNDLE 2: FIRE: MARCH 2017**

presence of [•]

Executed as a Deed by [SUB-  
CONTRACTOR] acting by [•]

)  
)

\_\_\_\_\_  
Authorised Signatory

And

)  
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\_\_\_\_\_  
Authorised Signatory

Executed as a Deed by  
[SUPPLIER] acting by [•]

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Authorised Signatory

And

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)

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Authorised Signatory

**SCHEDULE 12: PERFORMANCE MEASUREMENT**

**LOT 2 (FIRE) - MARCH 2017**

**SCHEDULE 12: PERFORMANCE MEASUREMENT**



**LOT 2 (FIRE) - MARCH 2017**

**SCHEDULE 12a: PERFORMANCE MEASUREMENT MECHANISM**

**1. Definitions**

“Abatement” means a reduction from the payment due to the Supplier, calculated in accordance with Schedule 12d (Payment Abatement) at each payment assessment made by the Company’s Representative.

“Abating PIs” means the PIs designated as being subject to Abatement in accordance with paragraph 2.2 of Schedule 12d (Payment Abatement) as set out in Schedule 12b (Performance Measurement Matrix).

“Annual Contract Scorecard” means a report to be produced at the end of each Contract Year in accordance with the requirements of Schedule 21 Contract Management.

“Annual CSF” has the meaning given to it in Appendix 3 to Schedule 12a (Performance Measurement Mechanism).

“Annual Contract Score” has the meaning given to it in Appendix 3 to Schedule 12a (Performance Measurement Mechanism).

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

“Critical Success Factors” or “CSF” means any or all, as the case may be, of the Company’s four pillars of “Delivery”, “People”, “Customers” and “Value” under which Key Performance Indicators and Performance Indicators are established as set out in Schedule 12b (Performance Measurement Matrix).

“Customer PI” means any or all, as the case may be, of the PIs contained within the Customer CSF as set out in Schedule 12b (Performance Measurement Matrix).

“Delivery PI” means any or all, as the case may be, of the PIs contained within the Delivery CSF as set out in Schedule 12b (Performance Measurement Matrix).

“Delivery Unit” means the sub-divisions of TfL Business Areas identified in Schedule 12b (Performance Measurement Matrix) under the heading of Delivery Unit.

“Escalation Procedure” means the procedure set out at paragraph 4 of this Schedule 12a (Performance Measurement Mechanism).

“Emergency Clearance Times” are as set out in Appendix 2 (Emergency Clearance Time, Standard Clearance Times and Services Points) to Schedule 12c (Performance Measurement).

“Key Performance Indicator” or “KPI” means any or all, as the case may be, of the topics set out in the column headed “Key Performance Indicator (KPI)” in Schedule 12b (Performance Measurement Matrix) which are further sub-divided into Performance Indicators.

“Level 1 Non-Conformance Report” has the meaning given to it in paragraph 4.7.1 of this Schedule 12a (Performance Measurement Mechanism).



## LOT 2 (FIRE) - MARCH 2017

“Level 1 Rectification Period” has the meaning given to it in paragraph 4.7.1(c) of this Schedule 12a (Performance Measurement Mechanism).

“Level 1 Required Action” has the meaning given to it in paragraph 4.7.1(b) of this Schedule 12a (Performance Measurement Mechanism).

“Level 2 Non-Conformance Report” has the meaning given to it in paragraph 4.8.2 of this Schedule 12a (Performance Measurement Mechanism).

“Level 2 Rectification Period” has the meaning given to it in paragraph 4.8.2 of this Schedule 12a (Performance Measurement Mechanism).

“Level 2 Required Action” has the meaning given to it in paragraph 4.8.2 of this Schedule 12a (Performance Measurement Mechanism).

“Level 3 Non-Conformance Report” has the meaning given to it in paragraph 4.9.3(a) of this Schedule 12a (Performance Measurement Mechanism).

“Level 3 Rectification Period” has the meaning given to it in paragraph 4.9.3(b) of this Schedule 12a (Performance Measurement Mechanism).

“Level 3 Required Action” has the meaning given to it in paragraph 4.9.3(a) of this Schedule 12a (Performance Measurement Mechanism).

“Non-Conformances” has the meaning given to it in paragraph 4.2 (Escalation Procedure) of this Schedule 12a (Performance Measurement Mechanism), which shall include “Level 1 Non-Conformances”, “Level 2 Non-Conformances”, “Level 3 Non-Conformances” and “Level 4 Non-Conformances” as applicable.

