

Worldwide including offsite storage and whilst in transit by land, air, rail, sea and inland waterway the interpretation of the policy must be under English law.

2.6 **Period of Insurance**

From the Commencement Date until the Expiry date.

2.7 **Cover Features and Extensions**

- (a) Terrorism.
- (b) Additional costs of completion.
- (c) Professional fees clause (including the Purchaser's advisers' fees incurred during any period of reinstatement).
- (d) Debris removal clause.
- (e) 72 hour clause.
- (f) European Union local authorities clause.
- (g) Free issue materials clause.
- (h) 15 per cent escalation clause .
- (i) Automatic reinstatement of sum insured clause.
- (j) Loss minimisation.
- (k) Testing/commissioning.
- (l) Capital additions clause.
- (m) Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded. To include pollution or contamination resulting from accidental damage.
- (n) Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

2.8 **Principal Exclusions**

- (a) LEG 2.
- (b) War and related perils (UK market agreed wording).
- (c) Nuclear/radioactive risks (UK market agreed wording).
- (d) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (e) Wear, tear and gradual deterioration.
- (f) Consequential financial losses.

- (g) Cyber risks other than physical damage arising from fire, explosion or collision or derailment of rail vehicles resulting from cyber risks.
- (h) Inventory losses, fraud and employee dishonesty.

3. **Third Party Public and Products Liability Insurance**

3.1 **Interest**

To indemnify the Insureds in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

- (a) bodily injury, illness, death, disease contracted by any person;
- (b) loss or damage to property; or
- (c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the Services.

3.2 **Limit of Indemnity**

Not less than £10,000,000 (or such higher amount required by the Office of Rail and Road or its successors for operators of railway assets) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 **Maximum Deductible**

£25,000 (Indexed) for each and every occurrence of property damage, escalated periodically as appropriate. Personal injury claims will be paid in full.

3.4 **Territorial Limits**

Worldwide. The interpretation of the policy must be under English Law.

3.5 **Jurisdiction**

Worldwide.

3.6 **Period of Insurance**

From the Commencement Date up to and including the Expiry Date.

3.7 **Cover Features and Extensions**

- (a) Cross liability clause.
- (b) Contingent motor liability.
- (c) Defence Costs in respect of Health and Safety at Work Legislation.

- (d) Corporate Manslaughter defence costs.
- (e) Full indemnity for the Purchaser and Subcontractor to the extent that the Service Provider is legally liable.
- (f) Automatic reinstatement of sum insured clause on at least one occasion for an annual period.

3.8 **Principal Exclusions**

- (a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- (b) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by Applicable Laws in respect of such vehicles.
- (c) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- (d) Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to all property belonging to Purchaser that is in the care, custody and control of another Insured.
- (e) Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- (f) Losses under the insurances referred to in paragraph 2 of this Part B of Schedule 5 (*Insurance*).
- (g) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (h) Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.

3.9 **Principal Exclusions**

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration.
- (e) Consequential financial losses.
- (f) Cyber risks other than physical damage arising from fire, explosion or collision or derailment of rail vehicles resulting from cyber risks.

4. **PI Insurance**

- 4.1 The Service Provider undertakes itself to, and to procure that Subcontractor(s) take out and maintain in force professional indemnity insurance with worldwide jurisdiction ("**PI Insurance**").
- 4.2 Without prejudice to the other provisions of this Agreement, the Service Provider shall provide evidence satisfactory to (as and when reasonably required by) the Purchaser of the PI Insurance being in full force and effect from the date of this Agreement until the date 12 years from the Expiry Date such evidence to include details of the cover including confirmation of territorial limits, confirmation that coverage includes breach of intellectual property rights, levels of excess, insurers, policy number and indemnity limit which shall be a minimum of two million pounds (£2,000,000) (Indexed) per event and with an excess not greater than five hundred thousand pounds (£500,000) (Indexed) for each and every loss and otherwise to be on terms satisfactory to the Purchaser.
- 4.3 The Service Provider shall provide the Purchaser with notice of:
 - (a) any cancellation of the PI Insurance not less than 30 days prior to the relevant cancellation date; and
 - (b) any adverse material changes (including, for the avoidance of doubt, any changes to the excess levels) to or suspension of cover relevant to the Services not less than 30 days prior to the relevant change or suspension.
- 4.4 The Service Provider shall inform the Purchaser as soon as reasonably practicable of any third party claim under the PI Insurance in respect of the Services in excess of five hundred thousand pounds (£500,000) (Indexed) and provide such information to the Purchaser as the Purchaser may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit.
- 4.5 The provisions of this paragraph 4 shall survive termination or expiry of this Agreement.

