

that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.

- 21.5** The Supplier's indemnity under Clause 21.2 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of each Contract and for the period of six (6) years after the Order Completion Date or earlier termination of each Contract.
- 21.6** The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clauses 21.2 to 21.4 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 21.7** Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Agreement or any Contract.
- 21.8** Without prejudice to the obligation to indemnify the Company set out in Clauses 21.2 and 21.4, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
 - (b) maintain at its own cost public liability insurance in respect of the Supplier's liability for death or injury to any person in an amount not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (c) maintain at its own cost public liability insurance in respect of the Supplier's liability for loss or damage to any property arising out of its performance of the Services in an amount of not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (d) maintain at its own cost professional indemnity insurance to ensure that its activities under each Contract are insured and remain insured in an amount not less than that set out in the Order, for any one occurrence or series of occurrences consequent on one event or original cause;
 - (e) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than six (6) years after the completion of the Services;
 - (f) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and

- (g) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under any Order satisfactory evidence confirming the existence of insurance in accordance with the terms of this Clause 21.

21.9 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 21.8.

21.10 If the Supplier fails to maintain the insurance policies as provided in this Clause 21, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

21.11 Not used

21.12 The provisions of this Clause 21 shall survive the termination of the Agreement and each Contract for whatever reason.

22 Force Majeure

22.1 Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under such Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of such Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Supplier to perform its obligations under such Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

23 Confidentiality

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

- 23.2** On the Company's request, the Supplier shall, so far as is reasonably possible:
- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;
 - (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
 - (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.
- 23.3** The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 23.1 and 23.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 23.4** The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 23.5** The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, LUL, any Contract or the Services without the prior written consent of the Company.
- 23.6** The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with any Contract or the Services, or any Dispute arising under or in connection with any Contract.
- 23.7** The provisions of Clauses 23.1 to 23.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of any Contract; or
 - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

23.8 The obligations of the parties under this Clause 23 shall survive the expiry or the termination of the Agreement and each Contract for whatever reason.

24 Assignment, Subcontracting and LUL Step-In Rights

24.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any Contract or any part thereof without the prior written consent of the Company.

24.2 The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under any Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.

24.3 The Company may novate, assign, transfer or subcontract the Agreement and/or any Contract (or any parts thereof) to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.

24.4 Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 4 in favour of any person to whom the Agreement and/or any Contract is being novated.

24.5 The Supplier acknowledges LUL's step-in rights as set out in the LUL Direct Agreement. The Supplier shall not hinder or prevent LUL or its appointee from exercising its step-in rights under the Tube Lines Contract. The Supplier shall not exercise any Intellectual Property Rights that it owns so as to prevent or hinder LUL or its appointee from exercising its step-in rights.

24.6 The Supplier acknowledges that if the Company fails to comply with its obligations and duties to LUL under the Tube Lines Contract then LUL may issue a Step-in Notice to the Company advising the Company that it shall, from the date specified in the Step-in Notice, exercise its rights to step-in. The Supplier acknowledges LUL's rights to step-in under the Tube Lines Contract and accepts the Step-in Notice as conclusive proof of LUL's entitlement to step-in.

24.7 The Supplier acknowledges and accepts that, from the date specified in the Step-in Notice to the relevant date specified in any Step-out Notice served on the Supplier by LUL as referred to in Clause 24.11, it:

- (a) shall comply with the reasonable instructions of LUL or its appointee given in accordance with the Agreement and any Contract; and
- (b) is not in breach of the Agreement or any Contract by complying with the instructions of LUL.

- 24.8** Subject to Clause 24.9 the Company shall remain liable to the Supplier for all amounts due and payable to the Supplier under each Contract and for all the Company's obligations under each Contract.
- 24.9** If LUL serves a notice on the Supplier requiring the Supplier to accept instructions from LUL or its appointee in respect of the Agreement or any Contract, then all amounts due and payable to the Supplier, or which may become due to the Supplier under such Contracts without right of retention or set off in respect of any prior breach of such Contracts (and which have not been discharged by the Company or any other person) shall be paid directly to the Supplier by LUL or its appointee.
- 24.10** The Supplier shall not hinder or prevent LUL or its appointee from exercising its step-in rights under the Tube Lines Contract. The Supplier shall not exercise any Intellectual Property Rights owned by it so as to prevent or hinder LUL or any third party appointed by LUL in accordance with its step-in rights from exercising its step-in rights.
- 24.11** If LUL serves a Step-out Notice on the Supplier then, if so required by the Step-out Notice, from the relevant date specified in the Step-out Notice, the Supplier shall comply with the instructions of the Company on the terms and conditions of the Agreement and each Contract.
- 24.12** The Supplier and the Company shall not be in breach of the Agreement or any Contract for complying with the obligations imposed by Clauses 24.6 to 24.12.

