

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

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

2. Personnel

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

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

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

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

- (A) undertakes that all the Supplier's Personnel possess the appropriate skills, qualifications and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract;
- (B) shall ensure that all the Supplier's Personnel are in possession of valid work permits if they are non-European Community nationals; and
- (C) shall (at its expense) provide or procure the provision of training for the Supplier's Personnel in respect of all aspects of its performance of the Contract and, as the Company may require, for any employees, agents and contractors of the Company in relation to the operation or use of any equipment supplied under the Contract, such training to include, as a minimum:
 - (1) the training activities specified in Schedule 22 (Training);
 - (2) training as required by Schedule 7 (Health, Safety, Quality and Environmental) and any TfL Group standards; and
 - (3) such other training as required by TfL Group from time to time.

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

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

33. London Living Wage

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

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

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

Living Wage;

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

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

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

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

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

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

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

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

34.1 For the purposes of this Clause 34:

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

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

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- 34.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he has a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has a Relevant Conviction.
- 34.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any Sub-Contractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction or who the Supplier is aware has a Relevant Conviction.
- 34.4 The Company shall have the right in accordance with the audit rights set out in Clause 13 to audit and inspect the records of the Supplier and its Sub-Contractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 34 at any time during performance of this Contract.
- 1.5 If the Supplier fails to comply with the requirements under Clauses 34.2 and/or 34.3 the Company may, without prejudice to its rights under Clause 44, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from this Contract and/or Company's Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 34.2) within five (5) Working Days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 34.2.
- 34.6 A persistent breach of Clause 34.2 and/or Clause 34.3 by the Supplier shall entitle the Company to terminate this Contract in whole or in part with immediate effect in accordance with Clause 44, as if such persistent breach were a Supplier Default.
- 34.7 In the event the Company becomes aware that a Relevant Individual has a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from this Contract and/or the Company's Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 34.8 The Supplier shall ensure that each Relevant Individual has the right to work in the UK and shall comply with its obligations under the relevant immigration legislation including but not limited to the obligation to conduct document checks in respect of Relevant Individuals.
- 34.9 Nothing in this Clause 34 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under this Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier is not entitled to claim any extra costs or time or any relief from its obligations as a result of any actions under this Clause 34.

34A. Offers of Employment (Non-Solicitation)

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

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6 months of new employment.

PART 11: RESPONSIBLE PROCUREMENT

35. Responsible Procurement

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

36. CompeteFor

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

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

PART 12: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

37. Intellectual Property Rights

37.1 Existing Contracts

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

37.2 Vesting of Intellectual Property Rights created under this Contract

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

7.3 Ownership of the Supplier's Intellectual Property Rights

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

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

The Company shall have and the Supplier hereby grants, and procures that its Sub-Contractors or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 37.3 for the purposes of:

- (A) understanding the Services;
- (B) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
- (C) extending, interfacing with, integrating with, connecting into and adjusting the Services;
- (D) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the TfL Network and/or Sites;
- (E) executing and completing the Services; and
- (F) enabling the Company to make available the TfL Network to perform its function and duties as Infrastructure Manager and Operator of the TfL Network.

37.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (A) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or Sub-Contractor's or other third party's possession or control (or which ought reasonably to be in the Supplier's or

Sub-Contractor's or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 37.2, 37.3 and 37.4 above; and

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

37.6 Company's Rights of Retention

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

37.7 Company's Rights to the Software

If the Supplier or any of its Sub-Contractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in the definition of Supplier Default (including their equivalent in any jurisdiction to which the Supplier or any of its Sub-Contractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

37.8 Not used.

37.9 Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 37.5 and anything in which the Intellectual Property Rights referred to in Clauses 37.2, 37.3 and 37.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 37.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

37.10 Supplier's Indemnity against Third Party Intellectual Property Rights Infringement

- (A) The Supplier shall indemnify and hold harmless the Company and any member of the TFL Group against any actions, claims, losses, demands, costs, charges or expenses that arise from, or are incurred by reason of, any infringement or alleged infringement of any Intellectual Property Rights belonging to any Sub-Contractor or sub-contractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any Sub-Contractor or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (B) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim and for the avoidance of doubt shall not be entitled to any relief in respect of its obligations to perform the Services as required by this Contract.

37.11 Ownership of the Company's Intellectual Property Rights

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

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

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

37.13 Corporate IPRs

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

38. Confidentiality

38.1 The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and to use such information only for the purpose of the performance of his obligations under this Contract.

38.2 At the Company's request, the Supplier shall, so far as is reasonably possible:

- (A) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;

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- (B) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - (C) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 38.3 The Supplier shall ensure that all Supplier Parties perform the obligations in Clauses 38.1 and 38.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by any Supplier Parties in this regard.
- 38.4 The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a Supplier Party and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that Supplier Party for such breach of confidence.
- 38.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, this Contract or the Services without the prior written consent of the Company.
- 38.6 The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with this Contract or the Services, or any Dispute arising under or in connection with this Contract.
- 38.7 The provisions of Clauses 38.1 to 38.6 shall not apply:
- (A) to any information which is already in the public domain at the time of its disclosure other than by breach of this Contract; or
 - (B) to any information which is required to be disclosed to the extent required by any Applicable Law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 38.8 The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 38 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 38.

39. **Freedom of Information**

39.1 For the purposes of this Clause 39:

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

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

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

39.2 The Supplier acknowledges that the Company:

- (A) is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
- (B) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

39.3 Without prejudice to the generality of Clause 39.2 the Supplier shall and shall procure that its Sub-Contractors (if any) shall:

- (A) transfer to the Company's Representative (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to this Contract, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (B) in relation to Information held by the Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

39.4 The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

40. Data Transparency

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

40.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 40.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

41. Data Protection

The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in Section 1(1) of that Act) on behalf of the Company ("Company Personal Data"), the Supplier shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.

PART 13: COMPANY STEP IN, TERMINATION AND SUSPENSION

42. Company Step-in

- 42.1 Without limiting any other remedy, if the Supplier fails to comply with its obligations to perform the Services as required by this Contract, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 42 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 42.2 Without prejudice to the provisions of Clause 42.1 if the Company reasonably believes that it needs to take action in connection with the Services:
- (A) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - (B) to discharge a statutory duty,
- then the following provisions shall apply.
- 42.3 The Company shall provide notice to the Supplier in writing of the following:
- (A) the action it wishes to take;
 - (B) the reason for such action;
 - (C) the date it wishes to commence such action;
 - (D) the time period which it believes will be necessary for such action; and
 - (E) to the extent practicable, the effect on the Supplier and its obligations to provide the Services during the period such action is being taken.
- .4 Following service of the notice required in Clause 42.3, the Company or a third party appointed by the Company for the purpose shall take such action as is notified under these provisions and any consequential additional action as the Company reasonably believes is necessary (the "Required Action").
- 42.5 For so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Services, the Supplier shall be relieved from its obligations to provide such part of the Services and the Company shall not be liable to pay the Target Cost, the Defined Cost or the Fee for such part of the Services.
- 42.6 For the purposes of this Clause 42 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under this Clause 42 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under this Clause 42.

