

PRIVATE AND CONFIDENTIAL

LONDON UNDERGROUND LIMITED

and

EKE-ELECTRONICS LTD

SPARES AND SUPPORT AGREEMENT

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SPARES AND SUPPORT AGREEMENT**DATED** 2016**BETWEEN:**

- (1) **LONDON UNDERGROUND LIMITED** (Registered Number 1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Purchaser**");
- (2) **EKE-ELECTRONICS LTD.** (Registered No: 01007204) a company incorporated under the laws of Finland whose registered office is at Piispanportti 7, 02240 Espoo, Finland (the "**Service Provider**").

WHEREAS:

- (A) The Service Provider is experienced and qualified in providing support services and supplying spare parts in relation to data transmission systems on London Underground trains, including services of similar nature and complexity to the Services.
- (B) The Purchaser wishes to appoint the Service Provider to provide support and material supply services for the Replacement Systems and Goods on the terms and conditions of this Agreement.

IT IS AGREED:**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement, (including the recitals) unless the context otherwise requires, the following words and expressions have the following meanings respectively:

"**Additional Review Meeting**" shall have the meaning given to it in paragraph 2.2 of Schedule 3A (*Contract Management*);

"**Affected Party**" shall have the meaning given to it in Clause 25.2;

"**Agreed FRACAS and DRACAS Database**" means the FRACAS and DRACAS database established pursuant to the MSA;

"**Agreement**" means this agreement which has been signed and delivered by the Parties as a Deed and includes the Schedules;

"**Agreement Duration**" means the period commencing upon the date hereof and continuing until the Expiry Date subject to:

- (a) earlier termination pursuant to Clause 13; and/or
- (b) the Purchaser extending the Agreement pursuant to Clause 2.2;

"**Applicable Laws**" means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time or from time to time in force in the United Kingdom or the European Union and which are or may become

applicable to this Agreement or any obligations performed under it, any agreement or document referred to in this Agreement or to the Parts, Spares or Special Tools, including, without limitation, Industry Standards (but excluding the LU Standards), and the Railways (Interoperability) Regulations 2006;

"Bond Provider" means a bond provider having a credit rating of at least the Required Rating and having been approved in writing by the Purchaser (in its absolute discretion);

"Call-Off Notice" has the meaning given in Clause 4.5.1;

"Change Date" means the date set out in the Contract Particulars for the Change Date;

"Change in Law" means the application to any person of any Applicable Laws and/or LU Standards which did not apply to them at the Change Date, or any change in the application or interpretation after the Change Date of any Applicable Laws and/or LU Standards but excluding any Foreseeable Change in Law;

"Commencement Date" means the date specified as such in the Contract Particulars or if no date is specified, the date specified in a written notice by the Purchaser to the Service Provider instructing it to commence the provision of works and Services under this Agreement;

"Competent Authority" means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of them) of the United Kingdom or the European Union or any supranational body which has rule-making power or whose directions, instructions, rulings, laws or regulations are directly enforceable against a Party in connection with the performance of this Agreement;

"Confidential Information" shall have the meaning given to it in Clause 19.1;

"Consequential Loss" means in relation to a breach of this Agreement or other circumstances in which an Indemnified Party is entitled to recover any costs, expenses or liabilities suffered or incurred, any loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties and/or indirect or consequential or other financial loss resulting from such breach and whether or not the Party committing the breach knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach;

"Contract Information" means (i) this Agreement in its entirety (including from time to time agreed changes to this Agreement) and (ii) data extracted from the invoices submitted by the Service Provider which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;

"Contract Particulars" means the contract particulars set out in Part A of Schedule 1 (*Contract Particulars*);

"controlling interest" shall have the meaning given to it in Clause 13.1.8;

"Core Services" means the Services excluding the Optional Services;

"Corrective Action" shall have the meaning given to it in Clause 9.6;

"Declaration" shall have the meaning given to it in Clause 33.1;

"Declaration of Ineffectiveness" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations (as amended);

"Default Interest" means interest on late payment at the rate of two per cent (2%) per annum above the base rate of the Bank of England from time to time;

"Default Package" means an electronic and hard copy set of the following:

- (a) a list of any third party providers of Spares and Special Tools;
 - (b) the object code for the Software;
 - (c) the Manufacturer Documentation,
- (a) to (c) (a)(b)above updated by the Service Provider in accordance with the Service Provider's obligations under this Agreement and to include details of any Variations); and
- (d) details of the estimated and, when available, the actual annual usage of each type of Part;
 - (e) an updated obsolescence plan in respect of all Spares prepared in accordance with paragraph 1.3 of Schedule 2 Part A;

"Design Authority" means the entity responsible for ensuring that the Replacement Systems and each Part, Spare and Special Tool continues to comply with the Specification and for maintaining Relevant Consents following approved changes to the Design;

"Design Life" means the design life of the Replacement Systems specified in the Specification;

"Dispute" shall have the meaning given to it in Schedule 6 (*Dispute Resolution Procedure*);

"Dispute Resolution Procedure" means the process for resolving Disputes set out in Schedule 6 (*Dispute Resolution Procedure*);

"DRACAS" means the data recording analysis and corrective action system;

"Environmental Damage" means any injury or damage to persons (including material offence to man's senses), living organisms or property or any material pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

"Escrow Agent" means NCC Escrow International Limited (Company Number 03081952) or any successor or replacement to all or any of its functions;

"Escrow Agreement" means an agreement in the form or substantially in the form set out in Schedule 12 (*Form of Escrow Agreement*);

"Escrow Materials" means the Software, the Source Code and any other such materials notified in writing by the Purchaser to the Service Provider that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Service Provider's obligations under this Agreement;

"European Railway Agency" means the European Railway Agency established pursuant to Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) and includes any successor to all or any of its functions;

"Euros" means the lawful currency from time to time of the European Union;

"Excepted Liabilities" means:

- (a) the Service Provider's liability for death, personal injury, or fraud, fraudulent misrepresentation or corruption;
- (b) the Service Provider's liability for loss suffered or incurred by the Purchaser or any other person to the extent such loss is or is required to be insured by the Service Provider in accordance with the provisions of Clause 17;
- (c) the Service Provider's liability for Environmental Damage;
- (d) the Service Provider's liability under Clause 7.2 (Liquidated Damages);
- (e) the Service Provider's liability in respect of its express obligations in relation to warranty claims pursuant to the Service Provider's obligations under Clause 11;
- (f) the Service Provider's liability in respect of any IPRs pursuant to Clause 15.5;
- (g) the Service Provider's liability to pay any Taxes as expressly provided by this Agreement or as required by Applicable Law;
- (h) any Default Interest on any payments falling within (a) to (g) above;
- (i) the Service Provider's liability on termination or cancellation of this Agreement or otherwise to refund and pay to the Purchaser all payments previously paid by the Purchaser in respect of the Services which are the subject of termination or cancellation in accordance with this Agreement (together with all Default Interest payable on such refund or payment), as such refund is calculated in accordance with Clause 13.5;
- (j) any costs or expenses which the Service Provider is obliged or does expend during the term of the Agreement in carrying out its obligations; and
- (k) the Service Provider's liability in respect of any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;

"Expiry Date" means the date set out in the Contract Particulars for the Expiry Date;

"Extension Limit" means the period set out for the Extension Limit in the Contract Particulars;

"Fault" means, in relation to the Replacement Systems or any Part, Spare or Special Tool that such Replacement Systems or Part, Spare or Special Tool does not comply with the requirements of this Agreement or is not Fit for Purpose, whether in consequence of faulty design, faulty materials, bad workmanship or negligence of, or for any other reason

attributable to, the Service Provider or its employees, Subcontractors or suppliers or the employees of any of them;

"Fit for Purpose" means, in relation to any asset or service to be provided under this Agreement:

- (a) that it complies with all requirements and provisions of this Agreement and the MSA (including the Specification);
- (b) that it complies with all Applicable Laws, Relevant Consents and applicable LU Standards, and to the extent that there is non-compliance with an applicable LU Standard, that there is a valid derogation from that LU Standard;
- (c) where it is a Part and/or Spare, that if such Part or Spare is incorporated into the Replacement System, such incorporation does not prevent the Replacement System from complying with (a) or (a)(b) above; and
- (d) in relation to a Special Tool, that such Special Tool is able to perform its specification in accordance with the Manuals;

"FM Affected Party" shall have the meaning given to it in Clause 18.1.1;

"FM Notice" shall have the meaning given to it in Clause 18.3;

"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 of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Force Majeure Event" means any:

- (a) fire, earthquake or flood;
- (b) act of terrorism;
- (c) war, invasion, acts of foreign enemies, hostilities, civil war, revolutions, insurrection, riots or civil unrest; and/or
- (d) strikes, lock outs or other industrial action not solely affecting the Service Provider's and/or their Subcontractors' employees or those of any of its Subcontractors,

save to the extent that such event is caused by the Service Provider, any Subcontractor, or their respective agents, officers and/or employees;

"Foreseeable Change in Law" means any Change in Law which:

- (a) is a requirement under the Specification;
- (b) is, provided it comes into force in the same or substantially similar form:
 - (i) enacted prior to the Change Date as coming into effect on a specified future date;

- (ii) in a draft bill or statutory instrument published on or before the Change Date;
 - (iii) in a draft Industry Standard published on or before the Change Date by Transport for London, the Secretary of State for Transport, RSSB, Network Rail, or the European Rail Agency;
- (c) a prudent supplier of services and support for data transmission systems on London Underground trains should have reasonably known about on or before the Change Date; and/or
- (d) otherwise arises on or before the Change Date;

"FRACAS" means the fault recording analysis and corrective action system;

"Further Warranty Period" shall have the meaning given to it in Clause 11.3;

"Goods" means the Replacement Systems, Parts, Spares and Special Tools, Manufacturer Documentation and other items provided by the Manufacturer in accordance with the MSA;

"Government Authority" means any national, supra-national (including the European Union), state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the ORR and the Secretary of State;

"Group" means, in relation to any company (which for the purposes of this Agreement shall include TfL), that company and any company which is a holding company or subsidiary of that company and any subsidiary of any such holding company; for which purposes "subsidiary" and "holding company" have the meanings respectively given to them by section 1159 of the Companies Act 2006;

"Guarantee" means, where the Contract Particulars specify a Guarantee is required, the parent company guarantee of even date herewith of the Service Provider's obligations under this Agreement provided by the Guarantor in favour of the Purchaser substantially in the form set out in Schedule 7 (*Form of Guarantee*);

"Guarantee Event" shall have the meaning given to it in Clause 13.1.4;

"Guarantor" means the Service Provider's parent company (if any) identified as the Guarantor in the Contract Particulars;

"Indemnified Parties" shall have the meaning given to it in Clause 16.1;

"Indemnified Party" shall have the meaning given to it in in Clause 16.1;

"Independent Auditor" shall have the meaning given to it in Clause 13.10.4;

"Indexation Adjustment" means the adjustment for all amounts payable hereunder as calculated in accordance with Part F of Schedule 4 (*Service Payments*);

"Indexation Base Date" means the date set out in the Contract Particulars for the Indexation Base Date;

"Industry Standards" means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which

have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Parts, Spares or Special Tools which are or have been issued by the Secretary of State, Network Rail, or any other Relevant Consents Authority or other person from time to time legally authorised to set standards in respect of the rail industry including the European Railway Agency and shall include, without limitation, Railway Group Standards and Technical Specifications for Interoperability;

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

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

"Insolvency Event" in relation to any person means:

- (a) such person stopping or suspending or threatening to stop or suspend payment of all or a material part of its debts, or becoming unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986;
- (b) any step being taken by any person with a view to the winding up of such person or any person presenting a winding-up petition in respect of such person which is not dismissed within seven (7) days;
- (c) any step being taken to enforce security over or a distress execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of such person;
- (d) a receiver, administrative receiver, administrator, compulsory manager or other similar officer being appointed in respect of such person;
- (e) such person ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Purchaser (in its absolute discretion) before that step is taken;
- (f) the making by such person of a general assignment or an arrangement or composition with or for the benefit of creditors; or
- (g) any event occurring which, under the laws of any relevant jurisdiction other than England and Wales, has an analogous or equivalent effect to any of the events listed above;

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights in any part of the world, including any patent, rights to inventions, patent application, trade mark and service mark (including any trade, brand or business names), trade mark application, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, registered design, registered design application, utility model, trade name, discovery, invention, process, formula, specification, copyright and related rights, unregistered design right, technical information or drawing (including rights in software, database rights and topography rights), rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals

or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"KPIs" shall have the meaning given to it in paragraph 1.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance" shall have the meaning given to it in paragraph 3.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance" shall have the meaning given to it in paragraph 4.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance" shall have the meaning given to it in paragraph 5.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 4 Non-Conformance" shall have the meaning given to it in paragraph 6.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance Notice" shall have the meaning given to it in paragraph 3.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance Notice" shall have the meaning given to it in paragraph 4.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance Notice" shall have the meaning given to it in paragraph 5.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Non-Conformance Plan" shall have the meaning given to it in paragraph 3.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Non-Conformance Plan" shall have the meaning given to it in paragraph 4.3 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Non-Conformance Plan" shall have the meaning given to it in paragraph 5.4.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 1 Rectification Period" shall have the meaning given to it in paragraph 3.4.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 2 Rectification Period" shall have the meaning given to it in paragraph 4.3.4 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Level 3 Rectification Period" shall have the meaning given to it in paragraph 5.4.2 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"Liquidated Damages" means the payments to be made by the Service Provider to the Purchaser under the Performance Management Regime;