“People PI” means any or all, as the case may be, of the PIs contained within the People CSF as set out in Schedule 12b (Performance Measurement Matrix).

“Performance Indicator” or “PI” means any or all, as the case may be, of the indicators set out in the column headed “Performance Indicator (PI)” in Schedule 12b (Performance Measurement Matrix).

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

“Period Performance Scorecard” means a report to be produced at the end of each Period in accordance with the requirements of Schedule 21 Contract Management.

“PI Allocated Score” means the score allocated to a Delivery PI on the Quarterly Contract Scorecard.

“Quarter” means respectively each or all of Periods 1 to 4, 5 to 7, 8 to 10 and 11 to 13 in each Contract Year.

“Quarterly Contract Score” has the meaning given to it in Appendix 2 to Schedule 12a (Performance Measurement Mechanism).

“Quarterly Contract Scorecard” means a report to be produced by the Company at the end of each Quarter in accordance with paragraph 3.2 of this Schedule 12a (Performance Measurement Mechanism).



## LOT 2 (FIRE) - MARCH 2017

“Quarterly CSF” has the meaning given to it in Appendix 2 to Schedule 12a (Performance Measurement Mechanism).

“Quarterly KPIs” has the meaning given to it in Appendix 2 to Schedule 12a (Performance Measurement Mechanism).

“Quarterly Review Meeting” means the meeting which is held each Quarter and during which any Level 3 Non-Conformances are reviewed.

“Recovery Plan” means a plan to be provided by the Supplier upon request by the Company in the event that a performance issue has been raised to the Escalation Procedure in a form similar to that at Appendix 6 to this Schedule 12a (Performance Measurement Mechanism) setting out how the Supplier will address such non-performance.

“Root Cause Analysis” means an analysis to be provided by the Supplier upon request by the Company in the event that a performance issue has been raised to the Escalation Procedure in a form similar to that at Appendix 7 to this Schedule 12a (Performance Measurement Mechanism) setting out the Supplier’s analysis of the root cause of the Non-Conformance in question.

“Same Type” has the meaning given to it in paragraph 4.8.1(f) of this Schedule 12a (Performance Measurement Mechanism).

“Service Delivery Review Meeting” means the weekly meeting during which any Level 1 Non-Conformances are reviewed.

“Standard Clearance Times” are as set out in Appendix 2 (Emergency Clearance Time, Standard Clearance Times and Services Points) to Schedule 12c (Performance Measurement).

“TfL Business Area” means the subdivisions of TfL identified in Schedule 12b (Performance Measurement Matrix) under the heading of TfL Business Areas.

“TfL Period Progress Meeting” means the meeting which is held each Period and during which any Level 2 Non-Conformances are reviewed.

“Value PI” means any or all, as the case may be, of the PIs contained within the Value CSF as set out in Schedule 12b (Performance Measurement Matrix).



## LOT 2 (FIRE) - MARCH 2017

### 2. Overview

- 2.1. This Schedule 12 (Performance Measurement) comprises the performance measurement mechanism (“PMM”) applicable to the Services, in order to incentivise the Supplier to deliver the Services in accordance with the requirements of the Contract and to provide the Company with a remedy where the Supplier fails to do so.
- 2.2. The PMM set out in this Schedule 12 (Performance Measurement) shall, subject to paragraph 5 (Exclusions), come into effect on the Services Commencement Date and shall be applicable to the whole of the Services, including (where relevant) any Additional Works.
- 2.3. The PMM comprises and incorporates:
  - 2.3.1 a balanced score card approach that measures performance across the Critical Success Factors;
  - 2.3.2 a range of Key Performance Indicators (“KPIs”) and Performance Indicators (“PIs”), in each case set out in Schedule 12b (Performance Measurement Matrix);
  - 2.3.3 Schedule 12c (Performance Measurement) which sets out the details as to how the KPIs and PIs are to be measured, the frequency and methodology of monitoring performance and the performance level required; and
  - 2.3.4 Schedule 12d (Payment Abatement) which sets out the method of calculation of the Abatement.
- 2.4. In respect of each KPI and PI, a failure by the Supplier to meet the required level of performance set out in Schedule 12c (Performance Measurement) shall entitle the Company to levy an Abatement and/or to enact the Escalation Procedure. For the avoidance of doubt, in relation to a PI which is subject to both the Escalation Procedure and Abatements (as set out in Schedule 12 Part b), these processes may be carried out in parallel.
- 2.5. The provisions of Schedule 12d (Payment Abatement) and paragraph 4 (Escalation Procedure) set out the remedy that the Company is entitled to and the circumstances in which the Company is entitled to that remedy.
- 2.6. At the end of each Period, the sum of all Abatements in respect of such Period calculated pursuant to Schedule 12d (Payment Abatement) shall be applied to the payment due to the Supplier in the immediately following Period.