25 Company's and Supplier's Representative

Each party shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract. The names and contact details of the representatives shall be recorded in each Order. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

26 Costs

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

27 Severance

If a provision of any Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of such Contract, provided that the operation of this Clause 27 would not negate the commercial interest and purpose of the parties under such Contract. The provisions of this Clause 27 shall survive the termination of the Agreement and each Contract for whatever reason.

28 Publicity

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

29 Corrupt Gifts and Payments of Commission

- 29.1** The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 29.2** The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 29.3** The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 29 at any time during performance of each Contract and during the twelve (12) year period following completion of performance.

29A Criminal Record Declarations

- 29A.1** For the purposes of this Clause 29A:

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

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

- 29A.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or 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 and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 29A.3 The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 29A.4 The Company and/or LUL shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 29A at any time during performance of the Agreement and/or any individual Contract.
- 29A.5 If the Supplier fails to comply with the requirements under Clause 29A.2 and/or Clause 29A.3 the Company may, without prejudice to its rights under Clause 20.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 29A.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 29A.2.
- 29A.6 A persistent breach of Clause 29A.2 and/or Clause 29A.3 by the Supplier shall entitle the Company to terminate the Agreement and/or any individual Contract in whole or in part with immediate effect in accordance with Clause 20.1(a).
- 29A.7 In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from any Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 29A.8 Nothing in this Clause 29A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any individual Contract and the Supplier's

responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 29A.

30 No Waiver

No failure or delay on the part of either party to exercise any right or remedy under any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in any Contract are cumulative and are not exclusive of any rights or remedies provided by law. The provisions of this Clause 30 shall survive the termination of the Agreement and each Contract for whatever reason.

31 Entire Contract

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

32 Notices and Service of Process

32.1 Any notice or other document given under, or in connection with, the Agreement or any Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other party's representatives in each case to the address below. The notice or other document will be effective as follows:

- (a) if the notice or other document is sent by letter, it will be effective when it is delivered;
- (b) if the notice or other document is sent by fax, it will be effective when it has been transmitted and the transmission report from the fax machine states that the entire fax has been sent successfully; and
- (c) if the notice or other document is delivered by hand to the other party's representative, it will be effective immediately it is delivered.

The address and fax numbers of the Company and the Supplier are as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

Company: Cockfosters Maintenance Depot, Bramley Road, Oakwood, E14 4HX

Attn: Company's Representative Peter Riley

E-mail: peter.riley@tubelines.com

Supplier: Unit 1, Grove Road Industrial Estate, Grove Road, Fenton
Stoke-on-Trent, Staffordshire ST4 4LG

Attn: Andrew Jubb

E-mail: [REDACTED]

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Agreement or any Contract may be served in accordance with this Clause 32.1.

32A Not used

33 Dispute Resolution

- 33.1** Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 33.
- 33.2** The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company's Representative and a suitably qualified and duly authorised representative of the Supplier (together the "**Nominated Representatives**") which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.
- 33.3** If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 33.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts Manager and the Supplier's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.
- 33.4** If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Contracts Manager and the Supplier's Managing Director or their deputies in accordance with Clause 33.3 either party may refer the matter for resolution in accordance with the provisions of Clause 34.
- 33.5** Clauses 33.1 to 33.4 are subject to the Supplier's rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 33.5, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

34 Governing Law and Jurisdiction

The Agreement and each Contract and any non-contractual obligations connected with the Agreement and each Contract shall be governed by and interpreted in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

35 Contracts (Rights of Third Parties) Act 1999

35.1 Subject to:

- (a) LUL's rights under Clause 24;
- (b) LUL's rights in accordance with Clauses 4.3, 4.4 and 4.6;
- (c) LUL's rights in accordance with Clauses 19.5 and 19.16;
- (d) *Not used and*
- (e) the Replacement Supplier's rights in accordance with Clause 15.6.3,

no person except any member of the TfL Group may enforce any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.

35.2 Notwithstanding LUL's rights referred to in Clause 35.1, the Company and the Supplier may agree to vary or rescind the Agreement or any Contract without the consent of any third party.

