

(j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and

(k) strikes, lock outs or other industrial action being in each case industry-wide.

“Form of Agreement” means the Form of Agreement contained in Section 1.

“Framework Particulars” means the Framework Particulars contained in Section 2.

“Framework Commencement Date” means the date specified as such in the Framework Particulars.

“Free Issue Materials” means materials, apparatus and components supplied by the Company to the Contractor without charge and intended for use by the Contractor exclusively in the provision of Works under each Contract.

“Greater London” has the meaning ascribed to it in the GLA Act.

“Greater London Authority Act” or **“GLA Act”** means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

“HGCRA” means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 or as further amended or supplemented.

“Infrastructure Manager” has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

“Initial Term” means the period of time specified as such in the Framework Particulars.

“Intellectual Property Rights” means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

“Interest Rate” means the percentage above the base rate from time to time of the Bank of England as specified in the Framework Particulars.

“Invitation to Tender” or **“ITT”** means an invitation to tender for works under a contract in the form set out in Part A to Schedule 2 issued to the Contractor by the Company in accordance with Clause 3.2 of the Form of Agreement.

“Key Performance Indicator” or **“KPI”** means any or all, as the case may be, of the indicators set out in paragraph 2 of Schedule 12.

“Key Personnel” means Contractor personnel identified in the Framework Particulars and the relevant Order and any changes to the same that are made in accordance with Clause 4.

“Liquidated Damages” means the liquidated damages identified as such in the Framework Particulars and payable subject to and in accordance with Clause 11.

“London Living Wage” means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Living Wage Foundation, the Mayor or any other relevant Competent Authority.

“Losses” means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments whatsoever or howsoever arising incurred by the Company, its subcontractors, employees or agents or any other member of the TfL Group.

“Mayor” means the person from time to time holding the office of Mayor of London as established by the GLA Act.

“Milestone” means all of the activities corresponding to the milestone stated in the Contract and the Milestone Payment Plan.

“Milestone Payment” means the sum corresponding to the applicable Milestone stated on the Milestone Payment Plan.

“Milestone Payment Plan” means the plan attached to each Contract setting out the Milestones and corresponding Milestone Payment.

“Mini-Competition” means a competitive process which the Company may from time to time utilise to select a Contractor to provide the Works.

“Notified Sum” has the meaning given to that term in Clause 19.6.

“Operator” means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements.

“Order” means an order which, unless the Parties agree otherwise, shall be substantially in the form set out in Part B to Schedule 2, entered into by the Company and the Contractor.

"Parties" means the Company and the Contractor and **"Party"** shall mean either of them as the case may be.

"Payment Application" has the meaning given to that term in Clause 19.1.

"Permitted Delay Event" has the meaning given to that term in Clause 28.2.

"Planned Works" means routine or planned works set out in the Specification such as planned performance, support services, planned maintenance and preventative maintenance.

"Plant and Materials" means any plant, materials, apparatus, components or other items which are intended to be included in the Works.

"Prescribed Period" has the meaning given to that term in Clause 19.8.

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Agreement or any Contract or any other contract with the Company; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any Contract or any other contract with the Company; or
- (b) entering into this Agreement or any Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf or to its knowledge unless, before such contracts were entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts,in relation to this Agreement or any Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

“Proposal” means the Contractor’s offer to provide the Works in response to an ITT in the form set out in Part C to Schedule 2.

“Public Procurement Termination Event” means:

- (a) this Agreement or any Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (b) the Company determines that this Agreement or any Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations contained in the EU Treaties and applicable procurement Regulations.

“Reactive Works” means Works set out in the Specification that are not planned Works and which entail responding to Faults and other unplanned events.

“Rectification Time” has the meaning given to it in Schedule 12.

“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

“Response Time” has the meaning given to it in Schedule 12.

“Responsible Procurement Policy” means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006 and updated in January 2008 and as may be amended.

“Safety Breach” means a material breach of any obligation under this Agreement or any Contract caused by the gross incompetence of or wilful default by the Contractor (or anyone employed by or acting on behalf of the Contractor) or any of its agents which has materially affected the safe operation of the Underground Network and/or Sites or the safety of the Company’s customers, staff or any other person.