### 3. Reports

- 3.1. Period Performance Scorecard
  - 3.1.1. A Period Performance Scorecard will be produced by the Company at the end of each Period, incorporating an analysis of the performance of each of the Delivery PIs during the Period.
  - 3.1.2. An example of the Period Performance Scorecard is included in Appendix 1 to this Schedule 12a (Performance Measurement Mechanism).
- 3.2. Quarterly Contract Scorecard
  - 3.2.1. A Quarterly Contract Scorecard will be produced by the Company at the end of each Quarter.
  - 3.2.2. The Quarterly Contract Scorecard will contain a summary of:
    - 3.2.2.1. People PIs, Customer PIs and Value PIs measured and reported across the whole of the Quarter; and



## LOT 2 (FIRE) - MARCH 2017

- 3.2.2.2. Delivery PIs calculated for each Period within the Quarter and reported on in the Period Performance Scorecard and which are subsequently averaged for the Periods being the subject of the Quarterly Contract Scorecard in accordance with Schedule 12c (Performance Measurement).
    - 3.2.3. KPIs and PIs will be weighted as set out in Schedule 12b (Performance Measurement Matrix) and the scores will be added up to give a total percentage score to calculate the total contract performance over the Quarter including the performance broken down by reference to each CSF.
    - 3.2.4. An example of the Quarterly Contract Scorecard setting out how the Delivery PIs are averaged, how the KPIs and PIs are weighted and how the total percentage score is derived is included in Appendix 2 to this Schedule 12a (Performance Measurement Mechanism).
  - 3.3. Annual Contract Scorecard
    - 3.3.1. An Annual Contract Scorecard will be produced by the Company within twenty (20) Working Days of the end of each Contract Year to measure and report on the performance by the Supplier of the Services as against the KPIs and PIs over the course of the prior Contract Year.
    - 3.3.2. PIs will be calculated by averaging the four quarterly scores. KPIs are then calculated from the results of the PIs.
    - 3.3.3. KPIs are weighted and the scores are added up to give a total percentage score to calculate the total contract performance over the Contract Year including the performance broken down by reference to each CSF.
    - 3.3.4. An example of the Annual Contract Scorecard setting out how the PIs and KPIs are averaged, how the KPIs are weighted and how the total percentage score is derived is included in Appendix 3 to this Schedule 12a (Performance Measurement Mechanism).
  - 3.4. Calculations for Quarterly Contract Scorecard and Annual Contract Scorecard
    - 3.4.1. With reference to the Quarterly Contract Scorecard set out in Appendix 2 to this Schedule 12a (Performance Measurement Mechanism), collated scores are calculated as follows:
      - 3.4.1.1. the Quarterly KPI is calculated as an average of the Quarterly PI % allocated scores;
      - 3.4.1.2. the Quarterly CSF is calculated as an average of the Quarterly KPI score for each CSF; and
      - 3.4.1.3. the Quarterly Contract Score is calculated as an average of the four Quarterly CSF scores.
    - 3.4.2. With reference to the Annual Contract Scorecard set out in Appendix 3 to this Schedule 12a (Performance Measurement Mechanism), collated scores are calculated as follows
      - 3.4.2.1. the Annual CSF is calculated as an average of the four Quarterly CSF scores; and
      - 3.4.2.2. the Annual Contract Score is calculated as an average of the four Annual CSF Scores.
    - 3.4.3. With reference to the collated scores for the Quarterly Contract Scorecard and the Annual Contract Scorecard as set out above, the performance levels



## LOT 2 (FIRE) - MARCH 2017

for the Quarterly KPIs, Quarterly CSFs, Quarterly Contract Score, Annual CSFs and Annual Contract Score are set as follows:

- 3.4.3.1. Meets Requirements - greater than 90.00%;
- 3.4.3.2. Below Requirements - between 75.00% and 89.99%; and
- 3.4.3.3. Unsatisfactory - below 75.00%.

### 3.5. Supplier Responsibilities

The Supplier shall report to the Company on its performance against the KPIs and PIs in accordance with the requirements of Schedule 12c (Performance Measurement). The PIs are assessed independently for each TfL Business Area and may be escalated by the Company pursuant to paragraph 4 (Escalation Procedure) of this Schedule 12a (Performance Measurement Mechanism) independently for each TfL Business Area.