43. Voluntary Termination by the Company

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

44. Termination on Supplier Default

- 44.1 For the purposes of Clause 44, a Supplier Default is any of the following events:
- (A) the Supplier committing a material breach of this Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
 - (B) a Persistent Breach occurring;
 - (C) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
 - (D) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under this Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same or any similar or analogous procedure or step is taken in any jurisdiction;
 - (E) a persistent breach of the Supplier's obligations set out in either or both of Clause 34.2 and 34.3;
 - (F) a breach of the Supplier's obligations under Clauses 55 or 56;
 - (G) any parent company guarantee or bond required pursuant to Clause 54 becoming invalid and/or the Supplier being in breach of Clause 54.3;
 - (H) a breach by the Supplier of its obligations to take out and maintain any of the insurances required pursuant to Clause 51;
 - (I) the occurrence of a conflict of interests such that the circumstances set out in Clause 76.5(B) occur;
 - (J) the Company becomes entitled to terminate in accordance with the escalation procedure

set out in Schedule 12 (Performance Measurement);

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

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

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

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

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

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

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

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

44.7 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then, without prejudice to the Company's rights pursuant to this Clause 44, the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

45. Compensation on Termination

45.1 Following a termination (in whole or in part) in accordance with Clause 43, the Supplier shall be entitled to be paid:

- (A) the total value of the Services provided at the date of termination of this Contract or the relevant part of it (as applicable), such value to be ascertained in accordance with this Contract as if this Contract had not been terminated, together with any amounts due to the Supplier under this Contract not included in such total value; and
- (B) the reasonable properly incurred cost of removal of the Supplier's property from the Sites in respect of which this Contract has been terminated;

less any amounts previously paid to the Supplier under this Contract.

45.2 Following a termination (in whole or in part) in accordance with Clause 44:

- (A) the Supplier shall indemnify the Company and keep the Company fully and effectively indemnified against all expense, loss, damage and liabilities suffered or incurred by the Company associated with or arising from the termination including any additional expense incurred by the Company in continuing to provide the Services in respect of which this Contract has been terminated, from the date of termination to the Expiry Date (as may have been extended only where notice has been served pursuant to Clause 2.2) including for the avoidance of doubt the cost of finding an alternative contractor or contractors and any additional amounts charged by them for providing the Services; and
- (B) the Supplier shall be entitled to be paid for Services provided and which have not been paid for at the date of termination, to the extent that the provision of such Services has been terminated, less the cost to the Company of having the Services that have not been carried out completed (whether the Company has those Services delivered or not).

45.3 In the event that the Company terminates this Contract for any reason under Clause 44, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under this Contract or under general law, at the Company's option:

- (A) permit the Company to enter the Supplier'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;
- (C) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its Sub-Contractors have possession; and
- (D) sell to the Company, at the purchase price any materials or goods properly ordered for the Services in respect of which this Contract has been terminated (and which have not at the date of termination become the property of the Company) and on such payment in full by the Company such materials or goods shall become the property of the Company.

In each such case, the Company shall be entitled to retain the benefit of any part of the Services already provided by the Supplier in accordance with this Contract.

45.4 Any amounts which the Company is liable to pay pursuant to this Clause 45 shall, in default of

agreement, be determined pursuant to the provisions of Schedule 14 (Dispute Resolution Procedure).

46. Accrued Rights and Survival

- 46.1 In the event that this Contract is terminated, the liability of the Company to pay the Supplier in respect of the performance of the Services shall be limited to payment to the Supplier for those Services provided in accordance with this Contract up until the date of such termination.
- 46.2 Save as otherwise expressly set out in this Contract or as already taken into account in the calculation of any payment of compensation on termination pursuant to this Contract, termination of this Contract for whatever reason shall not affect the accrued rights of the Parties arising in any way out of this Contract as at the date of termination and in particular but without limitation the right to recover damages against the other Party.
- 46.3 The provisions of Clauses 13, 18.10, 31, 35, 37, 38, 39, 40, 41, 43, 46, 50, 52, 58, 59, 60, 61, 63, 65, 69, 70, 75, 76.1 will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this 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.

47. Force Majeure

- 47.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Company shall not be entitled to terminate this Contract for a Supplier Default if such Supplier Default arises from a Force Majeure Event (but without prejudice to Clauses 47.5 or 47.6).
- 47.2 The Company shall be under no obligation to make any payments to the Supplier of the Target Cost, the Defined Cost or the Fee in respect of any Services affected by the Force Majeure Event.
- 47.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 47.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 47.5 If no such terms are agreed on or before the date falling eighty (80) Working Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Working Days, then, subject to Clause 47.6, either Party may terminate this Contract in respect of the affected Services by giving twenty (20) Working Days' written notice to the other Party.
- 47.6 If this Contract is terminated, in whole or in part, under Clause 47.5 no compensation shall be payable by either Party in relation to such termination.
- 47.7 The Parties shall at all times following the occurrence of a Force Majeure Event use all

reasonable endeavours to prevent and mitigate the effects of any delay and the Supplier shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

47.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

48. Suspension

48.1 Without prejudice to Clause 43, the Company shall have the right at any time to require the Supplier to suspend the provision of the Services (or any part thereof) by giving notice in writing to the Supplier.

48.2 In the event that this Contract is suspended in accordance with Clause 48.1, the Supplier shall:

- (A) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with this Contract up until the date of such suspension; and
- (B) not carry out any further work in connection with the provision of the Services which are the subject of the suspension until such time as the Company issues a notice lifting the suspension (a "Notice to Proceed").

48.3 In the event that this Contract is suspended in accordance with Clause 48.1, and such suspension continues for a period of twenty (20) Working Days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further ten (10) Working Days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.

48.4 In the event that the Parties are unable to agree upon the variation requested under Clause 48.3, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 65.

I. Co-operation in Handover

The Parties shall comply with their respective obligations as set out in Schedule 15 (Obligations on Handover).

PART 14: INDEMNITIES, LIABILITIES AND INSURANCE

50. Indemnity

50.1 The Supplier shall be liable for and shall at all times indemnify the Company, including any of its employees, servants, agents, sub-contractors, directors and officers and members of the TfL Group and shall keep them indemnified on an after-tax basis against, all Losses suffered or incurred by the Company, any of its employees, servants, agents, sub-contractors, directors and officers or any relevant member of the TfL Group:

- (A) in respect of death or personal injury to any person;
- (B) in respect of loss of or damage to any property (including the TfL Network and Sites and any other property belonging to the Company or for which it is responsible); and
- (C) in respect of claims against the Company made by third parties (whether under contract, tort, breach of statutory duty or otherwise),

arising from or in connection with the performance or non-performance of the Supplier under this Contract, 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 Supplier or any Supplier Party.

50.2 The Supplier shall not be liable under the indemnity in Clause 50.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

50.3 The Supplier's indemnity under Clause 50.1 and all other indemnities under this Contract shall remain in force for the duration of this Contract and for the period of twelve (12) years after the Expiry Date or earlier termination of this Contract.

50.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 50.1 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.

50.5 Other than in respect of (i) the Losses described in Clause 50.1(C) 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 this Contract. Each Party respectively undertakes not to sue the other Party or any member of the TfL Group in respect of Consequential Loss for which liability is excluded in this Clause 50.5.

50.6 The Supplier shall have no claim against the Company in respect of delay or disruption of the Services, except as expressly provided for in this Contract.

