

Dated 18 **December 2015**

LONDON UNDERGROUND LIMITED (1)

and

1st INRAIL LIMITED (2)

FRAMEWORK AGREEMENT

for Supply of Track Labour under a Nil Value

Framework (Lot 1)

CONTRACT REFERENCE NUMBER TfL 00249 Lot

1 Contingent Track Labour /5

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SECTION 1

FORM OF AGREEMENT

This **Agreement** is made on the 26th day of December 2015

BETWEEN

- (1) **London Underground Limited** (company number 01900907) whose registered office is Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**", which expression shall include its successors and assigns); and
- (2) **1st Inrail Limited** (company number 06252002) whose registered office is Unit 1D North Crescent, Cody Road, London E16 4TG (the "**Contractor**")

RECITALS:

- (1) The Company is an expert in the supply of Contingent Labour under a Nil Value Framework (Lot 1) labour to support track maintenance and upgrade works on the Underground Network and other TfL infrastructure.
- (2) In reliance on that expertise, the Company wishes to appoint the Contractor to provide such services to it and other members of the TfL Group.
- (3) When the Company or any other member of the TfL Group requests works from the Contractor, and the Contractor is able to provide such services, the relevant parties will enter into a separate contract in accordance with this Agreement.
- (4) Each contract will incorporate the terms and conditions set out in this Agreement.

NOW IT IS AGREED THAT:

1. General

- 1.1. This Agreement does not place the Company or any member of the TfL Group under any obligation to procure the Services from the Contractor at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement operates to prevent the Company or any member of the TfL Group from engaging any other organisation or person to provide services or works similar to or the same as the Services.
- 1.2. The following documents shall comprise the Agreement:
 - (a) this Form of Agreement (Section 1);
 - (b) the Framework Particulars (Section 2); and

Framework agreement for the supply of track labour

(c) Conditions of Contract (including the Schedules) (Section 3),

together with all other documents included or incorporated by reference in these documents.

2. Commencement and duration

- 2.1. The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.2. Expiry or termination of the Agreement shall not, in and of itself, give rise to the expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract unless terminated earlier in accordance with this Agreement.
- 2.3. The Company shall at its own discretion be entitled to extend the Term pursuant to the process set out in Schedule 5, provided that the extension to the Initial Term shall not exceed the period specified in the Framework Particulars. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term. On receipt of such notice from the Company by the Contractor, the Agreement shall be deemed extended accordingly.

3. Order Procedure

- 3.1. At any time during the term of the Agreement, the Company may identify the Services which at its sole discretion it wishes to let under the terms of the Agreement. Any decision by the Company to place an Order under the terms of the Agreement shall be preceded by a Mini-Competition save where the Company, having considered the Applicable Laws and Standards (including the Utilities Contracts Regulations 2006), considers it appropriate to issue an Order to one or more framework suppliers without holding a Mini-Competition.
 - 3.2. If pursuant to Clause 3.1, the Company wishes to be provided with a Proposal it shall issue to the relevant supplier(s) a Request Form, specifying the Services it requires.
 - 3.3. On receipt of the Request Form, the Contractor shall:
 - (a) within two (2) Working Days of the date of issue of the relevant Request Form, confirm receipt of such Request Form; and
 - (b) by the date specified in the relevant Request Form (or if no date is specified within seven (7) Working Days of the date of issue of such relevant Request Form) or by such other date agreed in writing between the Company and the Contractor:
 - (i) complete and issue to the Company a Proposal which shall include in full the information requested by the Company in the relevant Request Form [and full details of the basis on which the prices have been calculated; or
 - (ii) notify the Company that it does not intend to submit a Proposal.
- Framework agreement for the supply of track labour

- 3.4. The Contractor acknowledges and agrees that a Proposal remains valid for at least [six (6)] months (or such longer period as may be specified in the relevant Request Form) from the date such Proposal is submitted to the Company.
- 3.5. If the Company accepts a Proposal issued pursuant to Clause 3.3(b)(i), it shall notify the Contractor of its intention to place an Order for the Services to be performed and each Order so given shall be final unless varied in accordance with terms of the Agreement or the relevant Contract.
- 3.6. Each Order shall incorporate the terms of the Agreement and shall form a separate and distinct contract between the parties to it and herein referred to as a "**Contract**".
- 3.7. A Request Form and anything prepared or discussed by the Company constitutes an invitation to treat and does not constitute an offer capable of acceptance by the Contractor. The Company is not obliged to consider or accept any Proposal submitted by the Contractor.
- 3.8. The Agreement does not oblige the Company to place an Order or enter into any Contract with the Contractor.
- 3.9. The Contractor is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3 (the "**Procurement Process**"), and the Company shall not be liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Contract (which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled Procurement Process).

4. Strategic Labour Needs and Training

- 4.1. The Contractor shall comply with the strategic labour needs and training requirements set out in Schedule 13 of the Conditions of Contract.

5. Priority of Documents

- 5.1. The documents forming the Agreement and each Contract are to be taken as mutually explanatory of one another. Subject to Clause 5.2, in the event of any ambiguity, discrepancy or inconsistency between the provisions of all or any of the documents, their priority shall be as follows:
- (b) this Form of Agreement;
 - (c) the Framework Particulars;
 - (d) the Conditions of Contract; and
 - (e) the Schedules to the Conditions of Contract.

SECTION 2

FRAMEWORK PARTICULARS

- (a) The Commencement Date is 21st December 2015
- (b) The Initial Term is four (4) years.
- (c) The extension to the Initial Term shall be no greater than two (2) years.
- (d) The extension to the Initial Term shall be no greater than Two (2) years as set out below
 - 1.1 TfL may at its sole discretion extend the duration of the Contract by up to two (2) years on the same terms (save as to the Schedule of Rates, which shall for the additional period be as set out in paragraph 1.3 to 1.6 below). TfL shall notify the Contractor in writing whether or not it is considering such an extension by no later than the date three years after the Contract Start Date.
 - 1.2 Following the issue of a notice under paragraph 1.1, the Schedule of Rates for such a contract extension may, at the discretion of TfL, be subject to review. The objective of such a review is to ascertain the competitiveness of the Schedule of Rates against the market at that time.
 - 1.3 Any exercise which may be carried out at TfL's option and by TfL in accordance with paragraph 1.2, will be carried out in good faith on the basis of an objective and like-for-like comparison by comparing the standards and prices of Services equivalent to the Services and the costs of providing them in similar circumstances by reputable contractors. This review will be conducted promptly following issue of the notice under Paragraph 1.1 and the Contractor shall provide TfL with all information and assistance reasonably required for this purpose.
 - 1.4 If any such review is carried out, the Parties shall if so required by the Company negotiate and endeavour in good faith to agree any consequential amendments to the Schedule of Rates for the extension period.
 - 1.5 The review and negotiations referred to in Paragraphs 1.1 to 1.4 shall be completed by the date three (3) years and six (6) months after the Contract Start Date.
 - 1.6 If no agreement is reached to vary the Schedule of Rates in accordance with Paragraph 3.5 then the agreed Schedule of Rates for Year Four (4) shall be subject to adjustment to reflect any change in the RPIX between the third (3rd) and fourth (4th) anniversaries of the Contract Start Date.
 - 1.7 Not later than the date three (3) years after the Contract Start Date the Contract Manager on behalf of TfL shall issue a notice to the Contractor confirming whether or not TfL wish in principle to exercise the option to extend the Framework Agreement. Such notice shall set out:

- i) the period of the extension up to the two (2) year maximum;
- ii) whether TfL wish in principle to proceed in accordance with any agreement reached pursuant to Paragraph 1.4; or
- iii) whether TfL wish in principle to proceed in accordance with Paragraph 1.6.

1.8 Where Paragraph 1.7(ii) applies the Parties shall endeavour in good faith to agree an amendment agreement setting out the agreed terms of the extension and no extension shall take effect and the Framework Agreement shall not be or be deemed to be extended until an amendment agreement has been agreed and signed by the duly authorised representatives of the Parties.

1.9 Where Paragraph 1.7(iii) applies the Contract Manager on behalf of TfL shall issue a notice formally confirming the extension not later than the date six (6) months prior to the fourth (4th) anniversary of the Contract Start Date.

- (e) The minimum period of notice required in respect of a change to the Services in accordance with Clause 5.4 of the Conditions of Contract is: three (3) Working Days
- (f) If not £10,000,000 per occurrence, the minimum sum for public and product liability insurance in accordance with Clause 15.2(b) of the Conditions of Contract shall be defined within individual order Specification.
- (g) The Interest Rate pursuant to Clause 48 of the Conditions of Contract is 8% above the Bank of England's official bank rate.

SECTION 3

CONDITIONS OF CONTRACT

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 In this Agreement and each Contract the following words and phrases have the following meanings:

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| "Additional Equipment" | means | any equipment or tools which are not Equipment but which the Company requires to be supplied to support provision of the Services and which are separately identified in the Specification or as may be instructed by the Company from time to time. |
| "Agreement" | means | the agreement as described in Clause 1.2 of the Form of Agreement (including any Schedules, annexes or attachments) as may be amended from time to time in accordance with its terms. |
| "Applicable Laws" | means | depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Agreement or any Contract, any agreement or document referred to in the Agreement or any Contract, or for the performance of the Services. |
| "AWR" | means | the Agency Workers Regulations 2010 (<i>SI 2010/93</i>). |
| "CDM Regulations" | means | the Construction (Design and Management) Regulations 2015 and any revision or replacement thereof including any approved code of practice and any guidance requirements issued by the Health and Safety Executive. |

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| "Cessation Plan" | means | plan agreed between the Parties or determined by the Company in accordance with Clause 35.1 to give effect to a Declaration of Ineffectiveness. |
| "Commencement Date" | means | the date specified as such in the Framework Particulars. |
| "Company" | means | the entity named as such in the Agreement and its legal successors in title and assigns. |
| "Company's Representative" | means | the person appointed by the Company and named as such in the relevant Order. |
| "Competent Authority" | means | any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the Parties in connection with the performance of the Agreement or any Contract. |
| "Completion Date" | means | the date set out in the Framework Particulars, as amended from time to time in accordance with the Agreement. |
| "Conditions of Contract" | means | the Conditions of Contract incorporated in Section 3 of the Agreement, including the Schedules and other documents or parts of other documents expressly referred to in them. |
| "Confidential Information" | means | any information given orally or in writing which is a trade or business secret or method; technical know how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Company's obligations in accordance with sections 118 to 121 of the Railways Act 1993; confidential financial information including |

but not limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

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| "Consequential Loss" | means | in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach. |
| "Contract" | means | an agreement for the provision of Services by the Contractor to the Company or any member of the TfL Group agreed in accordance with Clause 3 of the Form of Agreement. |
| "Contract Information" | means | (i) each Contract and the Agreement in its entirety (including from time to time agreed changes to the Agreement or any Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 13.1 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount. |
| "Contract Reference Number" | means | the number shown on the front page of this Agreement. |
| "Contract Variation Procedure" | means | the contract variation procedure set out in Schedule 5. |
| "Contractor" | means | the entity named as such in the Agreement. |
| "Contractor Personnel" | means | all employees, agents or consultants of the Contractor and the Contractor's subcontractors from time to time. |
| "Contractor's Representative" | means | the person appointed by the Contractor and named as such in the relevant Order. |
| "Corporate IPRs" | means | the trade marks, trade names and other Intellectual |

Property Rights notified by the Company from time to time.

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| "Declaration of Ineffectiveness" | means | a declaration of ineffectiveness in relation to the Agreement made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended). |
| "Dispute" | means | any question, dispute, difference or claim between the Parties in arising out of, under, or in connection with the Agreement. |
| "Documentation" | means | all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Contractor in the performance of the Agreement and whether in paper form or stored electronically. |
| "Equipment" | means | the tools and equipment stipulated in the Specification as necessary to be brought to the Site by the various grades of labour for the purpose of carrying out the Services for which they are employed including all personal protective clothing and equipment in accordance with the Standards. |
| "Ethical Sourcing Policy" | | has the meaning given to the term in Clause 32.3. |
| "Excepted Liabilities" | means | <p>the liability of the Contractor for:</p> <ul style="list-style-type: none"> (a) any abatements for performance levied in accordance with this Agreement or any Contract; (b) losses, expenses, liabilities, claims, demands, actions, costs or charges against which the Contractor is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance); (c) Losses caused by fraudulent acts or acts of a |

criminal nature;

(d) Losses caused by death or personal injury to any person; and

(e) Losses caused by the Contractor committing a Prohibited Act or Safety Breach.

