

professional indemnity insurance with a limit of indemnity of not less than [two million pounds (£2,000,000)] in respect of each and every claim which may be made against the Sub-Contractor in respect of the Sub-Contract Services. The Sub-Contractor shall maintain such professional indemnity insurance for a period of twelve (12) years from completion of the Services provided such insurance remains available at commercially reasonable rates and shall notify the Company forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Sub-Contractor's insurance claims record.

8. If any dispute of any kind whatsoever arises between the Parties in connection with this Agreement or the Sub-Contract Services which raises issues which are in opinion of the Company the same as or substantially the same as issues raised in a related dispute (the "Related Dispute") between the Company and the Supplier and such Related Dispute has already been referred to a conciliator or arbitrator appointed under the provisions to that effect contained in the Main Contract, then the Sub-Contractor hereby agrees that the Company may at his discretion by giving notice in writing to the Sub-Contractor refer the dispute arising out of this Agreement or the Sub-Contract Services to the adjudicator, conciliator, arbitrator or other Party (the "Appointed Party") appointed to determine the Related Dispute. In this event the Appointed Party shall have power to give such directions for the determination of the dispute and the Related Dispute as he may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the Parties and to him.

9.
 - (A) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than twenty-five (25) Working Days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
 - (B) If the Main Contract is terminated for any reason, within twenty-five (25) Working Days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "Step-in Notice") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-Clause (C) below.
 - (C) With effect from the date of the service of any Step-in Notice:

- (1) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
 - (2) the Sub-Contractor shall be bound to continue with the performance of its duties and obligations under the Sub-Contract and any exercise or purported exercise by the Sub-Contractor prior to the date of the Step-in Notice of any right to terminate or treat as terminated the Sub-Contract or to discontinue or suspend the performance of any of its duties or obligations thereunder or to treat the Sub-Contract as automatically determined shall be of no effect;
 - (3) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and
 - (4) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:
 - (a) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and
 - (b) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
- (D) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(B) above.
10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
 11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.
 12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.

13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.
14. No amendment to this Agreement shall be valid unless it is in writing and signed by all Parties.
15. Any person who is not a Party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Executed as deed by the Parties and delivered on the date of this Agreement.

Executed as a deed by)
affixing the Common)
Seal of Transport for)
London in the presence)
of [•] _____
Authorised Signatory

Executed as a Deed by)
[SUB-CONTRACTOR])
acting by [•] _____
Authorised Signatory

And)
)
) _____
Authorised Signatory

Executed as a Deed by)
[SUPPLIER] acting by)
[•]) _____
Authorised Signatory

And)
) _____
Authorised Signatory

SCHEDULE 12: SUPPLIER PERFORMANCE

Definitions

1.1 In this Schedule 12, the following terms shall have the following meanings:

“Deductions” means a reduction from the Service Charges in respect of a failure by the Supplier to meet the required level of performance in respect of specific KPIs, as determined and calculated in accordance with paragraph 2 of this Schedule 12.

“Emergency Fault” means any Fault so designated by the Company and having a Response Time set out in this Schedule 12, Table 5.

“FR02 Fault” means a Fault coded FR02.

“Exclusion” has the meaning given in paragraph 7.1 of Schedule 12.

“No Defect Found” has the meaning given in paragraph 3.2.16 of this Schedule 12.

“Non-EEC Fault” means a Fault not being an Emergency Fault or FR02 Fault as designated by the ECC/MCC (Engineering Control Centre, Maintenance Control Centre or fault reporting centre).

“Non-Conformance” has the meaning given in paragraph 6.2 of this Schedule 12.

“Notice of Non-Conformance” means a notice that may be issued by the Company in respect of Non-Conformances in accordance with paragraph 3 of this Schedule 12 and substantially in the form set out in Appendix A of this Schedule 12.

“Recovery Plan” means a plan to be provided by the Supplier upon request by the Company in the event that there has been a performance issue which has not been raised to Level 1 Non-Conformance setting out how the Supplier will address such non-performance.

“Rectification Time” means the maximum amount of time the Supplier has before being at variance to the elapsed time of Key Performance Indicator 3 set out in this Schedule 12, Table 5.

“Repeat Fault” means the re-occurrence of a Fault or the occurrence of a closely related Fault affecting the same Asset.

“Response Time” means the maximum amount of time the Supplier has before being at variance to the elapsed time of Key Performance Indicator 3 set out in this Schedule 12, Table 5.

“Root Cause Analysis” means an analysis to be provided by the Supplier upon request by the Company in the event that there has been a performance

issue which has not been raised to Level 1 Non-Conformance setting out the Supplier's analysis of the root cause of the non-performance in question.

"Support Services" are support services that form part of the Planned Services.