50.7 Control of indemnity claims

(A) Subject to Clause 50.7(B), if a claim is made against a Party ("the Indemnified Party"), or the Indemnified Party becomes aware that a claim is likely to be made, by a third party which may give rise to a claim under an indemnity given by a Party ("the Indemnifying Party"):

- (1) the Indemnified Party shall promptly notify the Indemnifying Party of the claim, giving full particulars of the claim, and consult with the Indemnifying Party in relation to the proposed actions to be taken prior to settlement or compromise of the claim;
- (2) each Party shall provide the other Party with such assistance and information as it

reasonably requests in relation to the claim;

- (3) the Indemnified Party shall not admit liability in respect of or settle the matter without first obtaining the Indemnifying Party's written consent; and
 - (4) subject to applicable security and confidentiality restrictions, the Indemnified Party shall provide the Indemnifying Party with reasonable access to its premises and personnel and all relevant assets, documents and records for the purpose of investigating the matter.
- (B) The Company may elect at any time to have sole control of the defence of proceedings relating to any claim for which the Supplier has given an indemnity and all negotiations for its settlement (in which case the provisions in Clause 50.7(D) shall apply to the Company as if it were the Indemnifying Party and the Supplier were the Indemnified Party).
- (C) If the Company elects to have sole control of the defence of proceedings pursuant to Clause 50.7(B) after the Supplier has already commenced the defence of such proceedings, the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the Company, and shall provide to the Company all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.
- (D) The Indemnifying Party shall:
- (1) assume and conduct the defence of any proceedings relating to the claim diligently using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute in which case the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim;
 - (2) consult with the Indemnified Party and keep the Indemnified Party informed of all material matters, including formulation of any defence and counter-claims and filing of evidence from employees of the Indemnified Party;
 - (3) not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed) and do nothing which could prejudice the defence of any such claim; and
 - (4) obtain the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed, before any settlement is made in respect of the claim.

51. Insurance

51.1 Without prejudice to the obligation to indemnify the Company set out in Clause 50.1, the Supplier undertakes to:

- (A) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof at a level of not less than £5,000,000 (five million pounds) per occurrence;
- (B) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £10,000,000 (ten million pounds) per occurrence;

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- (C) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence and in the aggregate per annum;
 - (D) maintain at its own cost an adequate level of product liability insurance of not less than £10,000,000 (ten million pounds) per occurrence;
 - (E) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;
 - (F) ensure that any Sub-Contractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil; and
 - (G) produce within five (5) Working Days of any reasonable request by the Company and in any event before the commencement of any of the Services under this Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 51.
- 51.2 The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 51.1.
- 51.3 If the Supplier fails to maintain the insurance policies as provided in this Clause 51, 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 Supplier or recover the same as a debt due from the Supplier.
52. **Environmental Claims**
- 52.1 The Supplier shall indemnify the Company against Losses and costs of Remediation in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non-performance or part performance of this Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, its employees, Sub-Contractors or agents.
- 52.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.
- 52.3 Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 52.4 In the event that the Supplier commissions an environmental assessment, the Supplier shall procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 52.5 The Supplier shall provide to the Company's Representative:

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- (A) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Services (for the purposes of this Clause 52.5, the “authorisations”);
- (B) copies of any amendments to the authorisations;
- (C) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (D) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

53. Sole Remedy

53.1 Without prejudice to any entitlement of the Supplier:

- (A) to specific performance of any obligation under this Contract; or
- (B) to injunctive relief;

the Supplier’s sole remedy in relation to matters for which an express right or remedy is stated in this Contract shall be that right or remedy and the Supplier shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

53.2 The Supplier shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Company’s breach of its obligations hereunder.

54. Bonds, Warranties and Guarantees

54.1 Where stated in Schedule 1 (Detailed Terms), the Supplier shall at its own expense provide within five (5) Working Days of the Company’s request the following:

- (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 9 (Form of Parent Company Guarantee and Performance Bond) in favour of the Company; and/or (as applicable)
- (B) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (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 9 in favour of the Company.

54.2 The Supplier shall ensure that any bond required under Clause 54.1:

- (A) provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1 (Detailed Terms); and
- (B) is renewed every twelve (12) months until the Expiry Date (or date of termination if earlier).

54.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 54.1 and 54.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within five (5) Working Days.

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- 54.4 If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 54.1 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.
- 54.5 The Company shall not be obliged to make any payment to the Supplier under the Contract unless and until the parent company guarantee and/or performance bond (as the case may be) and legal opinion (if applicable) have been provided in a form satisfactory to the Company.
- 54.6 If required by the Company, the Supplier shall procure that the terms of any Sub-Contract require the Sub-Contractor, within five (5) Working Days of a written request by the Company to the Sub-Contractor, to enter into:
- (A) a collateral warranty in the form set out in Schedule 11 (Form of Collateral Warranty) in favour of the Company and if requested by the Company, the Supplier shall require the Sub-Contractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the Sub-Contractor is resident in the form specified by the Company; and
 - (B) a parent company guarantee in the form provided by the Company from the ultimate holding company of the Sub-Contractor in respect of any of the Sub-Contractor's obligations under any collateral warranty required under this Clause 54.6.
- 54.7 If any warranty (including any accompanying parent company guarantee) required under Clause 54.5 is not delivered to the Company in accordance with Clause 54.5 one quarter of the Target Cost relative to the Services supplied by the relevant Sub-Contractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.
- 54.8 The Supplier shall be regarded as being in material breach of the Contract which is incapable of remedy in the event that any parent company guarantee and/or performance bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 54.9 Where the Supplier has provided the Company with a performance bond and thereafter any variation is made to the Services or Contract under Clause 15, the Company may in its discretion require the Supplier to provide at its expense a replacement performance bond for a greater sum where such variation either alone or when aggregated with any other variations has resulted in a material increase to the value of the Contract to the Company.

PART 15: GENERAL CONDITIONS

55. Assignment and Sub-contracting

- 55.1 The Supplier shall not assign, novate or sub-contract any of its rights or obligations under this Contract or any part thereof without the prior written consent of the Company.
- 55.2 The sub-contracting of all or any part of the Services to a Sub-Contractor shall not relieve the Supplier of its obligations to perform the Services under this Contract.
- 55.3 Subject to the provisions of this Contract, the Supplier shall be responsible as against the Company for the acts and omissions of the Supplier Parties as if they were the acts and omissions of the Supplier. The Supplier shall, as between itself and the Company, be responsible for the selection of and pricing by any Supplier Party.
- 55.4 The Company may novate, assign, transfer or sub-contract this Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 55.5 Within five (5) Working Days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 8 (Deed of Novation) in favour of any person to whom this Contract is being novated.
- 55.6 Subject to the Company's prior written consent pursuant to Clause 55.1, where the Supplier sub-contracts any or all of the Services, the Supplier shall include in each Sub-Contract (and procure that its Sub-Contractors include in each of their sub-contracts) payment terms substantially similar to those set out in Clause 18 and Clause 18A.
- 55.7 On or before the Commencement Date the Supplier shall notify the Company in writing of the name, contact details and details of the legal representatives of any Sub-Contractor, to the extent that such information has not already been provided by the Supplier to the Company. The Supplier shall also immediately provide to the Company in writing the name, contact details and details of the legal representatives of each new Sub-Contractor which the Supplier subsequently involves in the Services after the Commencement Date.
- .8 The Company reserves the right to verify whether there are any grounds for excluding any Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Company's exercise of its right under this Clause 55.8, the Company may request that the information provided by the Supplier under Clause 55.8 shall be accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Sub-Contractor(s). Further, the Company:
- (A) shall require that the Supplier replace any Sub-Contractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
 - (B) may require that the Supplier replace any Sub-Contractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.
- 55.9 The Supplier shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a Sub-Contractor pursuant to Clause 55.8(A) or (B).