Annex A: Broker's Letter of Undertaking

To: London Underground

Dear Sir/Madam

Spares and Support Agreement dated [●] 2016 entered into between EKE-Electronics Ltd (the "Service Provider") and London Underground Limited (the "Purchaser") (the "Agreement")

We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.

1. We act as insurance broker to the Service Provider in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to clause 17 and Schedule 5 of the Agreement:
 - a) where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - b) are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
 - c) all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with and maintained with insurers with a Standard & Poor's Corporation long-term credit rating of at least A- (or an equivalent rating from another rating agency of equal repute). We do not however make any representations regarding such insurers' current or future solvency, or ability to pay claims; and that
 - d) the endorsements set out in Annex B (*Endorsements*) of Schedule 5 of the Agreement which is attached hereto are in our reasonable opinion as at today's date in full force and effect in respect of the Required Insurances.
2. We further confirm that the attached cover notes confirm this position.
3. Pursuant to instructions received from the Service Provider and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in relation to the Required Insurances:
 - a) **Notification Obligations**
 - i. notify you at least thirty (30) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Service Provider to negotiate renewal and in

the event of our receiving instructions to renew, to advise you promptly of the details thereof;

- ii. to notify you at least thirty (30) days prior to ceasing to act as brokers in relation to the Required Insurances unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable;
- iii. to notify you as soon as reasonably practicable if the long-term credit rating of any insurer of the Required Insurances falls below the level referred to in clause 1(c) of this letter; and
- iv. to pay without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in this Schedule 5 of the Agreement in accordance with the loss payable clause endorsed on the policy as set out in Annex B (*Endorsements*) of Schedule 5 of the Agreement.

b) Advisory Obligations

- i. to notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Required Insurances;
- ii. to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances to us, at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than thirty (30) days before it is to take effect;
- iii. to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Required Insurances or, would otherwise materially impact on the extent of cover provided under the Required Insurances; and
- iv. in accordance with our duty to the Service Provider to notify the Service Provider of its pre-contractual duties of disclosure to insurers, including the duty to disclose all information that would be considered material in the context of such duty.

c) Disclosure Obligations

- i. subject to the prior written consent of the Service Provider (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Required Insurances in our capacity as insurance broker to the Service Provider, including any fact, change of circumstance or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant required insurance, as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise.
- ii. to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Service Provider or the Purchaser and not to disclose

such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances. Our obligations of confidentiality shall not conflict with our duties owed to the Service Provider and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

d) Administrative Obligations

- i. to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- ii. to supply to the Purchaser and/or its insurance advisers (or the Purchaser's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 3(d)(i) of this letter, and to the extent available, to make available to such persons promptly upon the Purchaser's request the originals of such documents
- iii. to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
- iv. to administer the payment of claims from insurers in respect of the Required Insurances (the "**Insurance Claims**") including:
 - negotiating settlement of Insurance Claims presented in respect of the Required Insurances; and
 - collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances;
- v. in so far as it is relevant and practicable, liaising and reporting to the Purchaser throughout the settlement, payment and administration of such Insurance Claims;
- vi. to advise the Purchaser as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by the Service Provider to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as Insurance Brokers would result in any material reduction in limits or coverage or increase in deductibles, exclusions or exceptions; and
- vii. to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Annex B of Schedule 5 of the Agreement.

4. Notification Details

Our obligations at clause 3 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

[Address]

5. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Purchaser that they may not rely on any advice which we have given to the Service Provider, and we do not represent that the Required Insurances are suitable or sufficient to meet the needs of the Purchaser which must take steps and advice of its own as it considers necessary in order to protect its own position.
6. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Service Provider in relation to the Required Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Required Insurances, arising through common law or otherwise.
7. Our aggregate liability to any persons, companies or organisation who acts in reliance on this letter, or any other broker's letter of undertaking issued by us in respect of the Required Insurances, for any and all matters arising from it and the contents hereof shall in any and all events be limited to the sum of £5,000,000, even if we are negligent. We do not limit liability for our fraud.
8. This letter is given by us on the instructions of the Service Provider and with their full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of [Service Provider's broker]

We consent to the giving of this Letter of Undertaking by our insurance brokers

For and on behalf of

[Service Provider]

Annex B: Endorsements

1. Endorsement 1

1.1 Cancellation

- 1.1.1 This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.
- 1.1.2 The insurer shall by written notice advise the Purchaser:
- (a) at least thirty (30) days before any such cancellation or termination is to take effect;
 - (b) at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect;
 - (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy;
 - (d) of any default in payment or any premium payable under the policy; and
 - (e) of any act or omission, including but not limited to known breaches of warranty, or of any event of which the insurer has knowledge and which might invalidate or render a policy void or voidable at the insurer's discretion.