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| "Existing Contracts" | means | any and all contracts, whether current, expired or terminated, pursuant to which goods or services have been supplied or provided by the Contractor (in the capacity of contractor or subcontractor) to the Company or any member of the TfL Group. |
| "Form of Agreement" | means | the Form of Agreement contained in Section 1. |
| "Framework Particulars" | means | the Framework Particulars contained in Section 2. |
| "Free Issue Materials" | means | Materials, apparatus and components supplied by the Company to the Contractor without charge and intended for use by the Contractor exclusively in the provision of Services under each Contract. |
| "Greater London" | | has the meaning ascribed to it in the GLA Act. |
| "Greater London Authority Act" or "GLA Act" | means | the Greater London Authority Act 1999 relating to the formation of the Greater London Authority. |
| "HGCRA" | means | the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 or as further amended or supplemented. |
| "Infrastructure Manager" | means | the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006. |
| "Initial Term" | means | the period of time specified as such in the Framework Particulars. |
| "Intellectual Property Rights" or "IPRs" | means | any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business |

names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

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| "Interest Rate" | means | <i>the percentage above the base rate from time to time of the Bank of England as specified in the Framework Particulars.</i> |
| "Key Personnel" | means | <i>Contractor Personnel identified as such in Error! Reference source not found. and any changes to the same that are made in accordance with Schedule 5.</i> |
| "London Living Wage" | means | <i>the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Living Wage Foundation, the Mayor or any other relevant Competent Authority.</i> |
| "Losses" | means | <i>any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments whatsoever or howsoever arising incurred by the Company, its subcontractors, employees or agents or any other member of the TfL Group.</i> |
| "Materials" | means | <i>any materials incidental to the provision of the Services which the Company requires to be supplied to enable the Contractor Personnel to undertake the Agreement and which are identified in the Specification or as otherwise instructed by the</i> |

Company from time to time.

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| "Mayor" | means | the person from time to time holding the office of Mayor of London as established by the GLA Act. |
| "Mini-Competition" | <i>means</i> | a competitive process which the Company may from time to time utilise to select a Contractor to provide the Services. |
| "Operator" | means | a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements. |
| "Order" | means | an order, which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 2, entered into by the Company and the Contractor. |
| "Order Commencement Date" | means | the date on which the Contractor is to commence providing the Services as specified as such on each Order or such other date as may be agreed between the parties in accordance with the terms of each Contract. |
| "Order Completion Date" | means | the date on which the Services are to be performed as specified as such in each Order or such other date as may be agreed between the parties in accordance with the terms of each Contract. |
| "Order Price" | means | the amount stated under the heading "Order Price" in the relevant Order. |
| "Order Programme" | means | the programme of work set out in each Order for the provision of the Services which has been submitted by the Contractor and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the relevant Contract or otherwise by agreement in writing between the Contractor and the Company. |
| "Order Specification" | means | the specification appended to the relevant Order. |
| "Payment Application" | means | the application by the Contractor made in accordance with Clause 13 of the Conditions of |

Contract and Clause 2.5 of Part 2 of Schedule 4.

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| "Payment Period" | means | the four (4) week period each ending on the dates set out in Appendix C to Schedule 4. |
| "PPE" | means | personal protective equipment. |
| "Price" | means | the total payment for the Services. |
| "Prohibited Act" | means | <ul style="list-style-type: none">(a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:<ul style="list-style-type: none">(i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement or any other contract with the Company; or(ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any other contract with the Company; or(b) entering into the Agreement or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf or to its knowledge unless, before the Agreement is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment of such contract have been disclosed in writing to the Company; or(c) committing an offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010;(ii) under legislation creating offences in respect of fraudulent acts; or(iii) at common law in respect of fraudulent acts, <p style="text-align: right;">in relation to the Agreement or any other</p> |

contract with the Company; or

(d) defrauding or attempting to defraud the Company.

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| “Proposal” | means | the Contractor's offer to provide the Services in response to a Request Form. |
| “Qualifying Supplied Worker” | means | an agency worker as defined by Regulation 3 of the AWR. |
| “Quality and Safety Plan” | means | the quality and safety plan set out in Schedule 6 as amended from time to time. |
| “Relevant Terms and Conditions” | means | the relevant terms and conditions for any particular Qualifying Supplied Worker.. |
| “Request Form” | <i>means</i> | <i>the request form produced by the Company detailing the Company's requirements for a Proposal from the relevant Contractor.</i> |
| “Responsible Procurement Policy” | means | the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006, updated in January 2008 and as may be amended. |
| “Safety Breach” | means | a material breach of any obligation under the Agreement or any Contract caused by the gross incompetence of or wilful default by the Contractor (or anyone employed by or acting on behalf of the Contractor) or any of its agents which has materially affected the safe operation of the Underground Network or the safety of the Company's customers, staff or any other person. |
| “Services” | means | the provision of labour, Equipment, Additional Equipment and Materials in accordance with the terms of the Agreement as set out in the Specification. |
| “Site” | means | the site set out in the Specification at which the Services are to be provided. |
| “Specification” | means | the information which describes the Services as set out in Schedule 1 and the relevant Order Specification including any subsequent amendments. |

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| "Standards" | means | the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Contractor to provide the Services in accordance with good industry practice. A full set of current Standards is available for the Contractor's use on-line at the LU Standards e-library or as notified to the Contractor. |
| "Term" | means | the duration of the Agreement which, unless terminated earlier in accordance with this Agreement, shall be the Initial Term as may extended pursuant to clause 2.3 of the Form of Agreement. |
| "TfL" or "Transport for London" | means | Transport for London, a statutory body set up by the Greater London Authority Act 1999. |
| "TfL Group" | means | Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary. |
| "Transparency Commitment" | means | the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received. |
| "Underground Network" | means | the stations and depots (wherever situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as "London Underground". |
| "Value Added Tax" or "VAT" | means | value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced |

in addition to the foregoing.

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| "Variation" | means | any addition, omission or other change to the Specification. |
| "Variation Order" | means | the written authorisation from the Company to a Variation Proposal in accordance with the Contract Variation Procedure. |
| "Working Day" | means | any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday. |
| "Works" | Means | the works undertaken at the direction of the Company for which the Services are required as set out in the Specification. |

- 1.2 Headings in the Agreement are for reference only and are not to be used for the interpretation of the Agreement.
- 1.3 A reference to a Clause or Schedule shall be to a Clause of, or a Schedule to, the Agreement or each Contract (as the case may be) and references to the Agreement or any Contract include its recitals and Schedules.
- 1.4 Where appropriate, the singular includes the plural and vice versa and words importing a particular gender shall include all genders.
- 1.5 References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and any Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the "Company" shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 Where another member of the TfL Group enters into a Contract with the Contractor, references in that Contract to "the Company" shall, unless the context otherwise requires, be to that member of the TfL Group.

2 Not used

3 Not used

4 Contractor's Obligations

4.1 The Contractor:

- (a) shall provide the Services in accordance with the terms of this Agreement and each Contract (including the relevant Order Programme) and in a regular and diligent manner;
- (b) shall perform its obligations under the Agreement and any Contract with reasonable skill and care and with a competence appropriate for the required Works;
- (c) shall provide the required Contractor Personnel, Additional Equipment and Materials as set out in the Specification;
- (d) shall ensure that all Contractor Personnel involved in the provision of the Services:
 - (i) are appropriately qualified and competent to perform the Services in accordance with the Agreement and the Specification;
 - (ii) shall arrive at the Site punctually and able to commence the Services at the time designated;
 - (iii) are entitled to work in the United Kingdom;
 - (iv) have no known employment history indicating that they are unsuitable to work for the Company;
 - (v) can communicate effectively, both orally and in writing, in the English language;
 - (vi) are equipped with all necessary PPE in compliance with the Standards;
 - (vii) are equipped with all necessary Equipment required to undertake the Services in accordance with the Specification;
 - (viii) perform their tasks in accordance with good industry practice; and
 - (ix) have received appropriate training for particular tasks as is indicated by the Specification.
- (e) shall be able to provide documentary evidence that all Contractor Personnel involved in the provision of the Services are appropriately qualified and competent to perform the Services in accordance with the Agreement and any Contract.

- 4.2 The Contractor shall at all times comply with:
- (a) not used;
 - (b) the Quality and Safety Plan;
 - (c) the terms set out in the Agreement (including the Schedules) and each Contract;
 - (d) all lawful and reasonable directions of the Company; and
 - (e) the Standards and any Applicable Laws.
- 4.3 The Contractor shall use all prudent and commercial steps necessary to mitigate and minimise:
- (a) the effect of any actual or potential increase in Price or additional cost that may be assessed under Clause 12 in order to reduce or to avoid any effects on the costs and programme to the maximum extent reasonably practical; and
 - (b) any actual or potential Losses (including but not limited to costs on or relating to termination of the Agreement or any Contract).
- 4.4 The Contractor shall ensure that all Contractor Personnel provided to the Company in accordance with the terms of the Agreement and any Contract comply with all relevant obligations of the Contractor in accordance with the Agreement and any Contract.
- 4.5 The Contractor shall carry out the Services in such a manner as not to endanger or interfere in any way with the railway, the Company or any operator.
- 4.6 Without prejudice to Clauses 4.1 to 4.5 the Parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under the Agreement and any Contract.
- 4.7 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Contractor under this Agreement or any Contract.
- 4.8 The Contractor warrants to the Company that it has entered into and executed the Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.
- 4.9 The Contractor warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in the Agreement and each Contract.

- 4.10 The Contractor shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services and the Quality and Safety Plan, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 4.11 It shall be the responsibility of the Contractor to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services, including, but not limited to, those required by any Applicable Laws and Standards.

5 Provision of Labour

- 5.1 The Contractor shall supply to the Company the Contractor Personnel:
- (a) in the numbers;
 - (b) of the required trades and skills; and
 - (c) to the required shift/working pattern and at the times,
- set out in the Agreement and/or any Contract and identified in the Specification or as otherwise instructed by the Company.
- 5.2 The Contractor warrants and undertakes that the Contractor Personnel supplied to the Company are, and at all times during the provision of the Services in accordance with the Agreement and any Contract shall remain, competent to perform the role for which they have been supplied in accordance with the Agreement and any Contract (including (without limitation) the Specification) or as otherwise instructed by the Company.
- 5.3 Subject to Clauses 5.4 to 5.7 inclusive the Company shall have the right to issue an instruction changing the manner in which the Services are provided which may:
- (a) reduce or increase the numbers of Contractor Personnel required; and/or
 - (b) change the trades, grades or skills required; and/or
 - (c) change the shift/working pattern required; and/or
 - (d) change the Standards; and/or
 - (e) add to or omit from the Additional Equipment and/or Materials required; and/or
 - (f) otherwise amend the Specification.

Such instruction shall be issued in accordance with Clause 10.1 and Schedule 5 (Contract Variation Procedure).

Framework agreement for the supply of track labour

- 5.4 The minimum period of notice for an instruction changing the manner in which the Services are provided is stipulated in the Framework Particulars. The minimum period does not apply to the implementation of a change to the Standards or the serving of a health and safety notice or the removal of incompetent Contractor Personnel in which event the instruction shall be implemented at the earliest possible moment.
- 5.5 In the event that the Company seeks to change the manner in which the Services are provided with less than the minimum period of notice, the Contractor shall use its best endeavours to meet the Company's requirements.
- 5.6 In the event that the Company omits the Services required either in whole or in part in accordance with Clause 5.3 the Company shall owe no liability with regard to any part of the Services not used save that should the Company omit the Services required either in whole or in part with less than the minimum notice period stipulated in the Framework Particulars, the Company shall pay those justified and reasonable costs incurred by the Contractor directly relating to that part of the Services not used provided that such costs were otherwise unavoidable and are supported by documentary evidence.
- 5.7 With reference to Clause 4.3 the Contractor shall use best endeavours to mitigate the costs incurred under Clause 5.6 and any failure to do so will relieve the Company from any liability in respect of additional payment.

6 Labour Utilisation

- 6.1 The Company shall instruct the Contractor Personnel supplied in accordance with the Agreement and any Contract to carry out only such tasks as are consistent with their qualifications and skill.
- 6.2 The Contractor and/or the Contractor's Representative shall, unless otherwise indicated in the Specification, participate in compiling a resource look-ahead and shall complete all reporting records relating to the Services as may be as set out in the Specification.

