A30 LONDON LIVING WAGE

For the purposes of this Clause A30, unless the context indicates otherwise, the expression **"London Living Wage"** means a basic hourly wage (as at the date of this Contract) of £9.75 (before tax, other deductions and any increase for overtime) but as is updated from time to time and notified to the Service Provider.

A30.1 The Service Provider acknowledges and agrees that the Mayor of London pursuant to section 155 of the GLA Act has directed that members of the Authority Group ensure that the London Living Wage is paid to anyone engaged by any member of the Authority Group who is required to discharge contractual obligations in Greater London or on the Authority's estate.

A30.2 Without prejudice to any other provision of this Contract, the Service Provider shall:

A30.2.1 ensure that none of its employees engaged in the provision of the Services (in Greater London or on the Authority's estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

A30.2.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;

A30.2.3 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time;

A30.2.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and

A30.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

A30.3 For the avoidance of doubt the Service Provider shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.

A30.4 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its sub-contractors.

A30.5 Any breach by the Service Provider of the provisions of this Clause A30 shall be treated as a material breach capable of remedy in accordance with Clause 26.1.1.

A33 SUPPLIER DIVERSITY

A33.1 Compliance

A33.1.1 Without limiting the generality of any other provision of this Contract, the Service Provider:

(a) shall not unlawfully discriminate,

(b) shall procure that its personnel do not unlawfully discriminate, and

(c) shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate in relation to the Services,

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

A33.1.2 The Service Provider acknowledges that the Authority as a public authority is subject to a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty.

A33.1.3 The Service Provider acknowledges where the Authority is the GLA, the GLA is under a duty under section 404(2) of the Greater London Authority Act 1999 and where the Authority is TfL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

(a) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

(b) eliminate unlawful discrimination;

(c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and

(d) in providing the Services, the Service Provider shall assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty.

A33.1.4 TfL's Harassment, Bullying and Discrimination Policy ("Policy") as up- dated from time to time (copies of which are

available on request from TfL) requires TfL's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

(a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;

(b) fully investigate allegations of workplace harassment in accordance with the Policy; and

(c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

A33.2 Strategic Equality & Diversity Plan

A33.2.1 For the duration of this Contract, the Service Provider shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its direct subcontractors:

(a) adopts and implements; and

(d) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as that agreed with TfL and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of this Agreement the expression "Agreed Strategic Equality & Diversity Plan " means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to the Contract as a Schedule headed "Agreed Strategic Equality & Diversity Plan".

A33.2.2 Where a subcontractor has, pursuant to Clause A33.2 or otherwise, adopted a Strategic Equality & Diversity Plan, the Service Provider shall procure that each of its direct subcontractors:

(a) provides; and

(b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.3 Diversity Training

A33.3.1 For the duration of this Contract, the Service Provider shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached to the Contract as a Schedule headed "Agreed Training Plan". The Service Provider shall procure that each of its direct subcontractors:

(a) adopts and implements; and

(b) in respect of other tiers of subcontractors beneath the Service Provider 's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement,

a diversity training plan in respect of their respective employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Training Plan.

A33.3.2 Where a subcontractor has, pursuant to Clause A33.1 or otherwise, adopted a diversity training plan, the Service Provider shall procure that each of its direct subcontractors:

(a) provides; and

(b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide

a copy of its diversity training plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A33.4 Supplier Diversity

A33.4.1 For the duration of this Contract the Service Provider shall at all times comply with the "Agreed Supplier Diversity Plan". For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached to the Contract as a Schedule headed "Supplier Diversity Plan". The Service Provider shall procure that each of its direct subcontractors:

(a) adopts and implements; and

(b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors uses reasonable endeavours to procure that those indirect subcontractors adopt and implement

a supplier diversity plan in relation to the performance of this Contract which is as least as extensive as the Agreed Supplier Diversity Plan.

A33.4.2 Where a subcontractor has, pursuant to Clause [33.4.1] or otherwise, adopted a supplier diversity plan, the Service Provider shall procure that each of its direct subcontractors:

(a) provides; and

(b) in respect of other tiers of subcontractors beneath the Service Provider's direct subcontractors, use reasonable endeavours to procure that those indirect subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to TfL or its nominee as soon as reasonably practicable.