2. Overview

- 2.1 This Schedule 12 comprises the performance measurement mechanism applicable to the Services, in order to incentivise the Supplier to deliver the Services in accordance with the requirements of this Contract and also to provide the Company with a remedy where the Supplier fails to do so.
- 2.2 The performance measurement mechanism set out in this Schedule shall, subject to paragraph 7 (Exclusions) below, come into effect on the Contract Commencement Date and be applicable to the whole of the Services, including where relevant any Additional Services.
- 2.3 The performance measurement mechanism comprises and incorporates:
- a) a range of performance measures that define required performance in respect of Planned Services, Reactive Services and standards;
 - b) an assessment of performance at the end of each Accounting Period against KPIs and SDIs;
 - c) Deductions from and adjustments to the Service Charges in respect of the Supplier's failure to meet KPIs;
 - d) non-financial remedies in respect of the Supplier's failure to meet SDIs;
 - e) an Escalation Procedure which can be invoked in the event of unsatisfactory performance; and
 - f) incentives for the Supplier to innovate to continuously improve the Services.
- 2.4 KPIs are stated in paragraph 3 of this Schedule 12. The KPIs measure:
- a) actual performance achieved by the Supplier against the Activity Plans;
 - b) the speed with which the Supplier rectifies Faults; and
 - c) achievement of the required quality of maintenance.
- 2.5 SDIs are stated in paragraph 4 of this Schedule 12. The SDIs measure:
- a) Repeat Faults;
 - b) reporting; and
 - c) adherence to health & safety, environmental and quality standards.

3. Key Performance Indicators

3.1 Planned Services KPIs

3.1.1 Planned Services KPIs measure:

- actual performance achieved against Planned Services as set out in the Activity Plan; and
- achievement of the required quality of planned maintenance when measured by the Company's quality inspections.

Table 1 – Planned Service KPIs

KPI Number	Service	Measure	Target
KPI 1	Maintenance	Delivery of planned maintenance in accordance with Activity Plan	100%
KPI 2	Quality inspections	Achievement of required standard of planned maintenance when inspected by the Company	100% passed

3.1.2 At the end of each Accounting Period, the Supplier shall assess and report to the Company on actual performance against the Planned Service KPIs. Performance against Planned Service KPIs shall be assessed at the end of each Accounting Period and the Company shall be entitled to apply an adjustment to the Service Charges to reflect the actual performance for the Accounting Period. The payment for the Services shall be directly related to the percentage of planned maintenance performance set out in the Activity Plan that has been delivered in that Accounting Period and the percentage of quality inspections that have been passed.

3.1.3 A maximum of 80% of the Service Charges for Planned Services shall be payable by the Company in respect of maintenance Planned Services set out in the Activity Plan and a maximum of 20% of the Service Charges for Planned Services shall be payable by the Company in respect of Planned Services quality inspections.

KPI 1 Delivery of Planned Maintenance in Accordance with the Activity Plan

3.1.4 Tables 2a and 2b provide examples in respect of KPI 1.

Table 2a - Example 1

Planned performance	100 planned maintenance tasks
Actual performance achieved	96 tasks
Actual performance against plan	96%

Actual payment against Service Charges	96% x 80% of Service Charge for Planned Services
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Table 2b - Example 2

Planned performance	100 planned maintenance tasks
Actual performance achieved	100 tasks
Actual performance against plan	100%
Actual payment against Service Charges	100% x 80% of Service Charge for Planned Services

- 3.1.5 Where actual performance of KPI 1 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency by carrying forward the undelivered work into the Activity Plan for the next Accounting Period. The Company shall offer the Supplier the opportunity to carry work forward where the Company considers, in its absolute discretion, that completion of the undelivered work is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors. Where work carried forward is completed to the satisfaction of the Company within the next Accounting Period, this work, which shall be known as “Undelivered Completed Work”, shall be included within the payment for the following Accounting Period. Payment for undelivered work can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 2c.

Table 2c – Payment example

Accounting Period	Planned Performance	Actual Performance	Undelivered Work	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 80% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 80% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 80% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 80% for P3

KPI 2 Quality Standards

- 3.1.6 Tables 3a and 3b provide examples in respect of KPI 2.

Table 3a - Example 1

Planned performance	100 passed quality inspections
Actual performance achieved	96 passed quality inspections
Actual performance against plan	96%
Actual payment against Service Charges	96% x 20% of Service Charge for Planned Services

Table 3b - Example 2

Planned performance	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

Table 3c Example 3

Support Services	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

- 3.1.7 On completion of the Planned Services (including Undelivered Completed Work), the Company will conduct Planned Services quality inspections in accordance with the Specification. The Company will provide the Supplier with a Notice of Non-Conformance if a Planned Services quality inspection has failed.
- 3.1.8 Where actual performance of KPI 2 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.

3.1.9 The Company will carry out a second Planned Services quality inspection and where the Supplier achieves a “pass” within the next Accounting Period, this quality inspection, which shall be known as “Passed Second Quality Inspection”, shall be included within the payment for the following Accounting Period. Payment for Passed Second Quality Inspections can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 3c.

Table 3c – Payment example

Accounting Period	Planned Performance	Actual Performance	Failed Quality Inspection	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 20% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 20% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 20% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 20% for P3

3.1.10 Where the Company fails to carry out a second Planned Services quality inspection within the relevant Accounting Period, the Supplier will be deemed to have passed the second Planned Services quality inspection.

3.1.11 Where actual performance of KPI 2 (Support Services) falls below 100%, the Company shall give the Supplier the opportunity during the next three (3) Accounting Periods to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.

3.2 Reactive Services KPIs

3.2.1 Reactive Services KPIs measure:

- a) the speed at which Faults are rectified;
- b) the speed at which Emergency Faults are responded to; and
- c) achievement of the required standard of workmanship for rectified Faults when inspected by the Company.

Table 4 – Reactive Services KPIs

KPI Number	Service	Measure	Target
KPI 3	Faults	Faults to be responded to or rectified within specified timescale	100%
KPI 4	Quality inspections	Achievement of required standard of workmanship for rectified Faults when inspected by the Company	100% passed

A maximum of 80% of the Service Charges for Reactive Services shall be payable in respect of Fault response and rectification (as measured by KPI 3) and a maximum of 20% of the Service Charges for Reactive Services shall be payable in respect of Reactive Services quality inspections.