7 CDM Regulations

The Company shall act as principal contractor and principal designer under the CDM Regulations and in addition to complying with the Agreement and any Contract, the Contractor shall provide all necessary assistance to enable the Company to comply with such obligations.

8 Equipment

- 8.1 The Contractor shall provide all such Equipment and Additional Equipment required by the Agreement and any Contract and shall ensure that the Equipment and Additional Equipment are available for use by the Contractor Personnel whenever required for the provision of the Services.

- 8.2 The Contractor shall ensure that the Equipment and Additional Equipment required by the Agreement and any Contract are maintained in good working order and comply with the Standards and Applicable Laws and are suitably and properly certificated and insured.

9 Access

- 9.1 Subject to the provisions of this Clause 9, the Company will use its reasonable endeavours to arrange and manage access to any part of the Underground Network necessary for the provision of the Services.
- 9.2 The Contractor acknowledges that the Company does not guarantee uninterrupted or exclusive possession to any parts of the Underground Network and that its access to some parts of the Underground Network may be limited in accordance with the Agreement and each Contract.
- 9.3 The Contractor shall ensure that all booked access is used efficiently with minimal disruption and disturbance to others or damage to the Underground Network.
- 9.4 The Contractor shall not and shall ensure that its Contractor Personnel do not frustrate any booked access or cause any booked access to be withdrawn.

10 Variations

- 10.1 The Company may, at any time during the term of any Contract, request the Contractor to provide a quotation for the supply of a Variation in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Variation, the relevant parts of the Contract shall be amended accordingly.
- 10.2 Any other variation to the terms of the Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

11 Incompetent Contractor Personnel

- 11.1 Contractor Personnel will be deemed to be incompetent and not in accordance with the Specification if their standard of workmanship or their productivity is held to be less than can be reasonably expected from a person of their purported competency, skill and training when compared with industry standards in the opinion of the Company's Representative. Work undertaken by incompetent Contractor Personnel may be rejected as defective.
- 11.2 Where the Contractor Personnel supplied by the Contractor are deemed to be incompetent and not in accordance with the Specification then the Contractor shall replace such Contractor Personnel immediately upon notification from the Company.
- 11.3 Where the Company notifies the Contractor that Contractor Personnel are deemed incompetent and not in accordance with the Specification, the Contractor shall not be entitled to payment of the part of the Price relating to the provision of Contractor Personnel which is the subject of such

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notification from the Company and the Company shall also have the right to recover from the Contractor the cost of rectifying work that is rejected as defective in accordance with Clause 11.1 provided such costs are limited to recovery of all expenditure on labour, Materials, Equipment, Additional Equipment and waste disposal additional to that originally contemplated by the Parties under the Agreement or any Contract.

11.4 Where the Company suffers direct loss due to one of the specified events listed in Clause 11.5, then the Company shall be entitled to recover from the Contractor an amount relating to such direct loss, provided that such deduction is limited to the non-attendance or partial attendance of Contractor Personnel and the abortive costs of other labour utilisation (including the Company's and third party labour) and abortive costs of Equipment and Additional Equipment utilisation including Access Bookings as may be caused by the specified event.

11.5 The specified events referred to in Clause 11.4 are:

- (a) Non-attendance of Contractor Personnel either individually or collectively except where this is due to exceptional circumstances affecting travel or access to the Site;
- (b) Partial attendance of Contractor Personnel either individually or collectively where the hours worked are less than required by the Specification;
- (c) Contractor Personnel either individually or collectively not having the required competency, skills, training, certification and/or permits or not having the Equipment necessary to provide the Services;
- (d) Removal of any Contractor Personnel due to a default of the Contractor or any Contractor Personnel supplied by the Contractor, including without limitation a Safety Breach or Prohibited Act; and
- (e) Non-attendance of Contractor Personnel arising from any strike or other industrial action.

12 Pricing

12.1 In consideration of the provision of the Services by the Contractor pursuant to an Order, the Company shall pay the applicable Order Price in accordance with Clause 13 and the pricing conditions in Schedule 4. The Order Price will be calculated on a reimbursable basis in accordance with the rates and pricing conditions in Schedule 4.

12.2 The rates and pricing conditions in Schedule 4 shall remain valid for the duration of the Term, save that where the Agreement is extended beyond the Initial Term, the rates for the period of extension shall be as agreed or determined in accordance with Schedule 4.

13 Payment

- 13.1 The Contractor shall submit an application for payment of the relevant portion of the Order Price using the rates and prices set out in Schedule 4 to the Company's Representative for the Services *[on the application for payment dates set out in the Order] [following the completion of the Services to the satisfaction of the Company]* (a "**Payment Application**"). Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date (including for invoiced Additional Equipment and Materials at the rates set out in Schedule 4) and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.
- 13.2 The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("HGCRA") on the date on which the Company's Representative receives the Payment Application.
- 13.3 The Company's Representative shall assess the Payment Application and shall notify the Contractor in writing not later than five (5) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
 - (b) the basis on which the amount was calculated, a "Payment Certification".
- It is immaterial for the purposes of this Clause 13.3 that the amounts referred to in Clause 13.3(a) or Clause 13.3(b) may be zero. *[A notification given under this Clause 13.3 shall constitute a payment notice for the purposes of section 110A of the HGCRA.]*
- 13.4 Within seven (7) days of receipt of a Payment Certification the Contractor shall issue a VAT invoice for the amount stated in that Payment Certification to the Company. The final date for payment of such VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.
- 13.5 The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application.
- 13.6 Subject to Clause 13.7 and Clause 13.8, the Company shall pay the Contractor the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 13.3 (or, if the Company's Representative has not served a Payment Certification, the sum referred to in the

Contractor's Payment Application under Clause 13.1 (the "Notified Sum") on or before the final date for payment.

13.7 If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Contractor in writing not later than one (1) day prior (the "Prescribed Period") to the final date for payment of:

- (a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or
- (b) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 13.7 that the amounts referred to in Clause 13.7(a) and Clause 13.7(b) may be zero. Where a notice is given under this Clause 13.7, the Company's obligation to pay the Notified Sum under Clause 13.6 applies only in respect of the sum specified pursuant to this Clause 13.7.

13.8 Not used

13.9 Notwithstanding Clauses 13.6 and 13.7, if the Contractor is subject to an event set out in Clause 16.1(a) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment.

13.10 The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

13.11 In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement, any Contract or any other contract between the Company and the Contractor

- (a) any sum of money is recoverable from or payable by the Contractor (including, without limitation, any costs arising from incompetent Contractor Personnel in accordance with Clause 11, the recovery of any amount over-paid or wrongfully paid or where the Contractor has failed to provide substantiated records of hours worked or evidence of competency of any Contractor Personnel) ; or
- (b) any Losses are reasonably and properly owed to, or incurred by, the Company or any member of the TfL Group

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

- 13.12 All Payment Applications shall be submitted separately for each Contract and all such payment applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order and the Order Price. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.
- 13.13 All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 13.14 No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Contractor from any obligation or liability imposed upon the Contractor by any provision of the Agreement, any Contract or otherwise.

13A Contractor Performance

- 13A.1 At the end of the Company's first full accounting period after the Commencement Date (and for the duration of the Agreement) every four (4) weeks after that date the Company shall assess the Contractor's performance under the Agreement and any Contract in accordance with **Error! Reference source not found..**
- 13A.2 The Company shall have the right to:
- (a) abate the Contractor for failure to meet the key performance indicators stated in **Error! Reference source not found.;** and
 - (b) use the escalation process stated in **Error! Reference source not found.** to rectify any unsatisfactory performance by the Contractor in its performance of the Agreement or any Contract or any failure by the Contractor to meet the performance standards set out in **Error! Reference source not found..**

14 Tax Deduction - The Construction Industry Scheme

- 14.1 The Contractor shall provide the following information to the Company by no later than the date of the first Payment Application:
- (a) If the Contractor is a company:

- (i) Unique Taxpayer Reference (“**UTR**”) number; and
 - (ii) company registration number.
 - (b) If the Contractor is a partnership:
 - (i) partnership's UTR number;
 - (ii) each partner's name; and
 - (iii) each partner's UTR number.
 - (c) If the Contractor is an individual:
 - (i) UTR number; and
 - (ii) National Insurance number.
- 14.2 The Company's obligation to make any payment under this Agreement or any Contract is subject to the provisions and requirements of the Construction Industry Scheme.
- 14.3 The Contractor shall note that in the event payments under the Agreement or any Contract are subject to the statutory deduction of tax in accordance with the Construction Industry Scheme such deduction shall apply to the full value of said payments whether or not such payments may be wholly or partly due to costs other than the cost of labour.

15 Insurances

- 15.1 The insurance requirements under the Agreement and any Contract shall not relieve the Contractor from or limit any of its other obligations and liabilities under the Agreement and any Contract.
- 15.2 The Contractor shall ensure that the following policy or policies shall, at its own cost, be effected with a reputable insurer for the duration of the Agreement and for a period of not less than [twelve (12)] years after expiry or termination of this Agreement or any Contract, whichever is the later. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed).
- (a) employer's liability insurance in respect of the Contractor's liability for any person in the Contractor's employment in the sum of not less than ten million pounds (£10,000,000) per incident or such other minimum level as may from time to time be required by law;
 - (b) public and product liability insurance in respect of the Contractor's liability in the sum of not less than ten million pounds (£10,000,000) per occurrence with financial loss

extension and shall be endorsed to provide that no act or omission on the part of the Contractor shall prejudice the Company's rights under such policy as principal;

- (c) professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the Services but not less than two million pounds (£2,000,000) in the aggregate per annum or such other sum as may be specified in the Order; and
- (d) insurance of all materials acquired by or delivered to the Contractor for the purposes of performing its obligations under this Agreement or any Contract (whether or not the property of the Contractor or of the Company) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the Company and/or the Services are completed.

(together the "**Insurances**").

- 15.3 The Contractor shall provide satisfactory evidence to the Company prior to the Commencement Date and within one (1) month of renewal or when requested by the Company that the Insurances have been effected and are in full force and effect and if so required produce the insurance policies for inspection and receipts for payment of the current premiums.
- 15.4 The Contractor shall notify the Company immediately of its inability to obtain any of the Insurances, the cancellation of any of the Insurances, or its inability to renew any of the Insurances.
- 15.5 If the Contractor fails to maintain the insurance policies as provided in this Clause 15, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Contractor or recover the same as a debt due from the Contractor.
- 15.6 The Contractor must comply with the terms and conditions of the insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Contractor must bear the cost of all exclusions and limitations under the insurances.

16 Termination and Suspension

- 16.1 The Company may terminate the Agreement and/or any Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Contractor if:
 - (a) the Contractor enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall Framework agreement for the supply of track labour

agree to be bound by and assume the obligations of the Contractor under each Contract) or is deemed unable to pay its debts as they fall due in accordance with or within the meaning of Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or any similar or analogous procedure or step is taken in any jurisdiction;

- (b) the Contractor commits a breach of the Agreement or any Contract which cannot be remedied;
- (c) the Contractor commits a breach of the Agreement or any Contract which is capable of remedy and fails to remedy such breach within seven (7) days after receipt of a notice from the Company detailing the breach and requiring the Contractor remedy the breach;
- (d) the Contractor or anyone employed by or acting on behalf of the Contractor (whether or not acting independently of the Contractor when committing any breach) commits a Safety Breach or Prohibited Act;
- (e) the Company becomes entitled to terminate in accordance with the escalation procedure set out in **Error! Reference source not found.**;
- (f) the Contractor fails to provide the Services in full;
- (g) a breach of the Contractor's obligations under Clause 47; or
- (h) The Contractor commits a persistent breach of Clause 24A.2 and/or Clause 24A.3

16.2 Without prejudice to Clause 16.1(d), if anyone employed by the Contractor, acting independently of the Contractor, commits a Safety Breach or Prohibited Act, then the Company may require the Contractor to exclude that individual from the Site with immediate effect and that individual may only be readmitted to the Site at the Company's absolute discretion.

16.3 Without prejudice to Clause 16.1, the Company shall have the right:

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

16.4 In the event that the Company terminates the Agreement and/or any Contract in accordance with this Clause 16 the liability of the Company shall be limited to payment to the Contractor for those

Services provided in accordance with such Agreement and/or Contract(s) up to the date of termination.