A 33.5 Communications Plan

A33.5.1 For the duration of this Contract and in all dealings with the Local Community, the Service Provider shall comply with the Agreed Communications Plan. For the purposes of this Contract the expression "Agreed Communications Plan" means the communications plan agreed and attached to the Contract as a Schedule headed "Agreed Communication Plan" and the expression "Local Community" means those areas of London affected by the Works from time to time.

A33.6 Monitoring and Reporting

A33. 6.1 Subject to Clause [A33.6.2], the Service Provider shall use reasonable endeavours to provide TfL on the date of this Contract and subsequently every 12 months from the date or such other frequency as TfL may reasonably request of this Contract with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in clauses A33.2 to A33.5. The annual report should set out:

(a) the performance of the Service Provider over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with clause A33.6.1 (d)

(b) the proportion of its employees engaged in the performance of the Contract and, to the extent reasonably possible, the employees of its direct or indirect subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Contract who are:

(i) female;

(ii) of non-white British origin or who classify themselves as being non-white British;

(iii) from the Local Community;

(iv) disabled

(c) the proportion of its direct or indirect subcontractors that are SMEs and/or BAMEs and/or other suppliers from other under-represented or protected groups.

(d) a plan of action for the forthcoming 12 months showing what the Service Provider plans to do to continue delivery of the equality & supplier diversity objectives.

For the purposes of this clause, the meaning of SME and BAME is as set out in the attached document called TfL Supplier Diversity Definitions.

A33.6.2 The Service Provider shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to TfL pursuant to clause A33.6.1.

A33.7 Equality and Diversity Infractions

A33.7.1 If the Service Provider or any of its direct subcontractors commits a Equality & Diversity Infraction, TfL shall be entitled (but not obliged) to act as follows:

(a) if a Equality & Diversity Infraction is committed by the Service Provider then TfL may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or

(b) if the Equality & Diversity Infraction is committed by a direct subcontractor of the Service Provider, TfL may serve written notice upon the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall procure that the direct subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Service Provider of such notice (or such longer period as may be specified in the notice). If the Service Provider fails to procure the remedy of the Diversity Infraction, TfL may serve a further written notice upon the Service Provider and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Service Provider shall terminate, at its own cost, the relevant contract with its direct subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in clauses A33.2 to A33.5 of this Contract.

A33.7.2 It shall be a fundamental term and condition of the Contract that the Service Provider complies with its obligations under clauses A33.7.1 (a) to A33.7.1(b). Where, following receipt of a notice given pursuant to clause A33.7.1(a) or A33.7.1(b) the Service Provider fails to remedy a Diversity Infraction to the satisfaction of TfL or in the case of clause A33.7.1(b) fails to terminate the contract with a defaulting subcontractor and procure performance by another person on the terms specified in clause A33.7.1(b) the Service Provider will be in breach of the Contract and TfL shall be entitled (but not obliged) to terminate the Contract, without further notice to the Service Provider, in accordance with the [termination clause] in the Contract Conditions.

A.33.7.3 For the purposes of this clause A33.7 "Equality & Diversity Infraction" means any breach by the Service Provider of its obligations specified in clauses A33.2 to A33.5 of this Contract and/or any failure by a direct subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in clauses A33.2 to A33.5 of this Contract.

A.33.8 Equality and Diversity Audit

A33.8.1 TfL or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with clauses A33.2 to A 33.5

A33.8.2 TfL's rights pursuant to this clause shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of clauses A33.2 to A33.4 indirect subcontractors and shall include the Minimum Records.

A33.8.2 The Service Provider shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.5. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of clauses A33.2 to A33.4, indirect subcontractors shall, maintain and retain the Minimum Records for a minimum of six years from the termination or expiry of the Contract with respect to all matters in respect of the performance of and compliance with clauses A33.2 to A33.4. The Service Provider shall procure that each subcontract between it and its direct subcontractors and, where applicable, subject to the provisions of clauses A37.2 to A33.4 each subcontract between its direct subcontractor and any indirect subcontractor of the Service Provider shall contain rights of audit in favour of and enforceable by TfL substantially equivalent to those granted by the Service Provider pursuant to clause A33.8.