2. Endorsement 2

2.1 Multiple Insured/Subrogation/Non-Vitiation clause (not applicable to the PI Insurance)

- 2.1.1 Each of the Parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
- 2.1.2 It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 2.1.3 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "**Vitiating Act**") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 2.1.4 For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 2.1.5 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and

agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

2.1.6 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- (a) no party other than the Purchaser has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of Purchaser;
- (b) where any warranty, disclosure or representation is required from the Purchaser in connection with this policy insurers will contact the Purchaser in writing (in accordance with Endorsement 3 to the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Purchaser (regarding itself); and
- (c) save as set out in a request from insurers to the Purchaser in accordance with (B) above, the Purchaser shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Purchaser not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

3. Endorsement 3

3.1 Communications

3.1.1 All notices or other communications under or in connection with this policy shall be given to each insured (and the Purchaser) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

3.1.2 The address and facsimile number of the Purchaser for all notices under or in connection with this policy are those notified from time to time by the Purchaser for this purpose to the Contractor's insurance broker at the relevant time. The initial address and facsimile number of the Purchaser is as follows:

London Underground Limited:

Address: Templar House, 81-87 High Holborn, London, WC1V 6NU

Facsimile No: N/A

Attention: The Chief Executive from time to time of the Purchaser

3.1.3 It is further agreed that a notice of claim given by the Purchaser or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

4. Endorsement 4**4.1 Primary Insurance**

4.1.1 It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

5. Endorsement 5**5.1 Claims Negotiation Rights**

5.1.1 Notwithstanding any claim conditions contained herein insurers agree that the Purchaser has the right to settle and negotiate any claims received from third parties subject to prior consent of insurers. If the Purchaser takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity is reduced to such an extent.

6. Endorsement 6**6.1 Ring-fencing**

6.1.1 The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Services shall not be affected and/or reduced by any claim(s) unrelated to the Services.

7. Endorsement 7**7.1 Loss Payee (applicable only to the Property Damage and Transit Policies)**

7.1.1 All Required Insurances shall provide that claim proceeds, whether interim or final unless and until the insurers receive written notice from the Service Provider and the Purchaser directing otherwise, shall be paid to the Purchaser, or, at the Purchaser's discretion, to other parties and where such other party is the Service Provider, the proceeds being released to the Service Provider against its undertaking to reinstate such loss or damage with such supporting information as the Purchaser may reasonable require:

- (a) In respect of loss or damage to the Spares, to be applied in reinstatement of the insured asset in question;
- (b) In respect of loss of or damage to LUL Property, to be retained by the Purchaser; and
- (c) In respect of insurances against liabilities to third parties, to be applied to the aggrieved party or, where that liability has been met by an insured party pursuant to an indemnity or express contractual obligation under this Agreement, shall be paid to the indemnifier or the person liable for such obligations,

and shall be payable without deduction or set-off from the agreed claim.

Schedule 6
Dispute Resolution Procedure

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

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule;

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

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

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

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

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

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

- 1 The Purchaser and the Service Provider shall follow the procedure set out in this Schedule for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within fourteen (14) days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within fourteen (14) days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7 to 29 and notice has been given in accordance with paragraph 29.

6 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7 Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7 to 29 by giving a Notice of Adjudication to the other parties to the Dispute.

8 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within four (4) days of receiving a request to do so.

9 Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:

9.1 shall be a natural person acting in his personal capacity; and

9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

10 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within seven (7) days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

11 Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within seven (7) days of the date of the Notice of Adjudication or within two (2) days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

12 The Referral Notice shall:

12.1 include the facts relied upon by the referring Party in support of its claim(s);

- 12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
- 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
- 12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and
- 12.5 include the addresses of all Parties to the Dispute,

and the referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.

- 13 If a matter disputed by the Service Provider under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Service Provider may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.

- 14 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:

14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

- 15 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from

liability.

- 16 The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- 17 The Adjudicator shall reach his decision and gives notice of the decision to the parties to the Dispute within twenty-eight (28) days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- 18 The Adjudicator may extend the period of twenty-eight (28) days referred to in paragraph 17 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.
- 19 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.
- 20 The Adjudicator:
- 20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - 20.3 shall reach his decision in accordance with the law applicable to this Agreement;
 - 20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - 20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
 - 20.6 shall, where a translation of any document is required, decide by whom it should

be provided in the event that the parties to the Dispute do not agree.

