

10 ACCESS AND AUDIT

- 10.1 For the purposes of exercising any of its rights under this Clause 10, the Supplier shall (a) grant the Company access on reasonable prior notice to any of the Supplier'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.
- 10.2 The Supplier shall, and shall (unless the Company's Representative otherwise agrees in writing) procure that its Subcontractors shall:
- 10.2.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Supplier's obligations under this and all transactions and Subcontracts entered into by the Supplier for the purposes of performing its obligations under this Agreement (in respect of the Supplier) and the performance by the Subcontractor of its obligations under its Subcontract (in respect of the Subcontractor) (the "Supplier's Records"); and
 - 10.2.2 retain all the Supplier's Records until the date six (6) years (or such longer period as may be required by law) following expiry or termination of this Agreement for whatever reason (the "Retention Period").
- 10.3 The Supplier shall ensure that its procedures and obligations are regularly audited, tested and/or inspected by an independent auditor.
- 10.4 Notwithstanding any other right of audit that the Company is entitled to under this Agreement, in order to verify the Supplier's performance of and compliance with this Agreement the Company shall be entitled on reasonable notice (whether in writing or verbally), either itself or using such agents or representatives as it may authorise to:
- 10.4.1 audit, inspect or witness any aspects of the provision of the Services;
 - 10.4.2 inspect any and all of the Supplier's Records during the Retention Period as are reasonably necessary to investigate the Supplier's (and any Subcontractor's) performance of its obligations under this Agreement
 - 10.4.3 audit the management systems of the Supplier and those of any Subcontractor; and
 - 10.4.4 inspect and/or audit compliance by the Supplier and its Subcontractors with the Supplier's obligations under this Agreement,
- and where such inspection reasonably requires the attendance or participation by the Supplier, the Supplier shall provide such attendance or participation by appropriately qualified individuals at its own cost.

- 10.5 To the extent necessary for the purpose of exercising any of the rights granted under Clause 10.3 the Supplier shall provide, and shall procure that its Subcontractors shall provide, all reasonable co-operation to the Company, including:
- 10.5.1 upon request from the Company, acting reasonably, providing electronic or paper copies of any Supplier's Records required for the purposes of Clause 10.4.2 free of charge and within a reasonable time of any request; and
 - 10.5.2 making the Supplier's employees available for discussion with the Company.
- 10.6 No audit and/or inspection testing by the Company pursuant to Clause 10.3 shall relieve the Supplier (or any of its Subcontractors) from any of its obligations under this Agreement or prejudice any right, power and/or remedy of the Company against the Supplier.
- 10.7 Any actions found to be reasonably necessary having regard to the Supplier's obligations under this Agreement as a consequence of the Company undertaking any inspections or audits (a "Corrective Action") shall be carried out by the Supplier. The Supplier shall acknowledge formally within two (2) Working Days receipt of any request for a Corrective Action raised by the Company, together with the Supplier's confirmation of the timescale allocated by the Company for the Supplier to close out the Corrective Action. The Supplier shall advise the Company upon its close-out of the Corrective Action, together with details of the Corrective Action applied. The Company shall be entitled to undertake a further audit of any Corrective Actions on the same basis as set out in Clauses 10.1 to 10.6.
- 10.8 If the Supplier (acting reasonably) disputes any Corrective Action, it shall notify the Company whereupon the Supplier and the Company shall consult with each other and seek to resolve such dispute and in default of such resolution either the Company or the Supplier may refer the dispute for determination in accordance with Clause 44.

Plans for Remedial Action

- 10.9 If, at any time in the course of any participation or inspection by the Company in accordance with Clauses 10.2 and 10.7, the Company 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 5.2 the Company shall notify the Supplier of such determination. The Company and the Supplier shall thereafter use all reasonable endeavours to agree a plan for necessary remedial action to be implemented by the Supplier, at the Supplier's cost, to ensure that that the Services do or will conform to the requirements of Clause 5.2. If the Supplier fails to implement such remedial action within a reasonable period following agreement of a plan pursuant to this Clause 10.9 then the Company may proceed to implement, or procure the implementation, of such remedial action at the Supplier's expense. The exercise by the Company of its rights

under this Clause 10.9 shall not in any way prejudice or affect any of the Company's other rights or remedies under this Agreement nor shall it relieve the Supplier from any of its obligations and liabilities under this Agreement.

II SECURITY

II.1 Performance Bond

II.1.1 On or prior to the date of this Agreement, the Supplier shall procure at its cost a valid and effective Performance Bond in favour of the Company. The Performance Bond shall:

- (a) be for the amount of £ ;
- (b) substantially in the form set out in Schedule 9 (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.

II.2 Not used

II.3 Replacement Bonds

II.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 Supplier shall provide a replacement Performance Bond issued by a Bond Provider and that otherwise complies with this Clause II within 10 (ten) Working Days of the relevant event(s) under this Clause II.3.