"London Living Wage" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor of London or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Purchaser;

"**Losses**" means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Purchaser, its employees or agents or any other person;

"**LU Standards**" means the various standards documents and associated codes of practice identified in the Specification;

"**LUL Network**" means the stations and depots (wherever situate), assets, systems, track and other buildings which are used for the maintenance and provision of the underground service known as the London Underground;

"**Management Escalation Procedure**" shall have the meaning given to it in paragraph 2.1 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"**Mandatory Modification**" means a Modification which is required to be made under any Applicable Laws including, without limitation, any directive of Network Rail or any other Relevant Consents Authority and which is carried out in accordance with the Variation Procedure;

"**Manuals**" means documents which fully describe how the Replacement Systems should be operated, serviced, maintained, dismantled, reassembled, repaired and overhauled;

"**Manufacturer**" means EKE-Electronics Ltd in its capacity as a party to the MSA;

"**Manufacturer Documentation**" means the documentation provided by the Manufacturer under the MSA as more particularly described in the Specification, including but not limited to the Manuals, the Training Materials and the Training Programme;

"**Manufacturer Design Documentation**" means any documentation collated by and/or maintained by the Manufacturer pursuant to its obligations as Design Authority under the MSA, including but not limited to information relating to the design of the Goods, modifications to the design of the Goods, change of use, and the impact of operational and technical requirements on the design of the Goods;

"**Modification**" means any variation, modification or addition to the Replacement Systems;

"**MSA**" means the Manufacture and Supply Agreement of even date herewith between the Purchaser and the Manufacturer;

"**Network Rail**" means Network Rail Infrastructure Limited (Registered Number 02904587) a company incorporated under the laws of England and Wales whose registered office is at 1 Eversholt Street, London, NW1 2DN;

"**Non-Conformance**" shall have the meaning given to it in paragraph 2.2 of Schedule 2 (*Services*) Part C (*Performance Management Regime*);

"**Non-Conformance Notices**" means the Level 1 Non-Conformance Notice(s), Level 2 Non-Conformance Notice(s) and the Level 3 Non-Conformance Notice(s);

"**Notice of Default**" shall have the meaning given to it in Clause 13.10.1;

"**Optional Services**" means the services, work and activities, details of which are set out in Part B of Schedule 2 (*Services*);

"Part" means any component, furnishing or equipment forming part of the Replacement Systems or Spares;

"Party" means each of the Purchaser and the Service Provider and **"Parties"** shall be construed accordingly;

"Payment Certificate" shall have the meaning given to it in Clause 8.2.2;

"Payment Period" means the period of time specified as the Payment Period in the Contract Particulars;

"Performance Bond" means, where the Contract Particulars specifies a Performance Bond is required, a performance bond issued by a Bond Provider in favour of the Purchaser in substantially the form set out in Schedule 11 (*Form of Performance Bond*);

"Performance Bond Event" shall have the meaning given to it in Clause 13.1.9;

"Performance Management Regime" means, where the Contract Particulars specify that the Performance Management Regime applies, the performance management regime set out in Part C of Schedule 2 (*Services*);

"Performance Report" means a report in substantially the form set out in Schedule 9 (*Form of Performance Report*);

"Persistent Breach" shall have the meaning given to it in Clause 13.4.2;

"PI Insurance" shall have the meaning given to it in paragraph 4.1 of Schedule 5 (*Insurance*) Part B (*Insurance required from the Commencement Date to the Expiry Date*);

"Potential Obsolete Spares" shall have the meaning given to it in paragraph 1.3.3 of Schedule 2 (*Services*) Part A (*Core Services*);

"Proceedings" shall have the meaning given to it in Clause 43.3;

"Prohibited Act" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Purchaser or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Purchaser; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Purchaser;
- (b) entering into this Agreement or any other contract with the Purchaser in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Purchaser;

- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
 - (ii) under any law or 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 other contract with the Purchaser; or
- (d) defrauding or attempting to defraud the Purchaser;

"Public Procurement Termination Event" means:

- (a) this Agreement has been subject to any substantial modification that would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
- (b) the Purchaser determines that this Agreement should not have been awarded to the Manufacturer in view of a serious infringement of the obligations contained under the EU Treaties and Directive 2014/24/EU of the European Parliament Council dated 26 February 2014;

"Purchaser Representative" means the person identified as the Purchaser Representative in the Contract Particulars;

"Purchaser Event of Default" shall have the meaning given to it in Clause 13.8;

"Purchaser Termination Notice" shall have the meaning given to it in Clause 13.2.2;

"Quality Plan" means the quality plan specific to this Agreement produced by the Service Provider if so requested based on the principles set out in Appendix 1 of Schedule 2 (*Services*) and agreed with the Purchaser in accordance with paragraph 3.3.1 of Part B of Schedule 2 (*Services*);

"Quarterly Period" shall have the meaning given to it in 1)Part C (*Service Payments Schedule*) of Schedule 4 (*Service Payments*);

"Railway Group Standards" means, to the extent applicable to the Replacement Systems or Goods and their operation:

- (a) technical standards with which railway assets or equipment used on or as part of railway assets must conform, and
- (b) operating procedures with which the purchaser of railway assets must comply,

known generally as the Railway Group Standards and which are established and maintained by the RSSB and in each case as authorised pursuant to the document known as the Railway Group Standards Code;

"Recurrent Fault" means:

- (a) a Fault in any Spare or Part and which:

- (i) in any consecutive twelve (12) month period occurs in or affects three (3) or more items of Spares or Parts; or
 - (ii) occurs three or more times in the same Spare or Part in any consecutive twelve (12) month period; or
 - (iii) the Purchaser reasonably believes will occur in or affect three (3) or more items of the same items of Spares or Parts in any twelve (12) month period; or
- (b) any fault, defect, or actual or potential failure (whether relating to safety, reliability or maintainability), occurring in or affecting any spares, parts or other goods provided by the Service Provider which is similar to the Replacement Systems and Goods supplied pursuant to the MSA;

"Rectification Programme" shall have the meaning given to it in Clause 11.5;

"Relevant Changes" has the meaning ascribed to it in paragraph 1.1.2 of Part A (*Core Services*) of Schedule 2 (*Services*);

"Relevant Consents" means a consent, approval, authorisation, acceptance, certificate, licence (including export licence), exemption, registration, filing, permit and other matters, including any relevant derogation required to be granted by a Relevant Consents Authority, which are required or necessary for the proper performance of the Service Provider's duties and obligations under this Agreement;

"Relevant Consents Authority" means any or all of the Government Authority, or any other entity which has the appropriate authority for the granting of a Relevant Consent;

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

"Relevant Individual" means any servant, employee, officer, consultant or agent of the Service Provider or any Subcontractor carrying out, or intended to carry out, any aspects of this Agreement on the LUL Network or any other property owned by the Purchaser;

"Remedial Plan" shall have the meaning given to it in Clause 13.3.1;

"Remedy Notice" shall have the meaning given to it in Clause 13.3.1;

"Replacement Systems" has the meaning given to it in the Specification;

"Representative" means a representative appointed by the Service Provider, or Purchaser, as the case may be, in accordance with Clause 20.2;

"Required Rating" means a long term, stable credit rating of at least "A+" or better from Standard & Poor's or the equivalent rating from Moody's or Fitch;

"Required Insurances" shall have the meaning given to it in paragraph 1.1 of Schedule 5 (*Insurance*) Part A (*Required Service Provider Insurances*);

"Responsible Procurement Principles" means the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time and which is available from the Purchaser on request;

"Retention Period" shall have the meaning given to it in Clause 9.2.2;

"RSSB" means the Rail Safety and Standards Board;

"Safety Plan" means the safety plan specific to this Agreement produced by the Service Provider if so requested in accordance with paragraph 3.3.2 of Part B of Schedule 2 (*Services*);

"Secretary of State" means the Secretary of State for Transport, or any successor to all or part of his functions in relation to the operation of the railways;

"Security Interest" means any mortgage, charge, assignment, pledge, lien, hypothecation, security interest, title retention or other encumbrance;

"Service Payments" means the payments to be made by the Purchaser to the Service Provider in respect of the provision of the Services as set out in the Service Payments Schedule;

"Service Payments Schedule" means Part C of Schedule 4 (*Service Payments*);

"Service Provider Event of Default" means any of the events set out in Clause 13.1;

"Service Provider IPR" means any existing or new Intellectual Property Rights owned by the Service Provider, any Subcontractor or other third party that:

- (a) are used for; or
 - (b) arise in connection with,
- the performance of the Services;

"Service Provider Public Procurement Termination Event" means the Service Provider has, as at the Commencement Date, 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 those regulations;

"Service Provider's Representative" means the person identified as the Service Provider's Representative in the Contract Particulars;

"Service Provider's Group" means the Service Provider and any member of its Group from time to time;

"Service Provider's Records" shall have the meaning given to it in Clause 9.2.1;

"Services" means the services, work and activities to be carried out by the Service Provider described in Schedule 2 (*Services*) and shall include the Optional Services to the extent that the Purchaser notifies the Service Provider at any time pursuant to Clause 4.5 that it wishes the Service Provider to carry out any such Optional Services;

"Software" means all computer programs installed in or on a Replacement System or Part or Spare produced by the Service Provider or any Subcontractor for this Agreement or which is proprietary to the Service Provider or to a Subcontractor;

"Source Code" means the source code version of any Service Provider-owned Software which is licensed to the Purchaser pursuant to this Agreement in a form capable of being

read and interpreted by humans, together with related interpretative documentation and material;

"Spares" means all spare parts of any description including fluids, parts and assemblies, required in connection with the Replacement Systems supplied or to be supplied under this Agreement;

"Special Tools" means a non-commercial-off-the-shelf tool or a tool that cannot be reproduced by the Purchaser at a negligible cost;

"Specification" has the same meaning given under the MSA;

"SSA Start Meeting" shall have the meaning given to it in paragraph 1 of Schedule 3A (*Contract Management*);

"SSA Status Update Meeting" shall have the meaning given to it in paragraph 2.1 of Schedule 3A (*Contract Management*);

"Sterling" means the lawful currency from time to time of the United Kingdom;

"Subcontract" means any contract awarded by, or to be awarded by, the Service Provider for any work to be performed or for the supply of Parts and Spares or materials as part of, or in connection with, the performance of the Service Provider's obligations under this Agreement, and, unless the context herein requires, includes a subcontractor or supplier of any such person;

"Subcontractor" means any party to a Subcontract other than the Service Provider;

"Supply and Support Period" means in relation to each Replacement System and each Special Tool, the period running from the Commencement Date and ending at the time at which the Services cease in accordance with the terms of this Agreement in relation to that Replacement System, or Special Tool, as the case may be;

"Supply and Support Plan" means the supply and support plan specific to this Agreement produced by the Service Provider in accordance with Clause 4.3;

"Taxes", "Tax" and "Taxation" means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest thereon;

"Technical Specifications for Interoperability" means the Technical Specifications for Interoperability adopted pursuant to EU Directive 2001/16/EC;

"TfL" or "Transport for London" means the body established pursuant to section 154 of the Greater London Authority Act 1999 and any successor body;

"TfL Group" means Transport for London and any member of its Group;

"Training Materials" means the training materials more particularly described in the MSA;

"Training Programme" means the training programme more particularly described in the MSA;

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

"TUPE" means The Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Two-Car Unit" means a multiple unit in two (2) 92TS car formation on which a Replacement System has been installed pursuant to the MSA, such multiple unit being in one of the following formation variants:

- (a) A-B unit (comprising one driving motor car and one non-driving motor car);
- (b) B-C unit (comprising two non-driving motor cars); or
- (c) B-C(D) unit (comprising one de-icing non-driving motor car and one non-driving motor car);

"Variation" means any addition, omission or other change whatsoever to or in respect of this Agreement including (without limitation) the Services, the Goods, the requirements of the Performance Management Regime and/or steps, if any, necessary to implement a Mandatory Modification;

"Variation Procedure" means the procedure for amending this Agreement, as detailed in Clause 5;

"Variation Quote" has the meaning ascribed to it in Clause 5.3;

"Variation Valuation" has the meaning ascribed to it in Clause 5.5;

"VAT" means

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a), or imposed elsewhere;

"Warranty Period" means a period of the duration set out as the Warranty Period in the Contract Particulars, beginning on the date that (i) a Part or Spare (other than a Part or Spare whose intended life is less than twelve (12) months or whose value is less than one hundred pounds (£100)) is fitted or (ii) that workmanship is undertaken on a Replacement System, Spare or Special Tool, provided that the Parties agree that the expiry of any such Warranty Period may occur after termination or expiry of this Agreement; and

"Working Day" means a weekday (other than a Saturday or Sunday or other public holiday) on which banks are open for domestic business in the City of London.