KPI 3 Faults

- 3.2.2 Rectification Times for Faults are set out in Table 5 below. Rectification Times start when the Supplier receives a Fault notification from the Company. Notwithstanding the Rectification Times set out in Table 5 below, any Faults which could result in safety or environmental contravention orders being issued against the Company by the Health & Safety Executive (including HMRI), the London Fire and Civil Defence Authority, Local Authorities or any other regulatory body shall have a Rectification Time of twenty-four (24) hours.
- 3.2.3 All Faults shall be notified by the Company to the Supplier. The Supplier shall receive Faults from the Company twenty-four (24) hours per day, seven (7) days a week, every day of the year.
- 3.2.4 The Supplier shall rectify all Faults within the Rectification times shown in Table 5 below. All rectified Faults shall be formally reported to the Company in writing within sixteen (16) hours of rectification.
- 3.2.5 Where the Supplier is required to respond to an Emergency Fault, the Supplier shall, within the Response Time set out in Table 5 below, attend site with equipment and notify the Company of the action to be taken to make safe. All responses to Emergency Faults shall be formally reported to the Company in writing within sixteen (16) hours of response.
- 3.2.6 The Supplier is required to submit quotes for emergency works within seven (7) calendar days of request.

Table 5 – Fault Response and Rectification Times

KPI Number	Fault Code	Description	Fault Type Examples	Response Time	Rectification Time
KPI 3	n/a	Emergency Faults	Bridge strike, embankment collapse, flooding	2 hours	n/a
KPI 3	FR02	Premises and structures	Water ingress, offensive	n/a	144 hours (6 days)

		related Faults	graffiti removal		
KPI 3	n/a	Incidents and near hits	Bridge Strike, embankment collapse	n/a	36 hours
KPI 3	n/a	Missed provision of inspection support		n/a	3 months
KPI 3	Cat 1	Non-ECC Faults		n/a	1 month
KPI 3	Cat 2	Non-ECC Faults		n/a	3 months
KPI 3	Cat 3	Non-ECC Faults		n/a	6 months

3.2.7 The Supplier shall notify the Company of the date by which they plan to rectify Faults. In the case of Non-ECC Faults, the Supplier shall review the Activity Plan and if the Fault can be rectified within the target timescale as part of planned maintenance which appears on the Activity Plan, the Supplier shall report this to the Company and rectify the Fault as planned maintenance.

3.2.8 At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against the Reactive Services KPI targets for KPI 3 as set out in Table 4 above. The Company shall be entitled to apply Deductions for Reactive Services where performance is below target. These Deductions, which are set out in the third column of Table 6 below (as a percentage of the Services Charge), are related to the percentage of Faults responded to or rectified within the target times (as set out in the first column in Table 6 below). For the avoidance of doubt, Faults to be included in a report shall include all Faults that have been closed within the Accounting Period and all open Faults where the Rectification Time has been exceeded. The report shall exclude Faults that are open at the end of the Accounting Period but where the Response Time or Rectification Time has not elapsed. These Faults shall be included within the report at the end of the next Accounting Period.

Table 6 – Calculation of Reactive Services Deductions

Performance against Target as set out in Table 4	Percentage of Service Charges Received	Percentage of Service Charges Deducted
100%	100%	0%
99% - 99.99%	99%	1%
98% - 98.99%	98%	2%
97% - 97.99%	97%	3%
96% - 96.99%	96%	4%

Performance against Target as set out in Table 4	Percentage of Service Charges Received	Percentage of Service Charges Deducted
95% - 95.99%	94%	6%
94% - 94.99%	92%	8%
93% - 93.99%	90%	10%
92% - 92.99%	88%	12%
91% - 91.99%	86%	14%
90% - 90.99%	84%	16%
89% - 89.99%	82%	18%
<89%	80%	20%

KPI 4 Quality Standards

3.2.9 Tables 7a and 7b provide examples in respect of KPI 4.

Table 7a - Example 1

Planned performance	100 passed quality inspections
Actual performance achieved	96 passed quality inspections
Actual performance against plan	96%
Actual payment against Service Charges	96% x 20% of Service Charge for Planned Services

Table 7b - Example 2

Planned performance	100 passed quality inspections
Actual performance achieved	100 passed quality inspections
Actual performance against plan	100%
Actual payment against Service Charges	100% x 20% of Service Charge for Planned Services

3.2.10 The Company will conduct Reactive Services quality inspections in accordance with the Specification. The Company will provide the Supplier with a Notice of Non-Conformance if a Reactive Services quality inspection has failed.

3.2.11 Where actual performance of this KPI 4 falls below 100%, the Company shall give the Supplier the opportunity during the next Accounting Period to address the deficiency set out in the Notice of Non-Conformance. The Company shall offer the Supplier this opportunity where the Company considers, in its absolute discretion, that addressing the deficiency is beneficial to the Company having regard to the nature of the work, its planned frequency and other relevant factors.

3.2.12 The Company will carry out a second Reactive Services quality inspection and where the Supplier achieves a “pass” within the next Accounting Period, this Reactive Services quality inspection, which shall be known as “Passed Second Quality Inspection”, shall be included within the payment for the following Accounting Period. Payment for Passed Second Quality Inspections can be carried forward for a maximum of one (1) Accounting Period only. A worked example is shown in Table 7c.