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55.10 The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 55.8(A) or 55.8(B).

56. Change of Control

The Supplier shall not without the prior written consent of the Company implement any Change of Control of the Supplier.

57. Costs

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

58. Severance

58.1 Each provision of this Contract (including each provision in each of the schedules) is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by Applicable Law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law it shall to that extent be deemed not to form part of this Contract. The remaining provisions of this Contract shall continue in full force and effect and their validity, legality and enforceability shall not therefore be affected or impaired.

58.2 If a provision of this Contract is held to any extent to be invalid, the Parties shall as soon as reasonably practicable commence negotiations in good faith to remedy that invalidity.

59. Publicity

The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the prior written approval of the Company. No interviews concerning the same shall be given by the Supplier with the media without prior written approval from the Company of the content of such an interview.

60. Corrupt Gifts and Payments of Commission

- .1 The Supplier undertakes that it shall not and shall procure that its Sub-Contractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 60.2 The Supplier undertakes that it shall not, and shall use reasonable endeavours to procure that its Sub-Contractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 60.3 The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 60 at any time during performance of this Contract and during the twelve (12) year period following completion of performance.
- 60.4 Without prejudice to Clause 60.1, the Supplier shall ensure that it and any other Sub-Contractors shall:
 - (A) comply with all Applicable Laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

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- (B) not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct were carried out in the UK;
- (C) comply with the Company's policy on fraud, theft, bribery, corruption, irregularity and waste referred to as "TfL's Fraud and Bribery Policy" as the Company may update it from time to time ("Relevant Policy");
- (D) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and Clause 60.4(A), and will enforce them where appropriate;
- (E) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier or any Sub-Contractor in connection with the performance of this Contract of which the Supplier is, or ought reasonably to be, aware;
- (F) immediately notify the Company in writing if a foreign public official becomes an officer or employee of the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract; and
- (G) on 31 March annually, certify to the Company in writing signed by an officer of the Supplier compliance with this Clause 60 by the Supplier and all Sub-Contractors. The Supplier shall provide such supporting evidence of compliance as the Company may reasonably request.

61. No Waiver

- 61.1 No failure or delay on the part of either Party to exercise any right or remedy under this 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 this Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 61.2 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 Supplier from any obligation or liability imposed upon the Supplier by any provision of this Contract or otherwise.

62. Mitigation

Both Parties shall take all reasonable steps and in the case of the Supplier act in accordance with Good Industry Practice to minimise and mitigate any loss and/or compensation for which it may make a claim against or which it may otherwise be entitled to recover from the other Party, including in the case of the Supplier by procuring (where applicable) that all Supplier Parties take all reasonable steps to mitigate and minimise such loss and/or compensation.

63. Entire Contract

This Contract embodies and sets forth the entire contract and understanding of the Parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of this Contract. Except in the case of fraud, neither Party shall be entitled to rely on any contract, understanding or arrangement which is not expressly set forth in this Contract.

64. Other Contracts with the Company

BUNDLE 3 LOT 3: M&E & FABRIC (NON-LUL): EXECUTION VERSION

Except as otherwise agreed in writing by the Parties, if the Supplier or any Supplier Party has entered or enters into any other contract with the Company relating in any way to the subject matter of this Contract, no breach by the Company of such other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Company, its servants or agents or other contractors relating to or connected with any other such contract shall, regardless of any negligence on its part or their part:

- (A) give the Supplier any right under this Contract to a Relief Event or an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Company;
- (B) affect, modify, reduce or extinguish either the obligations of the Supplier or the rights or remedies of the Company under this Contract; or
- (C) be taken to amend, add to, delete, or waive any term or condition of this Contract.

65. Dispute Resolution

any question, dispute, difference or claim (a “Dispute”) should arise under or in connection with this Contract, either Party may refer it for resolution pursuant to Schedule 14 (Dispute Resolution Procedure).

66. Counterparts

This Contract 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.

67. Partnerships and Joint Ventures

67.1 If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under this Contract are joint and several. This Contract and the liabilities of the partners under this 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 Supplier under this Contract.

67.2 If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under this Contract are joint and several.

67.3 Nothing in this Contract shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in this Contract, neither Party is deemed to be the agent of the other, and neither Party holds itself out as the agent of the other.

68. Independent Supplier

The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier’s employees or Sub-Contractors or their employees hold themselves out as, an agent of the Company.

69. Governing Law and Jurisdiction

69.1 This 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.

69.2 The Company and the Supplier submit, subject to the provisions of this 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 Supplier is incorporated or in which any asset of the Supplier may be situated.

70. Contracts (Rights of Third Parties) Act 1999

70.1 Subject to the Replacement Employer's rights under Clause 31, no person except any member of the TfL Group may enforce this 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.

70.2 Notwithstanding those rights referred to in Clause 70.1, the Company and the Supplier may agree to vary or rescind this Contract without the consent of any third party.

71. Further Assurance

Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Contract.

72. Duty of the Supplier to notify Occasion of Tax Non-Compliance

72.1 The Supplier shall send written notification of any Occasion of Tax Non-Compliance to the Company within five (5) Working Days from the date it became aware that it has committed an Occasion of Tax Non-Compliance during the performance of this Contract. The notification shall include steps being taken, if applicable, to remedy the Occasion of Tax Non-Compliance.

72.2 For the avoidance of doubt, the obligation in Clause 72.1 also applies to an Occasion of Tax Non-Compliance in non-UK jurisdictions. If the Occasion of Tax Non-Compliance occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the Occasion of Tax Non-Compliance and any relevant tax laws and administrative provisions so the Company can understand the nature and seriousness of the Occasion of Tax Non-Compliance.

72.3 Promptly upon a request by the Company, the Supplier shall supply to the Company a certificate signed by two (2) of its directors or senior officers on its behalf certifying that no Occasion of Tax Non-Compliance is continuing, or if an Occasion of Tax Non-Compliance is continuing, specifying the Occasion of Tax Non-Compliance and the steps, if applicable, taken to remedy it. This should include any mitigating factors that the Supplier considers relevant.

72.4 In exercising its rights or remedies under this Clause 72 or Clause 44, the Company shall:

- (A) act in a reasonable and proportionate manner taking into account, among other things:
 - (1) the gravity and duration of the Occasion of Tax Non-Compliance and any sanctions imposed by a court or tribunal; and
 - (2) any remedial action taken by the Supplier to prevent reoccurrence of the Occasion of Tax Compliance;
- (B) seriously consider, where appropriate, action other than termination of this Contract to deal with the failure of the Supplier to comply with this Clause 72.

73. Capacity

Save as otherwise expressly provided, the obligations of the Company under this Contract are

obligations of the Company in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Company in any other capacity, nor shall the exercise by the Company of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Company to the Supplier.

74. Amendments

Any amendments to this Contract, other than those made in accordance with Clause 15, shall be effective only if made by agreement in writing between the Company's Representative and the Supplier's Representative, or those persons duly appointed by either Party to act on behalf of the Company's Representative and the Supplier's Representative in accordance with Clause 12.