## 4. Escalation Procedure

- 4.1. In the event that any of the PIs are assessed as “Below requirements” or “Unsatisfactory” as determined in the Period Performance Scorecards for two or more consecutive Periods, or in the event of any breach by the Supplier of its obligations under the Contract, the Escalation Procedure may be invoked by the Company and the Company shall be entitled to do so in its absolute discretion. For Delivery PIs which are measured by Delivery Unit, the Non-Conformance will be escalated in the event that any of the PIs for an individual Delivery Unit are assessed as “Below requirements” or “Unsatisfactory”, as determined in the Period Performance Scorecards for two or more consecutive Periods.
- 4.2. The purpose of the Escalation Procedure is to provide a structured framework within which the Parties can address poor performance of the Services against timescales and deliverable targets. For the purposes of the Escalation Procedure, notified levels of poor performance will be termed “Non-Conformances”.
- 4.3. The Escalation Procedure operates with four levels, as set out in paragraph 4.5 of this Schedule 12a (Performance Measurement Mechanism), with the lowest level of Non-Conformance being a Level 1 Non Conformance. Where Non-Conformances are escalated, they shall receive an appropriate level of management intervention from the Company and the Supplier. In the event a Non-Conformance is escalated to become a Level 3 Non-Conformance, the Parties shall have a final review and opportunity for remedial actions to resolve the relevant issues before the Non-Conformance becomes a Level 4 Non-Conformance, which will in turn entitle the Company to terminate the Contract in whole or in part in accordance with Clause 44 (Termination on Supplier Default). A Non-Conformance must either start the Escalation Procedure as a Level 1 Non-Conformance or a Level 2 Non-Conformance, but a Level 1 Non-Conformance can skip Level 2 to become a Level 3 Non-Conformance if the Company determines (at its sole discretion) that the Non-Conformance is of a nature which requires it to be dealt with as a Level 3 Non-Conformance.
- 4.4. In the event of any PIs being assessed as “Below requirements” or “Unsatisfactory” for two or more consecutive Periods, the Non-Conformance may be escalated to a Level 1 Non-Conformance or a Level 2 Non-Conformance (but not straight to a Level 3 Non-Conformance), to be determined by the Company at its absolute discretion. It is possible for a number of Level 1 Non-Conformances and/or Level 2 Non-Conformances to be on-going at any one time. In the event the same PI is escalated for multiple Delivery Units, the Company may, at its absolute discretion, determine to treat the Non-Conformances as one single Non-Conformance or individually.



**LOT 2 (FIRE) - MARCH 2017**

- 4.5. Additionally, in the event of the Supplier failing to achieve an overall score of 75% or more in the Quarterly Contract Scorecard or the Annual Contract Scorecard (as required under paragraph 3.4 of this Schedule 12a (Performance Measurement Mechanism), the Company may escalate this as a Level 1 Non-Conformance or a Level 2 Non-Conformance, be determined by the Company at its absolute discretion.

**Table 1 – Summary of Escalation Procedure (for illustrative purposes only)**

TRIGGER	LEVEL	ACTION	BY	RESULT
A PI being assessed as “Below requirements” or “Unsatisfactory” as determined in the Period Performance Scorecards for two or more consecutive Periods	Level 1	Improvement plan with precise end date required. On-going review dates specified.	Supplier	Satisfactory - Stop  Unsatisfactory - Level 2
Level 1 Non-Conformance re-occurrence  Persistent failure to meet required requirement  Safety Condition infringements	Level 2	Improvement plan with precise end date required. On-going review dates specified.	Supplier	Satisfactory - Stop  Unsatisfactory - Level 3
Level 2 Non-Conformance re-occurrence	Level 3	Final review. Final opportunity for remedial action. Precise end date required.	Supplier	Satisfactory - Stop  Unsatisfactory - Level 4
Level 3 Non-Conformance re-occurrence	Level 4	Termination at Company’s discretion pursuant to Clause 44 (Termination on Supplier Default).		

- 4.6. As part of the Escalation Procedure and at any level, the Supplier may be required to supply a Root Cause Analysis and/or a Recovery Plan at its own cost.