Table 7c – Payment example

Accounting Period	Planned Performance	Actual Performance	Failed Quality Inspection	Payment
Accounting Period 1	100% for P1	96% for P1	4% for P1	96% x 20% for P1
Accounting Period 2	4% for P1 plus	3% for P1 plus	1% for P1	3% x 20% for P1 plus
	100% for P2	100% for P2	Nil for P2	100% x 20% for P2
Accounting Period 3	100% for P3	99% for P3	1% for P3	99% x 20% for P3

3.2.13 Where the Company fails to carry out a second quality inspection within the relevant Accounting Period, the Supplier will be deemed to have passed the second quality inspection.

Fault Reports

3.2.14 The Supplier shall track and report open Faults to the Company daily. The open Faults report shall highlight Faults where the Rectification Time has not been met and shall incorporate the agreed revised Rectification Time for such Faults.

3.2.15 Where a Fault remains open beyond the Rectification Time for more than a reasonable period (in the absolute opinion of the Company), the Company reserves the right to invoke the procedure set out in Clause 46 (Company Step-in) of this Contract.

3.2.16 Where the Supplier is notified of a Fault and responds but can find no Fault (“No Defect Found”), the Supplier shall incorporate these events into a No Defect Found report, which the Supplier shall issue to the Company weekly.

4. Service Delivery Indicators

4.1 Service Delivery Indicators measure

- a) Repeat Faults;
- b) reporting; and
- c) adherence to health & safety, environmental and quality standards

4.2 Repeat Fault SDI

4.2.1 At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against the Repeat Fault SDI set out in Table 8 below. In the event that the Supplier fails to meet the SDI the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 8 – Repeat Faults

Service	Measure	Target
Repeat Faults	All Repeat Faults to be reported by the Supplier to the Company in accordance with agreed timescales	100%

4.3 Health, Safety, Environmental and Quality Standards

4.3.1 The Supplier's adherence to health & safety, environmental and quality standards shall be measured by the Service Delivery Indicators shown in Table 9 below. At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against these SDIs. In the event that the Supplier fails to meet the SDIs, the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 9 – Health, Safety, Environmental and Quality SDIs

Service	Measure	Target
Supplier's reporting systems	Evidence that the Supplier is reporting in accordance with the Supplier's own reporting systems when audited by the Company	100%
Environmental Planned General Inspections	Achievement of required standard when inspected by the Company	100%
Planned General Inspections	Achievement of required standard when inspected by the Company	100%
Annual Planned Maintenance Certificate (E3006)	Provision of required information	100%
Strategic Labour Needs and Training (SLNT)	Evidence of delivery of the SLNT Plan as documented when audited by the	100%

Plan	Company	
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4.4 Meetings and Reporting SDIs

4.4.1 The Supplier's adherence to the requirements of Appendix 2 of Schedule 1 in respect of Contract Requirements shall be measured by the Service Delivery Indicators shown in Table 10 below. At the end of each Accounting Period, the Supplier shall assess and report to the Company actual performance against these SDIs. In the event of the Supplier's failure to meet these SDI targets, the Escalation Procedure set out in paragraph 6 of this Schedule shall apply.

Table 10 – Meetings and Reporting SDIs

Service	Measure	Target
Meetings	Supplier attendance at meetings in accordance with the requirements of Appendix 2 of Schedule 1	100%
Reporting	Delivery of reports by the Supplier in accordance with the requirements of Appendix 2 of Schedule 1	100%

5. Innovation and Continuous Improvement

5.1 The Supplier shall submit Improvement Suggestions to the Company. "Improvement Suggestions" are innovations in or improvement to the delivery of the Services and which lead to savings and may include but shall not be limited to changes to the Specification, changes to the Activity Plans, changes to Service delivery methodologies or changes to the Services themselves.

5.2 The Supplier's performance in delivering innovation and continuous performance shall be measured quarterly by the Improvement Suggestion Service Delivery Indicator which is set out in Table 11 below. Savings realised as a result of the implementation of Improvement Suggestions shall be shared by the Company and the Supplier in a ratio which shall be included in each business case as set out in paragraph 5.4 below.

Table 11 – Improvement Suggestion Service Delivery Indicator

Service	Measure	Target
Innovation and Continuous Improvement	Amount of savings realised from Improvement Suggestions	4% (four percent) of the annual Service Charges

5.3 The Supplier's performance in putting forward Improvement Suggestions shall be reviewed by meetings of the Senior Manager Level Governance Group (as such term is defined in paragraph 4 of Appendix 2 of Schedule 1). Financial Deductions shall not apply to this Service Delivery Indicator.