II.3.2 In the event that the Supplier does not provide a replacement Performance Bond in accordance with Clause II.3.1, the Company 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 Company and retained by the Company pending receipt of a replacement Performance Bond meeting the requirements of this Clause II (provided that if, prior to

receipt of such Performance Bond this Agreement is terminated, the Company 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 II and invoice the Supplier for the cost thereof. The Supplier shall reimburse the Company 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.

II.4 Demands

II.4.1 Where this Agreement is terminated due to the occurrence of a Supplier Event of Default, the Company shall be entitled to make a demand under the Performance Bond for the Performance Bond amount specified in Clause II.1.(a), 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 Company and the Supplier for application in or towards amounts due to the Company following termination for Supplier Event of Default as provided for in this Agreement.

II.4.2 Where this Agreement terminates other than as contemplated by Clause II.4.1 (or expires, the Company shall be entitled to make a demand under the Performance Bond in respect of any amounts which the Supplier is liable to pay to the Company (whether by way of indemnity or otherwise) and has failed to pay to the Company.

12 COMPANY'S OBLIGATIONS

12.1 The Company shall:

12.1.1 pay the Supplier the Service Payment for the Services in accordance with the terms of this Agreement; and

12.1.2 comply with its express obligations as set out in this Agreement, including the Machine Specification and the Works Information.

12.2 Payment of the Service Payment shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under this Agreement properly.

13 EVENTS OF DEFAULT

13.1 Supplier Events of Default

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

13.1.1 the Supplier fails to obtain the Required Approvals for:

- (a) at least one Rail Re-Profiling Machine on or before the last day of the sixth (6th) complete Payment Period following the date of this Agreement; and
 - (b) both Rail Re-Profiling Machines on or before the last day of the ninth (9th) complete Payment Period following the date of this Agreement;
- 13.1.2 the Supplier fails to pay any sum (including, where applicable, any Liquidated Damages) not in dispute when due and payable to the Company in accordance with this Agreement within thirty (30) days of a written demand for payment;
- 13.1.3 an Insolvency Event occurs in relation to the Supplier;
- 13.1.4 the Supplier commits a material breach of its obligations under this Agreement;
- 13.1.5 Not used.
- 13.1.6 the Supplier 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 Supplier of its obligations under Clause 38;
- 13.1.8 without the Company's written consent, at any time a person (or persons acting together) takes a controlling interest in the Supplier'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 Supplier's voting share capital or the share capital of the Supplier's holding company; or
 - (b) the ability to direct the casting of more than 30% of the votes exercisable at the Supplier's general meetings or those of the Supplier's holding company on all, or substantially all, matters;
- 13.1.9 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, or the Bond Provider breaches the Performance Bond;
- 13.1.10 a Supplier Public Procurement Termination Event occurs; or
- 13.1.11 a Level 4 Non-Conformance occurs.
- 13.2 Procedures in relation to Termination for a Supplier Event of Default
 - 13.2.1 The Supplier shall notify the Company forthwith on the Supplier becoming aware of the occurrence of a Supplier Event of Default.

13.2.2 Following the occurrence of a Supplier Event of Default (and notwithstanding that the Supplier may not have notified it pursuant to Clause 13.2.1), the Company may by notice in writing to the Supplier, specifying the Supplier Event of Default in question, terminate this Agreement in relation to the provision of Services ("Company Termination Notice"), such termination to take effect from the date specified in the Company Termination Notice (being not less than seven (7) days after the date of the Company Termination Notice or, in the case of an Insolvency Event, forthwith), provided that, in respect of a Supplier Event of Default under Clauses 13.1.2 or 13.1.4 which is capable of remedy, the provisions of Clause 13.3 shall apply.

13.3 Remedial Plan

13.3.1 Where a Supplier Event of Default that is capable of remedy arises under Clauses 13.1.2 or 13.1.4, the Company shall by notice in writing to the Supplier signed on behalf of the Company (a "Remedy Notice") require the Supplier 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 Company 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 Supplier puts forward a Remedial Plan in accordance with Clause 13.3.1, the Company shall notify the Supplier in writing within twenty (20) Working Days of receipt of the Remedial Plan that it does not accept the Remedial Plan. If the Company does not so notify the Supplier, the Company shall be deemed to have accepted the Remedial Plan.

13.3.3 If the Company notifies the Supplier that it does not accept that Remedial Plan pursuant to Clause 13.3.2, the Company and the Supplier 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 Company. In the absence of agreement in that period of ten (10) Working Days, the Company may treat the Supplier Event of Default as not being capable of remedy and terminate this Agreement in accordance with Clause 13.2 (notwithstanding the proviso thereto). Where the Company and the Supplier agree the form of the Remedial Plan, the Supplier 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 Company, or the Supplier otherwise fails to comply with the terms of that Remedial Plan,

then the Company may:

- (i) proceed to implement, or procure the implementation, of the Remedial Plan at the Supplier's expense. The exercise by the Company of its rights under this Clause 13.3.4 shall not in any way prejudice or affect any of the Company's other rights or remedies under this Agreement nor shall it relieve the Supplier from any of its obligations and liabilities under this Agreement; and/or
- (ii) exercise its rights under Clause 13.2 as if the Supplier Event of Default is not capable of remedy.