1.2 Construction

Save where the contrary is indicated:

- 1.2.1 the headings in this Agreement are only for convenience and shall not affect its interpretation;
- 1.2.2 where appropriate, the singular includes the plural and vice versa;
- 1.2.3 a reference to a Clause or to a schedule shall be to a Clause of or, as the case may be, a schedule, to this Agreement and references to this Agreement include its recitals and schedules;
- 1.2.4 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended, supplemented, novated or varied in accordance with the terms hereof or, as the case may be, with the consent of the relevant parties (and where such consent is, by the terms of this Agreement or the relevant document, required to be obtained as a condition to such amendment being permitted, such prior written consent);
- 1.2.5 references to a Party or person shall include their successors, transferees, legal, personal representatives and permitted assignees;
- 1.2.6 without prejudice to any provision of this Agreement providing for adjustments in the event of a Change in Law, reference to Applicable Laws or Industry Standards also includes a reference to such Applicable Laws or Industry Standards as from time to time amended, extended or re-enacted;
- 1.2.7 references to a "regulation" include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Authority or Relevant Consents Authority;
- 1.2.8 references to a statute shall include any subordinate legislation made from time to time under it and shall be construed so as to refer to such statute as it is amended or modified from time to time;
- 1.2.9 the masculine shall include a reference to the feminine and neuter, the feminine shall include a reference to the masculine and neuter and neuter shall include a reference to the masculine and feminine, as appropriate;
- 1.2.10 references to assets include business, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
- 1.2.11 references to this Agreement shall include reference to the Schedules, the Annexures and any document or information contained in electronic format on any CD-ROM dated the date of this Agreement and initialled by each Party to identify that CD-ROM and the documents or information contained in it as forming part of a Schedule or Annexure.

1.3 **Contract Precedence**

In the case of any inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:

- 1.3.1 the Schedules to this Agreement;
- 1.3.2 the terms of this Agreement;

1.3.3 the Services; and

1.3.4 the Performance Management Regime.

2 AGREEMENT DURATION

2.1 Duration

This Agreement shall continue for the Agreement Duration and the Service Provider shall supply the Services for the duration of the Supply and Support Period in accordance with the provisions of this Agreement. Neither Party shall have any right to terminate this Agreement or any part of this Agreement except in accordance with the express terms of this Agreement.

2.2 Extension

Where an Extension Limit is specified in the Contract Particulars, the Purchaser may on six (6) months' prior written notice, extend the term of this Agreement up to the Extension Limit. If the Purchaser exercises its rights under this Clause 2.2, all of the terms and conditions of this Agreement shall remain the same except as otherwise notified by the Purchaser in writing.

3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties by the Service Provider

3.1.1 The Service Provider provides the representations and warranties in Clause 3.1.2 to the Purchaser. The Service Provider acknowledges and agrees that the Purchaser is relying on the representations and warranties set out below and is entering into this Agreement on the basis of them.

3.1.2 The Service Provider represents and warrants to the Purchaser that as at the date of this Agreement:

- (a) the Service Provider is a company properly organised and validly existing under the laws of Finland as a limited liability company. It has the power, capacity and legal right to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Service Provider has power, capacity and legal right to enter into and perform its obligations and exercise its rights under this Agreement and any related ancillary documents to which it is a party, and any necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement and any related ancillary documents to which it is a party;
- (c) this Agreement and any related ancillary documents to which it is a party constitute its legal, valid and binding obligations;
- (d) entering into this Agreement and performing its obligations or exercising its rights under this Agreement will not:

- (i) conflict with the Service Provider's Memorandum and Articles of Association;
- (ii) conflict with or result in a breach of any existing contract to which the Service Provider is a party or in the creation of any Security Interest over the Service Provider or any of its property;
- (e) to the best of the Service Provider's knowledge and except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Service Provider's knowledge threatened against it which if decided against the Service Provider would have a material adverse effect upon the Service Provider's financial condition or business or its ability to perform its obligations under this Agreement;
- (f) to the best of the Service Provider's knowledge no information is in existence at the time this statement of fact is made which would cause the Purchaser not to enter into this Agreement if the Purchaser were aware of that information; and
- (g) no Insolvency Event has occurred or is reasonably likely to occur in relation to the Service Provider.

3.2 Repetition of Warranties

The Parties agree that the Service Provider's representations and warranties set out in Clause 3.1 shall be deemed to be repeated by the Service Provider on the Commencement Date and every five (5) years thereafter.

4 THE SERVICES

4.1 Service Provision

- 4.1.1 The Service Provider agrees with the Purchaser that it shall, in respect of the Replacement Systems and each item of Goods, carry out the Services in accordance with the terms of this Agreement.
- 4.1.2 In addition to the warranties and undertakings contained in the other provisions of this Agreement, the Service Provider warrants and undertakes to the Purchaser that it shall:
 - (a) maintain and update, for the Supply and Support Period, the Manufacturer Documentation in accordance with the requirements set out in Part A (*Core Services*) of Schedule 2 (*Services*);
 - (b) maintain and update, for the Supply and Support Period, the Agreed FRACAS and DRACAS Database in accordance with the requirements set out in paragraph 1.5 of Part A of Schedule 2 (*Services*);
 - (c) maintain and update, for the Supply and Support Period, the obsolescence plan in accordance with the requirements set out in paragraph 1.3 of Part A of Schedule 2 (*Services*); and

- (d) perform, for the duration of the Supply and Support Period, the obligations of the Design Authority as further described in paragraph 1.1 of Part A of Schedule 2 (*Services*).

4.2 Standards of Performance

4.2.1 The Service Provider agrees with the Purchaser that it shall carry out the Services in relation to the Replacement Systems and each item of Goods:

- (a) in accordance with:
 - (i) all Applicable Laws and all applicable LU Standards;
 - (ii) the requirements of:
 - (A) the Performance Management Regime;
 - (B) the Supply and Support Plan;
 - (C) the Quality Plan;
 - (D) the Agreed FRACAS and DRACAS Database;
 - (E) the Safety Plan; and
 - (F) the Manuals;
- (b) with the degree of diligence, care and skill reasonably to be expected of a competent supplier of services and support for data transmission systems on London Underground trains with demonstrable experience in carrying out work of a similar scope, type, nature and complexity to the Services and by suitably qualified and trained personnel in a safe manner; and
- (c) in a safe manner and free (to the extent reasonably possible using the best modern design and engineering principles and practices) from any risk to the health and wellbeing of persons using, operating, maintaining, or involved in the management of the Replacement Systems and other items of Goods.

4.3 Supply and Support Plan

Where the Contract Particulars specify that a Supply and Support Plan is required, the Service Provider shall provide the Purchaser with a draft supply and support plan specific to this Agreement based on the principles set out in Schedule 3 (*Supply and Support Plan Specification*) no later than the Commencement Date. The Purchaser acting reasonably shall notify the Service Provider of any amendments required to the draft supply and support plan within one (1) month of receiving the draft supply and support plan from the Service Provider and the Service Provider shall incorporate such amendments. The Service Provider shall provide the Purchaser with the final version of the supply and support plan (in hard copy and electronic copy form) within fourteen (14) days of the Purchaser notifying the Service Provider of any amendments and this shall be deemed to be the Supply and Support Plan as defined for the purposes of this Agreement.

4.4 **Change in scope of Core Services**

- 4.4.1 The Purchaser may at any time request a change of the scope of Services by instructing a Variation and the provisions of Clause 5 shall apply.
- 4.4.2 If the Purchaser makes a request to reduce the scope of Services pursuant to Clause 4.4.1, the reduced scope of Services becomes effective on the date specified in the Variation and, where applicable, the Service Payment shall be reduced accordingly to reflect such reduction in Services.

4.5 **Optional Services**

- 4.5.1 If the Purchaser determines that it requires Optional Services to be undertaken by the Service Provider, then the Purchaser shall submit a request by email or telephone call to the Service Provider (the "**Call-Off Notice**"), requesting that the relevant Optional Services are carried out in accordance with Part B of Schedule 2 (*Services*) and on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*). Such Call-Off Notice shall include the nature and extent of the requirement for the Optional Services.
- 4.5.2 Following receipt of a request referred to in Clause 4.5.1 above, the Service Provider shall as soon as reasonably practicable submit a written response by email to the Call-Off Notice which shall include the information required in paragraph 2 of Part B of Schedule 2 (*Services*).
- 4.5.3 The Service Provider acknowledges that Optional Services may be required from time to time. The Service Provider shall use all reasonable endeavours to be prepared to provide such Optional Services.
- 4.5.4 The Purchaser may, at any time, terminate any Optional Services instructed in accordance with Clause 4.5.1.

5 **VARIATIONS**

5.1 Any variation to this Agreement shall be agreed by the Purchaser Representative and the Service Provider in accordance with the Variation Procedure.

5.2 If:

- 5.2.1 the number of Replacement Systems is varied by the Purchaser;
- 5.2.2 a Mandatory Modification is required; or
- 5.2.3 there is a Change in Law,

the Service Provider shall be entitled to a Variation.

5.3 **Right to request a quote**

- 5.3.1 The Purchaser Representative may, at any time prior to instructing a Variation, request the Service Provider to provide, in writing, a quotation in respect of any variation envisaged, such quotation to detail any adjustment to the Service Payment as a result of implementing the proposed variation (the "**Variation Quote**").

- 5.3.2 The Service Provider shall:
- (a) provide the Purchaser Representative with a Variation Quote within five (5) Working Days (or such longer period as the Purchaser Representative may agree) of a request from the Purchaser Representative; and
 - (b) hold its Variation Quote open for ninety (90) Working Days and shall endorse the Variation Quote to this effect.
- 5.3.3 The Purchaser Representative may, in its absolute discretion, accept the Variation Quote and instruct a Variation in accordance with Clause 5.4.1, and the remaining provisions of this Clause 5.3 shall apply in respect of such Variation.
- 5.3.4 The Service Provider shall be responsible for all costs and expenses associated with the preparation of any Variation Quote.

5.4 **Right to vary**

- 5.4.1 The Purchaser Representative may at any time instruct the Service Provider in writing to proceed with a Variation of any kind in accordance with the provisions of this Clause 5.4.
- 5.4.2 Upon instruction of a Variation by the Purchaser Representative, the Service Provider shall carry out such Variation and be bound by the terms of this Agreement in so doing, as though the Variation was stated in the Agreement.
- 5.4.3 Nothing in this Clause 5.4 shall prevent the Service Provider from making a proposal to the Purchaser Representative for a Variation but no Variation so proposed shall be carried out by the Service Provider except as directed in writing by the Purchaser Representative.

5.5 **Valuation of Variations**

- 5.5.1 As soon as possible after having received any instruction under Clause 5.4.1, the Service Provider shall notify the Purchaser Representative if, in the Service Provider's opinion, the Variation will involve an adjustment to the Service Payment (the "**Variation Valuation**").
- 5.5.2 Subject to Clause 5.5.3, the Variation Valuation shall, if not the subject of a Variation Quote which has been accepted by the Purchaser Representative in accordance with Clause 5.3.3, be determined by the Purchaser Representative on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*) or, to the extent that such rates are not applicable, on a fair and reasonable basis in all the circumstances reflecting, so far as possible, the then current market rates. Due account shall be taken of any partial performance of the Agreement which is rendered useless by any such Variation.
- 5.5.3 The Service Provider shall not be entitled to any increase in the Service Payment with respect to any Variation to the extent that it was directly or indirectly caused by or resulted from any act, neglect, default or breach of this Agreement by the Service Provider its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them or to the extent that the Service

Provider has failed to take all reasonable steps to mitigate any actual or potential increase in the Service Payment.

5.6 **Notice of Variations**

5.6.1 When instructing any Variation, the Purchaser Representative shall, to the extent possible, give the Service Provider such reasonable notice as will enable him to make his arrangements accordingly.

5.7 **Progress with Variations**

5.7.1 The Service Provider shall, on receipt of an instruction from the Purchaser Representative to proceed with a Variation, immediately proceed to carry out such Variation in accordance with its terms notwithstanding that the Variation Valuation has not yet been determined. The carrying out of the Variation by the Service Provider shall not, without the prior written consent of the Purchaser, be delayed pending determination of the Variation Valuation in accordance with Clause 5.5.2.

5.7.2 The Parties shall enter into such amendments to this Agreement to give effect to any Variation instructed by the Purchaser Representative pursuant to Clause 5.4.1.

6 **SPARES AND SPECIAL TOOLS**

6.1 **Spares: Title and Risk**

6.1.1 Title to any Spare, including any replacement Spare, which is supplied or made available by the Service Provider shall, upon payment or installation, whichever is the earlier, vest in the Purchaser without further act (with full title guarantee and free from all Security Interests other than those created by or attributable to the Purchaser). For the avoidance of doubt, title to any Part which is replaced by a Spare shall remain with the Purchaser.

6.1.2 Risk of loss, theft, damage and destruction of any Spare shall rest with the Service Provider for so long as it is in Service Provider's care, custody and control.

6.2 **Provision of Spares**

If, under the Contract Particulars, the Service Provider is required to supply Spares, the provisions of paragraph 1.2 of Part A of Schedule 2 (*Services*) shall apply.