5.4 Where the Supplier identifies an Improvement Suggestion it shall provide a business case to the Company which shall:

- a) provide a description of the relevant Improvement Suggestion;
 - b) describe in detail how such Improvement Suggestion would benefit the delivery of the Services;
 - c) detail a breakdown of the costs of implementing an Improvement Suggestion (the "Improvement Suggestion Cost") (if any) including the proposed reimbursement period for the Improvement Suggestion Cost;
 - d) propose the ratio in which realised savings shall be shared; and
 - e) any other information reasonably required by the Company.
- 5.5 Following receipt of each business case, the Company shall notify the Supplier in writing that it:
- a) approves the business case for the Improvement Suggestion;
 - b) approves the business case for the Improvement Suggestion subject to any condition the Company may require; or
 - c) rejects the business case for the Improvement Suggestion.
- 5.6 Where the Company conditionally approves the business case in accordance with paragraph 5.5(b) above, the Supplier may re-submit an amended business case for reconsideration by the Company in accordance with the procedure set out in paragraph 5.4 above.
- 5.7 Where the Company approves the business case for the Improvement Suggestion the Parties shall follow the procedure set out in Schedule 6 (Contract Variation Procedure) and, upon implementation of the Improvement Suggestion by the Supplier, the Service Charges shall be adjusted in accordance with the provisions of that Schedule and the applicable Variation.
- 5.8 The Company shall decide at its absolute discretion whether business cases are approved or rejected.
- 5.9 Where the Contract is terminated early in accordance with the provisions of this Contract, the relevant provisions of Clause 49 shall apply to the balance of any unpaid Improvement Suggestion Cost properly due to the Supplier.
- 5.10 Where the Company identifies potential Improvement Suggestions either as part of the annual review of plans as set out or referred to in Appendix 2 of Schedule 1 or at any other time, the Company shall notify the Supplier of the potential Improvement Suggestion and the Supplier shall submit a business case for the Improvement Suggestion to the Company in accordance with paragraphs 5.4 to 5.8 above.

6. Escalation Procedure

- 6.1 In the event of unsatisfactory performance of the Services by the Supplier, including (but not limited to) failure to reach the targets set by the SDIs and the KPIs, this Escalation Procedure may be invoked by the Company in its absolute discretion.

- 6.2 The purpose of this Escalation Procedure is to provide a structured framework within which the Parties can address unsatisfactory performance of the Services against timescales and deliverable targets. For the purposes of this procedure, notified levels of poor performance will be termed “Non-Conformances”.
- 6.3 This Escalation Procedure operates with four levels (as set out in paragraph 6.4 of this Schedule 12); the lowest level of Non-Conformance being a Level 1 Non-Conformance. Should Non-Conformances escalate, they shall receive an appropriate level of management intervention from the Company and the Supplier. In the event a Non-Conformance escalates to become a Level 3 Non-Conformance, the Parties shall have a final review and opportunity for remedial actions to resolve the relevant issues before the Non-Conformance becomes a Level 4 Non-Conformance, which will entitle the Company to terminate in accordance with Clause 48.1(K) (Termination on Supplier Default).
- 6.4 In the event that a performance issue is not resolved between the Company and the Supplier by the end of the next accounting period then the Non-Conformance may be raised by the Company to a Level 1 Non-Conformance or a Level 2 Non-Conformance, depending upon the severity of the performance failure. It is possible for a number of Level 1 Non-Conformances and/or Level 2 Non-Conformances to be in hand at any one time.

Table 12 – Summary of Escalation Procedure

TRIGGER	LEVEL	ACTION	BY	RESULT
Failure to rectify identified Non-Conformance issued as part of KPIs and/ or SDIs	LEVEL 1	Improvement plan with precise end date required. Ongoing review dates specified.	i) Company ii) Supplier	Satisfactory - Stop Unsatisfactory - Level 2
Level 1 Non-Conformance re-occurrence Consistent failure to meet required requirement Safety Condition infringements.	LEVEL 2	Improvement plan with precise end date required. Ongoing review dates specified.	i) Company ii) Supplier	Satisfactory - Stop Unsatisfactory - Level 3
Level 2 Non-Conformance re-occurrence	LEVEL 3	Final review. Final opportunity for remedial action. Precise end date required.	i) [Company] ii) [Supplier]	Satisfactory - Stop Unsatisfactory - Level 4
Level 3 re-occurrence	LEVEL 4	POSSIBLE TERMINATION		

6.5 The Company and the Supplier shall endeavour to resolve any performance issues locally on a day-to-day basis to the mutual satisfaction of each Party and shall not raise such issues to Level 1 Non-Conformance without having taken prior endeavours to resolve them. At this stage of the process, the Supplier may be required by the Company to supply a Root Cause Analysis and a Recovery Plan.

6.6 Level 1 Non-Conformance

6.6.1 The Level 1 Non-Conformance will be recorded by the Company and a notice will be submitted to the Supplier in the form attached as Appendix A to this Schedule 12. The Supplier shall in response (such response to be within ten (10) Working Days of service of the notice by the Company) prepare and submit to the Company a report (the "Level 1 Non-Conformance Report"). Such report will contain:

- a) confirmation of the date and details of the Level 1 Non-Conformance;
- b) the steps to be taken by the Supplier to ensure there is no repetition of such Level 1 Non-Conformance (the "Level 1 Required Action"); and
- c) the time within which such Level 1 Required Action is to be completed which shall be a reasonable period and no longer than ten (10) Working Days (the "Level 1 Rectification Period").

6.6.2 The Supplier and the Company will use reasonable endeavours to agree the Level 1 Rectification Period and the Level 1 Required Action. If the agreed Level 1 Required Action is carried out within the agreed Level 1 Rectification Period then the Level 1 Non-Conformance will be closed.

6.6.3 All Level 1 Non-Conformances will be reviewed weekly at the Service Manager Level Governance Group meetings (as defined in paragraph 4 of Appendix 2 of Schedule 1) (whether resolved or not) to ensure that reoccurrence is (where possible) eliminated.