A33.8.3 TfL shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each direct subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).

A33.8.4 The Service Provider shall promptly provide, and procure that its direct subcontractors and, where applicable subject to the provisions of clauses A33.2 to A33.4 indirect subcontractors promptly provide all reasonable co- operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

(a) granting or procuring the grant of access to any premises used in the Service Provider's performance of the Contract or in the relevant subcontractor's performance of its subcontract, whether the Service Provider's own premises or otherwise;

(b) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant subcontractor's obligations specified in clauses A33.2 to A33.4 wherever situated and whether the Service Provider's own equipment or otherwise; and

(c) complying with TfL's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Contract or the relevant subcontractor's performance of its subcontract.

A33.8.5 For the purposes of this clause A33.8 the expression Minimum Records means all information relating to the Service Provider's performance of and compliance with clauses A33.2 to A33.5 and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of clauses A33.2 to A33.4 indirect subcontractor of the Service Provider.

Transport for London

TfL Supplier Diversity Definitions

Issue Date: *February 2010*
Effective: *February 2010*

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1. *Document Outline*

1.1 Background

Encouraging a diverse base of supplier forms a part of the GLA Group Responsible Procurement Policy. The TfL Supplier Diversity Definitions ensure consistency across Supplier Diversity activities across TfL. These definitions form a basis for the TfL Supplier Diversity Policy and act as a basis for alignment in the measurement of diverse suppliers.

1.2 Version Control

Version Date	Author	Notes
26 February 2010	C Cottam	Turnover/Balance Sheet Amendment
02 February 2009	C Cottam	SME definition update
31 January 2008	J Gall	Ownership categorisation
8th May 2006	J Gall	EU definitions
19th October 2005	J Gall	Updates/clarifications

2. *Diverse Suppliers*

For the purposes of TfL's Procurement Supplier Diversity Programme, **"Diverse Suppliers"** comprise the following four subsets:

2.1 Small and Medium Enterprises (SMEs)

2.2 Black, Asian and Minority Ethnic (BAME) businesses

2.3 Suppliers from other under-represented or protected groups

2.4 Suppliers demonstrating a diverse workforce composition

The more detailed explanations of the four above subsets are given in the sections below.

3. *Small and Medium Enterprises (SMEs)*

3.1 A **Small Enterprise**[5] is a business which has both the following:

i) 0-49 Full Time Equivalent employees[1];

AND EITHER

ii) Turnover[2] per annum of no more than £5.6 million net (or £6.72 million gross); in the last financial year;

OR

iii) Balance sheet total[4] of no more than £2.8 million net (£3.36 million gross).

3.2 A **Medium Enterprise**[5] is a business which has both the following:

i) 50-249 Full Time Equivalent employees[1];

AND EITHER

ii) Turnover[2] per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;

OR

iii) Balance sheet total[4] of no more than £11.4 million net (or £13.68 million gross).

3.3 A **Large Enterprise**[5] is a business which has both the following:

i) 250 and over Full Time Equivalent employees[1];

AND EITHER

ii) Turnover[2] per annum over £22.8 million net (or £27.36 million gross) in the last financial year;

OR

iii) Balance sheet total[4] of over £11.4 million net (or £13.68 gross).

[1] Full Time equivalent employees is defined in Section 7.1
[2] Turnover is defined in Section 7.3
[4] Balance Sheet Total is defined in Section 7.5
[5] Further explanation is outlined in Section 7.7 (Definition of Size) & 7.8 (Ownership Categorisation)

4. *Black, Asian and Minority Ethnic (BAME) owned businesses*

A Black, Asian and Minority Ethnic (BAME) owned business is a business which is 51% or more owned by members of one or more Black, Asian or Minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'White British'.

The minority ethnic classification groups used by TfL for monitoring purposes are:

Ethnic group	Racial origin
White	Irish Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian or Asian British	Indian Pakistani Bangladeshi Any other Asian background
Black or Black British	Caribbean African Any other Black background
Chinese or other Ethnic Group	Chinese Any other Ethnic Group

5. *Suppliers from other under-represented groups or protected groups*

5.1 A Supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

5.1.1 Women (gender)

5.1.2 Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;

5.1.3 Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and

5.1.4 Older people (aged 60 or over), young people (aged 24 or under) (age)

5.2 A Supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

6. *Suppliers demonstrating a diverse workforce composition*

This relates to Full Time Equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in II and III above.