75. Notices and Service of Process

75.1 Subject to Clause 75.2, any notice or other document given under, or in connection with, this Contract must be in English and in writing and sent by letter, electronic mail or fax or delivered by hand to the other Party's representatives in each case to the address identified below. The notice or other document will be effective as follows:

- (A) if the notice or other document is sent by letter, it will be effective when it is delivered;
- (B) if the notice or other document is sent by electronic mail, it shall be deemed to be given five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses are used, and the onus shall be on the sender to prove the time that the electronic mail was dispatched and the address it was sent to. The place of delivery of electronic mail will be deemed to be the postal address of the recipient in set out in Schedule 1 (Detailed Terms);
- (C) if the notice or other document is 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
- (D) if the notice or other document is delivered by hand to the other Party's representative, it will be effective immediately upon delivery.

The address, electronic mail address and fax numbers of the Company and the Supplier are set out in Schedule 1 (Detailed Terms).

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

75.2 The Parties agree that proceedings arising out of or in connection with this Contract may not be served by electronic mail or fax provided that the Company may from time to time give notices to the Supplier that such proceedings may be served by electronic mail or fax. If the Company gives such a notice then with effect from such notice such proceedings may be served by electronic mail or fax in accordance with Clause 75.1. The Company may from time to time rescind such a notice by further notice and, with effect from the date of such notice of rescission, proceedings arising out of or in connection with this Contract may not be served by electronic mail or fax.

PART 16: TRANSPORT FOR LONDON GROUP REQUIREMENTS

76. Transport for London Group

76.1 Declaration of Ineffectiveness and Public Procurement Termination Event

- (A) Without prejudice to the Company's right to terminate this Contract under Clause 43.1, 44, or at common law, the Company may terminate this Contract at any time in accordance with the provisions of this Clause 76.1 in the event that:
 - (1) there is a Declaration of Ineffectiveness; or
 - (2) there is a Public Procurement Termination Event (without prejudice to the Company's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or by regulation 89(3) of the Utilities Contracts Regulations 2016).
- (B) In the event that any court makes a Declaration of Ineffectiveness or there is a Public Procurement Termination Event, the Company shall notify the Supplier. The Parties agree that the provisions of this Clause 76.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness or a Public Procurement Termination Event. Where there is any conflict or discrepancy between the provisions of Clause 43.1 and this Clause 76.1 or the Cessation Plan, the provisions of this Clause 76.1 and the Cessation Plan shall prevail.
- (C) The Declaration of Ineffectiveness or the Public Procurement Termination Event 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 or Public Procurement Termination Event.
- (D) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness or the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (1) 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
 - (2) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 76.1 and to give effect to the terms of the Declaration of Ineffectiveness or the Public Procurement Termination Event.
- (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 Supplier'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 this Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of this Contract in accordance with this Clause 76.1.

76.2 Crime and Disorder Act 1998

The Supplier acknowledges that the Company 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 its 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:
 - (1) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - (2) the misuse of drugs, alcohol and other substances; and
 - (3) re-offending,

and in the performance of this Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its Sub-Contractors assist and co-operate, with the Company and relevant members of the TfL Group to enable the Company to satisfy its duty.

76.3 The Company's business

The Supplier 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 this 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 this Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services.

76.4 Best value

The Supplier acknowledges that the Company 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 Supplier shall assist the Company to discharge its duty where possible, and in doing so, shall carry out any review of Services reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to this Contract in order for the Company to achieve best value.

76.5 Conflict of Interest

- (A) The Supplier 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 Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of this 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 this 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 entitled to terminate this Contract.

76.6 Equality and Diversity

- (A) Without limiting the generality of any other provision of this Contract, the Supplier:
 - (1) shall not unlawfully discriminate;
 - (2) shall procure that its employees and agents do not unlawfully discriminate; and
 - (3) shall use reasonable endeavours to procure that its Sub-Contractors do not unlawfully discriminate when providing the Services,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.
- (B) The Supplier acknowledges that the Company is under a duty under Section 149 of the Equality Act 2010 to have due regard to the need to:
 - (1) 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;
 - (2) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
 - (3) foster good relations between persons who share a Protected Characteristic and persons who do not.

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

- (C) The Supplier shall ensure that its staff, and those of its Sub-Contractors who are engaged in the performance of this 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.

- (D) The Company's Harassment, Bullying and Discrimination Policy as up-dated from time to time (copies of which are available on request from the Company) requires the Company's own staff and those of its Sub-Contractors to comply fully with the Harassment, Bullying and Discrimination Policy to eradicate harassment in the workplace. The Supplier shall:
- (1) ensure that its staff, and those of its Sub-Contractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Harassment, Bullying and Discrimination Policy;
 - (2) fully investigate allegations of workplace harassment in accordance with the Harassment, Bullying and Discrimination Policy; and
 - (3) ensure that appropriate, effective action is taken where harassment is found to have occurred.
- (E) In addition to this Clause 76.6, the Supplier shall comply with its obligations under Schedule 16 (Responsible Procurement) in respect of equality and diversity.

76.7 Work Related Road Risk

- (A) For the purposes of Clauses 76.7(B) to 76.7(I) (inclusive) of this Contract, the following expressions shall have the following meanings:

"Bronze Accreditation" means 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" means 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" means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;

"Delivery and Servicing Vehicle" means a Lorry, a Van or a Car-derived Van;

"Driver" means any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;

"DVLA" means Driver and Vehicle Licensing Agency;

"FORS" means 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" means 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" means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

“Lorry” means a vehicle with an MAM exceeding 3,500 kilograms;

“MAM” means 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” means 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” means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk ; and

“Van” means a vehicle with a MAM not exceeding 3,500 kilograms.

(B) Fleet Operator Recognition Scheme Accreditation

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within sixty five (65) Working Days of the Commencement Date:

- (1) (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
- (2) (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 Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

(C) Safety Equipment on Vehicles

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

- (1) have Side Guards, unless the Supplier 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;
- (2) 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;
- (3) have equipment fitted with an audible means of warning other road users of the Lorry’s left manoeuvre; and
- (4) 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.

(D) Driver Licence Checks

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the

Supplier shall ensure that:

- (1) 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
- (2) 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 Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last twelve (12) months:
 - (a) 0 – 3 points on the driving licence – annual checks;
 - (b) 4 – 8 points on the driving licence – six (6) monthly checks;
 - (c) 9 – 11 points on the driving licence – quarterly checks; or
 - (d) 12 or more points on the driving licence – monthly checks.

(E) Driver Training

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier 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 this Contract.

(F) Collision Reporting

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

- (1) 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
- (2) within ten (10) Working Days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five (5) Working Days of a written request from the Company.

(G) Self-Certification of Compliance

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within sixty five (65) Working Days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 76.7(C), 76.7(D) and 76.7(E) of this Contract (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

(H) Obligations of the Supplier Regarding Sub-Contractors

BUNDLE 3 LOT 3: M&E & FABRIC (NON-LUL): EXECUTION VERSION

The Supplier shall ensure that those of its Sub-Contractors who operate Delivery and Servicing Vehicles to provide the Services shall:

- (1) comply with Clause 76.7(B); and
- (2) where its Sub-Contractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Contract:
 - (a) For Lorries – Clauses 76.7(C), 76.7(D), 76.7(E), and 76.7(F); and
 - (b) For Vans – Clauses 76.7(D), 76.7(E), and 76.7(F),
 - (c) as if those Sub-Contractors were a party to this Contract.

(I) **Failure to Comply with Work Related Road Risk Obligations**

Without limiting the effect of any other Clause of this Contract relating to termination, if the Supplier fails to comply with any of Clauses 76.7(B), 76.7(C), 76.7(D), 76.7(E), and 76.7(F), 76.7(G) and/or 76.7(H):

- (1) the Supplier has committed a material breach of this Contract; and
- (2) the Company may refuse the Supplier, 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).