6.7 Level 2 Non-Conformances

6.7.1 Paragraph 6.7.2 shall apply where:

- a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or
- b) the Supplier fails to notify the Company of the occurrence of a Level 1 Non-Conformance prior to the Company notifying the same to the Supplier (provided that the Company shall be entitled, having regard to the gravity of the Non-Conformance, to treat the same as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or
- c) the Supplier fails to make available to the Company a Level 1 Non-Conformance Report within ten (10) Working Days of service by the Company of the notice referred to in paragraph 6.6.1; or

- d) the Supplier fails to undertake the Level 1 Required Action within the Level 1 Rectification Period; or
- e) the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period; or
- f) a further Non-Conformance occurs after the Level 1 Rectification Period but within two (2) months of the end of the Level 1 Rectification Period and that is a Non-Conformance in relation to the same SDI or KPI ("Same Type") as the Level 1 Non-Conformance; or
- g) a further Non-Conformance occurs during the Level 1 Rectification Period that is of the Same Type as the Level 1 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance; or
- h) the Supplier fails to meet the requirements of Schedule 7 (QUENSH).

6.7.2 Where one or more of the circumstances described in paragraph 6.7.1 applies, then this shall be a "Level 2 Non-Conformance" and the Company may submit a notice to the Supplier in the form attached as Appendix A to this Schedule. The Supplier shall determine (acting reasonably) the steps to be taken by the Supplier to ensure there is no repetition of such Level 2 Non-Conformance (the "Level 2 Required Action") and the time within which such Level 2 Required Action is to be completed (which shall be a reasonable period and no longer than ten (10) Working Days (the "Level 2 Rectification Period"), and prepare and make available to the Company a report (the "Level 2 Non-Conformance Report"), which shall set out the following information:

- a) the date and details of the Level 2 Non-Conformance;
- b) the Level 2 Required Action; and
- c) the Level 2 Rectification Period.

6.7.3 The Supplier and the Company will use reasonable endeavours to agree the Level 2 Rectification Period and the Level 2 Required Action.

6.7.4 If the Level 2 Required Action is taken within the agreed Level 2 Rectification Period then the Non-Conformance will be closed. However, a record of the Non-Conformance will be made by the Company and Level 2 trends monitored.

6.7.5 All Level 2 Non-Conformances will be reviewed every Accounting Period at the Senior Manager Level Governance Group meetings (whether resolved or not) to ensure reoccurrence is (where possible) eliminated.

6.8 Level 3

6.8.1 Paragraph 6.8.2 shall apply where:

- a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or

- b) the Supplier fails to make available to the Company a Level 2 Non-Conformance Report within ten (10) Working Days of service by the Company of the notice referred to in paragraph 6.7.2; or
- c) the Supplier fails to undertake the Level 2 Required Action within the Level 2 Rectification Period; or
- d) the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period; or
- e) a further Non-Conformance occurs after the Level 2 Rectification Period but within two (2) months of the end of the Level 2 Rectification Period and which is of the Same Type as the Level 2 Non-Conformance; or
- f) a further Non-Conformance occurs during the Level 2 Rectification Period that is of the Same Type as the Level 2 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

6.8.2 Where one or more of the circumstances described in paragraph 6.8.1 applies, then this shall be a "Level 3 Non-Conformance" and the Company shall inform the Supplier of the same by written notice.

6.8.3 The notice referred to in paragraph 6.8.2 shall set out:

- a) the deadline by which it requires the Supplier to serve on the Company a report setting out the steps which the Supplier has taken, or will take, to ensure that no further Non-Conformances of this type shall arise (the "Level 3 Required Action") (a "Level 3 Non-Conformance Report"); and
- b) the period (being no greater than two (2) months from the time of occurrence of the Level 3 Non-Conformance) for the Supplier to put in place steps to ensure that no further Non-Conformances of the Same Type occur (the "Level 3 Rectification Period").

6.8.4 All Level 3 Non-Conformances will be reviewed every third Accounting Period at the Director Level Governance Group meetings.

6.9 Level 4

6.9.1 Paragraph 6.9.2 shall apply where:

- a) the Supplier fails to make available to the Company by the deadline notified under paragraph 6.8.3 a Level 3 Non-Conformance Report; or
- b) the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or
- c) the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period; or
- d) a further Non-Conformance occurs after the Level 3 Rectification Period but within two (2) months of the end of the Level 3 Rectification Period and which is of the Same Type as the Level 3 Non-Conformance; or

- e) a further Non-Conformance occurs during the Level 3 Rectification Period that is of the Same Type as the Level 3 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

6.9.2 Where one or more of the circumstances described in paragraph 6.9.1 applies, then this shall be a "Level 4 Non-Conformance" and the Company will be entitled to terminate the Contract in accordance with Clause 48.1(K).

7. Exclusions

7.1 Subject to paragraph 7.3 below, no Faults will be attributed to the Supplier in the circumstances set out in sub-paragraphs (a) to (d) below (an "Exclusion"), provided that when the Fault is reported, the Supplier shall commence and continue to make all reasonable endeavours to rectify the Fault so reported. For the avoidance of doubt, where an Exclusion is agreed by the Company to apply to a Fault, the Fault and the actual rectification time achieved shall not be included in the performance calculation for KPI 3:

- a) specialist equipment is required and is not immediately available provided the Supplier could not reasonably be expected to obtain such equipment in the time required; or
- b) specialist materials are required provided the Supplier could not obtain them in the time required; or
- c) confirmed Access is denied by the Company including but not limited to the following reasons:
 - (i) emergency access requirements of another party to deal with an incident;
 - (ii) urgent access requirements of another party to rectify an asset failure that would otherwise have a materially adverse impact on passenger services; or
 - (iii) for safety reasons; or
- d) the Asset is Beyond Economic Repair.