36 Not used

37 Default Interest

37.1 If either party fails to pay to the other any amount payable in connection with any Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default Interest Rate. Any interest accruing under this Clause 37.1 shall be immediately payable by the paying party on demand.

37.2 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

- 37.3 The Late Payment of Commercial Debts (Interest) Act 1998 and related Regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under any Contract.

38 Freedom of Information

- (a) For the purposes of this Clause 38:

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

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

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

- (b) The Supplier acknowledges that the Company:

- (i) 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
- (ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

- (c) Without prejudice to the generality of Clause 38(b) the Supplier shall and shall procure that its subcontractors (if any) shall:

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

Company may reasonably specify), and in such forms as the Company may reasonably specify.

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

38A Data Transparency

- 38A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 38, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 38A.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 38A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

39 Transport for London Group

39.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any individual Contract under Clause 20.1, Clause 20.2(a) or at common law, the Company may terminate the Agreement and/or any individual Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 39.1
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 39.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 20.1 and this Clause 39.1 or the Cessation Plan, the provisions of this Clause 39.1 and the Cessation Plan prevail.
- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.

- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
 - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 39.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Agreement and/or any individual Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Agreement and/or any individual Contract in accordance with this Clause 39.1.

39.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and
- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

39.3 The Company's business

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the Services;
- (b) is aware of the Company's processes and business;
- (c) has made all appropriate and necessary enquiries to enable it to carry out the Services in accordance with the Agreement and/or any individual Contract;
- (d) is aware of the purposes for which the Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and/or any individual Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services.

39.4 Best value

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Company to discharge TfL's duty where possible, and in doing so, shall carry out any review of the supply of Services reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company any changes to the Agreement and/or any individual Contract in order for the Company to achieve best value.

39.5 Data Protection

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company 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 from the date of the request.

- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
 - (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
 - (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Agreement and/or any individual Contract.

39.6 Conflict of Interest

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake on-going and regular checks for any conflict of interest throughout the duration of the Agreement and/or any individual Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Agreement and/or any individual Contract or with any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Agreement and/or any individual Contract.

39.7 Not used.

39.8 Equality and Diversity

- (a) Without limiting the generality of any other provision of the Agreement and/or any individual Contract, the Supplier:
 - (i) shall not unlawfully discriminate;
 - (ii) shall procure that its personnel do not unlawfully discriminate; and
 - (iii) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976 (including the Race Relations (Amendment) Act 2000), the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005), the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Equality Act 2006, and any other relevant enactments in force from time to time in relation to discrimination in employment.

- (b) The Supplier acknowledges that the Company is under a duty under Section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and shall use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible in satisfying this duty.
- (c) The Supplier acknowledges that the TfL Group are under a duty by virtue of the Mayor's direction under Section 155 of the GLA Act (in respect of the Greater London Authority's duty under Section 404(2) of the GLA Act) to have due regard to the need to:
 - (i) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation or religion;
 - (ii) eliminate unlawful discrimination; and
 - (iii) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible to enable the Company to satisfy this duty.

- (d) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of each Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.
- (e) The Supplier acknowledges that the Company is under a duty under Section 49A of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) to have due regard to the need to:

- (i) eliminate discrimination that is unlawful under the Disability Discrimination Acts;
- (ii) eliminate harassment of disabled persons related to their disabilities and promote equality of opportunity between disabled persons and other persons;
- (iii) take steps to take account of disabled persons' disabilities (even when that involves treating disabled persons more favourably than other persons); and
- (iv) promote positive attitudes towards disabled persons and encourage participation by disabled persons in public life,

and in the performance of the Agreement and/or any individual Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company where possible to enable the Company to satisfy this duty.

39.9 Cycling Safety

- (a) For the purposes of this Clause 39:

"Approved Driver Training" means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at www.fors-online.org.uk.

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

"Car-derived Vans" means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment.

"Class VI Mirror" means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC.

"Close Proximity Sensor" means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged.

"Collision Report" means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities.

"Driver" means any employee of the Supplier (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while delivering the Services.

"DVLA" means the Driver and Vehicle Licensing Agency.

"FORS" means the Fleet Operator Recognition Scheme, which is an accredited membership scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members to improve their compliance with relevant laws and their environmental, social and economic performance.

"FORS Standard" means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk.

"Freight Vehicle" means a Lorry, a Van or a Car-derived Van.

"Fresnel Lens" means a clear thin plastic lens that is pressed fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot.