6.3 **Special Tools**

If, under the Contract Particulars, the Service Provider is required to supply Special Tools, during the Supply and Support Period, the Service Provider undertakes to the Purchaser that it shall supply the Special Tools to enable the Service Provider to comply with its obligations under this Agreement.

6.4 **Replacement Part**

Except as permitted or required by this Agreement, no Part shall be supplied by the Service Provider for installation (whether by the Service Provider or such other party as may be instructed by the Purchaser) on a Replacement System in replacement for a Part unless:

6.4.1 it is of the same or a more advanced make and model, as the replaced Part;

- 6.4.2 its installation will not materially diminish the value, utility, performance or condition of the Replacement System on which it is installed; and
- 6.4.3 it is in as good operating condition as the replaced Part (assuming that the replaced Part was in the condition and repair in which it is required to be maintained under this Agreement) and, without prejudice to the generality of the foregoing, if it is time or life limited and is not being replaced as part of a part rotation programme contemplated by the maintenance provider, has at least equal or a better number of hours and or miles available until the next scheduled maintenance check or depot visit.

7 PERFORMANCE MANAGEMENT REGIME

7.1 Obligations under the Performance Management Regime

- 7.1.1 The Service Provider shall make the Replacement Systems available to the Purchaser in accordance with the Supply and Support Plan and the requirements of the Performance Management Regime.
- 7.1.2 The Purchaser shall comply with its obligations under the Supply and Support Plan and Performance Management Regime.

7.2 Liquidated Damages

- 7.2.1 Where the Contract Particulars specify that the Performance Management Regime applies, this Clause 7.2 shall apply.
- 7.2.2 If the Service Provider fails to comply with its obligations under Clause 7.1.1 subject to the provisions of this Agreement, the Service Provider shall pay to the Purchaser Liquidated Damages (as compensation for loss and not as a penalty) calculated in accordance with the Performance Management Regime and payable in accordance with Clause 8.
- 7.2.3 All Liquidated Damages shall be subject to the application of the Indexation Adjustment.
- 7.2.4 The Service Provider and Purchaser agree that the amount of the Liquidated Damages are fair and reasonable and represent a genuine pre-estimate of the losses which are reasonably likely to be suffered.
- 7.2.5 The Purchaser shall be entitled to set-off any undisputed amount payable to it under Clause 7.2.2 against the next Service Payment payable by it to the Service Provider.

8 PAYMENTS

8.1 Amount of Service Payments

- 8.1.1 The Purchaser shall pay Service Payments to the Service Provider on the dates and in the amounts described in Part C of Schedule 4 (*Service Payments*). Service Payments in respect of:
- (a) Core Services; and

(b) Optional Services,

shall be paid in accordance with Clause 8.2.

8.1.2 The Service Payments shall be subject to:

(a) the Indexation Adjustment; and

(b) Variations (including Mandatory Modifications) affecting Service Payments in accordance with the Variation Procedure.

8.1.3 No Service Payment shall be made unless and until:

(a) the Guarantee is in place (where the Contract Particulars specify that a Guarantee is required); and/or

(b) the Performance Bond is in place (where the Contract Particulars specify that a Performance Bond is required).

8.2 Payment applications

8.2.1 At the beginning of each Payment Period the Service Provider shall submit a payment application to the Purchaser Representative at the address specified in Clause 38.2 which shall show the following amounts separately and in aggregate:

(a) the relevant Service Payment in respect of the Core Services provided by the Service Provider in the immediately preceding Payment Period;

(b) the relevant Service Payment in respect of the Optional Services provided by the Service Provider in the immediately preceding Payment Period (if any);

(c) amounts payable by the Service Provider under Clause 7.2.2 (if any) in relation to the immediately preceding Payment Period which shall be deducted from any payments to be made under paragraphs (a) and (b) above, provided that where such amounts payable under Clause 7.2.2 exceed the sum of payments to be made under paragraphs (a) and (b) above then Clause 8.5 shall apply; and

(d) any amounts due (less any payments already made) pursuant to Clause 5.5, and in accordance with the principles set out in paragraph 2 of Part B of Schedule 4 (*Service Payments*), in respect of any properly completed Variation in the immediately preceding Payment Period (or, where the Parties have agreed that a Variation shall be paid on a sectional basis, in respect of any properly completed section of the Variation in the immediately preceding Payment Period) provided that the Service Provider's application sets out details and value of any Variation payment being sought,

and the Service Provider shall ensure that each payment application is dated and issued no earlier than the first day of the subsequent Payment Period to which the Services relate and/or the date on which the Variation to which it relates has been completed.

8.2.2 The Purchaser Representative shall consider the Service Provider's payment application and assess and verify the amount due (the "**Invoice Amount**") in a timely manner. The Purchaser shall certify the Invoice Amount (the "**Payment Certificate**") within seven (7) days of receipt of the payment application and shall give the Service Provider details of how the Invoice Amount due has been assessed. Where the Purchaser fails to comply with its obligations under this Clause 8.2.2 and there is an undue delay in considering and verifying the Invoice Amount, the Payment Certificate shall be regarded as issued for the purposes of Clause 8.4 after a reasonable time has passed.

8.3 **VAT Invoice**

Within ten (10) days of receipt of the Payment Certificate, the Service Provider shall issue a corresponding VAT invoice for the amount of the relevant Invoice Amount, accompanied by a copy of the Payment Certificate, to the Purchaser Representative in accordance with any instructions received from him. The Service Provider shall ensure that such VAT invoice:

8.3.1 is dated and issued no earlier than the date when the Payment Certificate was issued; and

8.3.2 clearly states the purchase order number.

8.4 **Payment due date**

Subject to Clauses 8.5 and 8.9, the Purchaser Representative shall, subject to receipt by it of an appropriate VAT invoice in accordance with Clause 8.3, pay to the Service Provider within ten (10) days of receipt by it of such VAT invoice the relevant Invoice Amount calculated in accordance with Clause 8.2.2. If the Service Provider fails to issue a VAT invoice that complies with the requirements of this Clause 8 within the time period stated in Clause 8.3, then the time period for payment of the relevant Invoice Amount set out in this Clause 8.4 shall be automatically extended by the number of days that the VAT invoice remains outstanding.

8.5 **Payments Owed by the Service Provider**

Where a payment application shows a net amount owed by the Service Provider to the Purchaser the Service Provider shall pay the amount to the Purchaser within thirty (30) days of such application being provided to the Purchaser Representative or, at the option of the Purchaser Representative, carry forward that amount to the next payment application in reduction of amounts which would otherwise have been owed by the Purchaser to the Service Provider.

8.6 **Payment recovery**

Any payment made by the Purchaser under this Agreement does not prevent the Purchaser from recovering any amount over-paid or wrongfully paid however such payment may have arisen, including but not limited to, those amounts paid to the Service Provider by mistake of law or fact.

8.7 **Method of Payment**

All payments required to be made under this Agreement will be made for value on the due date in cleared funds to:

8.7.1 such account at a bank in the United Kingdom; and

8.7.2 in the case of payments made to the Service Provider, a European Bank account in Finland with IBAN (International Bank Account Number),

in each case as the payee shall have notified to the payer by not less than three (3) Working Days' notice, free and clear of any deduction, withholding, set off or counterclaim whatsoever except to the extent deduction is required by any Applicable Laws or is in accordance with the express provisions of this Agreement. If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Payment Period, in which case payment shall be made on the immediately preceding Working Day.

8.8 **Late Payment**

Save where otherwise specifically provided, where any payment or sum of money due from one Party to the other Party under any provision of this Agreement is not paid in accordance with the timescales set out in this Agreement and providing that there has been no Dispute in respect of the sums therein, without prejudice to the Parties' other rights under the Agreement, that sum shall bear simple interest thereon from the due date until payment is made in full at the Default Interest rate current at the date a payment under this Agreement becomes overdue. The Parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider is not entitled to suspend services under the Agreement as a result of any sums being outstanding.

8.9 **Disputed Payment Applications**

The Purchaser Representative shall notify the Service Provider in writing of any disputed amounts or payment applications stating the reasons for such dispute within seven (7) days of receipt of such payment application, and any dispute shall be resolved in accordance with Clause 43. In the event of any disputed payment application, the undisputed element of such payment application shall be certified by the Purchaser Representative in accordance with this Clause 8.

8.10 **Payments Inclusive**

Save as expressly provided otherwise in this Agreement, the Service Payments payable by the Purchaser are inclusive of all costs, expenses and disbursements incurred by the Service Provider in connection with this Agreement.

8.11 **Payments in Euros**

The Service Payments are denominated in, and shall (together with all other payments payable by any Party under this Agreement) be made in, Euros.

8.12 **Value Added Tax**

8.12.1 All amounts payable by one Party to another Party under this Agreement are, unless otherwise stated, exclusive of VAT. To the extent that VAT is properly chargeable in respect of any amount payable and the Service Provider is liable to account for such VAT to any Competent Authority, such VAT shall be charged by the Service Provider to the Purchaser at the rate in force on the date of the relevant

payment application and must be shown as a separate amount on such payment application and shall accordingly be paid by the Purchaser to the Service Provider. To the extent that VAT is chargeable in respect of the Service Payments and the Purchaser is liable to account for such VAT to any Competent Authority, the Service Payments shall not be affected by such VAT and no additional payments in respect of such VAT shall be made by the Purchaser to the Service Provider pursuant to this Agreement but the Purchaser shall instead account for such VAT to the relevant Competent Authority.

- 8.12.2 Where under this Agreement one Party is to reimburse or indemnify another Party in respect of any payment made or cost incurred by the other Party, the first Party shall also reimburse any VAT paid by the other Party in question which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other Party in question (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes).
- 8.12.3 Where under this Agreement any rebate or repayment of any amount is payable by one Party to another Party, and the first Party is entitled as a matter of law or of HM Revenue and Customs practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first Party shall issue an appropriate VAT credit note to the other Party in question.

9 ACCESS AND AUDIT

- 9.1 For the purposes of exercising any of its rights under this Clause 9, the Service Provider shall (a) grant the Purchaser access on reasonable prior notice to any of the Service Provider's premises involved in the provision of the Services and (b) use its reasonable endeavours to procure such access to those premises of its agents and Subcontractors.
- 9.2 The Service Provider shall, and shall (unless the Purchaser Representative otherwise agrees in writing) procure that its Subcontractors shall:
- 9.2.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service Provider's obligations under this Agreement and all transactions and Subcontracts entered into by the Service Provider for the purposes of performing its obligations under this Agreement (in respect of the Service Provider) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "**Service Provider's Records**"); and
- 9.2.2 retain all the Service Provider's Records until the date six (6) years (or such longer period as may be required by law or specified in the Contract Particulars) following expiry or termination of this Agreement for whatever reason (the "**Retention Period**").
- 9.3 Notwithstanding any other right of audit that the Purchaser is entitled to under this Agreement, in order to verify the Service Provider's performance of and compliance with the Agreement the Purchaser shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:

- 9.3.1 audit, inspect or witness any aspects of the provision of the Services;
- 9.3.2 inspect any and all of the Service Provider's Records during the Retention Period as are reasonably necessary to investigate the Service Provider's (and any Subcontractor's) performance of its obligations under this Agreement;
- 9.3.3 audit the management systems of the Service Provider and those of any Subcontractor; and
- 9.3.4 inspect and/or audit compliance by the Service Provider and its Subcontractors with the Service Provider's obligations under this Agreement,

and where such inspection reasonably requires the attendance or participation by the Service Provider, the Service Provider shall provide such attendance or participation by appropriately qualified individuals at its own cost.

- 9.4 To the extent necessary for the purpose of exercising any of the rights granted under Clause 9.3 the Service Provider shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Purchaser, including:
 - 9.4.1 upon request from the Purchaser, acting reasonably, providing electronic or paper copies of any Service Provider's Records required for the purposes of Clause 9.3.2 free of charge and within a reasonable time of any request; and
 - 9.4.2 making the Service Provider's employees available for discussion with the Purchaser.
- 9.5 No audit and/or inspection testing by the Purchaser pursuant to Clause 9.3 shall relieve the Service Provider (or any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Purchaser against the Service Provider.
- 9.6 Any actions found to be reasonably necessary having regard to the Service Provider's obligations under this Agreement as a consequence of the Purchaser undertaking any inspections or audits (a "**Corrective Action**") shall be carried out by the Service Provider. The Service Provider shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Purchaser, together with the Service Provider's confirmation of the timescale allocated by the Purchaser for the Service Provider to close out the Corrective Action. The Service Provider shall advise the Purchaser upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Purchaser shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 9.1 to 9.5.
- 9.7 If the Service Provider (acting reasonably) disputes any Corrective Action, it shall notify the Purchaser whereupon the Service Provider and the Purchaser shall consult with each other and seek to resolve such dispute and in default of such resolution either the Purchaser or the Service Provider may refer the dispute for determination in accordance with Clause 43.