13.4 Consequences of a Supplier Event of Default

13.4.1 Where the Company has served (a) a Company Termination Notice in accordance with Clause 13.2.2 (and, where relevant, the Supplier 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 Company will have the right to place the carrying out of the Services with a third party and the Supplier will, subject to Clause 13.4.3, indemnify the Company for any properly incurred reasonable costs of placing the Services with a third party to the extent they exceed the costs which the Company would have paid the Supplier for the same Services;
- (b) the Supplier 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 Company shall continue to pay the Supplier for performance of such Services;
- (c) the Supplier shall co-operate with the Company to minimise the disruption caused to the Company's business due to the termination of this Agreement in relation to the provision of the Services and shall provide any assistance, training or other support required by the Company or any third party taking over the provision of the Services; and

- (d) the Supplier will on demand pay the Company:
 - (i) all reasonable costs incurred by the Company as a result of any Supplier Event of Default and the loss of the provision of the Services; and
 - (ii) all amounts outstanding in respect of any accrued obligations;

13.4.2 The Company shall use reasonable endeavours to mitigate all costs claimed by it under this Clause 13.4.

13.4.3 For the avoidance of doubt, the Company's rights upon the occurrence of a Supplier Event of Default are as expressly set out in this Agreement.

13.5 Declaration of Ineffectiveness and Public Procurement Termination Event

13.5.1 The Company 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 Company's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015).

13.5.2 In the event that this Agreement is terminated pursuant to Clause 13.5.1, the provisions of Clause 13.6 shall apply.

13.6 Consequences of a Declaration of Ineffectiveness or Public Procurement Termination Event

13.6.1 If this Agreement is terminated in relation to the provision of the Services pursuant to Clauses 13.5, the Company will pay the Supplier:

- (a) the aggregate of all Service Payments (including the apportioned element of the period relating to the Payment Period during which this Agreement is so terminated) and other amounts payable to the Supplier 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 Supplier as at the date of termination of this Agreement in respect of the Services (including, without limitation, the cost of terminating subcontracts and redundancy of employees); and

- (c) all other direct losses, costs and claims reasonably incurred in connection with such termination if properly evidenced by the Supplier.

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

- 13.6.2 Subject to payment by the Company to the Supplier of all sums due and payable under this Agreement the Supplier will comply with the provisions of Clauses 13.4.1(b) to 13.4.1(d) above.
- 13.6.3 The Company 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 Supplier 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 Supplier as a direct result of the termination of this Agreement.
- 13.6.4 Where the Company exercises its rights pursuant to Clause 13.6.3, it shall give written notice to the Supplier identifying the Independent Auditor appointed by the Company, the terms of the Independent Auditor's appointment and the proposed timeframes for undertaking the audit. The Supplier shall cooperate with the Independent Auditor and grant the Independent Auditor the same rights of audit as the Company enjoys under this Agreement.
- 13.6.5 The Company shall procure that the Independent Auditor provides a copy of its decision in writing (together with reasons for its decisions) to the Supplier. 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 Supplier as a direct result of termination of this Agreement, the Company shall not be obliged to pay such amount to the Supplier.
- 13.6.6 The costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Company 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 Supplier, in which case the costs incurred by the Independent Auditor in undertaking the audit shall be borne by the Supplier.
- 13.6.7 In the event the Supplier disputes any findings of the Independent Auditor, such Dispute shall be referred for resolution in accordance with Clause 44.
- 13.6.8 With effect from the termination or expiry of the Agreement Duration, the Supplier shall extend to the Company the benefit of any then subsisting guarantee, condition or warranty which may have been given to the Supplier or which is implied by law in favour of the Supplier in respect of the Services as provided by the Supplier during the Agreement Duration, provided that in so doing

the Supplier shall be relieved of its obligations and liabilities under this Agreement in so far as the benefit of such rights are assigned to the Company.

14 PROHIBITED ACTS

- 14.1 The Supplier shall not and shall use its reasonable endeavours to procure that its Subcontractors (if any) shall not commit any Prohibited Act.
- 14.2 The Company may audit and check any and all such records of the Supplier 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 Supplier, any of its shareholders, Subcontractors, or anyone employed by or acting on behalf of the Supplier or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and shall entitle the Company 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 13.4 shall apply.
- 14.4 If a Prohibited Act is committed by any Subcontractor or any employee or agent of such Subcontractor or the Supplier then the Company may serve a warning notice upon the Supplier instead of exercising its rights to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Supplier 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 Company 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 13.4 shall apply.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Existing Contracts

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

15.2 Vesting of Intellectual Property Rights created under this Agreement

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

15.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 15.2, all Intellectual Property Rights owned by the Supplier or its Subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 15.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

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

The Company shall have and the Supplier hereby grants, and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 15.3 for the purposes of:

- 15.4.1 understanding the Services;
- 15.4.2 operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Services;
- 15.4.3 extending, interfacing with, integrating with, connecting into and adjusting the Services;
- 15.4.4 enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the LUL Network;
- 15.4.5 executing and completing the Services; and
- 15.4.6 enabling the Company to perform its function and duties as infrastructure manager and operator of the LUL Network.