- 16.5 In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 16, the Contractor shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law, at the Company's option:
- (a) permit the Company to enter the Contractor's premises and take possession of any equipment, goods or Documentation which are the property of the Company;
 - (b) permit the Company to place an order for the remaining Services with any other person or persons or complete the provision of such Services by its own workmen; and
 - (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Contractor or any of its subcontractors have possession.
- 16.6 Following a termination in accordance with Clause 16.1 (but not a termination in accordance with Clause 16.3) the Contractor shall be liable for:
- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
 - (b) where the Company exercises its rights under Clause 16.5(b) and in doing so incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Agreement and the relevant Contract(s) by the Contractor ("**Excess Costs**"), such Excess Costs.
- 16.7 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 16.3(b), the Contractor shall:
- (a) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension; and
 - (b) not carry out any further work in connection with the provision of the Services until such time as the Company issues a notice lifting the suspension.
- 16.8 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

17 Safety

Health and Safety

- 17.1 The Contractor shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 17.2 The Contractor shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in Schedule 6 ("QUENSH") as amended from time to time; and
 - (b) the Company's drug and alcohol principles as amended from time to time.
- 17.3 Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to the Agreement and each Contract as if the term "LU Premises" means any of the Company's property and as if references to "LU" are references to the Company.
- 17.4 The Company may at its discretion carry out on the Contractor's behalf any testing of the Contractor's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Contractor to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Contractor.

Working on and Adjacent to the Railway

- 17.5 The Contractor Personnel shall conduct themselves in such a manner as not to endanger or interfere in any way with the railway, the Company or any railway operator. The Contractor shall ensure its Contractor Personnel are instructed to strictly observe all rules, regulations or instructions which he may from time to time receive from the Company for the working and protection of the railway or for the protection of persons on or adjacent to the railway or railway operations.
- 17.6 In all cases where the Services have to be carried out on or adjacent to the railway traffic, the Contractor shall require its Contractor Personnel to observe special precautions for the protection of such railway traffic in accordance with the requirements stated or referred to in the Specification.

18 Intellectual Property Rights

18.1 Existing Contracts

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

18.2 *Vesting of Intellectual Property Rights created under this Agreement and/or any Contract*

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

18.3 *Ownership of the Contractor's Intellectual Property Rights*

Without prejudice to Clause 18.2, all Intellectual Property Rights owned by the Contractor or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 18.2 shall remain or be vested in the Contractor, its subcontractors (of any tier) or other third party (as the case may be).

18.4 *Company's Licence to use the Contractor's Intellectual Property Rights*

The Company shall have and the Contractor hereby grants, and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 18.3 for the purposes of:

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

18.5 *Provision of Supporting Documentation and Other Materials*

The Contractor shall:

(a) promptly, and in any event by no later than such date as the Company may notify to the Contractor, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Contractor's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Contractor's or subcontractor's or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 18.2, 18.3 and 18.4 above; and

(b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

18.6 *Company's Rights of Retention*

If the Contractor has not complied with its obligations under Clause 18.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Contractor under this Contract until the Contractor has complied with its obligations under Clause 18.5(a).

18.7 *Not used*

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

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 18.5 and anything in which the Intellectual Property Rights referred to in Clauses 18.2, 18.3 and 18.4 subsist for the purposes of inviting tenders or of procuring services similar to the Services for the carrying out of any activities in connection with the licence under Clause 18.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

18.9 *Contractor's Indemnity against Third Party Intellectual Property Rights Infringement*

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

(b) In the event of a claim of infringement of any Intellectual Property Rights the Contractor shall use all reasonable endeavours to make such alterations or adjustment to the method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim.

18.10 *Ownership of the Company's Intellectual Property Rights*

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

Company's Intellectual Property Rights

18.11 The Contractor is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.

19 **Indemnity**

19.1 The Contractor shall be liable for, and shall indemnify the Company and the TfL Group (including any of its or their employees, servants, agents, subcontractors, directors and officers) on an after-tax basis against, all Losses arising from or in connection with the performance or non-performance of the Contractor under the Agreement and each Contract:

(a) in respect of death or personal injury to any person;

(b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);

(c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and

(d) arising under the Company's contracts with third parties,

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

19.2 The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 19.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

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- 19.3 The Contractor's indemnity under Clause 19.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of [twelve (12)] years after the Order Completion Date or earlier termination of each Contract.
- 19.4 The Company may withhold from any sum due or which may become due to the Contractor any sum due to the Company as a result of the operation of Clause 19.1.
- 19.5 Other than in respect of the Losses (i) described in Clauses 19.1(a) and 19.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.
- 19.6 Not used.

20 Assignment, Novation and Subcontracting

- 20.1 The Contractor shall not assign, novate, transfer or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.
- 20.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Contractor of its obligations to perform the Services under any Contract. The Contractor shall remain responsible for the acts, defaults, omissions and negligence of any subcontractor or assignee and for the employees, directors, agents and representatives of the Contractor, its subcontractors or assignees as if they were the acts, defaults, omissions or negligence of the Contractor.
- 20.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any part thereof) to any person at any time without the consent of the Contractor, provided the Company has given prior written notice to the Contractor.
- 20.4 Within seven (7) days of any written request by the Company to the Contractor, the Contractor shall execute a deed of novation in the form set out in Schedule 7.

21 Licences, Consents, Notices and Approvals

- 21.1 The Company shall obtain all licences, consents, notices and approvals relating to the Works except those stated in the Specification as being the responsibility of the Contractor.
- 21.2 The Contractor shall ensure that the conditions or requirements of licenses and consents and other approvals are complied with by its Contractor Personnel.
- 21.3 Where the Specification states that the Contractor will be required to contribute to the preparation of submissions for licences and consents the Contractor shall afford all necessary Framework agreement for the supply of track labour

assistance to achieve such licences and consents within the timescales stated in the Specification.

22 Confidentiality

- 22.1 The Contractor undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Contractor and shall use such information only for the purpose of the performance of his obligations under the Agreement and each Contract.
- 22.2 On the Company's request, the Contractor shall, so far as is reasonably possible:
- 22.2.1 transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Contractor;
 - 22.2.2 return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - 22.2.3 destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 22.3 The Contractor shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 22.1 and 22.2 as if they were the Contractor, and the Contractor shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 22.4 The Contractor shall notify the Company promptly if the Contractor becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 22.5 The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, publish any material relating to the Company, the Company's Representative, the Agreement, any Contract or the Works without the prior written consent of the Company.
- 22.6 The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, make any press, television, radio or other media announcement or give any interview in connection with the Agreement, any Contract or the Works without the prior written consent of the Company to such announcement or interview and its content.

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22.7 The provisions of Clauses 22.1 to 22.6 shall not apply:

22.7.1 to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or

22.7.2 to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

22.8 The Contractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 22 by the Contractor and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 22.

23 Records and Audit

23.1 The Contractor shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Agreement and each Contract and all transactions related to the Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) details of the work or services performed;

- (l) details of the hours worked;
- (m) details of the costs incurred;
- (n) detailed inspection records; and
- (o) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against best and final offer pricing and project plans, in each case which have not already been provided to the Company.

23.2 The Contractor agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Contractor shall retain his records in an orderly and logical fashion.

23.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in this Clause 23 at any time during the period referred to in Clause 23.2.

23.4 The Contractor shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Contractor's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's obligations under each Contract, wherever situated and whether the Contractor's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Contractor's performance of each Contract.

23.5 The Contractor shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy each Contract's requirements.

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- 23.6 The Contractor shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Contractor shall provide the Company with a copy of any or all of the records listed in this Clause 23 free of charge within thirty (30) days of the Company's request for the same.
- 23.7 The Contractor shall and shall ensure that any sub-contractor or sub-Contractor shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

24 Corruption, Gifts and Payments of Commission

- 24.1 The Contractor and the Contractor Personnel shall not, and the Contractor shall procure that its subcontractors and agents do not, commit any Prohibited Act or cause the Company to commit any equivalent act.
- 24.2 The Contractor and the Contractor Personnel shall not, and the Contractor shall procure that its subcontractors and agents do not, enter into any business arrangements with the employees, officers or agents of the Company other than as a representative of the Company without the Company's prior written approval.
- 24.3 The Company has the right to audit any and all records necessary to confirm compliance with Clause 24.1 and 24.2 at any time during the performance of the Agreement and any Contract and during the period referred to in Clause 23.2.

24A Criminal Record Declarations

- 24A.1 For the purposes of this Clause 24A:

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

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

- 24A.2 The Contractor shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Contractor shall confirm to the Company in writing on request or in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Contractor shall procure that a Relevant Individual notifies the Contractor immediately if he commits a

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

- 24A.3 The Contractor shall not engage or allow to act on behalf of the Contractor or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 24A.4 The Company shall have the right in accordance with the audit rights set out in Clause 23 to audit and inspect the records of the Contractor and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 31A at any time during performance of the Agreement and any Contract.
- 24A.5 If the Contractor fails to comply with the requirements under Clause 24A.2 and/or 31A.3 the Company may, without prejudice to its rights under Clause 16.2, serve notice on the Contractor requiring the Contractor to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Agreement and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 31A.2) within seven (7) days of receipt of the notice the Contractor confirms to the Company that he has procured all of the relevant Declarations required under Clause 31A.2.
- 24A.6 A persistent breach of Clause 24A.2 and/or Clause 24A.3 by the Contractor shall entitle the Company to terminate the Agreement and/or any Contract in whole or in part with immediate effect in accordance with Clause 16.1(h).
- 24A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Contractor shall remove or procure the removal (as the case may be) of such Relevant Individual from the Agreement and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 24A.8 Nothing in this Clause 24A shall in any way waive, limit or amend any obligation of the Contractor to the Company arising under the Agreement or any Contract and the Contractor's responsibilities in respect of performance of the Services remain in full force and effect and the Contractor cannot claim any extra costs or time as a result of any actions under this Clause 24A.

25 Disputes and Adjudication

- 25.1 The Parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Contractor's Representative and Company's Representative (together the "**Nominated Representatives**") which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one Party to the other of a matter in dispute.

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- 25.2 If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 25.1 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one Party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts and Procurement Manager and the Contractor's Managing Director] or in the absence or unavailability of these personnel, persons of similar status deputed to resolve disputes on behalf of their respective companies.
- 25.3 If the Dispute has not been resolved within twenty-one (21) days of it being referred to *the Company's Contracts and Procurement Manager and the Contractor's Managing Director* or their deputies in accordance with Clause 25.2 either Party may refer the matter for resolution in accordance with the provisions of Clause 25.6.
- 25.4 Any joint decision which resolves the Dispute shall be recorded in writing and signed on behalf of each Party by their respective representatives and shall be final and binding on the Parties. Both Parties shall keep records of all such resolutions.
- 25.5 Clauses 25.1 to 25.4 are subject to either party's rights (if any) under the Housing Grants, Construction and Regeneration Act 1996 to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 19, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.
- 25.6 If a Dispute is not resolved in accordance with Clauses 25.1 to 25.4 either Party may serve notice referring any Dispute arising out of, under or in connection with the Agreement or any Contract to adjudication to be settled in accordance with the Adjudication Rules.

26 Contracts (Rights of Third Parties) Act 1999

- 26.1 Subject to any Replacement Employer's rights under Clause 30, no person except any member of the TfL Group may enforce the Agreement and any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 26.2 Notwithstanding those rights referred to in Clause 26.1, the Company and the Contractor may agree to vary or rescind the Agreement and any Contract without the consent of any third party.