Plans for Remedial Action

- 9.8 If, at any time in the course of any participation or inspection by the Purchaser in accordance with Clauses 9.2 and 9.6, the Purchaser reasonably determines that the provision of the Services does not, or is unlikely in the future to, comply with any of the requirements of

Clause 4.2 the Purchaser shall notify the Service Provider of such determination. The Purchaser and the Service Provider shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Service Provider, at the Service Provider's cost, to ensure that that the Services do or will conform to the requirements of Clause 4.2. If the Service Provider fails to implement such remedial action within a reasonable period following agreement of a plan pursuant to this Clause 9.8 then the Purchaser may proceed to implement, or procure the implementation, of such remedial action at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 9.8 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement.

10 SECURITY

10.1 Performance Bond

10.1.1 Where the Contract Particulars specify a Performance Bond is required, this Clause 10.1 shall apply.

10.1.2 On or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Performance Bond in favour of the Purchaser. The Performance Bond shall:

- (a) be in the amount stated in the Contract Particulars;
- (b) substantially in the form set out in Schedule 11 (*Form of Performance Bond*);
- (c) continue in full force and effect for the Agreement Duration; and
- (d) be duly executed and delivered by a Bond Provider.

10.2 Guarantee

10.2.1 Where the Contract Particulars specify a Guarantee is required, this Clause 10.2 shall apply.

10.2.2 On or prior to the date of this Agreement, the Service Provider shall procure at its cost a valid and effective Guarantee in favour of the Purchaser. The Guarantee shall:

- (a) be substantially in the form set out in Schedule 7 (*Form of Guarantee*);
- (b) continue in full force and effect for the Agreement Duration; and
- (c) be duly executed and delivered by the Guarantor.

10.3 Replacement Bonds

10.3.1 If at any time:

- (a) a Performance Bond ceases to be in full force and effect;
- (b) the Bond Provider's obligations under the Performance Bond are or become wholly or partly invalid or unenforceable;

- (c) the Bond Provider ceases to meet the Required Rating;
- (d) an Insolvency Event occurs in relation to a Bond Provider,

then the Service Provider shall provide a replacement Performance Bond issued by a Bond Provider and that otherwise complies with this Clause 10 within 10 (ten) Working Days of the Performance Bond ceasing to meet the relevant requirement(s) of this Clause 10.3.

10.3.2 In the event that the Service Provider does not provide a replacement Performance Bond in accordance with Clause 10.3.1, the Purchaser may at its option:

- (a) make a demand upon the full amount (or remaining balance thereof if a demand or demands have already been made) of the Performance Bond, which amount shall be paid to the Purchaser and retained by the Purchaser pending receipt of a replacement Performance Bond meeting the requirements of this Clause 10 (provided that if, prior to receipt of such Performance Bond this Agreement is terminated, the Purchaser may apply such amount towards any sums owing to it under this Agreement); or
- (b) procure the issue of a replacement Performance Bond meeting the requirements of this Clause 10 and invoice the Service Provider for the cost thereof. The Service Provider shall reimburse the Purchaser for the amount of such cost, together with Default Interest from the date of such invoice until the date on which the invoice is paid.

10.4 Demands

10.4.1 Where this Agreement is terminated due to the occurrence of a Service Provider Event of Default, the Purchaser shall be entitled to make a demand under the Performance Bond for the Performance Bond amount specified in the Contract Particulars, which amount shall be paid into an interest bearing account with a clearing bank of first class standing in London and held on trust for the Purchaser and the Service Provider for application in or towards amounts due to the Purchaser following termination for Service Provider Event of Default as provided for in this Agreement.

10.4.2 Where this Agreement terminates other than as contemplated by Clause 10.4.1 (save where it terminates due to a Purchaser Event of Default), or expires, the Purchaser shall be entitled to make a demand under the Performance Bond in respect of any amounts which the Service Provider is liable to pay to the Purchaser (whether by way of indemnity or otherwise) and has failed to pay to the Purchaser.

11 WARRANTIES

11.1 Subject to Clause 11.5, and without prejudice to the Purchaser's rights under the Performance Management Regime, the Service Provider shall, at its own expense, as soon as is reasonably practicable and in any event within seven (7) days of being notified of a Fault by the Purchaser, make good (and where necessary shall procure the making good of) any Fault arising from or in connection with (a) any Part or Spare which fails in service during the Warranty Period, or (b) any act or omission of the Service Provider in the performance of the

Services, and complete any work to make good any such Fault within a reasonable period having regard to the circumstances.

- 11.2 The Purchaser shall notify the Service Provider in writing as soon as reasonably practicable after it becomes aware of such Fault.
- 11.3 If the Service Provider makes good such Fault on any Part or Spare during the Warranty Period, such Part or Spare will be covered by a further Warranty Period (the "**Further Warranty Period**") commencing on the date on which such Fault is made good. If a Fault arises on such Part or Spare during the Further Warranty Period, the Service Provider shall comply with its obligations to make good such Fault under this Clause 11, provided that the Further Warranty Period cannot be extended, replaced or renewed under this Clause 11.
- 11.4 If any Fault identified pursuant to Clauses 11.1 or 11.2 is not remedied within a reasonable period of being notified to the Service Provider by the Purchaser, the Purchaser may proceed on notice to make good, or procure the making good of, the Fault at the Service Provider's expense. If the Purchaser makes good a Fault, the Service Provider's obligations under Clause 11.1 and 11.2 shall not apply to the works required to make good the Fault where the works are carried out by any person other than the Service Provider, provided that the exercise by the Purchaser of its rights under this Clause 11 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement (including pursuant to Clause 16) nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement other than to the extent specified under this Clause 11.
- 11.5 If, during the Warranty Period, the Parties identify that a Recurrent Fault has occurred or in the reasonable opinion of the Purchaser is reasonably likely to occur, each Party shall notify the other Party of such occurrence. The Service Provider warrants to the Purchaser that it shall remedy such Recurrent Fault and undertake necessary rectification on all Parts and Spares (as appropriate), and undertake such work as may be feasible in order to enable the Replacement Systems on which the Spares or Parts (as the case may be) are installed to continue in operation in compliance with the terms of this Agreement pending such rectification. Within twenty (20) Working Days of having identified, or having been notified of, such Recurrent Fault, the Service Provider shall submit to the Purchaser a programme for rectification of such Recurrent Fault and any necessary rectification required on any Part or Spare (as the case may be) (the "**Rectification Programme**") as soon as is practicable and the Parties shall negotiate and agree the Rectification Programme in good faith, within a period of twenty (20) Working Days after receipt of Rectification Programme. Where the Purchaser and the Service Provider agree the form of the Rectification Programme, the Service Provider shall forthwith implement such Rectification Programme in accordance with its terms.
- 11.6 For the avoidance of doubt, the Service Provider's obligations pursuant to this Clause 11 shall not in any way relieve or absolve the Manufacturer from its defect rectification obligations pursuant to clause 17 of the MSA.

12 PURCHASER'S OBLIGATIONS

12.1 The Purchaser shall:

- 12.1.1 comply with its express obligations under the Performance Management Regime;

12.1.2 notify the Service Provider of any Faults or damage which occur or it believes may occur to any of the Replacement Systems whilst the Replacement Systems are in the care, custody and control of the Purchaser in accordance with such procedure; and

12.1.3 comply with its express obligations as set out in this Agreement.

13 EVENTS OF DEFAULT

13.1 Service Provider Events of Default

It shall be a Service Provider Event of Default if any of the following occurs:

13.1.1 the Service Provider fails to pay any sum (including, where applicable, Liquidated Damages) not in dispute when due and payable to the Purchaser in accordance with this Agreement within thirty (30) days of a written demand for payment;

13.1.2 an Insolvency Event occurs in relation to the Service Provider;

13.1.3 the Service Provider commits a material breach of its obligations under this Agreement;

13.1.4 where the Contract Particulars specify that a Guarantee is to be provided:

(a) if the Guarantee either ceases to be in full force and effect or the Guarantor's obligations under the Guarantee are or become wholly or partly invalid or unenforceable or the Guarantor fails to comply promptly with any of its obligations pursuant to the Guarantee (a "**Guarantee Event**"); or

(b) the Guarantor breaches the Guarantee;

13.1.5 the Service Provider commits a Persistent Breach as provided for in Clause 13.4;

13.1.6 the Service Provider fails to take out and/or maintain any of the required insurances in accordance with Clause 17;

13.1.7 there is a breach by the Service Provider of its obligations under Clause 37;

13.1.8 without the Purchaser's written consent, at any time a person (or persons acting together) takes a controlling interest in the Service Provider's share capital, and for this purpose, a "**controlling interest**" being either:

(a) the ownership or control (directly or indirectly) of more than 30% of the Service Provider's voting share capital or the share capital of the Service Provider's holding company; or

(b) the ability to direct the casting of more than 30% of the votes exercisable at the Service Provider's general meetings or those of the Service Provider's holding company on all, or substantially all, matters;

13.1.9 where the Contract Particulars specify that a Performance Bond is to be provided:

(a) if the Performance Bond either ceases to be in full force and effect or the Bond Provider's obligations under the Performance Bond are or become

wholly or partly invalid or unenforceable or the Bond Provider fails to comply promptly with any of its obligations pursuant to the Performance Bond (a "**Performance Bond Event**"); or

(b) the Bond Provider breaches the Performance Bond; or

13.1.10 a Service Provider Public Procurement Termination Event occurs.

13.2 **Procedures in relation to Termination for a Service Provider Event of Default**

13.2.1 The Service Provider shall notify the Purchaser forthwith on the Service Provider becoming aware of the occurrence of a Service Provider Event of Default.

13.2.2 Following the occurrence of a Service Provider Event of Default (and notwithstanding that the Service Provider may not have notified it pursuant to Clause 13.2.1), the Purchaser may by notice in writing to the Service Provider, specifying the Service Provider Event of Default in question, terminate this Agreement in relation to the provision of Services ("**Purchaser Termination Notice**"), such termination to take effect from the date specified in the Purchaser Termination Notice (being not less than seven (7) days after the date of the Purchaser Termination Notice or, in the case of an Insolvency Event, forthwith), provided that, in respect of a Service Provider Event of Default under Clauses 13.1.1 or 13.1.3 which is capable of remedy, the provisions of Clause 13.3 shall apply.

13.2.3 This Clause 13.2 shall be without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015.

13.3 **Remedial Plan**

13.3.1 Where a Service Provider Event of Default that is capable of remedy arises under Clauses 13.1.1 or 13.1.3, the Purchaser shall by notice in writing to the Service Provider signed on behalf of the Purchaser (a "**Remedy Notice**") require the Service Provider either:

(a) to remedy such breach(es) referred to in the Remedy Notice within thirty (30) Working Days of that notice; or

(b) within ten (10) Working Days of the Remedy Notice, to put forward a plan (a "**Remedial Plan**") acceptable to the Purchaser in its absolute discretion to remedy the breach(es) referred to in the Remedy Notice. Such Remedial Plan shall be in writing and shall specify the proposed remedy in reasonable detail and the latest date by which it is proposed that that remedy will be completed.

13.3.2 Where the Service Provider puts forward a Remedial Plan in accordance with Clause 13.3.1, the Purchaser shall notify the Service Provider in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Purchaser does not so notify the Service Provider, the Purchaser shall be deemed to have accepted the Remedial Plan.

13.3.3 If the Purchaser notifies the Service Provider that it does not accept that Remedial Plan pursuant to Clause 13.3.2, the Purchaser and the Service Provider shall use reasonable endeavours in the following ten (10) Working Days to agree any necessary amendments to the Remedial Plan in order for it to be acceptable to the Purchaser. In the absence of agreement in that period of ten (10) Working Days, the Purchaser may treat the Service Provider Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 13.1.9(b) (notwithstanding the proviso thereto). Where the Purchaser and the Service Provider agree the form of the Remedial Plan, the Service Provider shall forthwith implement such Remedial Plan in accordance with its terms.

13.3.4 If any breach specified in a Remedy Notice served under Clause 13.3.1 is not remedied:

- (a) within the thirty (30) Working Day period specified in Clause 13.3.1(a) (if applicable); or
- (b) in accordance with a Remedial Plan that has been accepted or deemed accepted by the Purchaser, or the Service Provider otherwise fails to comply with the terms of that Remedial Plan,

then the Purchaser may:

- (i) may proceed to implement, or procure the implementation, of the Remedial Plan at the Service Provider's expense. The exercise by the Purchaser of its rights under this Clause 13.3.4 shall not in any way prejudice or affect any of the Purchaser's other rights or remedies under this Agreement nor shall it relieve the Service Provider from any of its obligations and liabilities under this Agreement; and/or
- (ii) exercise its rights under Clause 13.1.9(b) as if the Service Provider Event of Default is not capable of remedy.

13.4 **Persistent Breach**

13.4.1 If the Service Provider breaches any of its obligations (where those obligations are of the same type or nature) under this Agreement, more than twice in any three (3) month period, then the Purchaser may serve a notice on the Service Provider:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of such breach; and
- (c) stating that such breach is a persistent breach that, if it continues unremedied or if a breach of the same type or nature occurs within three (3) months of the date of service of the notice, may result in a termination of this Agreement in accordance with this Clause 13.4.

13.4.2 If, following service of such a warning notice pursuant to Clause 13.4.1, the breach specified has continued unremedied or a breach of the same type or nature has occurred within the three (3) months following the date of service of such notice, then the Purchaser may, no later than the date falling six (6) months following the date of service of the warning notice pursuant to Clause 13.4.1, serve another

notice on the Service Provider specifying that such breach constitutes a "**Persistent Breach**" for the purposes of Clause 13.1.5.