## LOT 2 (FIRE) - MARCH 2017

### 4.7. Level 1 Non-Conformance

4.7.1. The Supplier shall notify the Company of the occurrence of a Level 1 Non-Conformance, as soon as reasonably practicable after becoming aware of the occurrence, and the Level 1 Non-Conformance will be recorded by the Company and a notice will be issued to the Supplier in the form attached as Appendix 4 to this Schedule 12a (Performance Measurement Mechanism). The Supplier shall, within 10 Working Days of service of the notice by the Company, prepare and submit to the Company a report (the "Level 1 Non-Conformance Report"). Such report shall set out:

- a) confirmation of the date and details of the Level 1 Non-Conformance;
- b) the steps to be taken by the Supplier to ensure there is no re-occurrence of such Level 1 Non-Conformance (the "Level 1 Required Action"); and
- c) the time within which such Level 1 Required Action is to be completed by the Supplier (which shall be a reasonable period) (the "Level 1 Rectification Period").

4.7.2. The Supplier and the Company shall use all reasonable endeavours to agree the Level 1 Rectification Period (provided that in the event that the Supplier and the Company fail to agree the Level 1 Rectification Period, the Company shall be entitled to set the Level 1 Rectification Period) and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out by the Supplier (to the Company's reasonable satisfaction) within the agreed Level 1 Rectification Period, the Level 1 Non-Conformance will be classed as resolved.

4.7.3. All Level 1 Non-Conformances will be reviewed weekly at the Service Delivery Review Meeting and every Period at the Period Progress meeting (whether resolved or not) to ensure that re-occurrence is (where possible) eliminated.

### 4.8. Level 2 Non-Conformance

4.8.1. Paragraph 4.8.2 shall apply where:

- a) the Company determines that the Non-Conformance should be treated as a Level 2 Non-Conformance (to be determined by the Company at its absolute discretion); or
- b) the Supplier fails to notify the Company of the occurrence of a Level 1 Non-Conformance in accordance with paragraph 4.7.1 (provided that the Company shall be entitled to treat this as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance (to be determined by the Company at its absolute discretion)); or
- c) the Supplier fails to make available to the Company a Level 1 Non-Conformance Report within 10 Working Days of service by the Company of the notice referred to in paragraph 4.7.1; or
- d) the Supplier fails to undertake the Level 1 Required Action within the Level 1 Rectification Period; or
- e) having undertaken the Level 1 Required Action, the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period; or



**LOT 2 (FIRE) - MARCH 2017**

- f) a further Non-Conformance occurs after the Level 1 Rectification Period but within 2 months of the end of the Level 1 Rectification Period and being a Non-Conformance in relation to the same KPI or PI (the “Same Type”) as the Level 1 Non-Conformance; or
  - g) a further Non-Conformance occurs during the Level 1 Rectification Period that is of the Same Type as the Level 1 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance; or
  - h) the Supplier fails to meet the requirements of Schedule 7 (QUENSH and Quality and Safety Plan and Environmental Requirements).
- 4.8.2. Where one or more of the circumstances described in paragraph 4.8.1 applies, this shall be a Level 2 Non-Conformance and the Company may submit a notice to the Supplier in the form attached as Appendix 5 to this Schedule 12a (Performance Measurement Mechanism). The Supplier shall determine (acting reasonably) the steps it will take to ensure there is no re-occurrence of such Level 2 Non-Conformance (the “Level 2 Required Action”) and the time within which such Level 2 Required Action is to be completed (which shall be within a reasonable period) (the “Level 2 Rectification Period”), and prepare and make available to the Company a report (the “Level 2 Non-Conformance Report”) within 10 Working Days of service by the Company of the notice referred to in this paragraph 4.8.2, which shall set out the following information:
- a) the date and details of the Level 2 Non-Conformance;
  - b) the proposed Level 2 Required Action; and
  - c) the proposed Level 2 Rectification Period.
- 4.8.3. The Supplier and the Company shall use all reasonable endeavours to agree the proposed Level 2 Rectification Period (provided that in the event that the Supplier and the Company fail to agree the Level 2 Rectification Period, the Company shall be entitled to set the Level 2 Rectification Period) and the proposed Level 2 Required Action as set out in the Level 2 Non-Conformance Report.
- 4.8.4. If the agreed Level 2 Required Action is carried out by the Supplier within the agreed Level 2 Rectification Period, the Level 2 Non-Conformance will be classed as resolved.
- 4.8.5. All Level 2 Non-Conformances will be reviewed every Period at the Period Progress Meeting (whether resolved or not) to ensure that re-occurrence is (where possible) eliminated.
- 4.9. Level 3 Non-Conformance**
- 4.9.1. Paragraph 4.9.2 shall apply where:
- a) the Company determines that the Level 1 or Level 2 Non-Conformance should be treated as a Level 3 Non-Conformance (to be determined at the Company’s absolute discretion); or
  - b) the Supplier fails to make available to the Company a Level 2 Non-Conformance Report within 10 Working Days of service by the Company of the notice referred to in paragraph 4.8.2; or
  - c) the Supplier fails to undertake the Level 2 Required Action within the Level 2 Rectification Period; or