15.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- 15.5.1 promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, documentation) in the Supplier's or Subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or Subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 15.2, 15.3 and 15.4 above; and
- 15.5.2 keep copies of such materials, items and documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to

the Company at regular intervals and in any event upon the Company's request.

15.6 Company's Rights in relation to Other Procurement Activities

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 15.5 and anything in which the Intellectual Property Rights referred to in Clauses 15.2, 15.3 and 15.4 subsist for the purposes of inviting tenders or of procuring services the same as or similar to the Services for the carrying out of any activities in connection with the licence under Clause 15.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

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

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

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

15.8 Ownership of the Company's Intellectual Property Rights

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

15.9 Company's Intellectual Property Rights

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

15.10 Survival

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

16 LIABILITY, INDEMNITIES

16.1 General Indemnity

16.1.1 Subject to Clause 16.1.2, the Supplier shall be liable for and shall indemnify on demand on an after-Tax basis the Company 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 TfL Premises and the LUL Network);
- (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 and any Environmental Claim;

arising from or in connection with:

- (i) the performance or non-performance (including any negligent performance) of the obligations of the Supplier, its Subcontractors or suppliers or the directors, agents, representatives or employees of any of them under or in connection with this Agreement;
- (ii) any acts or omissions, breach, negligence or wilful misconduct by the Supplier.

16.1.2 The Supplier 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.

16.1.3 The provisions of this Clause 16 shall survive termination or expiry of this Agreement for whatever reason.

16.2 Notification of claims procedures and assistance in defending claims

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

16.2.2 The Company shall give to the Supplier 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 Company seeks to be indemnified by the Supplier 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 Supplier's Liability

16.4.1 Subject to Clause 16.4.2, the Supplier's liability to the Indemnified Parties under this Agreement (whether arising in contract, tort (including negligence, breach of statutory duty or otherwise)) shall be limited to 100 per cent (%) of the amounts paid to the Supplier up to and including the date of termination.

16.4.2 The Supplier's liability to the Indemnified Parties under this Agreement in respect of the Excepted Liabilities shall not be subject to the limits referred to in Clause 16.4.1.

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 Supplier's Personnel

16.6.1 For the purposes of this Clause 16.6:

- (a) "Current Supplier" means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company;
- (b) "Replacement Employer" means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of this Agreement (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 Supplier 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 this Agreement (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 Supplier who transfer or have the right to transfer to the Supplier under the Transfer Regulations.

16.6.2 The Supplier complies and procures that its Subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the Expiry 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

Company may require the Supplier to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Supplier 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 Supplier 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 Company upon request of any communication with any potential or intended new consultant or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

16.6.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 16.6 may be addressed. The Supplier will if required by the Company 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 Supplier will not and will procure that its Subcontractors will not in the twelve (12) months prior to the expiry or termination of this Agreement (or, where notice of termination is given of less than twelve (12) months, during any such period of notice) without the Company's written consent:

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

the 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 Services, except where such increases or changes would have arisen in the ordinary course of the Supplier'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 Supplier's or the relevant Subcontractor's employees, whether or not engaged in performing the Services (or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant Subcontractor which is not related or confined to the employees engaged in the provision of the Services or relates to the expiry or termination of this Agreement.

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

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

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

Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

The provisions of this Clause 16.6.7 shall survive the expiry or termination of this Agreement for whatever reason.

16.6.8 In this Clause 16.6 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this 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 Company 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 Company under any provision of the Transfer Regulations.

17 INSURANCE

The Supplier and the Company shall comply with the requirements of the insurance regime set out in Schedule 4 (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 Supplier, complying with the requests of the Company's 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 Company shall be entitled to terminate this Agreement by notice in writing (a "FM Notice") to the Supplier 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 Supplier shall comply with its obligations under Clauses 13.4.1(b) to 13.4.1(d) inclusive, but excluding Clauses 13.4.1(d)(i) and 13.4.1(d)(ii) (where applicable) subject in each case to payment of an appropriate amount by the Company to the Supplier in respect of the Services provided and provided that, in the case of Clauses 13.4.1(d)(i) and 13.4.1(d)(ii), the Supplier 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 Supplier being unable to carry out its obligations, the Company 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 Supplier 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 this 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 Company to the Supplier or by the Supplier to the Company in connection with this Agreement shall be treated by the recipient as confidential ("Confidential Information"). The Company and the Supplier shall not (and shall procure that their respective subcontractors, suppliers, officers, employees, advisers and agents and the officers, employees, advisers and agents of its 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

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 TfL 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 Company, 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 Company, 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 Supplier's Group for the purposes of the performance by the Supplier 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 Company, 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 Supplier.