13.5 **Consequences of a Service Provider Event of Default**

13.5.1 Where the Purchaser has served (a) a Purchaser Termination Notice in accordance with Clause 13.2.2 (and, where relevant, the Service Provider Event of Default has not been remedied pursuant to Clause 13.3) or (b) a notice of termination under Clause 14.4 (*Prohibited Acts*), then:

- (a) the Purchaser will have the right to place the carrying out of the Services with a third party and the Service Provider will, subject to Clause 13.5.3, indemnify the Purchaser for any properly incurred reasonable costs of placing the Services with a third party to the extent they exceed the costs which the Purchaser would have paid the Service Provider for the same Services;
- (b) the Service Provider will provide the Purchaser with the Default Package;
- (c) the Service Provider shall enter into an agreement with the Purchaser for the provision of access to the Provider's engineering support, the terms of which shall be agreed between the Parties;
- (d) the Purchaser will have the right to purchase any Spares in the Service Provider's possession at the date of the Purchaser Termination Notice or notice of termination under Clause 14.4 at the rates specified in Part E of Schedule 4;
- (e) the Purchaser will have the right to require the Service Provider to novate or to receive the assignment of any of the Service Provider's current orders with third party providers that relate to the Services;
- (f) the Service Provider shall continue to perform the Services and meet its obligations until the date upon which the termination of this Agreement in relation to the provision of the Services shall become effective and the Purchaser shall continue to pay the Service Provider for performance of such Services;
- (g) the Service Provider shall co-operate with the Purchaser to minimise the disruption caused to the Purchaser's business due to the termination of this Agreement in relation to the provision of the Services; or
- (h) the Service Provider will on demand pay the Purchaser:
 - (i) all reasonable costs incurred by the Purchaser as a result of any Service Provider Event of Default and the loss of the provision of the Services;
 - (ii) all reasonable costs incurred by the Purchaser in rectifying Faults arising but not rectified prior to the date of such termination which have not been reimbursed to the Purchaser under any provision of this Agreement; and

- (iii) all amounts outstanding in respect of any accrued obligations or liability under this Agreement.

13.5.2 The Purchaser shall use all reasonable endeavours to mitigate all costs claimed by it under this Clause 13.5.

13.5.3 For the avoidance of doubt, the Purchaser's rights upon the occurrence of a Service Provider Event of Default are as expressly set out in this Agreement.

13.6 **Purchase of Spares on Termination or Expiry**

13.6.1 Upon the termination or expiry of the obligations of the Service Provider to carry out the Services under this Agreement for any reason whatsoever, where, pursuant to Schedule 2 (*Services*), the Service Provider is required maintain adequate stocks of Spares and other materials to enable it to perform its obligations under this Agreement then the Service Provider hereby agrees that the Purchaser shall be entitled to purchase such of the Spares, Parts and Special Tools as it wishes from the Service Provider on the basis of the prices and rates set out in Part E of Schedule 4 (*Service Payments*).

13.6.2 If, at such time, the Spares, Parts and/or Special Tools are not Fit for Purpose, the Parties shall negotiate in good faith to agree a commensurate reduction in the price referred to in Clause 13.6.1.

13.7 **Voluntary Termination**

The Purchaser may terminate this Agreement without cause from the seventh (7th) anniversary of the Commencement Date by giving twelve (12) months' written notice to the Service Provider of such termination. In the event that this Agreement is terminated pursuant to this Clause 13.7, the provisions of Clause 13.10 shall apply.

13.8 **Declaration of Ineffectiveness and Public Procurement Termination Event**

13.8.1 The Purchaser may terminate this Agreement at any time in the event that:

- (a) there is a Declaration of Ineffectiveness; or
- (b) a Public Procurement Termination Event occurs (without prejudice to the Purchaser's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

13.8.2 In the event that this Agreement is terminated pursuant to Clause 13.8.1, the provisions of Clause 13.10 shall apply.

13.9 **Purchaser Event of Default**

It shall be an Purchaser Event of Default if the Purchaser fails to make payment of any sum in excess of three (3) Service Payments which is due and payable to the Service Provider in accordance with this Agreement and not in dispute and such amount has not been paid within thirty (30) days following a subsequent written demand by the Service Provider for payment.

13.10 **Consequences of a Purchaser Event of Default, Voluntary Termination, Declaration of Ineffectiveness or Public Procurement Termination Event**

13.10.1 If a Purchaser Event of Default occurs, the Service Provider may deliver to the Purchaser a notice (a "**Notice of Default**") specifying the Purchaser Event of Default which has occurred and the Service Provider may, terminate this Agreement in relation to the provision of the Services by notice in writing, such termination to have immediate effect or to be effective on such later date as is specified in the Notice of Default. If, following service of a Notice of Default, the relevant Purchaser Event of Default is remedied, then the applicable Notice of Default will be deemed to have been withdrawn and will no longer be outstanding.

13.10.2 If this Agreement is terminated in relation to the provision of the Services pursuant to Clauses 13.7, 13.8 or 13.10.1, the Purchaser will pay the Service Provider:

- (a) the aggregate of all Service Payments (including the apportioned element of the period relating to the Payment Period during which the Agreement is so terminated) and other amounts payable to the Service Provider which have then fallen due under this Agreement but remain unpaid;
- (b) such sum as represents the reasonable cost of labour and materials already incurred or committed by the Service Provider as at the date of termination of this Agreement in respect of Services (including, without limitation, the cost of terminating subcontracts and redundancy of employees);
- (c) the reasonable costs incurred by the Service Provider in preparing the Default Package; and
- (d) all other direct losses, costs and claims reasonably incurred in connection with such termination if properly evidenced by the Service Provider.

The Service Provider shall not be entitled to payment of any other loss and/or damage arising from such termination.

13.10.3 Subject to payment by the Purchaser to the Service Provider of all sums due and payable under this Agreement the Service Provider will comply with the provisions of Clauses 13.5.1(b) to 13.5.1(h) above.

13.10.4 The Purchaser shall be entitled to appoint a suitably qualified independent person ("**Independent Auditor**") to audit any or all of the costs, expenses and/or other liabilities incurred by the Service Provider as a direct result of termination of this Agreement and determine whether the amount of such costs, expenses and/or liabilities were properly and reasonably incurred by the Service Provider as a direct result of the termination of this Agreement.

13.10.5 Where the Purchaser exercises its rights pursuant to Clause 13.10.4, it shall give written notice to the Service Provider identifying the Independent Auditor appointed by the Purchaser, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Service Provider shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Purchaser enjoys under this Agreement.

- 13.10.6 The Purchaser shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Service Provider. Where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Service Provider as a direct result of termination of this Agreement, the Purchaser shall not be obliged to pay such amount to the Service Provider.
- 13.10.7 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Purchaser save where the Independent Auditor determines that some or all of a specific cost, expense and/or liability was not properly and reasonably incurred by the Service Provider, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Service Provider.
- 13.10.8 In the event the Service Provider disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 43.
- 13.10.9 With effect from the termination or expiry of the Agreement Duration, the Service Provider shall extend to the Purchaser the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Service Provider or which is implied by law in favour of the Service Provider in respect of the Services as provided by the Service Provider during the Agreement Duration, provided that in so doing the Service Provider shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Purchaser.
- 13.10.10 For the avoidance of doubt, the Service Provider's rights upon the occurrence of a Purchaser Event of Default are as expressly set out in this Agreement.

14 **PROHIBITED ACTS**

- 14.1 The Service Provider shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.
- 14.2 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 14 at any time during performance of this Agreement and during the three (3) years after the Expiry Date or earlier termination of this Agreement.
- 14.3 If the Service Provider, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Service Provider or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 14.3, Clause 13.5 shall apply.
- 14.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Service Provider then the Purchaser may serve a warning notice upon the Service Provider instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Service Provider removes or procures the removal of the relevant Subcontractor, employee or agent (as the case may be) from further involvement with any aspect of the performance of this

Agreement and (if necessary) procures the provision of the affected works and/or services by another Subcontractor, employee or agent (as the case may be) this constitutes a material breach of this Agreement and entitles the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 14.4, Clause 13.5 shall apply.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Licence of Service Provider IPR

The Service Provider grants, or shall procure the grant, to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Service Provider IPR, Software and Source Code for:

- 15.1.1 the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Parts and/or Spares or any related activity, or permitting the Purchaser to use the Parts and/or Spares for the purposes of performing the Services;
- 15.1.2 modifying, refurbishing, repairing, maintaining and overhauling the Parts and/or Spares or any related activity;
- 15.1.3 complying with all Applicable Laws, LU Standards and all Relevant Consents;
- 15.1.4 using and copying the Manuals and/or Manufacturer Documentation in order to perform any of the above;
- 15.1.5 training personnel to carry out any of the activities described in Clause 15.1.1, 15.1.2 and 15.1.4;
- 15.1.6 inviting tenders for any of the activities described in Clause 15.1.1 to 15.1.5 inclusive;
- 15.1.7 in the event of termination of this Agreement other than for a Purchaser Event of Default, procuring fulfilment and performance of the Service Provider's obligations under this Agreement, including the manufacture of any Parts and/or Spares or other equipment for use in connection with the Replacement Systems; and
- 15.1.8 the Purchaser performing its obligations under this Agreement.

Other than in accordance with this Clause 15, the Purchaser shall not, and no party to whom it sub-licences or transfers any rights under this Clause 15 shall, have the right to manufacture any Part or Spare that is the subject of Service Provider IPR.

15.2 Subcontractors

The Service Provider shall ensure that all Subcontracts entered into by the Service Provider shall permit the Service Provider to assign or novate its rights and obligations under such agreement relating to any Intellectual Property Rights to the Purchaser without the consent of the relevant Subcontractor and such Subcontracts shall specify the Purchaser as a permitted assignee.

15.3 **Documentation**

The Service Provider shall execute such further documents, and do such other things, as the Purchaser may reasonably request in order to obtain for the Purchaser the full benefit of this Clause 15 at no cost to the Purchaser.

15.4 **Warranties**

The Service Provider represents and warrants to the Purchaser that:

15.4.1 the Service Provider IPR and the Software constitute all the Intellectual Property Rights required by the Purchaser for the purposes of this Agreement;

15.4.2 it has the right and power to grant the licence set out in Clause 15.1; and

15.4.3 use of any Service Provider IPR, Software, Replacement System, Part and/or any other item of Goods or part thereof does not infringe any Intellectual Property Rights of another person.

15.5 **Indemnity**

The Service Provider shall indemnify the Purchaser and any member of the TfL Group against any claim for infringement of any Intellectual Property Rights.

15.6 **Remedy for Infringement**

Without prejudice to the provisions of Clause 15.5, if the use of any Service Provider IPR, Software, Part and/or Spare or part thereof is, or in the reasonable opinion of the Purchaser is likely to become, an infringement of the Intellectual Property Rights of another person, the Service Provider shall, at its expense, either:

15.6.1 procure for the Purchaser the right to continue to use that Service Provider IPR, Software, Part and/or Spare; or

15.6.2 (to the extent Clause 15.6.1 is not applicable) modify the Part and/or Spare so that it no longer infringes those rights, or replace the Part and/or Spare with a non-infringing Part and/or Spare (or part thereof) provided however that the modified or replacement Part and/or Spare (as the case may be) shall at all times comply with all the requirements of this Agreement.

15.7 **Software**

15.7.1 The Service Provider shall ensure in respect of all Software that is used in the provision of the Services:

(a) there is orderly documented progress from the functional requirements to the final code and provision for regular verification and testing at each stage of the design process; and

(b) where no particular standard is specified, it is designed and documented following a nationally or internationally recognised standard using recognised quality control methods.

The Service Provider shall provide copies of the documentation and information at Clause 15.7.1(a) and (b) above to the Purchaser on the request of the Purchaser.

15.7.2 The Service Provider shall in respect of Service Provider-owned Software, at all times during the period from the Commencement Date until the end of the Design Life retain the Software designed by the Service Provider.

15.8 **Cessation of Software Support**

If the Service Provider or any Subcontractor supplying any of the Software stops trading or makes known its intention to withdraw support for that Software, the Service Provider shall, without additional charge (save where the Subcontractor stops trading or makes such intention to withdraw support known in which case the Purchaser shall pay the reasonable and properly incurred costs of the Service Provider in complying with this Clause 15.8), use reasonable endeavours to procure the transfer to the Purchaser of all rights in and to the Software in question for the relevant type of Goods.

15.9 **Survival**

Each licence granted under this Clause 15 and/or any liability arising in connection with the same shall survive the termination of this Agreement.

15.10 **Escrow**

Within twenty (20) Working Days of the Commencement Date, the Service Provider shall execute the Escrow Agreement. The Service Provider shall place the Escrow Materials in escrow with the Escrow Agent on the terms set out in the Escrow Agreement as soon as reasonably possible after its completion and in any event within twenty (20) Working Days thereof. The Service Provider shall pay all fees of the Escrow Agent in connection with the placement, storage and release of the Escrow Materials and shall provide evidence of the same to the Purchaser on written request.