7.2 The Supplier shall notify the Company within the Rectification Time that they believe that the Fault should be excluded from the performance calculation setting out:

- a) the reason for the Exclusion; and
- b) the expected completion date; and
- c) providing any relevant supporting documentation including the lead time for specialist equipment and / or materials and cancelled / delayed access forms.

7.3 Following receipt of each request for an Exclusion, the Company, in its absolute discretion, shall decide and notify the Supplier in writing that it:

- a) approves the Exclusion; or
- b) rejects the Exclusion.

8. Cap on Deductions

- 8.1 The Reactive Services Deduction in any Accounting Period shall be capped at 100% of the Supplier's profit margin (as recorded in Schedule 2 appendix 1 for that Accounting Period (the "Reactive Services Deductions Cap"). For the avoidance of doubt, the Reactive Services Deductions Cap includes Deductions for Non-Conformances in respect of quality inspections. There shall be no cap on other Deductions made under this Contract.

9. Performance Reporting

- 9.1 The Supplier shall report on the performance of the Services against Key Performance Indicators and Service Delivery Indicators in accordance with Appendix 2 of Schedule 1.

10. Payment Adjustments

- 10.1 Adjustments to the Service Charges to reflect performance shall be applied in accordance with Schedule 2.

APPENDIX A: Notice of Non-Conformance Template

SCHEDULE 13: DISPUTE RESOLUTION PROCEDURE

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule 13 (Dispute Resolution Procedure).

"Dispute" has the meaning given to it in Clause 69.

"Nominating Authority" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

"Notice of Adjudication" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought.

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph 11;

"Senior Representative" means a representative of a Party at senior executive level.

- 1 The Company and the Supplier shall follow the procedure set out in this Schedule 13 (Dispute Resolution Procedure) for the management and resolution of Disputes.
- 2 Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Contract that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
- 3 Within fourteen (14) days of receipt of the notice pursuant to paragraph 2, the responding Party shall provide the referring Party with a brief written response. The response shall include identification of the responding Party's Senior Representative.
- 4 The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
- 5 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within twenty-eight (28) days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7–28 and notice

has been given in accordance with paragraph 29.

6 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7 Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7–29 by giving a Notice of Adjudication to the other parties to the Dispute.

8 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within four (4) days of receiving a request to do so.

9 Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:

9.1 shall be a natural person acting in his personal capacity; and

9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

10 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within seven (7) days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

11 Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within seven (7) days of the date of the Notice of Adjudication or within two (2) days of the date of appointment of the

Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the Dispute of the date that it was received.

12 The Referral Notice shall:

- 12.1 include the facts relied upon by the referring Party in support of its claim(s);
- 12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
- 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;
- 12.4 be accompanied by copies of, or relevant extracts from, this Contract and such other documents on which the referring Party relies; and
- 12.5 include the addresses of all Parties to the Dispute.

The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.

13 If a matter disputed by the Supplier under or in connection with a sub-contract is also a matter disputed under or in connection with this Contract, the Supplier may, with the consent of the Company, refer the sub-contract dispute to the Adjudicator at the same time as the main Contract referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Sub-Contractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Contract and sub-contract disputes.

14 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:

- 14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17;
- 14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17; or
- 14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the

provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

- 15 The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.
- 16 The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- 17 The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within twenty-eight (28) days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 13 (Dispute Resolution Procedure)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- 18 The Adjudicator may extend the period of twenty-eight (28) days referred to in paragraph 17 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.
- 19 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the Dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Contract. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Contract, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Contract, whichever is the later.
- 20 The Adjudicator:

- 20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - 20.3 shall reach his decision in accordance with the law applicable to this Contract;
 - 20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - 20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
 - 20.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
- 21 The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- 21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - 21.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
 - 21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
 - 21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
 - 21.5 inspect any part of the Sites, the Services or the facilities of any relevant Sub-Contractor.
- 22 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
- 23 All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

- 24 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 13 (Dispute Resolution Procedure).
- 25 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 26 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 27 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.
- 28 All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
- 29 If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination

of the Dispute.

SCHEDULE 14: OBLIGATIONS ON HANDOVER

1. The provisions of this Schedule 14 (Obligations on Handover) are without prejudice to the obligations of the Supplier to continue to provide the Services as required by the terms of this Contract and any services reasonably required to transition the Services to an incoming supplier with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Company or disruption to its operations.
2. The Supplier shall at its own cost, commencing no later than eleven (11) months before the Expiry Date or on the date of receipt of any Termination Notice:
 - 2.1 prepare and submit for review and approval by the Company's Representative, a detailed demobilisation plan for the Services containing the Supplier's proposals for the demobilisation aspects of the Services, including but not being limited to transfer of staff, intellectual property rights and manuals, spares and equipment (the "Demobilisation Plan") and thereafter update the Demobilisation Plan as requested by the Company.
 - 2.2 in order to support the seamless transition of the Services following the Expiry Date or Termination Date, undertake all necessary actions in connection with the demobilisation, including but not being limited to the following:
 - (a) providing all necessary resource, including Supplier Personnel, equipment and materials to enable timely demobilisation;
 - (b) identifying its demobilisation team and demobilisation manager;
 - (c) procuring that its demobilisation team shall attend Company chaired demobilisation/transition meetings;
 - (d) keeping the Company's Representative fully informed on the progress of the demobilisation; and
 - (e) complying with all reasonable instructions of the Company in connection with the demobilisation.
 - 2.3 cooperate fully with and provide all reasonable and necessary assistance and information in connection with the Services and/or to facilitate the orderly transfer of responsibility for and conduct of the Services to the Company and any incoming supplier or suppliers in the transition of the Services before the Expiry Date or Termination Date (as the case may be) and for a period of three (3) months after such date to ensure that the changeover to the incoming supplier (or back to the Company) is effected with minimal disturbance and disruption.
 - 2.4 the requirement for the Supplier to provide cooperation pursuant to paragraph 2.3 above extends to any retender process for the Services