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 Supplier shall not (and shall procure that each Subcontractor and supplier shall not) without the prior written consent of the Company (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 the Services.

19.7 Reputation

The Supplier 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 Company and the Supplier 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(s) 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 Supplier's Representative and the Company's 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 Rail Re-Profiling Machines and the Services 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.

20.4 Contract Management Meetings

20.4.1 A contract management meeting shall be held each Payment Period on a date and time as agreed between the Parties acting reasonably, and whenever any Party reasonably believes that the performance of another Party's obligations has fallen below an acceptable level (each being a "Contract Management Meeting").

20.4.2 Each Contract Management Meeting shall be attended by the Company's Representative or a delegate of the Company's Representative and the Supplier's Representative or a delegate of the Supplier's Representative and one or more Senior Representatives of the Supplier with relevant expertise to consider the agenda items for the Contract Management Meeting.

20.4.3 The Company shall take minutes at each Contract Management Meeting which shall be approved by the Supplier's Representative at the following Contract Management Meeting.

20.4.4 The agenda for the Contract Management Meeting shall be agreed by the Parties acting reasonably and may include any of the elements set out in Clause 20.4.6. Each Party shall give reasonable notice to the other Parties of any other items it proposed to be added to the Contract Management Meeting agenda. The final agenda for the meeting shall be published no later than one (1) week prior to the scheduled date of the Contract Management Meeting.

20.4.5 The location of any Contract Management Meeting shall be notified alternately by the Parties, unless otherwise agreed, with the location of the first meeting to be specified by the Supplier.

20.4.6 The agenda for a Contract Management Meeting may include any of the following:

- (a) a review of minutes from the previous meeting;
- (b) review of the content of the relevant Performance Report, including performance risk evaluation;
- (c) a review of costs incurred in the preceding Payment Period;
- (d) a review of the status of current and proposed Variations;
- (e) a review of audits and audit plans;
- (f) a review of safety performance and/or quality performance;
- (g) a review of completed Shift Reports;

- (h) a review of the reliability, availability, maintainability and safety of the Services (including failures);
- (i) reporting on past health, safety and environmental compliance;
- (j) a review of suppliers and Subcontractors;
- (k) relationship review;
- (l) complaints, claims or concerns by the Company regarding alleged underperformance or non-performance by the Supplier of any of its obligations under this Agreement;
- (m) any other business; and
- (n) planning of the date and location of the next Contract Management Meeting.

20.4.7 Where the Company raises a complaint or concern through a Contract Management Meeting regarding alleged underperformance or non-performance by the Supplier of any of its obligations under this Agreement, the Supplier's Representative shall:

- (a) promptly investigate the possible causes of the complaint or concern;
- (b) at the Contract Management Meeting immediately following the date on which the Company raised the complaint or concern and at each subsequent Contract Management Meeting until the date the Company notifies the Supplier that the complaint or concern has been resolved to the Company's satisfaction:
 - (i) communicate to the Company's Representative any findings by the Supplier of the investigation described in Clause 20.4.7(a); and
 - (ii) identify the course of action the Supplier proposes to take or has undertaken (as the case may be) to resolve the Company's complaint or concern; and
- (c) monitor the Supplier's performance of the obligations under this Agreement relevant to the Company's complaint or concern until the date the Company notifies the Supplier that the complaint or concern has been resolved to the Company's satisfaction.

20.5 Performance Reports

20.5.1 No later than two (2) Working Days prior to each Contract Management Meeting, the Supplier shall ensure that the Company receives two copies of the Performance Report relating to the

period (to be agreed by the Parties) immediately preceding that Contract Management Meeting.

20.5.2 The Supplier shall provide the Company, within a reasonable time following a request, any additional performance and other reports as are required by the Company.

20.6 Exceptional planning activities

The Company may require the Supplier to attend ad-hoc planning meetings from time to time on the date(s) and time(s) notified to the Supplier by the Company for the purpose of planning any large scale activities (such as week-52 possessions). The Supplier may be required as part of such meetings to produce any planning submissions that may be required by the Company in connection with such large scale activities.

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 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, 4, 9, 13.4, 13.6, 15, 16, 17, 18.4, 19, 20.6, 22, 23, 24, 25, 26, 30, 38, 39, 40, 41, 42, 44 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 TfL Standards makes it unlawful or impossible without breaching that Applicable Laws or TfL 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 TfL Standards.

25.3.2 The Supplier and the Company 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 Supplier acknowledges that the Company:

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

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

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

26.2.1 transfer to the Company or such other persons as may be notified by the Company to the Supplier each Information Request relevant to this Agreement or any member of the TfL Group that the Supplier 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 Supplier on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and provide such details and/or copies within six (6) days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

26.3 The Company (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 Supplier 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 Company.