## LOT 2 (FIRE) - MARCH 2017

- d) having undertaken the Level 2 Required Action, the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period; or
- e) a further Non-Conformance occurs after the Level 2 Rectification Period but within 2 months of the end of the Level 2 Rectification Period and which is of the Same Type as the Level 2 Non-Conformance; or
- f) a further Non-Conformance occurs during the Level 2 Rectification Period that is of the Same Type as the Level 2 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

4.9.2. Where one or more of the circumstances described in paragraph 4.9.1 applies, this shall be a Level 3 Non-Conformance and the Company shall inform the Supplier of the same by written notice, specifying the steps which the Supplier is required to take to ensure that no further Non-Conformance of the Same Type shall arise (the “Level 3 Required Action”) and the period (being no greater than 2 months from the date of occurrence of the Level 3 Non-Conformance) for the Supplier to put in place steps to ensure that no further Non-Conformances of the Same Type occur (the “Level 3 Rectification Period”).

4.9.3. Where paragraph 4.9.1(b) applies and the Supplier has failed to make available to the Company a Level 2 Non-Conformance Report, the notice referred to in paragraph 4.9.2 shall also set out the deadline by which the Supplier is required to serve on the Company a report (the “Level 3 Non-Conformance Report”) setting out the Level 3 Required Action and the Level 3 Rectification Period.

4.9.4. All Level 3 Non-Conformances will be reviewed (whether resolved or not) every Period at the Period Progress meeting and every Quarter at the Quarterly Review Meeting.

### 4.10. Level 4 Non-Conformance

4.10.1. Paragraph 4.10.2 shall apply where:

- a) the Supplier fails to make available to the Company by the deadline notified under paragraph 4.9.3 a Level 3 Non-Conformance Report; or
- b) the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or
- c) having undertaken the Level 3 Required Action, the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period; or
- d) a further Non-Conformance occurs after the Level 3 Rectification Period but within 2 months of the end of the Level 3 Rectification Period and which is of the Same Type as the Level 3 Non-Conformance; or
- e) a further Non-Conformance occurs during the Level 3 Rectification Period that is of the Same Type as the Level 3 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

4.10.2. Where one or more of the circumstances described in paragraph 4.10.1 applies, this shall be a Level 4 Non-Conformance and the Company shall be entitled to terminate the Contract in whole or in part in accordance with Clause 44 (Termination on Supplier Default).



**LOT 2 (FIRE) - MARCH 2017**

**5. Exclusions**

- 5.1. Details of any exclusions from this Schedule 12a (Performance Measurement Mechanism) for particular PIs and KPIs are detailed in Schedule 12b (Performance Measurement Matrix).
- 5.2. The Company shall not be entitled to levy any Abatement during the first four Periods following the Services Commencement Date.
- 5.3. The Escalation Procedure triggered by poor performance of KPIs and PIs shall not be applicable during the first four Periods following the Services Commencement Date.



LOT 2 (FIRE) - MARCH 2017

Schedule 12a - Appendix 1 – Period Performance Scorecard Template

Performance Indicator (PI)			TfL Head Offices	Surface					London Underground			London Rail	TfL Business Area
Ref	Name	Frequency of Assessment		Buses	Victoria Coach Station	Dial a Ride	River Services	Tram link	BCV/SSL Stations	Operational Support	JNP Stations	Overground	Delivery Unit
D1A	Planned/Periodic maintenance completed against Programme	Each period											
D2A	Emergency faults rectified on time	Each period											
D2B	Standard faults rectified on time	Each period											
D2C	All faults rectified on time	Each period											
D4A	Asset Reporting	Each period											
D5A	Number of Suppliers audits completed versus planned	Each period											
D5B	Number of lost time injuries	Each period											
D5C	Number of statutory notices / pollution events	Each period											
D5D	Number of non compliances attributed to failure to meet a requirement of Schedule 7	Each period											
D6A	Works/faults/planned maintenance completed in accordance with the Specification	Each period											
D7A	Accuracy of applications for payment	Each period											

KEY:

Meets requirements
Below requirements
Unsatisfactory
Not Measured