27 Costs

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

28 Bonds, Warranties and Guarantees

- 28.1 Where required by the Company, the Contractor shall provide at its own expense (including any stamp or other duty payable thereon) the following within seven (7) days of the Order Commencement Date:
- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
 - (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Contractor (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.
- 28.2 The Contractor shall ensure that any bond required under Clause 28.1 provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Order Price (or such other amount as may be stated in the Order) at all times until Completion or earlier expiry of the relevant Contract.
- 28.3 If at any time the existing bond and/or parent company guarantee cease to meet the requirements of Clauses 28.1 and 28.2 then the Contractor shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee that meet the requirements within seven (7) days. This Clause 28 shall not reduce or amend the Contractor's obligation to perform the Services in accordance with the Agreement and any Contract.
- 28.4 If requested by the Company, the Contractor shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 28.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.
- 28.5 If any performance bond and/or parent company guarantee is not procured by the Contractor and delivered to the Company in accordance with Clause 28.1 or 28.3, one quarter of the aggregate of the Order Price(s) for the relevant Contract(s) shall be retained in assessments of the amount due and shall not be payable to the Contractor until such documents have been delivered.
- 28.6 If required by the Company, the Contractor shall procure that the terms of each subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor to enter into:
- (a) a collateral warranty in the form annexed in Schedule 9 in favour of the Company and, if requested by the Company, the Contractor shall require the subcontractor to provide an Framework agreement for the supply of track labour

accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company; and

- (b) a parent company guarantee in a form to be provided by the Company from the ultimate holding company of the subcontractor in respect of the subcontractor's obligations under any collateral warranty referred to under Clause 28.

- 28.7 If any warranty (including any accompanying parent company guarantee) required under Clause 28.6 is not delivered to the Company in accordance with Clause 28.6, one quarter of the aggregate of the Order Price(s) relative to the Services supplied by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

29 Company's and Contractor's Representative

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

30 Contractor Personnel

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- 30.1 For the purposes of this Clause 30:

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

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

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

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

"Subsequent Relevant Employee" means a person employed or engaged by the Contractor or relevant subcontractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);

"Transfer Regulations" means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and

"Transferring Employees" means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Contractor under the Transfer Regulations

30.2 The Contractor complies and procures that his subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon expiry or earlier termination of the Agreement.

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

(a) the names of employees (of the Contractor or its subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;

(b) the method of organisation of the employees (of the Contractor or its subcontractors) engaged in providing Services and documentary evidence relating to such organisation;

(c) the proposals for informing and consulting with affected employees;

(d) details of collective agreements and union recognition agreements; and

(e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Company upon request of any communication with

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any potential or intended new consultant or the Contractor's employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.

30.4 The Contractor will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 30 may be addressed. The Contractor will if required by the Company warrant that any information provided under Clause 30 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

30.5 The Contractor will not and will procure that its subcontractors will not in the six (6) months prior to the expiry of the Term or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's written consent:

(a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in providing the Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Contractor or the relevant subcontractor which is not related or confined to the employees engaged in providing the Services or the expiry of the Term or termination of the Agreement, or

(b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in providing the Services, except where such increases or changes would have arisen in the ordinary course of the Contractor's or the relevant subcontractor's business and are not related to the expiry or termination of the Agreement (either because they are applied to all of the Contractor's or the relevant subcontractor's employees, whether or not engaged in providing the Services or otherwise) or are the result of a bona fide business reorganisation of the Contractor or the relevant subcontractor which is not related or confined to the employees engaged in providing the Services or relates to the expiry or termination of the Agreement.

30.6 The Contractor shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Contractor, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Contractor, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Services.

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30.7 The Contractor shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

(a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and

(b) any claim by any former or existing employee of the Contractor or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

(c) In this Clause 30.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Contractor shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

30.8 The provisions of this Clause 30 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Contractor of any provision of this Clause 30 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Key Personnel

30.9 The Contractor shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Contractor shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.

30.10 The Contractor agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) 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 Contractor's employment.

- 30.11 The Contractor 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 Contractor shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) 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) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Contractor shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.
- 30.12 A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Contractor shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Contractor if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Contractor shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 30.13 The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Contractor, such consent not to be unreasonably withheld or delayed.

Exclusion of Contractor Personnel

- 30.14 If anyone employed by the Contractor, acting independently of the Contractor, commits a Safety Breach or Prohibited Act, then the Company may require the Contractor to exclude that individual from the Site with immediate effect and that individual may only be readmitted to the Site at the Company's absolute discretion.

31 London Living Wage

- 31.1 The Contractor shall, to the extent the Agreement and/or any Contract is for the provision of Services to be undertaken within Greater London or on the Underground Network:
- (a) ensure that none of its employees engaged in the provision of Services under the Agreement and any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;

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- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;
- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 31 and the provisions of this Clause 31 are included in any subcontract (of any tier).

31.2 The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 31.

32 Responsible Procurement

32.1 The Contractor and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries to do all things reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities.

32.2 The Contractor 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 Company to enable the Company to comply with the Responsible Procurement Policy..

32.3 The Contractor acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Contractor shall and shall procure that all of its subcontractors shall comply with such the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

32.4 The Contractor 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).

32.5 The Contractor shall not be entitled to any addition to the Price 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).

- 32.6 The Contractor shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 32 and the provisions of this Clause 32 are included in any subcontract (of any tier).
- 32.7 The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 32.

33 Poaching of Staff

For a period of three (3) years after the Commencement Date the Contractor and the Company shall not directly or indirectly (whether on its own account or for any other person, firm, company or organisation) solicit or endeavour to solicit or entice away from or endeavour to entice away from the other Party any employee employed by that other Party as at the Commencement Date or thereafter, but excluding any recruitment pursuant to a public advertisement.

34 Freedom of Information

- (a) For the purposes of this Clause 34:

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

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

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

- (b) The Contractor acknowledges that the Company:
- (i) is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
 - (ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- (c) Without prejudice to the generality of Clause 34(b) the Contractor shall and shall procure that its subcontractors (if any) shall:

- (i) transfer to the Company's Representative (or such other person as may be notified by the Company to the Contractor) each Information Request relevant to the Agreement or any Contract, the supply of Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (ii) in relation to Information held by the Contractor on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.
- (iii) The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

35 Transport for London Group

35.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the employment of the Contractor under Clauses 16.1 to 16.2 or at common law, the Company may terminate the Contractor's employment at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 35.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Contractor. The Parties agree that the provisions of this Clause 35.1 shall apply as from the date of receipt by the Contractor of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clauses 16.1 to 16.2 and this Clause 35.1 or the Cessation Plan, the provisions of this Clause 35.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Contractor of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the

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absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 35.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company, of the Cessation Plan the Parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Contractor's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Contractor for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Contractor's employment in accordance with this Clause 35.1.

35.2 Crime and Disorder Act 1998

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

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

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

35.3 **The Company's business**

The Contractor acknowledges that it:

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

35.4 **Best value**

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

35.5 **Data Protection**

- (a) The Contractor shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Contractor shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.
- (b) When the Contractor receives a written request from the Company for information about, or a copy of, Company Personal Data, the Contractor shall supply such information or data to the Company within such time and in such a form as is specified in the request

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(such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.

- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Contractor shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
 - (i) only process Company Personal Data in accordance with the Company's instructions to the Contractor; and
 - (ii) comply with the same data protection requirements that the Contractor is required to comply with under the Agreement and any Contract.

35.6 Conflict of Interest

- (a) The Contractor acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Contractor shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Agreement and any Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement and any Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be a material breach of this Agreement and any Contract.

35.7 Data Transparency

- 35.7.1 The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 22 and Clause 34, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.
- 35.7.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Contractor

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regarding any redactions to the Contract Information to be published pursuant to Clause 35.7.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

35.8 Equality and Diversity

35.8.1 Without limiting the generality of any other provision of the Agreement and any Contract, the Contractor:

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

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

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

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

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

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

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

35.9 Work Related Road Risk

35.9.1 For the purposes of Clauses 35.9.2 to 35.9.9 (inclusive) of this Agreement, the following expressions shall have the following meanings:

| | |
|---|--|
| “Bronze Accreditation” | the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk |
| “Car-derived Vans” | a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment; |
| “Collision Report” | a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities; |
| “Delivery and Servicing Vehicle” | a Lorry, a Van or a Car-derived Van; |
| “Driver” | any employee of the Contractor (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Contractor while delivering the Services; |
| “DVLA” | Driver and Vehicle Licensing Agency; |
| “FORS” | the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance; |
| “FORS Standard” | the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk |
| “Gold Accreditation” | the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk |
| “Lorry” | a vehicle with an MAM exceeding 3,500 kilograms; |
| “MAM” | the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road; |
| “Side Guards” | guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986; |
| “Silver Accreditation” | the intermediate level of accreditation within the Framework agreement for the supply of track labour |

FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Van”

a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

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

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

Safety Equipment on Vehicles

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

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

Driver Licence Checks

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35.9.4 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services the Contractor shall ensure that:

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

Driver Training

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

Collision Reporting

35.9.6 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services, the Contractor shall:

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

Self Certification of Compliance

- 35.9.7 Where the Contractor operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Contractor shall make a written report to the Company detailing its compliance with Clauses 35.9.3, 35.9.4 and 35.9.5 of this Agreement (the "WRRR Self-certification Report") and any Contract. The Contractor shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Contractor Regarding Subcontractors

- 35.9.8 The Contractor shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to provide the Services shall:
- (a) comply with Clause 35.9.2; and
 - (b) where its subcontractors operates the following vehicles to provide the Services shall comply with the corresponding provisions of this Agreement:
 - (i) For Lorries – Clauses 35.9.3, 35.9.4, 35.9.5 and 35.9.6; and
 - (ii) For Vans – Clauses 35.9.4, 35.9.5, and 35.9.6,

as if those sub-contractors were a party to this Agreement.

Failure to Comply with Work Related Road Risk Obligations

- 35.9.9 Without limiting the effect of any other clause of this Agreement or any Contract relating to termination, if the Contractor fails to comply with any of Clauses 35.9.2, 35.9.3, 35.9.4, 35.9.5, 35.9.6, 35.9.7 and/or 35.9.8:
- (a) the Contractor has committed a material breach of this Agreement and any Contract; and
 - (b) the Company may refuse the Contractor, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

36 Not used

37 Entire Agreement

- 37.1 The Agreement and each Contract sets out the entire agreement between the Parties and it is acknowledged that neither Party has entered into the Agreement or any Contract in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in the Agreement or any Contract.

- 37.2 Neither Party shall have any remedy against the other Party in respect of any misrepresentation or untrue statement made or warranty given by the other Party which is not set out in the Agreement or any Contract save that this Clause 37 shall not exclude liability for fraudulent misrepresentation.

38 Governing Law and Jurisdiction

- 38.1 This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 38.2 The Company and the Contractor submit, subject to the provisions of the Agreement and each Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any asset of the Contractor may be situated.

39 Severance

- 39.1 If any provision of the Agreement or any Contract is, or becomes, invalid, illegal or unenforceable in whole or in part then the validity, legality and enforceability of all other provisions and the remainder of the affected provisions of the Agreement or any Contract shall not be affected or impaired, provided that the operation of this Clause 39 would not negate the commercial interest and purpose of the parties under the Agreement or any Contract.
- 39.2 Where a tribunal determines that any provision of the Agreement or any Contract is in any way unenforceable the relevant provision shall be amended or modified to the extent necessary to give the provision a valid legal and enforceable provision which is as similar as possible to that unenforceable provision and is reasonably consistent with the purpose and intent of the Agreement or Contract.

40 Surviving Provisions

Clauses 13.11 (Set-Off), 13.13 (Sums Payable by Contractor) 15 (Insurances), 16 (Termination and Suspension) 18 (Intellectual Property Rights), 19 (Indemnity), 20.2 (Contractor Liability), 22 (Confidentiality), 23 (Records and Audit), 24 (Corruption, Gifts and Payment of Commission), 25 (Disputes and Adjudication), 26 (Contracts (Rights of Third Parties) Act 1999, 30 (Contractor Personnel), 32 (Responsible Procurement), 34 (Freedom of Information, 35.1 (Declaration of Ineffectiveness), 35.5 (Data Protection), 35.7 (Data Transparency), 37 (Entire Agreement), 38 (Governing Law and Jurisdiction), 39 (Severance), 40 (Surviving Provisions), 41 (No Waiver), 43 (Agency Workers Regulations), 44 (Notices and Service of Process), 46 (Partnerships and Joint Ventures) and 49 (Free Issue Materials) of the Agreement shall survive any termination of the Agreement and any Contract and continue in full force and effect, along with any other

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Clauses or Schedules of this Agreement and any Contract necessary to give effect to them. In addition, any other provision of this Agreement and any Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

41 No Waiver

- 41.1 No failure or delay on the part of either party to exercise any right or remedy under the Agreement or any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Agreement and any Contract are cumulative and are not exclusive of any rights or remedies provided by law.