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

"Lorry" means a vehicle with an MAM exceeding 3,500 kilograms.

"MAM" means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road.

"Side Guards" means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.

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

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

(b) **Fleet Operator Recognition Scheme Membership**

Where the Supplier operates Freight Vehicles, it shall within ninety (90) days of executing the Agreement:

- (i) (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to membership of FORS (the “**Alternative Scheme**”); and
 - (ii) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) of FORS or the equivalent within the Alternative Scheme.
- (c) The Supplier 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 their FORS Silver or Gold membership agreement.
- (d) The Supplier shall ensure that those of its subcontractors who operate Freight Vehicles shall comply with Clauses 39.9(b) and 39.9(c) as if they applied directly to the subcontractor.
- (e) **Safety Equipment on Vehicles**

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

- (i) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - (i) have a close proximity warning system fitted comprising:
 - a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Operator has obtained the Company's approval to use the Fresnel Lens, which approval the Company may withhold in its unfettered discretion; and
 - a Close Proximity Sensor;
 - (ii) have a Class VI Mirror; and
 - (iii) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- (f) **Driver Licence Checks**

The Supplier shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last twelve (12) months:

- (i) 0 – 3 points on the driving licence – annual checks;
- (ii) 4 – 8 points on the driving licence – six (6) monthly checks;
- (iii) 9 – 11 points on the driving licence – quarterly checks; or
- (iv) 12 or more points on the driving licence – monthly checks.

(g) **Driver Training**

The Supplier shall ensure that each of its Drivers who has not undertaken:

- (i) Approved Driver Training (or training, which in the reasonable opinion of the Company, is an acceptable substitute) in the last three (3) years, undertakes Approved Driver Training within sixty (60) days of the commencement of this Agreement; and
- (ii) a FORS e-learning safety module in the last twelve (12) months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Company, is an acceptable substitute).

(h) **Collision Reporting**

Within fifteen (15) days of the commencement of this Agreement, the Supplier shall provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report on a quarterly basis and within five (5) Working Days of a written request from the Company.

(i) **FORS Reports**

Within thirty (30) days of it achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Supplier shall provide a written report to the Company at fors@tfl.gov.uk detailing its compliance with Clauses 39.9(e), 39.9(f) and 39.9(g) of this Agreement (the "**Safety, Licensing and Training Report**"). The Supplier shall provide updates of the Safety, Licensing and Training Report to the Company at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.

(j) **Obligations of the Supplier regarding subcontractors**

The Supplier shall ensure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Agreement as if those subcontractors were a party to this Agreement:

- (i) For Lorries – Clauses 39.9(e), 39.9(f), 39.9(g) and 39.9(h); and
- (ii) For Vans – Clauses 39.9(e)(iii), 39.9(f), 39.9(g) and 39.9(h).

(k) **Failure to Comply with Freight-related Obligations**

Without limiting the effect of Clause 20, if the Supplier fails to comply with Clauses 39.9(b), (c), (d), (e), (f), (g), (h), (i) and (j):

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

Schedule 1 Form of Order

Master Agreement for the supply of Services Contract Reference Number: TLL8161

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE SUPPLIER PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE ABOVE-REFERENCED MASTER AGREEMENT FOR THE SUPPLY OF SERVICES.

Notes: 1. Please confirm receipt of this Order immediately by fax to the Company's Representative.
 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all Payment Applications.
 3. Please address all correspondence and enquiries to the Company's Representative.

Company:	Tube Lines Limited
Supplier:	DePe Gear Company Limited
Contract Reference Number:	TLL8161
Blanket Purchase Agreement (BPA) Number: (All Purchase Orders released under this Contract shall be referenced with the BPA number)	6227504
Order Title:	Repair/Overhaul of Reclaimed Gearwheels
Company's Representative: Address for service of notices: Telephone: E-mail:	Peter Riley Cockfosters Maintenance Depot, Bramley Road, Oakwood N14 4HX [REDACTED] [REDACTED]
Supplier Representative: Address for service of notices: Telephone: Fax:	Andrew Jubb Unit One, Grove Road Industrial Estate, Grove Road, Fenton, Stoke-on-Trent, Staffordshire ST4 4LG [REDACTED] [REDACTED]
Delivery Address	Cockfosters Maintenance Depot, Bramley Road, Oakwood N14 4HX
Order Commencement Date:	TBC
Order Completion Date:	TBC
Order Specification:	As set out in Appendix 1
Standards:	BS EN ISO 9001: 2008
Order Programme:	TBC