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

27 RESPONSIBLE PROCUREMENT

The Supplier 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 Supplier and/or any Subcontractor.

28 CRIME AND DISORDER

The Supplier acknowledges that the Company is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998 to:

- 28.1 have due regard to the impact of crime, disorder and community safety in the exercise of the Company's duties;
- 28.2 where appropriate, identify actions to reduce levels of crime and disorder; and
- 28.3 without prejudice to any other obligation imposed on the Company, 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 Supplier shall assist and co-operate, and use its reasonable endeavours to procure that its Subcontractors assist and co-operate, with the Company where possible to enable the Company to satisfy its duty.

29 LONDON LIVING WAGE

- 29.1 The Supplier acknowledges and agrees that the Mayor of London, pursuant to section 155 of the GLA Act, has directed the TfL Group (including the Company) 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 TfL Premises.
- 29.2 Without prejudice to the generality of Clause 29.1, the Supplier 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 TfL Premises (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 Company and any member of the TfL Group in monitoring the effect of the London Living Wage.

30 DATA TRANSPARENCY

- 30.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding any provisions of this Agreement relating to the FOI Legislation or confidentiality, the

Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

- 30.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 30.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

31 DATA PROTECTION

- 31.1 The Supplier shall comply at all times with all obligations under Data Protection Legislation and if processing Personal Data on behalf of the Company, the Supplier shall only carry out such processing in order to carry out the supply of Services and at all times in accordance with any instructions from the Company.
- 31.2 When the Supplier receives a written request from the Company for the information about, or a copy of, the Company's Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days for the date of the request.
- 31.3 The Company shall remain solely responsible for determining the purposes and manner in which the Company's Personal Data is to be processed, the Supplier shall not share any of the Company's Personal Data with any Subcontractor or third party unless there is a written agreement in place which requires that Subcontractor or the third party to:
- 31.3.1 only process the Company's Personal Data in accordance with the Company's instructions to the Supplier; and
 - 31.3.2 comply with the same data protection requirement that the Supplier is required to comply with under this Agreement.
- 31.4 The Supplier shall:
- 31.4.1 take appropriate technical and organisational security measures satisfactory to the Company against unauthorised or unlawful Processing of the Company's Personal Data and against accidental loss, destruction of, or damage to such Personal Data;
 - 31.4.2 provide the Company with such information as it may reasonably require to satisfy itself of compliance by the Supplier with the requirements of this Clause 31;

- 31.4.3 co-operate with the Company in complying with requests or enquiries made pursuant to the Data Protection Legislation; and
- 31.4.4 follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

32 CONFLICT OF INTEREST

- 32.1 The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with performing this Agreement or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- 32.2 The Supplier shall undertake ongoing and regular conflict of interest checks throughout the Agreement Duration and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with performing this Agreement or any member of the TfL Group and work with the Company 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 Company's satisfaction and provided that, where the Company is not so satisfied (in its absolute discretion), the Company 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 13.4 shall apply.

33 CRIMINAL RECORDS DECLARATION

- 33.1 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions he has committed. The Supplier shall confirm to the Company in writing upon request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction throughout the Agreement Duration and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 33.2 The Supplier shall not engage or allow to act on behalf of the Supplier or any Subcontractor in the performance of any aspect of this Agreement any Relevant Individual who has disclosed a Relevant Conviction.
- 33.3 The Company may audit and check any and all such records of the Supplier as are necessary in order to monitor compliance with this Clause 33 at any time during performance of this Agreement.
- 33.4 If the Supplier fails to comply with the requirements under Clause 33.1 and/or 33.2, the Company may, without prejudice to its rights under Clause 33.5, serve notice on the Supplier requiring the Supplier 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 Supplier confirms to the Company 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 Supplier shall constitute a material breach of this Agreement and shall entitle the Company 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 13.4 shall apply.
- 33.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier 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 Supplier to the Company arising under this Agreement and the Supplier's obligation to perform this Agreement remains in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 33.
- 33.8 The Supplier confirms that, for the Agreement Duration, 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

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Company are 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 Supplier shall assist the Company (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Company (and, where appropriate, TfL) to achieve best value.

35 EQUALITY, DIVERSITY AND MODERN SLAVERY

- 35.1 Without limiting the generality of any other provision of this Agreement, the Supplier:
- 35.1.1 shall not unlawfully discriminate;
 - 35.1.2 shall procure that its employees and agents do not unlawfully discriminate; and
 - 35.1.3 shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

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

- 35.2 The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:
- 35.2.1 eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "Protected Characteristics") and marriage and civil partnership;
 - 35.2.2 advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and
 - 35.2.3 foster good relations between persons who share a Protected Characteristic and persons who do not.