7. *Other Definitions & Information*

7.1 Full-Time Equivalent Employees

Where employee numbers are used, these refer to Full-Time Equivalents (FTEs) expressed in **Annual Work Units** (see below). Staff headcount should include full-time, part-time and seasonal staff and includes the following:

- Employees
- Persons working for the enterprise being subordinated to it and considered to be employees under national law
- Owner managers
- Partners engaged in regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Full-time workers are expressed as hours worked per week. TfL refer to standard UK hours of work as full time workers – i.e. those who work 35 hours a week and 52 weeks a year (including annual leave).

7.2 Annual Work Units

Refer to anyone who worked, over the past year, full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

7.3 Turnover

Turnover is in line with that defined in the Companies Act 1985:

The amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:

i) trade discounts
ii) value added tax

Please refer to Section 7.8 regarding ownership categorisation to understand how to interpret ownership, where an enterprise is part of a parent organisation.

7.4 Financial Year

Financial Year relates to 1st April – 31st March or any other 12 month period as defined by the company.

All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

7.5 Balance Sheet Total

The annual balance sheet total refers to the value of your company's main assets.

7.6 Ownership

Individual or those in named control holding capital or voting rights - either through private or shared ownership - of any given business entity.

7.7 Definition of Size

Where headcount and turnover and/or balance sheet conditions apply to different size definitions, headcount acts as the more predominant aspect, in defining size.

An organisation does not need to satisfy both turnover and balance sheet total, only one of the conditions and may exceed one of them without losing its status. This is illustrated by an organisation which has 30 employees, a turnover of £12 million and a balance sheet total of £10 million. The number of employees figure would class the organisation as a small organisation, however the turnover and balance sheet total define the organisation as medium. In this case, the headcount would be used to define the classification of the organisation. This organisation would be classed as a small organisation.

To illustrate this, the following scenarios have been mapped for the different characteristics of supplier diversity definitions (based on information from the Department for Trade & Industry *(now Department for Business Enterprise & Regulatory Reform)*):

		Turnover/Balance Sheet Total		
		£5.6m net(up to)/ £2.8m net (up to)	**£22.8m net(up to/incl.)/ £11.4m net (up to/incl.)**	**£22.8m net(over)/ £11.4m net (over)**
Employees	**0-49**	✓	*Employees more predominant*	*Employees more predominant*
	50-249	*Employees more predominant*	✓	*Employees more predominant*
	250+	*Employees more predominant*	*Employees more predominant*	✓

7.8 Ownership Categorisation

EU Commission Definition on Enterprise Ownership Categorisation

The European Commission's Guidance published in 2005 "The New SME Definition: User Guide and Model Declaration"[6], outlines parameters for defining an organisation's ownership categorisation and whether an organisation is autonomous, partner or linked.

7.8.1 Autonomous

This is the most common category of ownership.

An organisation if autonomous if:
-It is totally independent, i.e. there is no participation in other enterprises and no enterprise has a participation.
-It has a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If an organisation is autonomous, it means that it is not a partner or linked to another enterprise

7.8.2 Partner

An enterprise is a partner enterprise if:

-It has a holding equal to or greater than 25%, of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in the other.

It is not linked to another enterprise. This means, among other things, that voting rights in the other enterprise (or vice versa) do not exceed 50%.

7.8.3 Linked

Enterprises formed as a **group** through the direct or indirect control of the majority of voting rights. An enterprise owned by another or through the ability to exercise a **dominant influence** on another enterprise.

Two or more enterprises are linked when they have any of the following relationships:
-One enterprise holds a majority of the shareholders' or members' voting rights in another.
-One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.
-A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.
-One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

[6] Refer directly to the EU Commission Definitions for more guidance:
http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

8. Document Owner & Contact Details

For further information, please contact Carina Cottam, Programme Team, Group Procurement, Finance, Transport for London via email: carinacottam@tfl.gov.uk