Order Price (exclusive of VAT):	See Schedule 5 for prices
Order Payment Profile :	As stated in Clause 8.2
Key Personnel:	The provisions of Clause 15.16 <i>apply</i> The following Supplier Personnel are Key Personnel: Andrew Jubb
Applicable levels of:	
Public liability insurance (death or injury):	Not less than £5 million per occurrence, in respect of death of or injury or to any person, and for loss of or damage to any third party property, arising from the Services being provided.
Products liability insurance:	Not less than £5 million per occurrence, in respect of death of or injury or to any person, and for loss of or damage to any third party property, arising from a defect in the goods and products provided.
Employers Liability Insurance:	Supplier to maintain at its' own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969. Limit of Liability – as required by law.
Additional Comments/Special Instructions:	Price fixed as indicated in Schedule 5 for the duration of this Agreement.

Signed by:
Title:
On behalf of:
Tube Lines Limited
.....
Date:.....

Signed by:
Title:
On behalf of:
[]
.....
Date:.....

Appendix 1
Specification Not Used

Schedule 2

Contract Variation Procedure

- 1 The cost of any Variation Order shall be agreed between the parties taking account of the reasons why the Variation Order was required.
- 2 The Company may propose a variation by completing Part A of the Variation Proposal and supplying three (3) copies of it to the Supplier. Within five (5) Working Days of receipt, or such other time as may be agreed by the Company, the Supplier shall complete Part B of the Variation Proposal and shall supply two (2) copies of the Variation Proposal to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct and authorise the Supplier to proceed with the variation on the terms so set out by each party by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a "**Variation Order**") and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 3 The Supplier may propose a variation, after requesting the issue by the Company of a Variation Proposal variation number, by completing Parts A and B of a Variation Proposal and supplying two (2) copies of it to the Company. The Company shall be entitled, at any time within thirty (30) days of receipt, to instruct the Supplier to proceed with the variation on the terms so set out by the Supplier by completing and signing Part C of one copy of the Variation Proposal (which, following such signature, will be referred to as a "**Variation Order**") and supplying such Variation Order to the Supplier. The relevant part(s) of the relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The price indicated by the Supplier must be the full price and shall cover all costs associated with the variation. If appropriate a range of prices may be shown corresponding to the extent of the Services to be carried out.
- 6 In an emergency, both parties shall use their reasonable endeavours to expedite the actions permitted or required under the Contract Variation Procedure.
- 7 The Company will not accept any retrospective claims for additional work caused by a variation which has not been approved by the Company in accordance with the Contract Variation Procedure before the commencement of such additional work.

- 8.1 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with a labour rate of [] per hour; and¹
- 8.2 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of each Contract, including but not limited to, the Specification and the Order Programme.
9. Strict adherence to the procedure described in this Schedule 2 shall be a condition precedent to any addition to the price for the Services. If the Supplier does not adhere to each paragraph in this Schedule 2 then the Supplier shall not be entitled to any addition to the price for the Services notwithstanding that the Supplier may have supplied additional or varied Services.

¹ Insert details on how the variation procedure will be priced.

Appendix 1 **Form of Variation Proposal/Variation Order**

To:	From:
------------	--------------

Contract Reference:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)

Description of change:

Reason for changes and impact (if any) on Contract:

Variation Proposal Authorised by:

Proposal Date:

PART B (TO BE COMPLETED BY THE SUPPLIER)

Price Breakdown

Note: If a further breakdown is needed please append details as a separate sheet.

Expected Delivery Date:

Supplier's Representative:

Print Name:

Signature:

Date:

Completed document to be returned to the Company's Representative

PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)

Comment on Parts A and B:

Variation Authorisation

Company's Representative:

Print Name:

Signature:

Date:

LUL Representative (if applicable):

Print Name:

Signature:

Date:

Schedule 3
Quality and Safety Plan

BUREAU VERITAS
Certification



Certification Awarded to

DE PE GEAR COMPANY LIMITED
UNIT 1, GROVE ROAD INDUSTRIAL ESTATE
GROVE ROAD, FENTON
STOKE-ON-TRENT ST4 4LG

Bureau Veritas Certification certify that the management system of the above organisation has been assessed and found to be in accordance with the requirements of the standards detailed below.

————— **STANDARD** —————

BS EN ISO 9001:2008

————— **SCOPE OF SUPPLY** —————

MANUFACTURE OF GEARS AND GEARBOXES AND GENERAL MACHINING.