42 Other Activities

- 42.1 The Company accepts that the Contractor may provide services to third parties during the currency of the Agreement or any Contract. The Contractor agrees that it will not put itself in a position where its other assignments conflict with the provision of the Services and its obligations under the Agreement and any Contract.

43 Agency Workers Regulations

- 43.1 The Contractor shall and shall ensure that any subcontractor or intermediary shall at all times comply with their obligations under the AWR, including but not limited to providing any Qualifying Supplied Worker with the Relevant Terms and Conditions in accordance with regulation 5 of the AWR, and warrants that it has taken all necessary steps to comply with the requirements of the AWR.
- 43.2 The Contractor acknowledges that it has received from the Company all information held by the Company necessary to enable the Contractor to comply with and ensure compliance with the above undertaking.
- 43.3 The Contractor shall indemnify the Company for any liability, cost, claim, award or any other expense incurred by it arising out of a breach or alleged breach by the Contractor, its subcontractors or any other intermediaries, of the AWR.
- 43.4 In the event that either Party:
- (a) receives an allegation by a Qualifying Supplied Worker that there has been a breach of the AWR in relation to the supply of that person to the Company by the Contractor; or
 - (b) receives a request for information from a Qualifying Supplied Worker,

it shall provide a copy of that allegation and/or request for information to the other Party within seven (7) days of receipt. The parties shall co-operate with each other in relation to responding to that allegation and/or request for information in a timely fashion and in accordance with any timescale prescribed by the AWR, which shall include supplying any information which may be reasonably requested by the other Party, and complying with any reasonable requests in relation to the contents of any response.

44 Notices and Service of Process

44.1 Subject to Clause 44.3, any notice, communication or document given under, or in connection with, the Agreement and each Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other Party's representatives in each case to the address stated in Clause 44.2. The notice, communication or document will be effective as follows:

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

44.2 The address, fax number and, where applicable, email address of the Company and the Contractor are as follows (or such other address, facsimile number or, where applicable, email address which may be subsequently notified by the relevant Party):

Company: [Address]

Attn:

Facsimile:

[Email:]

Contractor: [Address]

Attn:

Facsimile:

[Email:]

If a Party's details change, it must notify the other Party promptly in writing of any such changes.

44.3 Where stated in the Order, notices, communications or other documents may be given by email to the other Party's email address. The notice, communication or document will be effective five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time Framework agreement for the supply of track labour

when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in, or subsequently changed in accordance with, Clause 44.2 are used.

- 44.4 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

45 Counterparts

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

46 Partnerships and Joint Ventures

- 46.1 If the Contractor is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Agreement and any Contract are joint and several. The Agreement and any Contract and the liabilities of the partners under the Agreement and any Contract shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under the Agreement and any Contract.
- 46.2 If the Contractor comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Agreement and any Contract are joint and several.
- 46.3 Nothing in the Agreement or any Contract shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Agreement or any Contract, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

47 Change of Control

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

48 Interest

- 48.1 If either party fails to pay to the other any amount payable in connection with the Agreement or any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 48.1 shall be immediately payable by the paying party on demand.

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

49 Free Issue Materials

- 49.1 In the event of the Company supplying Free Issue Materials to the Contractor under any Contract the cost of which has been included in calculating the Order Price, the Order Price shall be reduced by the amount included in the Order Price for the materials which have been replaced by such Free Issue Materials.
- 49.2 Any Free Issue Materials supplied by the Company to the Contractor shall remain the property of the Company and the Contractor shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Contractor or with any materials supplied to it by third parties.
- 49.3 The Contractor shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Contractor's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Contractor shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Contractor's possession or in the possession of any subcontractor of the Contractor except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

Schedule 1

Specification

Lot 1 Principal Core Labour Frameworks

1. DESCRIPTION OF THE WORKS

- 1.1 As and when required, the Contractor shall provide principal core labour resource to supplement the Company's own maintenance teams to undertake track maintenance, repair and renewal works against a schedule of rates.
- 1.2 The Contractor shall provide relevant labour resource in accordance with the specified track competencies as defined in Appendix D to undertake the track maintenance, repair and renewal works defined in the work package scope of works.
- 1.3 The Contractor's labour shall be required to work as either a complete or part gang delivering a track maintenance, repair and renewal works. The Contractor may where applicable, be required to provide site supervision and to hand back the track fit for traffic. The Contractor shall provide the Contractor's Personnel with transport, Personal Protection Equipment and hand tools (including track trolleys) sufficient to undertake the track maintenance, repair and renewal works. The Company shall provide larger tools, plant and equipment where necessary.
- 1.3 Each party shall be responsible for the activities set out in Appendix 1 of this specification and entitled "Additional works information for Lot 1 Principal Core Labour Packages".

2. SCOPE OF SERVICES

- 2.1 The works shall consist of activities concerned with the maintenance, rectification and renewal of track, track drainage and track bed formation.

The works shall include but not be limited to:

| | |
|----|---|
| 1 | Rail maintenance |
| 2 | Rail replacement |
| 3 | Spot sleepers |
| 4 | Reconditioning works |
| 5 | Fettling & packing |
| 6 | Rail stressing |
| 7 | Conductor rail maintenance & replacement |
| 8 | Track surveys including CCTV pipe surveys to check the condition of existing drainage systems |
| 9 | Topological surveys |
| 10 | Points and crossings maintenance |
| 11 | Rectification of wet beds |
| 12 | Replacement of geotextile membrane |
| 13 | Removal of scrap materials |
| 14 | Track drainage and treatments to deal with wet track |
| 15 | Compacting new ballast, checking and resetting the track line, level and cant. |

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- 2.3 In providing track labour, the Contractor shall undertake all tasks carried out in relation to performing the relevant safety critical roles necessary to deliver the track maintenance, repair and renewal works.. The Contractor shall attend the Company's pre-planning and possession briefings, submit site diaries (or upload electronically where electronic sites diaries are used), incident and performance report to TfL, and possession plans and arrangements review when required by TfL.
- 2.4 Where the Contractor's Personnel transfer between night shift and day shift in Order to fulfil the requirements of the track maintenance, repair and renewal works., any cost incurred to ensure even and regular shift payment to the Contractors Personnel shall be at the expense of the Contractor and the Company will only pay for shifts worked.
- 2.5 Timings and Record of Attendance
- All Contractor's Personnel shall sign a record of attendance at a time and place specified by the TfL, before starting work on any shift.
3. Location of Packaged Works
- The Company may order and request resources to work on all areas of TfL rail infrastructure, including stations, depots and premises. This may also include areas where Network Rail rules apply and any resources supplied shall be trained and assessed in the relevant Network Rail disciplines.
4. Hours of Work and Access
- 3.1 Access will be obtained in accordance with the arrangements set out in Schedule 10 [Access Arrangements]. Compliance with these arrangements is mandatory.
- 3.2 In response to the Company's requirement for additional track labour resource the Contractor shall provide a list of Contractor's Personnel in accordance with the timescales set out within the enquiry and showing the named personnel and their respective competencies for each shift of the requirement.
- 3.3 The Contractor shall provide the full compliment of the listed personnel to the allotted shift.
- 3.4 The Contractor shall provide the Company with details of any failed, delayed or cancelled access shifts.
- 3.5 The Contractor shall provide the Company with details of actual attendance on all shifts highlighting instances where the allocated labour failed to attend or where the called off gang did not work the shift causing it to be aborted or foreshortened.

APPENDIX 1

Additional Works Information for Lot 1 Principal Core Labour Frameworks

| Activity | TfL | Contractor |
|--|--|--|
| Design | | |
| Surveys | TfL will carry out asbestos and power surveys. | |
| Core testing | TfL will undertake any core testing as required and the results will be made available to the contractor. | |
| Assurance | Relevant compliance submissions will be undertaken by TfL. | |
| Licences / Permits | The following licenses will be made available by TfL; Storage License, Hot Works, MOM, OAN, Hydrant Permit, BB224, Fire Isolations | |
| Permits to Dig | TfL will arrange for the CAT scanning of the site, and will in turn issue a permit to dig for the site. | |
| Signals liaison / programming | TfL will arrange all signals resources for these works. | |
| Welding liaison / programming | TfL will be responsible for the approval of proposed welding contractors | All weld records and inspection sheets are to be submitted to the TfL Operational Manager at the end of the shift they were taken. |
| Define / arrange storage | TfL shall define and arrange all storage for this scheme. | The contractor will be responsible for the management of all storage sites in accordance with the storage licences. |
| Resources | | |
| Gang Composition | TfL reserve the right to dictate the skill sets required to form the gang and to instruct the removal of individuals from the works if their competence does not meet agreed levels. A skills and competency matrix (template provided) must be completed for Lot 1 bid response, Any changes to the gang composition must be “like for like” on the skills and competency matrix and with the agreement of TfL. The contractor may not change more than one (1) member of the PWT-EH/Handback or Site Engineering capability on a nightly basis, without prior agreement of TfL, otherwise TfL reserves the right to abort the shift, with no costs incurred. The contractor may not change more than two (2) members of the gang on a nightly basis without prior agreement of TfL; otherwise TfL reserves the right to abort the shift, with no costs incurred. | |
| Transfer of Operatives | Without the employers absolute agreement the Contractor should not | |
| Framework agreement for the supply of track labour | | |

| | | |
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| without agreement. | transfer any Site Person in Charge PWT (any grade), T002/3 Handbacks or Site Engineers working elsewhere within the TfL Group to fulfil the requirements of new resource booking through the framework. | |
| Site Person in Charge with Protection competences | TfL reserves the right to interview contractors Site Persons in Charge PWT EH etc. | The Contractor is required to provide competent PWT-EH etc for this work. They will provide copies of the relevant certificates to TfL for approval. The Contractor may be required to provide a CV for the PWT-EH etc. |
| Handback | TfL will be responsible for the approval of proposed Handbacks. TfL reserves the right to interview contractors Handbacks. | The contractor is required to provide competent staff to undertake handback of the site. The names, licenses and portfolios shall be forwarded to TfL for acceptance. The Contractor may be required provide a CV for the Handback. |
| Work site protection; Protecting Workers on the Track (PWT – EH) etc | | The contractor is to provide adequate protection for all work by supplying Site Person in Charge with protection licences. |
| Production | | |
| Method Statements | TfL to provide generic method statements and safety cases. | The contractor shall be responsible for the production of a standardised method statement for the works. It will be approved by TfL before work will be allowed to commence. The Contractor is to include a rail diagram and rail installation methodology on a shift by shift basis. |
| Nightly Programme | Detailed nightly programmes, showing hold points and shift activities are to be provided and incorporated into daily briefing packs. Mitigation for any deviations will be discussed, agreed prior to shift commencement. | |
| Control of Productivity | TfL reserves the right to stop works where there is risk of overrunning. Decisions will be made based upon the nightly programme as provided by the contractor. TfL will not incur any commercial penalties as a result. | |
| Interim As Built diagrams etc | TfL is to provide the as built data of each shift, on a daily basis. | The Contractor is to provide Handback forms at the end of each shift, on a daily basis. Progress on as built drawings shall make up part of the end of shift document set. |
| Grease / | | The Contractor is responsible for |