77. **Enhanced Capital Allowances**

77.1 For the purposes of this Clause 77, "Eligible Components" shall mean any products that are listed or capable of being listed on the Energy Technology List and/or the Water Technology List.

77.2 Registration of Eligible Components

- (A) The Supplier shall use Eligible Components in providing the Services and shall comply with the following obligations:
 - (1) if the Supplier has the choice between an Eligible Component and another product, the Supplier shall use the Eligible Component; and
 - (2) if the Supplier develops a product that is capable of being an Eligible Component, the Supplier shall ensure that this product is designed in a way that allows it to become an Eligible Component.
- (B) The Supplier's obligations contained in Clause 77.2(A) above shall not apply to a particular product if the Supplier provides to the Company evidence that is satisfactory to the Company that it is not reasonably practicable to comply with the obligations contained in Clause 77.2(A) above in relation to that particular product.
- (C) The Supplier shall register all Eligible Components on the Energy Technology List and/or the Water Technology List (as the case may be) and shall provide to the Company evidence of such registration that is acceptable to the Company within ten (10) days of registration.

77.3 Claim for Enhanced Capital Allowances

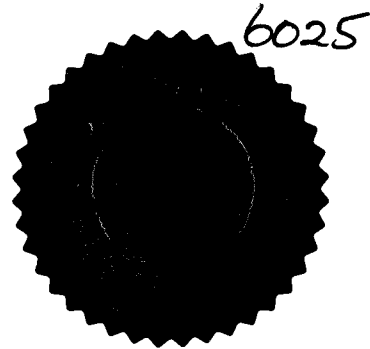
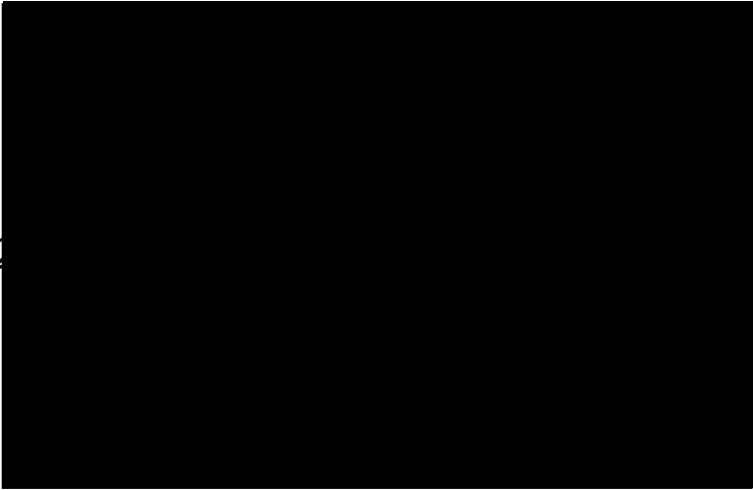
BUNDLE 3 LOT 3: M&E & FABRIC (NON-LUL): EXECUTION VERSION

- (A) To enable the Company to support its claim to HM Revenue and Customs in relation to Enhanced Capital Allowances, the Supplier shall provide the following information to the Company as necessary:
 - (1) details of all Eligible Components, including:
 - (a) the number of Eligible Components;
 - (b) unique model reference numbers; and
 - (c) Supplier details and evidence of conformance with minimum performance;
 - (2) the cost per each Eligible Component;
 - (3) any applicable professional fees directly associated with the provision of each Eligible Component;
 - (4) the installation and delivery costs of each Eligible Component and associated preliminaries directly associated with the provision of each Eligible Component; and
 - (5) details of the asset on which each Eligible Component purchased will be installed.
- (B) For the purposes of Clauses 77.3(A)(1) to 77.3(A)(5) inclusive, the Supplier shall provide to the Company an invoice or payment certificate along with supporting evidence that demonstrates to the satisfaction of the Company that the costs incurred as referred to in Clauses 77.3(A)(1) to 77.3(A)(5) inclusive are sufficiently linked to each Eligible Component (where applicable).
- (C) For the purposes of Section 5 of the Capital Allowances Act 2001, the Supplier shall provide the Company with the delivery date for each Eligible Component.
- (D) The Supplier agrees to co-operate with the Company and its professional advisers in relation to the submission and agreement of such claim to HM Revenue and Customs.

77.4 The Supplier undertakes and confirms to the Company that neither it nor any Affiliate, Sub-Contractor, supplier or provider of finance to the Supplier or any of those persons has claimed and that it will not claim and shall procure that no such other person shall claim any Enhanced Capital Allowances or analogous tax allowances in respect of the Services.

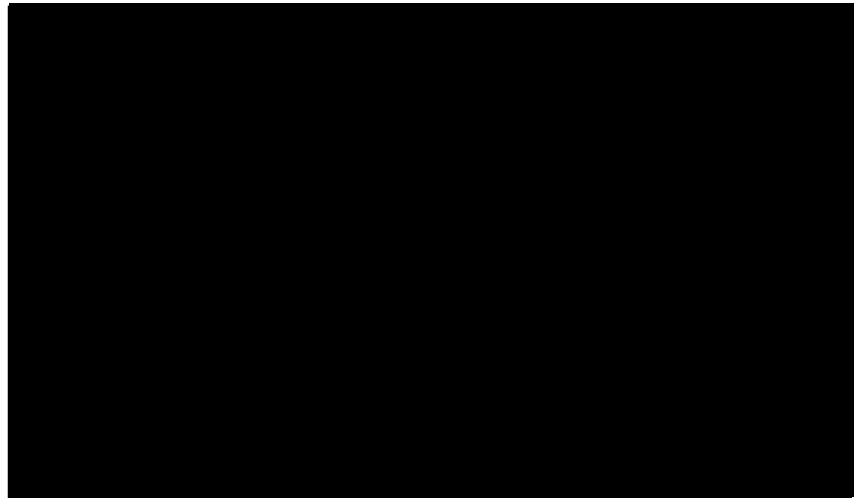
SIGNATURES

IN WITNESS of which this document has been executed as a deed by the Parties and delivered as a deed on the date first written above.

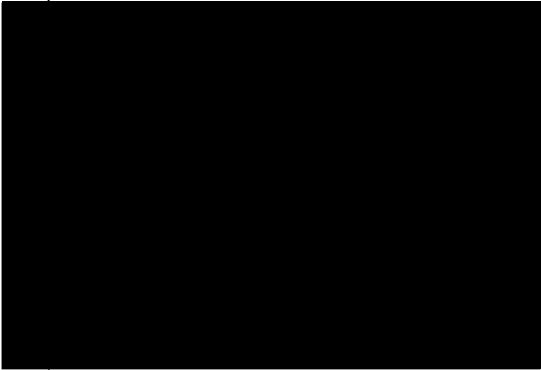


Executed as a deed by VINCI
Construction UK Limited acting by

and



SCHEDULE 1: DETAILED TERMS

Contract Reference Number:	TFL-00927 - 1FM Bundle 3 Lot 3 - Mechanical, Electrical, Fabric and Premises Maintenance (Surface & Head Office Facilities)
Supplier Reference:	FA0028
Commencement Date:	<u>02 MAY</u> 2017
Services Commencement Date:	25 June 2017
Expiry Date	24 June 2022
Supplier's Representative: Address for service of notices: Telephone: Email:	
Company's Representative: Address for service of notices: Telephone: Email	As notified to the Supplier.
Additional applicable standards under Clause 5.2(E)	Please refer to Specification.
Programme	See Schedule 4 (Programme).
Specification:	See Schedule 3 (Specification).