“Service Delivery Indicator” or **“SDI”** means any or all as the case may be of the indicators of performance of the Works against a target set out in paragraph 3 of Schedule 12.

“Site” means the place or places as specified in the Specification provided or made available by the Company where any part of the Works is to be carried out by the Contractor or to which the Works are to be delivered, together with so much of the area surrounding the same as the

Contractor shall, with the consent of the Company, use as a laydown area in connection with the Works other than merely for the purposes of access.

“**Specification**” means the description of the Works set out or referenced in Schedule 1 and the relevant Contract Specification including any subsequent amendments made in accordance with this Agreement.

“**Standards**” means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Contractor to provide the Works in accordance with good industry practice. A full set of current Standards is available for the Contractor’s use on-line at the LU Standards e-library or as notified to the Contractor.

“**Subcontract**” means a contract between the Contractor and a Subcontractor.

“**Subcontractor**” means a subcontractor to the Contractor, being the counterparty of a contract with the Contractor involved in the performance of works or services necessary for or related to the carrying out of the Works (or any part of them).

“**Term**” means the duration of this Agreement which, unless terminated earlier in accordance with this Agreement, shall be the Initial Term as may be extended pursuant to Clause 2.3 of the Form of Agreement.

“**TfL**” or “**Transport for London**” means Transport for London, a statutory body set up by the Greater London Authority Act.

“**TfL Group**” means Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any “**member of the TfL Group**” refers to TfL or any such subsidiary.

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

“**Transparency Commitment**” means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received.

“**Undelivered Completed Work**” has the meaning given to it in paragraph 3.1.5 of Schedule 12.

“Underground Network” means the stations and depots (wherever situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as “London Underground”.

“Variation” means any addition, omission or other change to the Specification.

“Variation Order” means the written authorisation from the Company to a Variation Proposal in accordance with the Contract Variation Procedure.

“Variation Proposal” means the written proposal put forward by the Company or the Contractor for a Variation in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

“Working Day” means any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday.

“Works” means any or all of the works and activities, including the Planned Works and the Reactive Works, to be undertaken and completed by the Contractor for the Company in accordance with the each Contract including any Variations to such Works and any Works, functions or responsibilities which may be reasonably regarded as incidental to the foregoing Works or activities and which may be reasonably inferred from the Contract.

1.2. Interpretation

- (a) Headings in this Agreement are for reference only and are not to be used for the interpretation of this Agreement.
- (b) A reference to a Clause, Schedule or Section shall be to a Clause of, or a Section or Schedule to, this Agreement or each Contract (as the case may be) and references to this Agreement or any Contract include its recitals and Schedules.
- (c) Where appropriate, the singular includes the plural and vice versa and words importing a particular gender shall include all genders.
- (d) References to (or to any specified provision of) this Agreement, any Contract or any other document shall be construed as references to this Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of this Agreement and any Contract.
- (e) Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- (f) References to the “Company” shall include its successors, transferees and assignees.

- (g) References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- (h) Where another member of the TfL Group enters into a Contract with the Contractor, references in a Contract to "the Company" shall, unless the context otherwise requires, be to that member of the TfL Group.

2. Contractor's Primary Obligations

2.1. The Contractor shall provide the Works to the Company in accordance with:

- (a) the terms set out in this Agreement; and
- (b) the terms of any Contract which from time to time may be entered into by the Company and the Contractor.

2.2. The Contractor shall ensure and warrants to the Company that the Works will:

- (a) be performed in accordance with good industry practice and in a good and workmanlike manner and be free from defects;
- (b) be performed with all due skill, care and diligence to be expected of appropriately qualified and experienced professionals with experience in carrying out work of a similar scope, type, nature and complexity to that required under this Agreement and each Contract;
- (c) be performed in accordance with the Contract Programme and in a regular and diligent manner;
- (d) be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement and any Contract having regard to the operation of the Underground Network and/or Site;
- (e) be provided using materials and goods that are of sound and satisfactory design and good quality and that the Contractor will only specify substances and materials for incorporation in the Works and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Specification;
- (f) be provided in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons and be capable of being used in a safe, economic and