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| | | |
|----------------------------|---|--|
| Contamination of Rail Head | | managing the contamination of the rail head in accordance with the existing TFL railhead construction mitigation procedure. |
| Safety Tours | | Safety Tours will take place a minimum of once every four (4) weeks, of which a report will be produced highlighting any recommendations/improvement actions along with agreed timescales for implication. A programme of Safety Tours will be provided to TFL. TFL will advise when they wish to attend Safety Tours. |
| Briefing Packs | TFL to sign off before issue to construction staff for briefing. | |
| Materials Supply (General) | All materials except where otherwise required in the Package Specific Requirements will be supplied by TFL and 'free issued' to the contractor. | The contractor will be responsible for arranging off site storage and management of the materials to site. The contractor is to provide a full and comprehensive list of all materials required before works commence either by agreeing to the material quantities supplied by TFL, or by adding to our list. |
| Timber Products | | Drilling and counter boring of all pitblocks / sleepers must be carried out in accordance with the standards. Materials showing signs of splitting or degradation must not be installed. |
| Recyclable Materials | | The Contractor must return recyclable materials such as NTF390 Baseplates, and temporary sleepers etc |
| Scrap Rail | | The contractor will secure all line side scrap rail securely |
| Concrete | Where relevant the standard concrete material issued by TFL will be BBTFL1515 (Tecroc) Concrete or equivalent authorised product. The preferred method of pouring concrete is two pours. The contractors compliant bid should allow for this. | |
| GRP Panels | Where relevant TFL will supply GRP panels free of charge. TFL will have the panels cut to the dimensions provided by the Contractor and will have the panels available for collection from a named depot. | The Contractor will provide a survey of panel width requirements at least one week before the panels are required. |
| Plant Supply | All plant will be supplied by TFL except where required in the | The contractor will be responsible for all plant on site. The Contractor |

| | | |
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| | Specific Package Specification. | will ensure that all plant is returned to stores, damage free, at the end of each shift. |
| Vehicles | | The contractor will supply all vehicles required to undertake their work. And shall comply with all Work Related Road Risk (WRRR)/ FORS requirements. |
| Welfare | | The contractor will be responsible for supplying all welfare in accordance with HSE regulations for their staff. |
| Site Waste | | The Contractor may remove waste to a specified TfL depot [Lillie Bridge, Edgware, Finchley Central, Ealing Common, Stratford Depot] , or to a Waste Disposal Facility (subject to TfL Approval). Where a Waste Disposal Facility is used, Transfer notes must be supplied to TfL. The Contractor is to submit a SWMP for approval by TfL. |
| Cleaning | | The Contractor is to leave the platforms, access and egress areas cleaned and ready for passenger use at the end of each shift. |
| Access | | |
| Define access routes liaise with stakeholders | TfL will liaise with the stakeholders and arrange access to sites through agreed routes and include lift and escalator licences as required. | The contractor will liaise with TfL to agree the access and will provide assurance that the agreed routes and access will be adhered to. |
| Station Damage | | A nightly inspection should be made by the contractor at the commencement, during and upon conclusion of each shift, if any damages have occurred, a TfL representative and the Station Supervisor must be notified. The contractor is to record any damage regardless of fault. |
| Working Week | TfL aim to provide 5 out of 7 shifts in any given working week (Sun-Sat), subject to available access, and the availability of Support Services. TfL will be responsible for advising the contractor of any cancelled access. | The contractor is to undertake whatever steps are required to mitigate the effects of any cancelled access. All works are to be planned in accordance with the European Working Time Directive. |
| Night Tube | TfL will introduce all night running from September 2015 on Friday and Saturdays on the BCV and JNP line groups. This will also affect Sub Surface Lines where they touch the BCV and JNP lines. | Contracts should take notice of all night running when developing their Access Plans or assisting TfL with the same. Opportunities for weekend possessions will be severely curtailed especially in the |

| | | |
|--------------------------------------|--|---|
| | | first quarter of Night Tube. |
| Delays to handback / over run risk | TFL reserves the right to stop works where there is risk of overrunning. Decisions will be made based upon the hold point plan as provided by the contractor. TFL will not incur any commercial penalties as a result. | |
| Management | | |
| Supervision | TFL will have a representative monitoring works | The Contractor will be responsible for supervising works on site, including management of performance, safety, quality and to ensure safe systems of work are in place. |
| Site Completion | | |
| Return of surplus materials to stock | | Any materials that are surplus to requirements either during or on completion of the works are returned to the stores specified by TFL so that they may be added to stock for re-issue. |

Part 2 - General Preliminary Requirements

1. Status of this Section

- 1.1. These General Preliminary Requirements are part of the Specification and shall be read and construed jointly with the Specific Services Requirements contained in Schedule 1, Part 1 of the Agreement. In the event of any conflict between the conditions contained in these General Preliminary Requirements and the Specific Services Requirements contained in Schedule 1, Part 1, the latter will prevail.

2. Training and Certification

- 2.1. As a minimum, all Contractor Personnel supplied by the Contractor must be in possession of a current entry permit and induction passport to enable access to the Site.
- 2.2. Other training/certification may also be required for certain activities and/or where the Works are undertaken on or adjacent to the Underground Network.
- 2.3. For further information, the Contractor is referred to the Company's Standard Series No. Aa009, "Safety On The Track Certification And Licences".
- 2.4. The Contractor is responsible for all costs relating to training its Contractor Personnel.
- 2.5. All Contractor Personnel will be required to man-handle Equipment and Materials and must be trained in manual handling.
- 2.6. Where the Services require that Contractor Personnel are to use specific tools or mechanical equipment requiring trained Contractor Personnel it is the responsibility of the Contractor to ensure that such Contractor Personnel are appropriately trained and accredited. All accreditation must be current.
- 2.7. The Contractor shall be responsible for ensuring the currency and suitability of its Contractor Personnel's certification for the duration of the Agreement and any Contract.
- 2.8. Contractor Personnel must carry their passes, permits and certification at all times while on Site and must produce them on request by any member of the Company's staff or other authorised personnel.

3. Competency Management System

- 3.1. The Contractor shall operate and maintain a competency management system meeting the requirements set out in the Company's Competency Management System Procedure included under Appendix G to this Schedule 1.
- 3.2. The Company reserves the right to audit the Contractor against the Company's Competency Management System Procedure included under Appendix G to this Schedule 1 having given reasonable prior notification.

4. Conduct

- 4.1. The Site is located on or in the vicinity of the Underground Network. The Contractor shall note that access to the Site for the Company personnel must be afforded at all times. The operation of railway traffic including public ways and adjoining properties must not be hindered in any way whatsoever. Insofar as and to the extent that it is within the jurisdiction of the Contractor to control such matters, the Contractor must minimise disruption and interference to the operations in these areas.
- 4.2. The Contractor is required to make its own assessment of any vehicular traffic restrictions affecting its access to the Site. The Contractor must park considerately and ensure that its vehicles do not obstruct the use by the public or the Company's staff.
- 4.3. The Contractor shall instruct its Contractor Personnel to:
 - (a) keep the Site tidy and free of personal litter at all times;
 - (b) keep the welfare provision in a clean and sanitary condition;
 - (c) comply with the Company's PPE Policy;
 - (d) comply with the Company's Smoking, Drugs and Alcohol Policy;
 - (e) restrict themselves to only those areas made available to them by the Company; and
 - (f) not interfere with any railway plant or track except as required by the Works.

5. Personal Protective Equipment

- 5.1. The Contractor is referred to the Company's PPE Policy included in Appendix A to this Schedule 1. PPE will not be free issue as stated in that policy. The Contractor will be responsible for the cost of all its Contractor Personnel's PPE.
- 5.2. The Contractor is referred to the Company's hand protection directive dated 10 July 2009 included in Appendix A to this Schedule 1.

- 5.3. The Contractor is to note that certain items of PPE will be dictated by the nature of the Works to be undertaken and the Contractor must consider this when evaluating the Specific Services Requirements set out in Schedule 1 Part 1.
- 5.4. Notwithstanding the provisions of Clause 4.1(d)(vi) of the Conditions of Contract, in the event that a Contractor Personnel attends the Site incorrectly equipped, the Company may, at its discretion, make items of PPE available to that Contractor Personnel on a daily hire basis subject to availability and the following conditions:
- (g) The hire fee will be £5 per shift or part shift for each item of Equipment or such other fee as may be subsequently notified to the Contractor;
 - (h) The fee will be debited to the Contractor's account at the next available assessment;
 - (i) All items must be signed out and signed back at the start and end of each shift by the Contractor Personnel in person;
 - (j) Items not signed back will be contra-charged to the Contractor's account at the full replacement cost plus £15 administration fee and debited at the next available assessment;
 - (k) The fees and charges are not negotiable; and
 - (l) The signing out and back record held by the Company will be accepted as conclusive evidence for the purpose of the operation of this Clause 5.4.

The Contractor is to note that this is a discretionary facility that is not guaranteed by the Company and is wholly dependent upon availability of spare PPE and the willingness of the Company's Site staff to operate its administration. It is not to be relied on and shall not relieve the Contractor from its obligation to ensure all Contractor Personnel attend the Site properly equipped. The inability or unwillingness of the Company to offer this facility will not prevent the Company from operating the provisions of Clauses 11.1 to 11.5 inclusive of the Conditions of Contract in the event that Contractor Personnel are deemed incompetent due to a failure to attend the Site properly equipped.

6. Smoking, Drugs and Alcohol Policy

The Contractor is referred to the Company's Drugs and Alcohol Policy included in Appendix B to this Schedule 1.

7. Standards

- 7.1. The Contractor shall comply with all of the Company's Standards (which the Contractor confirms it has access to) including but without limitation:

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- (m) The Construction Health & Safety Plan;
- (n) London Underground Limited Rule Book;
- (o) The Company's Engineering Instructions;
- (p) The Company's Policy on Health and Safety; and
- (q) The Company's Code of Practice: Fire Safety of Materials used in the Underground.

The Contractor will be deemed to be fully conversant with their requirements and provisions and the Company will not entertain any claim for want or lack of knowledge in this respect.

- 7.2. It is the Contractor's responsibility to ensure that it maintains the currency of its knowledge of the above Standards and the Company shall, at the Contractor's request, provide the Contractor with access to the Standards in electronic form via the internet. At its discretion the Company may also issue the Construction Health and Safety Plan in CD Rom format.

8. Electrical Testing

- 8.1. Where the Specification stipulates the Services include the testing of electrical installations, whether the installations are undertaken by the Contractor Personnel or otherwise, the Contractor shall have corporate membership of either the Electrical Contractors Association ("ECA") or the National Inspection Council for Electrical Installation Contracting ("NICEIC").
- 8.2. The Contractor shall provide upon request evidence of its competence and current membership of the above named organisations.
- 8.3. Company approval of the membership and competence evidence is a necessary pre-requisite to the engagement of labour from the Contractor to undertake electrical installations under the Agreement and any Contract.
- 8.4. Once labour supplied by the Contractor is engaged to undertake testing of electrical installation works the Contractor must inform the Company at the earliest possible opportunity should it cease to have competence and/or cease to have membership of any of the above named organisations for whatever reason.

9. Workmanship

The workmanship of Contractor Personnel supplied under the Agreement and any Contract shall comply with all relevant current codes of practice, British standards and the like consistent with the level of certification, qualification and skill.

10. Additional Equipment and Materials

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- 10.1. All Additional Equipment and Materials supplied under the Agreement and any Contract must be fit for the intended purpose and comply with all relevant current codes of practice, British standards and the like.

11. Work Schedules and Site Records

- 11.1. Weekly and Daily / Nightly Work Schedules are a management tool to enable the Company to monitor and measure its construction managed outputs. They are designed to enable the Company to better plan its construction managed work and provide data to better inform the Company of its resource requirements. The Contractor shall afford the Company all necessary assistance in the operation of these Schedules and, as a minimum, the assistance described in this Clause 11.
- 11.2. At the commencement of each working week the Contractor's Representative shall agree with the Company's Representative the extent and scope of work to be undertaken over the period. This work scope shall be recorded on a Weekly Work Schedule / Resource Call Off Summary (see Appendix C to this Schedule 1) and on Daily / Nightly Work Schedules (see Appendix D to this Schedule 1). The work scope will be realistically planned and agreed by consent of both Parties.
- 11.3. At the end of each week the Contractor's Representative shall agree with the Company's Representative an assessment of the work achieved measured against that planned for the respective period.
- 11.4. All Weekly and Daily / Nightly Work Schedules shall be signed and counter-signed by the Parties to record the agreement.