16 **LIABILITY, INDEMNITIES**

16.1 **General Indemnity**

16.1.1 Subject to Clause 16.1.3, the Service Provider shall be liable for and shall indemnify on demand on an after-Tax basis the Purchaser and any member of the TfL Group, including any of their respective employees, servants, agents, subcontractors, suppliers, directors, representatives and officers (each an "**Indemnified Party**" and together the "**Indemnified Parties**"), against all expenses, liabilities, losses, damages, claims, costs, demands, proceedings and Taxes whatsoever suffered or incurred or arising out of:

- (a) death or personal injury to any person;
- (b) any loss of, or damage to, any property or assets (including the LUL Network, the Replacement Systems or any other item of Goods);
- (c) any third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) brought against any Indemnified Party;
- (d) breach of statutory duty;

(e) any Environmental Damage;

arising from or in connection with:

- (i) the operation and/or use of the Replacement Systems, Spares or Special Tools in accordance with Manuals or as otherwise directed by the Service Provider;
- (ii) the performance or non-performance (including any negligent performance) of the obligations of the Service Provider, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
- (iii) any acts or omissions, breach, negligence or wilful misconduct by the Service Provider.

16.1.2 The remedy of Liquidated Damages set out in Clause 7.2 is the sole and exclusive remedy of the Purchaser in relation to breaches of the Performance Management Regime.

16.1.3 The Service Provider shall not be liable to indemnify any Indemnified Party under the indemnity in Clause 16.1.1 in the case of any loss referred to in Clauses 16.1.1(a) and 16.1.1(b) to the extent that it results from negligence or breach of duty on the part of any Indemnified Party.

16.2 Notification of claims procedures and assistance in defending claims

16.2.1 The Service Provider shall, as soon as reasonably practicable, notify the Purchaser of any actual or threatened claim (of whatever nature) in respect of which the Purchaser may seek to be indemnified and held harmless by the Service Provider under the provisions of this Agreement.

16.2.2 The Purchaser shall give to the Service Provider and any of its advisers such co-operation, access and assistance as any such person may reasonably require in defending claims in respect of which the Purchaser seeks to be indemnified by the Service Provider under this Agreement.

16.3 Consequential Breach and Loss

16.3.1 Neither Party shall be treated as being in breach of this Agreement if such breach arises as a direct, necessary and inevitable consequence of the occurrence of a breach thereof on the part of the other Party.

16.3.2 Otherwise in respect of the Excepted Liabilities, neither Party shall be liable to the other for any matter howsoever arising out of or in connection with this Agreement (including in Clause 16.1.1) in respect of any Consequential Loss. Each Party respectively undertakes not to sue the other Party (or make a claim against that Party), TfL or any member of the TfL Group in respect of Consequential Loss.

16.4 Limit on Service Provider's Liability

16.4.1 The Service Provider's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall not be limited.

16.5 **No Double Recovery**

No Indemnified Party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered under this Agreement and/or any document entered into in connection with or pursuant to this Agreement. There shall be no duplication solely by reason of there being multiple beneficiaries to a claim hereunder.

16.6 **Service Provider Personnel**

16.6.1 For the purposes of this Clause 16.6:

- (a) **“Current Service Provider”** means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Purchaser;
- (b) **“Replacement Employer”** means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);
- (c) **“Relevant Claims and Liabilities”** means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;
- (d) **“Subsequent Transfer Date”** means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations;
- (e) **“Subsequent Relevant Employee”** means a person employed or engaged by the Service Provider or relevant Subcontractor from time to time in respect of any part of the Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it);
- (f) **“Transfer Regulations”** means all or any of the following: TUPE; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and
- (g) **“Transferring Employees”** means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Service Provider under the Transfer Regulations.

16.6.2 The Service Provider complies and procures that its Subcontractors comply with any obligations which may arise out of a transfer to the Purchaser or another person under the Transfer Regulations upon the Expected Delivery Date and/or Completion Date or earlier termination of this Agreement.

- 16.6.3 At any time during the last twelve (12) months of this Agreement and/or during any period of notice terminating this Agreement, the Purchaser may require the Service Provider to provide, within a specified period of being requested, to the Purchaser (or to any other person or persons nominated by the Purchaser) such information as is reasonably required by the Purchaser or such other persons relevant to the potential liabilities of the Purchaser or any other person arising under the Transfer Regulations including but not limited to information on the following:
- (a) the names of employees (of the Service Provider or its Subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service;
 - (b) the method of organisation of the employees (of the Service Provider or its Subcontractors) engaged in providing the Services and documentary evidence relating to such organisation;
 - (c) the proposals for informing and consulting with affected employees;
 - (d) details of collective agreements and union recognition agreements; and
 - (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Purchaser upon request of any communication with any potential or intended new consultant or the Service Provider's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.
- 16.6.4 The Service Provider will provide the Purchaser upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 16.6 may be addressed. The Service Provider will if required by the Purchaser warrant that any information provided under this Clause 16.6 is accurate, complete and not misleading, including any information supplied in relation to its Subcontractors.
- 16.6.5 The Service Provider will not and will procure that its Subcontractors will not in the six (6) months prior to the expiry or termination of this Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Purchaser's written consent:
- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in supplying the Parts, Spares and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in providing the Parts, Spares and/or Services or relates to the expected expiry or termination of this Agreement; or
 - (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Parts, Spares and/or Services, except where such increases or changes would have arisen in the ordinary course of the Service

Provider's or the relevant Subcontractor's business and are not related to the expiry or termination of this Agreement (either because they are applied to all of the Service Provider's or the relevant Subcontractor's employees, whether or not engaged in supplying the Parts, Spares and/or Services (or otherwise) or are the result of a bona fide business reorganisation of the Service Provider or the relevant Subcontractor which is not related or confined to the employees engaged in the provision of the Parts, Spares and/or Services or relates to the expiry or termination of this Agreement.

16.6.6 The Service Provider shall indemnify the Purchaser against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Service Provider, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Purchaser or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Service Provider, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Parts, Spares and/or Services. The provisions of this Clause 16.6.6 shall survive the termination or expiry of this Agreement.

16.6.7 The Service Provider shall indemnify the Purchaser and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Purchaser or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Purchaser or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

The provisions of this Clause 16.6.7 shall survive the termination or expiry of this Agreement

16.6.8 In this Clause 16.6 "**Relevant Claims and Liabilities**" include those incurred by the Purchaser by reason of any contract term between the Purchaser and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Purchaser may incur to a Replacement Employer, the Service Provider shall not be required to indemnify the Purchaser 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 Purchaser in providing an indemnity under this paragraph.

16.6.9 The provisions of this Clause 16.6 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Purchaser for any breach by the Service of any provision of this Clause 16.6 shall be in addition to and not in substitution for any remedies available to the Purchaser under any provision of the Transfer Regulations.

17 **INSURANCE**

The Service Provider and the Purchaser shall comply with the requirements of the insurance regime set out in Schedule 5 (*Insurance*).

18 **FORCE MAJEURE EVENTS**

18.1 **Notice of Force Majeure Event**

Neither Party shall be in breach of its obligations under this Agreement to the extent that it is unable to perform that obligation in whole or in part by reason of the occurrence of a Force Majeure Event provided that:

18.1.1 if any Party seeks to rely on this Clause 18.1.1 (the "**FM Affected Party**"), as soon as reasonably practicable and in any event no more than five (5) Working Days after the start of the claimed Force Majeure Event, the FM Affected Party shall notify the other Parties in writing of the act, event or circumstance relied on as a Force Majeure Event; and

18.1.2 within a further five (5) Working Days, the FM Affected Party shall notify the other Parties in writing of the date on which such act, event or circumstance commenced, including an estimate of the period of time required to overcome it and its effects, details of any failure by the FM Affected Party to perform its obligations under this Agreement, the effect on the FM Affected Party's ability to perform its obligations under this Agreement and the action being taken to mitigate its consequences in accordance with Clause 18.2 below.

18.2 **Mitigation**

18.2.1 An FM Affected Party shall:

- (a) make all reasonable efforts to mitigate the effects of the claimed Force Majeure Event (including, in the case of the Service Provider, complying with the requests of the Purchaser Representative), to continue to perform its obligations under this Agreement and to resume performance as soon as possible;
- (b) shall furnish written reports every seven (7) days to the other Party on its progress in doing so and any proposals to mitigate the effect of the claimed Force Majeure Event, including any reasonable alternative means for performance of the affected obligations; and
- (c) shall provide any information relating to the claimed Force Majeure Event and its effects that the other Party may reasonably request.

18.2.2 The FM Affected Party shall not be relieved from liability under this Agreement to the extent that it is not able to perform its obligations under this Agreement due to its failure to comply with its obligations under Clause 18.2.1 above.

18.3 Grounds for Termination due to a Force Majeure Event

The Purchaser shall be entitled to terminate this Agreement by notice in writing (a "**FM Notice**") to the Service Provider if one or more Force Majeure Event persists for a continuous period of six (6) months. The provisions of Clause 18.4 shall apply in respect of such termination.

18.4 Consequence of Termination due to a Force Majeure Event

In the event of termination of this Agreement pursuant to Clause 18.3 each Party shall bear its own costs arising out of such termination and the Service Provider shall comply with its obligations under Clauses 13.5.1(a) to 13.5.1(h) inclusive, but excluding Clauses 13.5.1(h)(i) and 13.5.1(h)(iii) (where applicable) subject in each case to payment of an appropriate amount by the Purchaser to the Service Provider in respect of the rights, goods or services provided and provided that, in the case of Clauses 13.5.1(h)(i) and 13.5.1(h)(ii), the Service Provider shall not be obliged to perform obligations from which it is excused under Clause 18.

18.5 Effect on payments

If a Force Majeure Event results in the Service Provider being unable to carry out its obligations, the Purchaser shall cease to be liable to make any payment which would otherwise have been due on fulfilment of that obligation until and to the extent that the Service Provider has performed that obligation.

18.6 Cessation of Force Majeure

Immediately after the end of the Force Majeure Event, the FM Affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement insofar as the Agreement has not been terminated in accordance with Clause 18.3.

18.7 Continuing Obligations

The Parties shall not be released from any of their obligations under this Agreement as a result of a Force Majeure Event, and this Agreement shall, subject to Clause 18.3, remain in effect for the duration of a Force Majeure Event.

19 CONFIDENTIALITY

19.1 Obligations of Confidentiality

Subject to Clause 19.2 the contents of this Agreement, any documents referred to in this Agreement and any information whether written or oral, provided by the Purchaser to the Service Provider or by the Service Provider to the Purchaser in connection with this Agreement shall be treated by the recipient as confidential ("**Confidential Information**"). The Purchaser and the Service Provider shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of their subcontractors and suppliers shall not) without the

prior written consent of the other Party or by failure to exercise due care or otherwise by any act or omission:

- 19.1.1 disclose Confidential Information to any person whomsoever;
- 19.1.2 use or exploit Confidential Information commercially for its or their own purposes other than in connection with the performance of this Agreement; or
- 19.1.3 use Confidential Information otherwise than for the purpose for which it was provided.

19.2 Permitted Disclosure

Without prejudice to the Purchaser's rights under its licence granted pursuant to Clause 15.1, the restrictions in Clause 19.1 shall not apply to the disclosure of Confidential Information:

- 19.2.1 in accordance with any requirement under any Applicable Law (including pursuant to Clause 26) or LU Standard to do so;
- 19.2.2 to the disclosing Party's respective professional advisers and auditors who are bound to such Party by a duty of confidentiality which applies to any information disclosed;
- 19.2.3 to any banks and financial institutions providing finance, or advising on or envisaging the provision of finance for any purpose in connection with this Agreement;
- 19.2.4 to any Competent Authority;
- 19.2.5 in the case of the Purchaser, to the Mayor of London and/or the Greater London Authority and/or the Secretary of State;
- 19.2.6 in the case of the Purchaser, to any member of the TfL Group;
- 19.2.7 to the extent that the relevant Confidential Information is in the public domain otherwise than by breach of this Agreement;
- 19.2.8 which was made available to the disclosing Party on a non-confidential basis;
- 19.2.9 which is required in connection with a disposition or other transfer of rights permitted in accordance with this Agreement;
- 19.2.10 which is required by law or by order of a Court of a competent jurisdiction (but only to the extent required by such law or order) to be disclosed in connection with any Dispute, litigation or other dispute resolution procedure; or
- 19.2.11 to any member of the Service Provider's Group for the purposes of the performance by the Service Provider of its obligations under this Agreement.

19.3 Confidentiality Undertaking

Where disclosure is permitted under Clause 19.2, other than Clauses 19.2.1, 19.2.2, 19.2.7 or 19.2.8, the Party disclosing the Confidential Information shall procure that the recipient of the Confidential Information shall be subject to the same obligations of confidentiality as that contained in this Agreement.

19.4 **Prior Notice of Disclosure**

If a Party becomes required in circumstances contemplated by Clauses 19.2.1 to 19.2.11 to disclose any Confidential Information, such Party shall give to the other Party as much notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps as the other Parties may reasonably require in order to enable it to mitigate the effect of, or avoid the requirements for, any such disclosure. Where the disclosing Party giving notice is the Purchaser, it shall only be obliged to give notice to co-operate with, have due regard to the views of, and take steps as reasonably required by the Service Provider.