- 21 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- 21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - 21.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
 - 21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
 - 21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
 - 21.5 inspect any part of the LUL Network, the Service Provider's Works or the facilities of any relevant Subcontractor.
- 22 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 23 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 24 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule.
- 25 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

- 26 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 27 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.
- 28 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 29 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

Schedule 7
Form of Guarantee

THIS GUARANTEE is made the day of 201

BETWEEN:

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

WHEREAS:

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

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be

carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.

3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.
4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;
 - (c) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;
 - (h) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;
 - (j) the termination of the Contract; or

- (k) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:
- (a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
 - (b) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs; or
 - (c) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs.
7. This Guarantee is irrevocable.
8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract. No further or other assignments shall be permitted.
9. The Guarantor:
- (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
 - (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
 - (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.
10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:
- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and

order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

(b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.

11. The Company is entitled to make any number of demands under this Guarantee.

12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

14. No person other than Tfl (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

16. *[For non-UK resident Guarantors only:*

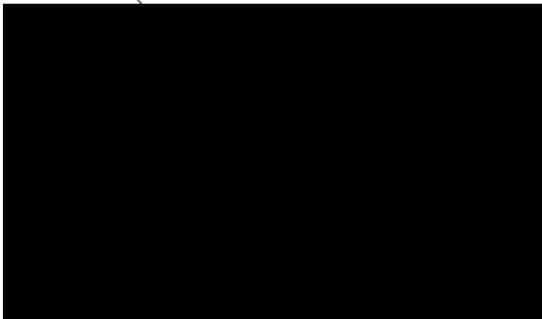
For the purposes of this Guarantee the Guarantor hereby appoints of..... [to be a London address] to accept service of process on its behalf, and service on the said at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate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

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

Executed as a Deed by [GUARANTOR]

acting by

and



5218

Executed as a deed by affixing the Common Seal of

[COMPANY]

in the presence of: -



[Authorised Signatory]

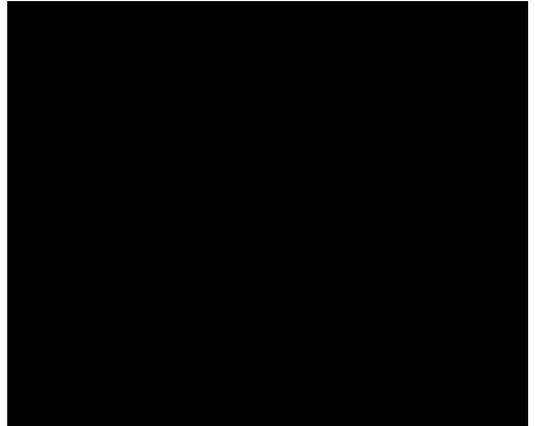


Executed as a Deed by [SUPPLIER]

acting by



and



ΕΚΕ ΕΛΕΚΤΡΟΝΙΚΑ Α.Ε.
(Ο.Τ.Α) ΕΛΕΚΤΡΟΝΙΚΑ

Schedule 8
NOT USED

Schedule 9
Form of Performance Report

The form of Performance Report shall be agreed by the Parties prior to the first SSA Status Update Meeting.

Schedule 10
Form of Deed of Warranty

THIS DEED is made on ● 201●

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** whose registered office is Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situated at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situated at ● (the "**Service Provider**").

WHEREAS:

- (A) The Service Provider has entered into a contract dated ● (the "**Contract**") with the Purchaser for the provisions of services and spares supply (the "**Services**").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the Service Provider for the carrying out of certain parts (the "**Subcontract Services**") of the Services more particularly defined in Annex ● hereto.¹

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Completion" means []²;
 - (b) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (c) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the Subcontract Services (whether in existence or to be made);
 - (d) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the Purchaser may reasonably request;
 - (e) "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements or otherwise;
 - (f) "Prohibited Act" means:

¹ A description of the Services should be provided in the Annex.

² This will depend upon the length of the subcontract.

- (i) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the Service Provider any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the Purchaser or the Service Provider or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the Purchaser or the Service Provider;
 - (ii) entering into the Subcontract or any other contract with the Purchaser or the Service Provider in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser or the Service Provider;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the Purchaser or the Service Provider; or
 - (iv) defrauding or attempting to defraud the Purchaser or the Service Provider;
- (g) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the Subcontract Services, the safe operation of the LUL Network and/or the safety of the Purchaser's employees, or the public or any other persons;
- (h) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
2. The Subcontractor warrants and undertakes to the Purchaser that:
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out services of a similar scope, size and complexity to the Subcontract Services; and
 - (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the Purchaser that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with all Applicable Laws and LU Standards, general good building and engineering practice and the requirements of the Specification.
4. The Subcontractor further warrants and undertakes to the Purchaser that:
- (a) the Subcontract Services will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;