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

- 35.3 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of this Agreement comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.
- 35.4 To the extent that the Company is required to assist or co-operate with the TfL Group in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.
- 35.5 Where applicable to the Supplier, the Supplier shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.

36 WORK RELATED ROAD RISK

36.1 Definitions

36.1.1 For the purposes of Clauses 36.2 to 36.10 (inclusive) of this Agreement, the following expressions shall have the following meanings:

"Approved Progressive Training"

An ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:

(a) Safe Urban Driving ("SUD") training to be

	undertaken every five (5) years; or
	(b) a training course, which in the reasonable opinion of the Company is an acceptable substitute to SUD; and
	(c) one safety related FORS e-learning module to be undertaken every twelve (12) months;
“Bronze Accreditation”	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
“Category N2 Lorry”	means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
“Category N3 Lorry”	means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;
“Car-derived Van”	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 twelve (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 Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“Direct Vision Standard” or “DVS”	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at: www.tfl.gov.uk
“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 a 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 Underrun Protection”

devices that are fitted between the front and rear axles of Lorries which 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

“Van”

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

36.2 Fleet Operator Recognition Scheme Accreditation

36.2.1 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the date of this Agreement:

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

36.3 Safety Features on Lorries

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

- (a) Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of Company that the Lorry will not perform the function for which it was built if the Side Underrun Protection is fitted;
- (b) Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted;
- (c) equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;
- (d) prominent signage on the Lorry to warn cyclists and other road users of the dangers of the Lorry's near side blind spot and of getting too close to the Lorry; and
- (e) front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of direct vision, fully operational indirect vision aids and driver audible alerts.

36.4 Direct Vision Standard

36.4.1 Where applicable:

- (a) Not used.
- (b) the Supplier shall ensure that:
 - (i) from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
 - (ii) from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and
 - (iii) so far as reasonably practicable, the conditions at all sites and locations within the control of the Supplier where:
 - (A) the Services are being delivered, or
 - (B) in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,are appropriate for each Category N2 lorry and Category N3 Lorry being used in the provisions of the Services. The Supplier shall not incur any costs or make any changes to the site(s) without the prior written consent of the Competent Authority.

36.5 Driver Licence Checks

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

- (a) it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and
- (b) each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Supplier's risk scale, provided

that the Supplier's risk scale has been approved in writing by Company within the last 12 months:

- (i) 0 – 5 points on the driving licence – annual checks;
- (ii) 6 – 8 points on the driving licence – quarterly checks; or
- (iii) 9 or more points on the driving licence – monthly checks.

36.6 Driver Training

36.6.1 Where the Supplier operates Delivery and Servicing Vehicles to supply the Services the Supplier shall ensure that each of its Drivers attends Approved Progressive Training throughout the Agreement Duration.

36.7 Collision Reporting

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

- (a) ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within 15 days of the Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to Company an updated Collision Report within five (5) Working Days of a written request from the Company.

36.8 Self-Certification of Compliance

36.8.1 Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to Company detailing its compliance with Clauses 36.2.1, 36.3.1, 36.5.1, 36.6.1, 36.6.1 and 36.7.1 of this Agreement (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to Company on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

36.9 Obligations of the Supplier regarding subcontractors

36.9.1 The Supplier shall ensure that those of its Subcontractors who operate Category N2 Lorries, Category N3 Lorries, Vans and/or Car-derived Vans to supply the Services shall comply with the corresponding provisions of this Agreement:

- (a) Clause 36.2.1;

- (b) for Category N2 Lorries – Clauses 36.3.1, 36.5.1, 36.6.1, 36.7.1 and 36.8.1;
- (c) for Category N3 Lorries – Clauses 36.3.1, 36.4.1, 36.5.1, 36.6.1, 36.7.1, 36.8.1; and
- (d) for Vans and Car-Derived Vans – Clauses 36.6.1, 36.7.1 and 36.8.1,

as if those subcontractors were a party to this Agreement.

36.10 Failure to Comply with Work Related Road Risk Obligations

36.10.1 Without limiting the effect of any other clause of this Agreement relating to termination, if the Supplier fails to comply with any of Clauses 36.2.1, 36.3.1, 36.5.1, 36.6.1, 36.7.1, 36.8.1 and/or 36.9.1:

- (a) the Supplier has committed a material breach of this Agreement; and
- (b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by Company for any purpose (including but not limited to deliveries).

37 COSTS

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

38 ASSIGNMENT

38.1 Assignment, Transfer and Subcontracting by the Supplier

Subcontracting

38.1.1 The Supplier may subcontract its obligations under this Agreement either in whole or in part to any Subcontractor provided that:

- (a) the written consent of the Company is obtained by the Supplier prior to the Supplier entering into any Subcontract; and
- (b) the Supplier shall notify the Company in writing of the name, contact details and details of the legal representatives of any Subcontractor.