Original approval date: **04 NOVEMBER 1993**

Subject to the continual satisfactory operation of the organisation's management system, this certificate is valid until:

28 NOVEMBER 2014

To check this certificate validity please call 020 7661 0760

Further clarifications regarding the scope of this certificate and the applicability of the management system requirements may be obtained by consulting the organisation



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For Bureau Veritas Certification UK Ltd
Brandon House
180 Borough High Street
London SE1 1LB

Laurent Dahmani
Managing Director

Certificate number: **3416**
Date issued: **18/01/2012**

MANAGING OFFICE: Bureau Veritas Certification Brandon House, 180 Borough High Street, London, SE1 1LB
ISSUING OFFICE: Bureau Veritas Certification Brandon House, 180 Borough High Street, London, SE1 1LB

Schedule 4
Deed of Novation

[NOVATION / TRANSFER] AGREEMENT

THIS DEED is made day of 201[]

BETWEEN:

Tube Lines Limited a company registered in England and Wales under number 3923425 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1 0TL (the "**Company**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**Contractor**"); and

[] a company registered in [England and Wales] under number [] and having its registered office at [] (the "**New Company**").

WHEREAS:

- (A) The Company has an agreement dated [] and referenced [insert contract number] with the Contractor for the provision of [describe in brief the scope of work/services] (the "**Contract**").
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Contractor and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

- 1. In this Deed:
 - 1.1 "**Transfer Date**" means [];
 - 1.2 "**Transferred Part**" means all that part of the undertaking of the Company which consists of [describe part of undertaking that the New Company will be taking responsibility for.
- 2. With effect from the Transfer Date [and only in so far as the Contract relates to the Transferred Part]:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the Contractor releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in

relation to the Contract in lieu of the liability of the Company and agrees to be bound by the terms of the Contract in every way as if the New Company were and had been a party to the Contract at all times in lieu of the Company;

2.3 for the avoidance of doubt, it is hereby expressly agreed that:

2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Contractor against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Contractor against the New Company; and

2.3.2 any and all rights, claims, counter-claims, demands and other remedies of the Company against the Contractor accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Contractor.

2.4 the Company transfers its rights and obligations under the Contract to the New Company.

EXECUTED as a Deed and delivered the day and year first above written.

THE COMMON SEAL of
TUBE LINES LIMITED
was hereunto affixed in
the presence of:-

) _____
) Director
) _____
) Director/Secretary

THE COMMON SEAL of
[CONTRACTOR]
was hereunto affixed in
the presence of:-

) _____
) Director
) _____
) Director/Secretary

THE COMMON SEAL of
[NEW COMPANY]
was hereunto affixed in
the presence of:-

) _____
) Director
) _____
) Director/Secretary

Prices for Services

Regrind / Reclaim of LT118 Gearwheels

Scope of work

Dated 17/04/2014

[illegible]

5	Gear Graphs to be produced [REDACTED] [REDACTED] [REDACTED]	£10
6	Gears to be MPI, bores and teeth. [REDACTED] [REDACTED]	£15
7	Gear to be coated in a protective coating suitable for 6 months inside storage and wrapped in wax paper.	£7
8	Placed in the reusable crates. 6 per crate	£3
9	Returned to Pullman in Cardiff. [REDACTED]	£10
Total		£265.00
PLEASE NOTE ONLY GEARS THAT ARE SUCCESSFULLY REGROUND ARE CHARGEABLE		
10	The above scope does not include putting the gears into a lathe and polishing up the bores and corrosion bands at the start and end of the bore with a 60 grit utility roll. [REDACTED] [REDACTED] [REDACTED]	£15

Schedule 6

NOT USED

Schedule 7

Form of Parent Company Guarantee and Performance Bond NOT USED

Schedule 8
Form of Collateral Warranty Not used

Schedule 9
[Form of Software Escrow Agreement] NOT USED

Schedule 10
[Performance Damages] Not used

Schedule 11

[Employment Regulations] NOT USED

EXECUTION PAGE:

IN WITNESS of which this document has been executed and, on the date set out above, as a
Contract.

SIGNED as a Contract for and on behalf of
Tube Lines Limited:

Authorised Signatory

Signature: 

Name: MATILDA JINSARDU

Executed as a Contract for and on behalf of
DePe Gear Company Limited:

Authorised Signatory

Signature: 

Name: Andrew Tubb