BUNDLE 3 LOT 3: M&E & FABRIC (NON-LUL): EXECUTION VERSION

Site	Please refer to Specification.
Security required pursuant to Clause 54.1	
Bond	No
Parent company guarantee	Yes
Application for payment dates	Please refer to Schedule 2 (Payment).
Interest Rate pursuant to Clause 21	2% above the Bank of England base rate

SCHEDULE 2: PAYMENT

PART A: PRICING PREAMBLE

1 Target Cost

1.1 This Schedule 2 (Payment) is comprised of:

- (A) **Part A:** Pricing Preamble
 - (B) **Part B:** Schedule of Defined Cost Components
 - (C) **Part C:** Target Cost and Other Pricing Information, which is made up of the following matrices:
 - (1) Summary (including the Target Cost);
 - (2) Matrix 1: Maintenance Operatives, Sub-Contractors, Plant, Equipment and Materials - Contract Master Sheet (this is a component of the Target Cost);
 - (3) Matrix 1.1 to Matrix 1.3: Delivery Unit Breakdown;
 - (4) Matrix 2: Core Team (this is a component of the Target Cost);
 - (5) Matrix 3: Additional Works Rates;
 - (6) Matrix 4: Discounts for multiple Bundles/Lots (if applicable); and
 - (7) Matrix 5: Location Breakdowns: This sets out a breakdown of individual buildings within the TfL Head Office Estate.
 - (D) **Part D:** Price Adjustment for Inflation
 - (E) **Part E:** Audit Plan
 - (F) **Part F:** Not Used
 - (G) **Part G:** TfL Business Areas and Delivery Units
- 1.2 The Defined Cost shall be in £ sterling, shall exclude VAT and shall be calculated using the rates set out in Matrices 1 and 2. Such rates, together with the Fee, shall be inclusive of all costs and expenses (including, but not limited to, labour, materials, equipment, profit, overhead and travel time) of whatsoever nature and howsoever incurred by the Supplier in consideration of the provision of the Services and the performance of the Supplier's obligations in accordance with the Contract, including as detailed in this Schedule 2 (Payment).
- 1.3 The Supplier shall raise separate Payment Applications in respect of the Services delivered to each Delivery Unit (as defined in Part G of this Schedule 2), as listed below:
- (A) TfL Head Office - Matrix 1.1;
 - (B) Victoria Coach Station - Matrix 1.2; and
 - (C) Surface Buses - Matrix 1.3.

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As such, the rights and obligations set out in Clause 18 (Certification and Payment) of the Contract shall apply in full and operate in parallel for each of the Delivery Units listed above.

- 1.4 Following 24 June 2018, the Target Cost shall be indexed in accordance with Part D (Price Adjustment for Inflation) of this Schedule 2 (Payment).
- 1.5 Defined Cost arising from variations made in accordance with Schedule 6 Part A (Contract Variation Procedure) to the Contract shall be calculated using the rates set out in Matrix 1 (Maintenance Operatives, Sub-Contractors, Plant, Equipment and Materials - Contract Master Sheet), Matrix 2 (Core Team) and Matrix 5 (Location Breakdown).
- 1.6 The Additional Works Rates referred to in Schedule 6 Part B (Additional Works) to the Contract shall be calculated using the rates set out in Matrix 3 (Additional Works Rates).
- 1.7 Bank Holidays, Public Holidays and leap years have been accounted for in the Target Cost and so no further adjustment to the Target Cost to take account of such days is required.
- 8 "Maintenance Operatives" means those of the Supplier Personnel set out in Appendix 1 to this Schedule 2 (Payment).
- 1.9 The "Core Team" means those of the Supplier Personnel set out in Appendix 2 to this Schedule 2 (Payment).
- 1.10 The percentage to be applied to the total amount of Defined Cost as referred to in the definition of "Fee" is [REDACTED]

PART B: SCHEDULE OF DEFINED COST COMPONENTS

1. Maintenance Operatives and Core Team

1.1 The following components for the cost of:

- (A) Maintenance Operatives and Core Team members who are directly employed by the Supplier and whose normal place of working is within the Sites;
- (B) Maintenance Operatives and Core Team members who are directly employed by the Supplier and whose normal place of working is not within the Sites but who are working in the Sites for a period of not less than one week;
- (C) Maintenance Operatives and Core Team members who are not directly employed by the Supplier but are paid by the Supplier according to the time worked while they are within the Sites;
- (D) wages and salaries and amounts paid by the Supplier for Maintenance Operatives and Core Team members paid in accordance with the time worked within the Sites;
- (E) payments to Maintenance Operatives and Core Team members in respect of:
 - (1) bonuses and incentives;
 - (2) overtime;
 - (3) working in special circumstances (only applicable for working at heights, working in exposed conditions, trade supplements, plus rates, shift allowance, tool allowance, local allowance, food allowance);
 - (4) special allowances (only applicable for working at heights, working in exposed conditions, trade supplements, plus rates, shift allowance, tool allowance, local allowance, food allowance);
 - (5) absence due to sickness and holidays; and
 - (6) severance related to work on this Contract.
- (F) payments made to Maintenance Operatives and Core Team members in respect of:
 - (1) travelling to and from the Sites in the course of performing the Services;
 - (2) subsistence and lodging where operatives are required to stay overnight in order to perform the Services;
 - (3) relocation;
 - (4) medical examinations;
 - (5) passports and visas;
 - (6) protective clothing;

- (7) hand tools and equipment;
- (8) complying with Applicable Laws;
- (9) superannuation and life assurance (only applicable for taxes in respect of employees, National Insurance contributions, payment under employment law, levies for industrial training (if required by law)) and medical insurance relating to Maintenance Operatives and Core Team members in the performance of the Services;
- (10) death benefit;
- (11) occupational accident benefits; and
- (12) medical aid.

Plant and Equipment

- 2.1 The following component for the cost of usage of the Supplier's equipment used within the Sites:
 - (A) amounts for Supplier's equipment are the rates stated in Part C (Matrix 1) of this Schedule 2 (Payment), multiplied by the time for which the Supplier's equipment is required.
- 2.2 The time required is expressed in Working Days, weeks or Periods. For idle and standby time, the following times shall be deducted:
 - (A) the first half Working Day for items paid at a daily rate;
 - (B) the first third of a week for items paid at a weekly rate; and
 - (C) the first quarter of a Period for items paid at a Period rate.
- 2.3 The rates are inclusive of the cost of:
 - (A) transporting the Supplier's equipment to and from the Sites;
 - (B) erecting and dismantling the Supplier's equipment; and
 - (C) maintaining the Supplier's equipment.
- 2.4 The rates are inclusive of the purchase price (or any replacement cost) and the hire charge for the Supplier's equipment.

3. Materials and Charges

- 3.1 The following components for the cost of materials:
 - (A) Payments:
 - (1) for delivery to Site of materials and consumables;
 - (2) for providing and removing packaging;
 - (3) for samples and tests;

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- (4) to utilities for the provision and use of water, gas, electricity and other services (where these services are not provided by the Company);
- (5) to public authorities, utilities and other properly constituted authorities of charges which they are authorised to make in respect of the Services and where such charges are not paid directly by the Company; and
- (6) for accommodation and rest rooms, including associated servicing costs where such facilities are not provided by the Company and the Company has instructed the Supplier to provide such facilities.