APPENDICES

Appendix A: Weekly Works Schedule / Resource Call Off Summary

Appendix B: Daily / Nightly Work Schedule

Appendix C: Track Labour Tools

Appendix D: Competency and Training Matrices

Appendix A

Weekly Work Schedule / Resource Call Off Summary



| STATION NAME: _____ | | | | WEEKLY WORK SCHEDULE / RESOURCE CALL OFF SUMMARY | | | | | WEEK ENDING: _____ | | |
|---------------------|-----|------|-------------------------|--|-------|------------|-------------|-------------------|------------------------|-------------|------------------|
| DAY | CBS | TASK | STATION LOCATION (ROOM) | NAME | TRADE | START TIME | FINISH TIME | WORKS DESCRIPTION | REPAIRS DESCRIPTION | HOW MANY | REQ. PRIORITY |
| MON | | | | | | | | | | | |
| TUE | | | | | | | | | | | |
| WED | | | | | | | | | | | |
| THUR | | | | | | | | | | | |
| FRI | | | | | | | | | | | |
| SAT | | | | | | | | | | | |
| SUN | | | | | | | | | | | |

| | |
|-----------------------------------|--|
| REPRESENTATIVE: _____ DATE: _____ | CONTRACTOR REPRESENTATIVE: _____ DATE: _____ |
|-----------------------------------|--|

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Appendix B
Daily / Nightly Work Schedule



| STATION NAME:- | | | | DAILY / NIGHTLY WORK SCHEDULE | | DATE:- | | RESOURCES NUMBERS AND TYPE REQUIRED | | | | |
|----------------------------------|-----|------|-------------------------|----------------------------------|-----------------------|--------------|--------------------------------|-------------------------------------|------|-------------|-----|--|
| SHIFT | WBS | TASK | STATION LOCATION (ROOM) | WORKS DESCRIPTION | WORKS COMPLETED (Y/N) | GANG No. | RESOURCE TYPE | | | | | |
| | | | | | | | SPC | COMMS | ELEC | SKILLED OPS | OPS | |
| DAY SHIFT | | | | | | | | | | | | |
| NIGHT SHIFT | | | | | | | | | | | | |
| SHIFT | WBS | TASK | LOCATION | WORKS NOT COMPLETED WITHIN SHIFT | | GANG No. | RESOURCES REQUIRED TO COMPLETE | | | | | |
| DAY SHIFT | | | | | | | | | | | | |
| NIGHT SHIFT | | | | | | | | | | | | |
| REPRESENTATIVE: | | | | | | DATE: | | | | | | |
| CONTRACTOR REPRESENTATIVE: | | | | | | DATE: | | | | | | |

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Appendix C

Track Labour Tools

The Contractor must ensure that the gang are equipped with the correct tools to carry out the Works every shift requires. The following list of tools and equipment is not exhaustive but is indicative of what the Contractor should ensure Contractor Personnel have available to carry out the track works required:

| | |
|----|--|
| 1 | Keying Hammers |
| 2 | Hammer Ball Pein - fibre glass |
| 3 | Slewing Bars |
| 4 | Panpullers |
| 5 | Panlock Pullers |
| 6 | Pansetters |
| 7 | Picks |
| 8 | Shovels |
| 9 | Ballast Forks |
| 10 | Key Extractors |
| 11 | Spanners (Various) |
| 12 | Box spanner (screwspike & coachscrew) |
| 13 | Files - various engineering |
| 14 | Rail set |
| 15 | Rail Nips (Open section & Tube section) |
| 16 | Wire Brushes |
| 17 | Hand Auger |
| 18 | Bance Lights (battery) |
| 19 | Formworkers hand tools such as hammers, saws etc |
| 20 | Concreting hand tools such as chipping hammers, chisels, bolster, hammers, |
| 21 | Trowels and floats, buckets, mixer etc. |

Appendix D
Competency and Training Matrices

Schedule 2

Form of Order

Framework Agreement [for the supply of track labour] - Contract Reference Number: [•]

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE CONTRACTOR PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE ABOVE-REFERENCED FRAMEWORK AGREEMENT FOR THE SUPPLY OF LABOUR

Notes: 1. Please confirm receipt of this Order immediately by [fax/email] to the Company's Representative.
 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all Payment Applications.
 3. Please address all correspondence and enquiries to the Company's Representative.

| | |
|---|---|
| Company: | London Underground Limited |
| Contractor: | |
| Contract Reference Number: | |
| Order Number: | |
| Order Title: | |
| Company's Representative: Address for service of notices: Telephone: Fax: Email (if applicable): | |
| Contractor's Representative: Address for service of notices: Telephone: Fax: Email (if applicable): | |
| Email to be used for notices and communications pursuant to clause 44.3: | yes / no (delete as applicable) |
| Order Commencement Date: | |
| Order Completion Date: | |
| Order Specification: | As set out in Annex 1 |
| Order Programme: | |
| Order Price (exclusive of VAT): | |
| The Contractor's professional indemnity insurance shall be: | As stated in Clause 15.2(c) / not less than £(insert level required) in the aggregate per annum / not required (delete as applicable) |
| Bond required pursuant to clause 28.1: | yes / no (delete as applicable) If yes, and the credit protection is not as stated in clause 28.2, it shall be for the following amount: [] [% of the Order Price]. |

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| | |
|---|---------------------------------|
| Parent company guarantee required pursuant to clause 28.1: | yes / no (delete as applicable) |
| The following Contractor Personnel are Key Personnel: | |
| The Contractor's total liability to the Company under Clause 19.6 is: | |
| Additional Comments/Special Instructions: | |

Schedule 3

Order Specification

To be defined within each individual order awarded under this framework

Schedule 3

Schedule 4

Pricing

1. DEFINITIONS AND INTERPRETATION

1.1 In the context of Schedule 4 "Pricing Schedule";

"Bank Holiday" means a published public holiday in England.

"Bank Holiday Shift" means from 22:00hrs prior to a Bank Holiday to 21:59hrs on the Bank Holiday.

"Christmas Day and New Years Day Shift" means from 22:00hrs prior to a either Christmas Day or New Years Day to 21:59hrs on Christmas Day or New Years Day.

"Shift" means a nominal eight (8) hours.

"Week Shift" means from 22:00hrs on Sunday to 21:59hrs on Friday.

"Weekend Shift" means from 22:00hrs on Friday to 21:59hrs on Sunday.

2. INTRODUCTION

2.1 Appendix 1 to this Schedule 4 Schedule of Rates sets out the Charges associated with the delivery of the Services by the Contractor to TfL and the Contractor acknowledges that it has completed all sections of this schedule.

2.2 Prices and costs are in pounds sterling and, with the exception of indexation, are not subject to variation for the period of the Framework Agreement and are exclusive of Value Added Tax.

3. SCHEDULE OF RATES

3.1 LABOUR RATES

3.1.1 The Contractor has provided a schedule of shift rates for the provision of labour, as set out in Appendix 1, which will be used for calculating:-

- a) the maximum costs for completion of work under this Framework Agreement and,
- b) the maximum costs for the calculation of any Variations issued under this Framework

3.1.2 The shift rates provided are deemed to be inclusive of all costs for overheads, vehicles, tools and Contractor's plant however arising for the Provision of the Services.

3.2 MATERIALS HANDLING CHARGE

3.2.1 All materials, goods and plant, the need for which has been agreed in advance in accordance with the Contract Requirements, used for the provision of the Services under this Framework Agreement shall be charged at the net cost to the Contractor (supported by manufacturer or supplier invoice and credit notes) plus the Contractor's fixed percentage charge for handling, overheads and profit, as set out in Appendix 1.

3.3 VEHICLE RATES

3.3.1 The vehicle rates are based on one shift and shall apply to weekdays, weekends, public holidays, Christmas day and New Years day.

3.3.2 The vehicle rate shall be inclusive of all consumables and fixed costs.

3.3.3 The vehicle rate shall exclude the cost of a driver on the basis that the Contractors operatives will drive and be charged as a member of the gang.

3.3.4 All loading limits for vehicles shall be strictly observed and remain the responsibility of the Contractor.

Part 2 – General Pricing Conditions

1. Status of this Section

These General Pricing Conditions are part of Schedule 4 (Pricing) (the "**Pricing Schedule**") and shall be read and construed jointly with the Specific Pricing Conditions contained in Schedule 4, Part 1 of the Agreement. In the event of any conflict between these General Pricing Conditions and the Specific Pricing Conditions contained in Schedule 4, Part 1, the latter will prevail.

2. Shift Reports and Applications for Payment

- 2.1. All applications for payment must be substantiated by shift report records duly signed on behalf of the Contractor and the Company. Unsigned shift reports will not be accepted as a basis for payment.
- 2.2. Shift report packs will be made available by the Company and must be used as instructed. A pro-forma of the shift report is included in Appendix D to this Schedule 4 together with instructions on use.
- 2.3. Shift reports must be signed daily at the end of the appropriate shift. For the avoidance of doubt, shift reports in respect of day shifts and night shifts must be signed-off separately. With reference to the shift report pack, each shift report is completed in quadruplicate; the original is retained by the Contractor and the copies are submitted to the Company in accordance with the instructions on use.
- 2.4. Weekly shift report summaries must be submitted electronically in Excel format by no later than 18:00 hours each Monday summarising the shift reports for the preceding working week. The Company's working week runs from Sunday to Saturday. The final weekly shift report summary of each Payment Period can be included in the Payment Application for the period.
- 2.5. Payment Applications must be submitted electronically in Excel format and accompanied by a complete set of hard-copy shift reports for the period. Contractor's invoices must also be submitted to substantiate the costs of any Additional Equipment and Materials.

3. Evidence of Competency / Minimum Payment Rate

- 3.1. It is incumbent upon the Contractor to ensure that all skilled and semi-skilled Contractor Personnel attend the Site with documentary evidence of attainment of the competency relating to the grade rate for which they have been supplied.
- 3.2. The Contractor is referred to Appendix F of Schedule 4 for specific definitions of the competency requirements relating to each trade and grade of operative.

- 3.3. Responsibility for inspecting evidence of the competency of any Contractor Personnel lies with the Project Manager and may, for practical purposes, be delegated to the Company's construction managers.
- 3.4. The Contractor Personnel must make evidence of competency available for inspection when requested to do so by the Project Manager or his/her delegate.
- 3.5. Provided a Contractor Personnel is not deemed incompetent under Clause 11 of Schedule 4, failure to provide evidence of competency will not be a reason to prevent a Contractor Personnel from engagement on the Works under the Agreement or any Contract but will be a reason for the Company to refuse to pay the relevant rate related to that competency until such evidence is satisfactorily presented for inspection.
- 3.6. In the event that a Payment Application is received in respect of Contractor Personnel whose evidence of competency has not been confirmed by the Project Manager or his/her delegate, the Company shall withhold payment at the relevant rate until such evidence is satisfactorily presented. In this event, payment will be made only at the rate of an unskilled Contractor Personnel in accordance with the agreed Pricing Schedule and, should no such rate exist, the Company shall apply a rate it deems fair and reasonable and reflective of an unskilled Contractor Personnel as if such a rate did exist. For the purposes of this Clause 3, this shall be deemed the "**Minimum Payment Rate**" for the Contractor Personnel concerned.
- 3.7. The Minimum Payment Rate shall apply until such time as evidence of competency is satisfactorily presented for inspection whereupon the rate of pay will be corrected to the rate relevant for the level of competency evidenced and such correction will be applied from the date of engagement of the Contractor Personnel on the Works.
- 3.8. In the event that the evidenced level of competency is lower than that applicable for the grade rate under which the Contractor Personnel was originally supplied, the pay rate will be adjusted to the competency level that meets but does not exceed the evidenced competency in accordance with the agreed Pricing Schedule and, should no such rate exist, the Company shall apply a rate it deems fair and reasonable and reflective of such a competency as if such a rate did exist.
- 3.9. In the event of a correction to the pay rate in accordance with Clauses 3.7 and 3.8, any monies withheld from past Payment Applications will be included in the next available payment certificate.
- 3.10. Notwithstanding the provisions of Clauses 3.1 to 3.8 inclusive, the Company shall have no right to withhold payment due to any failure of the Project Manager or his/her delegate to inspect evidence of competency when the opportunity for such inspection existed.

4. Costs of Employment

- 4.1. The Contractor's rates as set out in Appendix A to this Schedule 4 shall allow for all costs and expenses in connection with employment including (without limitation) guaranteed time, travelling time, fares, transport, subsistence allowance, holidays with pay, public holidays with pay, redundancy payments, CITB levies, overtime working and incentive bonus schemes and also all costs for transport and payments of Contractor Personnel to, between and from wherever labour is obtained and the Site(s), for all training in accordance with the Agreement and any Contract, for any provisions to comply with the rules and decisions of the National Joint Council for the Building Industry and in accordance with the terms of the Building and Civil Engineering Annual and Public Holiday agreement applicable to the Works and current at the date of tender or rules, decisions or agreements of any body applicable and current as aforesaid. In addition rates shall allow for all costs of providing pensions and national insurance payments.

5. Value Added Tax

- 5.1. The payment and recovery of Value Added Tax shall be the responsibility of the Contractor who shall be deemed to have allowed in its rates and prices for all incidental costs and expenses which it may incur.

APPENDICES

Appendix A: Schedule of Charge Pay Rates

Appendix B: Payment Certificate Pro-forma

Appendix C: Payment Periods

Appendix D: Shift Report Pro-forma

Appendix A
Schedule of Charge Pay Rates