38.1.2 In granting such consent pursuant to Clause 38.1.1(a), the Company may require the Supplier to procure that a Subcontractor duly executes and delivers to the Company, within fifteen (15) Working Days of the date of the relevant Subcontract, a deed of warranty in the form set out at Schedule 8 (Form of Deed of Warranty).

- 38.1.3 The Supplier shall be fully responsible for any act, neglect, default or breach of this Agreement by any Subcontractor or supplier or the directors, agents, representatives or employees of the Supplier or of any of its Subcontractors or suppliers as if such act, neglect, default or breach had been carried out by the Supplier.
- 38.1.4 The Supplier agrees that any Subcontractors who supply safety critical materials or services will be approved by the Company in accordance with all Applicable Laws and all applicable TfL Standards and in accordance with the Safety Plan and the Management Quality Plan.
- 38.1.5 The Supplier shall ensure that it includes in any Subcontract provisions on substantially similar terms to Clause 9 (Payments).
- 38.1.6 The Company reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Company's exercise of its right under this Clause 38.1.6, the Company may request that the information provided by the Supplier under Clause 38.1.1(b) is accompanied by one (1) or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Company:
- (a) shall require the Supplier to replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and
 - (b) may require the Supplier to replace any Subcontract in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.
- 38.1.7 The Supplier shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a Subcontractor pursuant to Clauses 38.1.6(a) or 38.1.6(b).
- 38.1.8 The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 38.1.6(a) or 38.1.6(b).

Assignment

- 38.1.9 Without prejudice to Clauses 38.1.1 to 38.1.3, the Supplier shall not assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) its rights and/or obligations under this Agreement, and

any purported dealing in contravention of this Clause 38.1 shall be ineffective.

38.2 Assignment and Novation or Granting of Security by the Company

Permitted Transfers

38.2.1 The Company shall be entitled without the consent of the Supplier to assign, transfer, novate, mortgage, charge or otherwise dispose of its rights and/or obligations under this Agreement to any person.

Implementation of Transfers

38.2.2 If the Company wishes to deal with its rights and/or obligations in this Agreement (either in whole or in part) pursuant to Clauses 38.2.1, the Supplier shall execute such documents and do such other things as the Company may reasonably request in order to facilitate and perfect such dealing.

39 NOTICES

39.1 Any notice or communication to be given under or in connection with this Agreement shall be in writing and signed by or on behalf of the Party giving it and may be served by personal delivery, or by prepaid recorded delivery or first class prepaid post to the address or, as the case may be, and for the attention of the relevant Party set out in Clause 39.2. Any such notice or communication shall be deemed to have been received:

39.1.1 if delivered, on delivery;

39.1.2 in the case of recorded delivery or first class post, forty eight (48) hours from the date of posting.

provided that if the date of delivery or receipt is not a Working Day such notice or communication shall be deemed to have been delivered or, as the case may be, received, on the opening of business on the next Working Day.

39.2 Notices or communications affecting this Agreement shall be addressed (where not specifically required to be addressed to the respective Parties' Representative) to:

39.2.1 in the case of the Supplier:

Attention: Maurice Verheijen

Address: Schweerbau GmbH & Co. KG, Industriestrasse 12,
31655 Stadthagen, Germany

Email:

39.2.2 in the case of the Company:

Attention: Paul Mallows
Address: TfL Rail Operations, 2nd Floor, West Wing,
55 Broadway, London SW1H 0BD
Email:

40 SET OFF

The Company shall be entitled to withhold from any sum or sums expressed in this Agreement to be payable by it to the Supplier, any amounts due or expressed to be due by the Supplier to the Company. Any payment payable by the Supplier under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the Supplier under this Agreement.

41 ACCRUED RIGHTS

Termination of the obligations to provide Services under this Agreement shall not affect any accrued rights and obligations under this Agreement as at the date of termination.

42 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

43 COUNTERPARTS

This Agreement to which the Supplier and Company are a Party may be executed in separate counterparts, each of which, when executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. All signatures need not be contained in the same counterpart.

44 DISPUTES AND GOVERNING LAW

44.1 Disputes

If any Dispute should arise under this Agreement, either Party may refer it for resolution pursuant to Schedule 6 (Dispute Resolution Procedure).

44.2 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

44.3 Exclusive Jurisdiction

Subject to the terms of Clause 44.1, the English Courts have exclusive jurisdiction in relation to any claim, dispute or difference ("Proceedings") concerning this Agreement and any matter arising from it. For these purposes, each Party irrevocably submits to the jurisdiction of the English Courts.

44.4 Forum

Each Party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.

In witness whereof this Agreement is executed as a Deed the day and date referred to above.

6617

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED



was affixed to THIS DEED

in the presence of:

Signature of Authorised Signatory

.....

S. KANDY

.....

Print name of Authorised Signatory

EXECUTED AND DELIVERED AS A DEED

by Schwebbau GmbH & Co. KG

acting by:

Signature of Director

.....

LUZ JELITTO

.....

Print name of Director