19.5 **Standard of Care**

In fulfilling its obligations under this Clause 19, each Party shall be required to use the same degree of care to prevent unauthorised disclosure of such Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

19.6 **Announcements**

The Service Provider shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed) advertise or otherwise give any publicity in any form to any matter relating to this Agreement or announce their involvement in the provision of support and material supply services for the Goods.

19.7 **Reputation**

The Service Provider shall not knowingly do or omit to do anything in relation to this Agreement which may bring the standing or reputation of any other Party into disrepute or otherwise attract adverse publicity in relation to the other Parties.

19.8 **Survival**

The obligations of the Parties under this Clause 19 shall survive the expiry or the termination of this Agreement for whatever reason.

20 **CONTRACT MANAGEMENT**

20.1 **General**

The Purchaser and the Service Provider agree to comply with their respective obligations as set out below.

20.2 **Representatives**

Each Party shall appoint (after consultation with the other Party) one or more Representatives to act on its behalf under this Agreement. Both Parties shall advise the other Party in writing prior to the date hereof of the name(s) and contact details of its Representative(s). Either Party may, on giving reasonable notice to the other Party, appoint an additional Representative or replace an existing Representative. Each Party shall be responsible for the acts, omissions, neglects and defaults of its Representative) as if such acts, omissions, neglects and defaults were the acts, omissions, neglects and defaults of that Party itself. Both Parties warrant that their Representative(s) has full authority to bind it in

respect of any decision made or action taken by such Representative(s). For the avoidance of doubt "Representatives" shall include the Service Provider's Representative and the Purchaser Representative.

20.3 **Communication**

20.3.1 The Parties shall ensure that at all times the authorised Representative, or any other authorised representative, is available to receive, deal with, agree, advise on and explain what the current position is concerning any issues regarding this Agreement, including safety related issues affecting the Replacement Systems and day to day operational and incident management.

20.3.2 The Parties shall establish appropriate procedures and points of contact for such consultation, liaison and communication as may be contemplated by this Agreement at the SSA Start Meeting.

20.3.3 The Parties shall comply with their respective obligations in relation to document communication and management set out in paragraph 3 of Schedule 3A (*Contract Management*).

20.4 **Meetings, progress review and reporting**

20.4.1 The Parties shall comply with their respective obligations in relation to meetings, progress review and reporting set out in paragraphs 1 and 2 of Schedule 3A (*Contract Management*).

21 **WAIVER AND VARIATION**

Except as expressly stated in this Agreement no failure or delay by either Party to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such Party of such provision or in any way affect the validity of this Agreement or any part of it, the respective rights of the Parties (whether arising under this Agreement or under the general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing.

22 **SURVIVAL**

22.1 **Consequences of termination or expiry**

Upon termination or expiry of this Agreement, the obligations of the Parties under this Agreement shall cease except for:

22.1.1 any rights and obligations arising as a result of any antecedent breach of this Agreement or any rights and obligations which shall have accrued or become due prior to the date of termination; and

22.1.2 the provisions of Clauses 1, 3, 8, 9, 10, 13.5, 13.6, 13.10, 15, 16, 17, 18.4, 19, 21, 22, 23, 24, 25, 26, 30, 37, 38, 39, 40, 41, 43 and the related Schedules referred to in or required to give effect to those Clauses which shall survive the termination or expiry of this Agreement and continue in full force and effect.

23 LANGUAGE

All documentation or information required or produced in the course of or in connection with a Party's performance of this Agreement shall be in English.

24 ENTIRE AGREEMENT

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the Parties hereto. Each Party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each Party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be a breach of the terms of this Agreement to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this Clause 24 "this Agreement" includes all documents entered into pursuant to this Agreement.

25 SEVERABILITY AND ILLEGALITY**25.1 Severance**

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

25.2 Performance unlawful etc

If, at any time after the date of this Agreement, the introduction, imposition, variation or change of any Applicable Laws or LU Standards makes it unlawful or impossible without breaching that Applicable Laws or LU Standards for a Party (an "**Affected Party**") to give effect to its obligations under this Agreement, then the Affected Party shall notify the other Party of the nature of the circumstances on becoming aware of them.

25.3 Mitigation

25.3.1 Without prejudice to any other terms of this Agreement, the Parties shall discuss in good faith any reasonable methods of avoiding the effects of any such introduction, imposition, variation or change referred to in Clause 25.2. including, subject to obtaining any necessary consents, transferring its rights and obligations under the relevant document to any other person, acceptable to the other Parties (at such other party Party's absolute discretion) not affected by that introduction, imposition, variation or change of any Applicable laws or LU Standards.

25.3.2 Save in respect of claims for which Liquidated Damages are payable, the Service Provider and the Purchaser shall be under a duty to mitigate any damages and losses in respect of which they make a claim under an indemnity or otherwise pursuant to this Agreement.

25.4 **Failure to avoid illegality**

If, notwithstanding the provisions of Clause 25.3, the Affected Party is unable to avoid the matters contemplated by Clause 25.2, or the Parties hereto fail to agree on a proposal to avoid its effects, this Agreement in relation to the provision of Services may be terminated by the Affected Party and each Party will bear its own costs.

26 **FREEDOM OF INFORMATION**

26.1 The Service Provider acknowledges that the Purchaser:

26.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation, and

26.1.2 may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Service Provider.

26.2 Without prejudice to the generality of Clause 26.1, the Service Provider agrees and shall procure that its Subcontractors and suppliers (if any) will agree to:

26.2.1 transfer to the Purchaser or such other persons as may be notified by the Purchaser to the Service Provider each Information Request relevant to this Agreement or any member of the TfL Group that the Service Provider or its Subcontractors (if any) (as the case may be) receive as soon as practicable and in any event within three (3) days of receiving such Information Request; and

26.2.2 in relation to Information held by the Service Provider on behalf of the Purchaser, provide the Purchaser with details about and/or copies of all such Information that the Purchaser requests and provide such details and/or copies within six (6) days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

26.3 The Purchaser (as may be directed by TfL) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Purchaser.

26.4 The Service Provider acknowledges that the Purchaser (as may be directed by TfL) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

27 **RESPONSIBLE PROCUREMENT**

27.1 The Service Provider shall have regard to the Responsible Procurement Principles and shall comply at all times with the Responsible Procurement Principles insofar as they are relevant to this Agreement, the Service Provider and/or any Subcontractor.

28 **CRIME AND DISORDER**

28.1 The Service Provider acknowledges that the Purchaser is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

- 28.1.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties;
- 28.1.2 where appropriate, identify actions to reduce levels of crime and disorder; and
- 28.1.3 without prejudice to any other obligation imposed on the Purchaser, exercise his 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 crime and disorder in its area,

and in the performance of this Agreement the Service Provider shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Purchaser where possible to enable the Purchaser to satisfy its duty.

29 LONDON LIVING WAGE

- 29.1 The Service Provider acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Purchaser) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.
- 29.2 Without prejudice to the generality of Clause 29.1, the Service Provider shall and shall procure that its Subcontractors (if any) shall:
 - 29.2.1 ensure that none of its employees engaged in the performance of this Agreement in Greater London or on the LUL Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 29.2.2 ensure that none of his employees engaged in the performance of this Agreement is paid less than the amount to which they are entitled in their respective contracts of employment; and
 - 29.2.3 co-operate and provide all reasonable assistance to the Purchaser and any member of the TfL Group in monitoring the effect of the London Living Wage.

30 DATA TRANSPARENCY

- 30.1 The Service Provider acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the Service Provider hereby gives its consent for the Purchaser to publish the Contract Information to the general public.
- 30.2 The Purchaser 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 Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Purchaser may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 30.1. The Purchaser shall make the final decision regarding publication and/or redaction of the Contract Information.

31 DATA PROTECTION

- 31.1 The Service Provider shall at all times comply with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued

by the Purchaser from time to time in relation to the processing of data and shall not by any act or fault cause the Purchaser to be in breach of these requirements.

31.2 The Service Provider shall:

31.2.1 take appropriate technical and organisational security measures satisfactory to the Purchaser against unauthorised or unlawful Processing of Purchaser Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;

31.2.2 provide the Purchaser with such information as it may reasonably require to satisfy itself of compliance by the Service Provider with the requirements of this Clause 31; and

31.2.3 cooperate with the Purchaser in complying with requests or enquiries made pursuant to the Data Protection Act.

32 CONFLICT OF INTEREST

32.1.1 The Service Provider 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 performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Purchaser.

32.1.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of this Agreement and in any event not less than once in every six (6) months and shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Purchaser to do whatever is necessary (including the separation of staff working on and/or data relating to this Agreement from the matter in question) to manage such conflict to the Purchaser's satisfaction and provided that, where the Purchaser is not so satisfied (in its absolute discretion), the Purchaser shall be entitled to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 32, Clause 13.5 shall apply.

33 CRIMINAL RECORDS DECLARATION

33.1 The Service Provider 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 he has committed. The Service Provider shall confirm to the Purchaser in writing on an annual basis upon request that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if he commits a Relevant Conviction throughout the duration of this Agreement and the Service Provider shall notify the Purchaser in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

33.2 The Service Provider shall not engage or allow to act on behalf of the Service Provider or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.

- 33.3 The Purchaser may audit and check any and all such records of the Service Provider as are necessary in order to monitor compliance with this Clause 33 at any time during performance of this Agreement.
- 33.4 If the Service Provider fails to comply with the requirements under Clause 33.1 and/or 33.2, the Purchaser may, without prejudice to its rights under Clause 33.5, serve notice on the Service Provider requiring the Service Provider to immediately take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement unless (in the case of non-compliance with Clause 33.1) within seven (7) days of receipt of the notice the Service Provider confirms to the Purchaser that it has procured all of the Declarations required under Clause 33.1.
- 33.5 A persistent breach of Clause 33.1 and/or 33.2 by the Service Provider shall constitute a material breach of this Agreement and shall entitle the Purchaser to serve written notice terminating this Agreement in whole or in part with immediate effect. In the event that this Agreement is terminated in accordance with this Clause 33, Clause 13.5 shall apply.
- 33.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the performance of any aspect of this Agreement.
- 33.7 Nothing in this Clause 33 in any way waives, limits or amends any obligation of the Service Provider to the Purchaser arising under this Agreement and the Service Provider's obligation to perform this Agreement remains in full force and effect and the Service Provider cannot claim any extra costs or time as a result of any actions under this Clause 33.
- 33.8 The Service Provider confirms that, for the duration of this Agreement, its corporate security and personnel processes are sufficient to ensure that no personnel with a Relevant Conviction will carry out any aspect of this Agreement.

34 **BEST VALUE**

- 34.1 The Service Provider acknowledges that the Purchaser is a best value authority for the purposes of the Local Government Act 1999 and as such the Purchaser is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Service Provider shall assist the Purchaser to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Purchaser to achieve best value.

35 **WORK RELATED ROAD RISK**

Definitions

- 35.1 For the purposes of Clauses 35.2 to 35.9 (inclusive) of this Agreement, the following expressions shall have the following meanings:

"Alternative Scheme" shall have the meaning set out in Clause 35.2.1;

"Bronze Accreditation" the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

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

particularly described at:

www.fors-online.org.uk

"to provide the Spares"	to provide the Spares in the United Kingdom
"Van"	a vehicle with a MAM not exceeding 3,500 kilograms; and
"WRRR Self-certification Report"	shall have the meaning set out in Clause 35.7

Fleet Operator Recognition Scheme Accreditation

35.2 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, it shall within ninety (90) days of the date of this Agreement:

- 35.2.1 (unless already registered) register for FORS or a scheme which, in the reasonable opinion of Purchaser, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and
- 35.2.2 (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 Service Provider has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

35.3 The Service Provider shall ensure that every Lorry, which it uses to provide the Spares, shall:

- 35.3.1 have Side Guards, unless the Service Provider can demonstrate to the reasonable satisfaction of Purchaser that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- 35.3.2 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;
- 35.3.3 have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- 35.3.4 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.

Driver Licence Checks

35.4 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares the Service Provider shall ensure that:

- 35.4.1 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
- 35.4.2 each of its Drivers engaged in the provision of the Spares has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Spares 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 Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by Purchaser 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 monthly checks;
 - (c) 9-11 points on the driving licence – quarterly checks; or
 - (d) 12 or more points on the driving licence – monthly checks.

Driver Training

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

Collision Reporting

- 35.6 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, the Service Provider shall:
- 35.6.1 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
- 35.6.2 no later than thirty (30) Working Days prior to the first use of Delivery and Servicing Vehicles to provide the Spares, provide to Purchaser a Collision Report. The Service Provider shall provide to Purchaser an updated Collision Report within five (5) working days of a written request from Purchaser.

Self-Certification of Compliance

- 35.7 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Spares, within ninety (90) days of the Commencement Date, the Service Provider shall make a written report to Purchaser detailing its compliance with Clauses 35.3, 35.4 and 35.5 of this Agreement (the "**WRRR Self-certification Report**"). The Service Provider shall provide updates of the WRRR Self-certification Report to Purchaser on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Service Provider Regarding Subcontractors