4. Sub-contractors

The component for cost of sub-contractors is the invoice cost of work which is sub-contracted net of all trade discounts.

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PART C: TARGET COST AND OTHER PRICING INFORMATION

Schedule 2 Part C is the document titled Lot 3.3 (M&E and Fabric) - Schedule 2 - Part C and stored on the CD-ROM at Schedule 23 (Documents on CD-ROM)

PART D: PRICE ADJUSTMENT FOR INFLATION

1. Definitions

For the purposes of this Schedule 2 Part D (Price Adjustment for Inflation), the following terms have the following meanings:

- 1.1 the "Base Date" used in the calculation of the Price Adjustment Factors is 31st December 2016;
- 1.2 the Base Date Index ("**B**") is the latest available Index before the base date;
- 1.2 the Latest Index ("**L**") is the latest available Index at the Adjustment Date;
- 1.3 the "Adjustment Date" is the date defined in the table set out in paragraph 3 below;
- 1.4 the "Price Adjustment Factor" is $(L-B)/B$ expressed as a percentage + 100% for the Index linked to it and may be negative; and
- 1.5 the "Index" is the Consumer Price Index ("CPI") published by the Office for National Statistics.

2. Price Adjustment Factors

- 2.1 If an Index is changed after it has been used in calculating a Price Adjustment Factor but before the next Adjustment Date, the calculation is repeated and a correction made.
- 2.2 If any of the indices referred to in the Index ceases to be published, the parties shall use such alternative index or publication or information which produces the same, or as nearly as possible the same, result. If the reference date used in the compilation of any such alternative index, publication or information shall change, the figure taken to be shown in such index, publication or information shall be the figure which would have been shown in the index or information if the original reference date had been retained.
- 2.3 If there has been a material change in the basis of information from which the Index is compiled which produces a significant change to the indexation provisions contained in the Contract, or it becomes impossible (by reason or any change after the date hereof in the method used to compile any such Index or information or for any other reason, whatever) to calculate the amounts due by reference to any such Index or information or any alternatives thereto, the parties shall use such alternative method of indexation under the Contract as a basis for the making of subsequent payments under the Contract as most closely reflects the intent of the Index or information in question.
- 2.4 If any Dispute shall arise between the Parties as to the construction or effect of paragraphs 1 to 2 of this Schedule 2 Part D (Price Adjustment for Inflation) or as to the calculation of any sum calculated in accordance with the provisions of paragraphs 1 to 3 of this Schedule 2 Part D (Price Adjustment for Inflation), the matter may be referred by either party for resolution under the dispute resolution procedure set out in Schedule 14 (Dispute Resolution Procedure) of the Contract.

3 Time of calculation

Target Cost, Target Cost Breakdown and the Additional Works Rates shall be adjusted annually for inflation in accordance with this Schedule 2 Part D (Price Adjustment for Inflation) by multiplying them by the relevant Price Adjustment Factor. Adjustments shall take effect on 24 June 2018 and thereafter at the commencement of Period 4 of each Financial Year using the Price Adjustment Factor applicable at the Adjustment Date identified below:

Item	Adjustment Dates
<p>Applicable elements of Target Cost and Target Cost Breakdown as listed in Schedule 2 Part C (Summary tab - table in Part B) (Target Cost – per year) and Matrix 1</p> <p>and</p> <p>Additional Works Rates as listed in Schedule 2 Part C (Matrix 3)</p>	<p>1 April 2018 and annually thereafter</p>

PART E: AUDIT PLAN

CONTENTS

Section A	-	The Audit Plan - General
Section B	-	Maintenance Operatives and Core Team
Section C	-	Equipment
Section D	-	Materials
Section E	-	Sub-contractors

Section A

The Audit Plan – General

A.1 Introduction

This plan (the “Audit Plan”) has been produced to audit the Defined Costs for the Services. Clause 18 (Certification and Payment) of the Contract provides that the Supplier is paid the Price for Services Provided to Date plus other amounts to be paid to the Supplier less amounts to be paid by or retained from the Supplier.

This Audit Plan is designed to demonstrate that the assessment of the Defined Cost has been completed in accordance with the provisions of Clause 18 (Certification and Payment) and this Schedule 2 (Payment) and satisfy the requirements of third party or external auditors.

The Company, the Company's Representative and the Supplier are jointly committed to ensuring the control of Defined Cost.

The Audit Plan shall also apply to any adjustments made to the Target Cost and/or Defined Cost as a result of a variation pursuant to Schedule 6 Part A (Contract Variation Procedure) of the Contract.

Within four (4) weeks of the Commencement Date the Supplier will submit to the Company for the Company's approval a draft audit compliance plan which will set out how the Supplier proposes to comply with this Schedule 2 Part E (Audit Plan) and include details of: (i) how the Supplier will substantiate and provide evidence of the Defined Cost and Defined Cost Components; and (ii) how it will substantiate its Payment Applications, including what supporting documents will be provided and how the amounts due will be assessed.

The Company may comment on and propose amendments to any draft audit compliance plan, and the Supplier will revise such draft audit compliance plan to take account of such comments and amendments and resubmit such revised draft audit compliance plan to the Company within five (5) Working Days of receipt such comments and proposed amendments. The Company may comment on and propose amendments to each draft audit compliance plan submitted by the Supplier, and the Supplier shall revise and resubmit each such revised draft audit compliance plan, in accordance with this paragraph.

If the Company is satisfied with a draft audit compliance plan it will notify the Supplier that this is the approved audit compliance plan (such approved audit compliance plan, the “Audit Compliance Plan”). The Supplier shall implement and comply with the Audit Compliance Plan. Notwithstanding such implementation and compliance the Company may require further or more detailed information in respect of any matter to which the Audit Plan or the Audit

Compliance Plan applies if it or any third party or external auditors considers this necessary to verify any such matter in any respect and the Supplier shall provide such information. The Audit Compliance Plan may only be subsequently amended with the Company's prior written approval.

A.2 Basis of Audit Plan and Procedures

This procedure is devised on the basis that there is a joint commitment towards minimising costs due to the Target Cost and incentive schemes incorporated within the Contract. With the joint incentive to minimise the cost, it is proposed relatively uncomplicated audit procedures can be adopted. This Audit Plan avoids the need for auditing all costs and endeavours to minimise cost of implementing the procedures.

There is a need for a number of audit procedures to be established to meet the audit objectives and also to satisfy the requirements of third party or external auditors.

The Audit Plan has been established to review administration and management procedures that are in place to manage the costs.

A.3 Main Audit Objectives

The intention of the Audit Plan is to allow an auditor appointed by the Company's Representative to provide a report for each Period based on a systematic analysis of the records of Defined Cost. This Audit Plan is intended to provide the Company with the maximum confidence in the accuracy of the Defined Cost paid whilst employing the minimum practical resource to implement the procedures.

The Audit Plan is divided into four key audit task sections:

- Maintenance Operatives and Core Team;
- Equipment;
- Materials; and
- Sub-contractors.

A.4 Reporting

The auditor, as a result of carrying out the audit, shall generate a number of reports/comments. A pro-forma "Audit Comment Sheet" is set out in Appendix 1 of this section A.

The reports shall highlight anomalies as well as items that need further action, however, the auditor shall, when requested, use their professional experience to provide comments/recommendations for consideration by others, which are intended to assist in the