carried out by the Company in relation to an incoming supplier or suppliers to enable it to access the Sites and/or Company personnel, and specifically an obligation to provide, on reasonable notice during the term of the Contract, information for the purpose of a competition and managing the transition to an incoming supplier or suppliers, to include:

- (a) details of the Services;
- (b) details of employees who would transfer to the replacement contractor;
- (c) management information; and
- (d) any other information that the Company may reasonably require.

2.5 maintain records, data, files, information and documentation relating to the Services in such form and manner as to enable the Supplier to effectively transfer them in full to the Company and/or to any third party nominated by the Company, so as to put the Company and/or third party into a position where the Company and/or the third party can provide a level of service which is similar to or the same level as Services provided under this Contract.

3. Without prejudice to paragraph 2, annually, on each anniversary of the Contract Commencement Date until expiry of the Contract or earlier termination, the Supplier shall submit a draft Demobilisation Plan for review and approval by the Company. The draft Demobilisation Plan shall be in the form set out in Appendix 1 to this Schedule 14. In addition to each such submission, at other intervals the Company may from time to time and acting reasonably request that the draft Demobilisation Plan is updated by the Supplier.

4. No later than ninety (90) days before the Expiry Date or immediately following receipt of a Termination Notice, the Supplier shall return to the Company's Representative all Free Issue Materials provided to the Supplier in accordance with Clause 26 (Free Issue Materials) of this Contract.

5. Without prejudice to the provisions of Clause 14 (Records and Audit) and 41 (Intellectual Property Rights), the Supplier shall:

5.1 hand back to the Company (at the Expiry Date or Termination Date (as the case may be)) all records, data, files, information and documentation owned by the Company but used by the Supplier in the performance of the Services, subsequently destroy all electronic information in the possession of the Supplier and provide a certificate of destruction to the Company's Representative;

5.2 provide the Company and/or incoming supplier or suppliers with all reasonable help, assistance and co-operation to make available and effect the transfer of records, data, files, information and documentation to an incoming supplier or suppliers so as to enable the

Company and/or incoming supplier or suppliers to set up and effect the transition of the Services, in accordance with Clause 14 (Records and Audit) of the Contract; and

- 5.3 hand over to the Company (upon request of the Company's Representative but in any event at the Expiry Date or Termination Date (as the case may be)) all passes or entry permits.
6. The Supplier shall ensure that (at the Expiry Date or Termination Date (as the case may be)):
 - 6.1 all equipment (whether or a temporary or permanent nature) used in the delivery of the Services whether or not owned by the Supplier, the Company or any third party is fully maintained, serviced and fully functional with an up-to-date service and maintenance history which is entered on the CAFM system. Equipment which fails to meet these conditions shall be replaced with new by the Supplier at its own cost. In the event that the Supplier is in breach of this paragraph 6.1 (irrespective of whether the equipment is in the ownership and responsibility of the Supplier or a Sub-Contractor), the Company shall be entitled to purchase such equipment itself and recover the associated costs from the Supplier;
 - 6.2 all assets and spares, critical and non-critical, are handed over to the incoming supplier and the Company and that relevant members of the Supplier's Personnel are present at handover; and
 - 6.3 all areas which the Contractor has used for storage or operation have been left clean and tidy and all rubbish has been removed from the Sites.
 7. During demobilisation the Supplier shall promptly provide all reasonable cooperation and support resource in relation to any audit or check required by the Company and commissioned by the Company's Representative, including in each particular circumstance:
 - 7.1 granting or procuring the grant of access to any premises used in performance of the Contract, whether the Supplier's own premises or otherwise;
 - 7.2 granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under the Contract, wherever situated and whether the Supplier's own equipment or otherwise;
 - 7.3 making any contracts and other documents, records and information related to the provision of the Services available for inspection;
 - 7.4 granting copying facilities to the Company and/or LUL's auditor for the purposes of making copies of any or all the information, records and documents;

- 7.5 complying with the Company's reasonable request for access to senior personnel engaged in the Supplier's performance of the Contract;
- 7.6 granting access to the Sites to staff of the incoming suppliers (with the approval of the Company) for the purpose of mobilisation and transitioning of the Services. This will include providing access to all plant, equipment, contract related records, staff and escorting the incoming staff as requested by the Company's Representative.
8. In the event of a failure by the Supplier to comply with any of the obligations set out in this Schedule 14, in the final twelve (12) months of the Contract the Company shall be entitled to retain from each payment per period due to the Supplier five per cent (5%) equal to the cost to the Supplier of performing the relevant obligations. The Parties agree that such retention shall not be a penalty and is fair and reasonable and represents a genuine pre-estimate of what the cost of performance to the Supplier would have been.
9. The Supplier is required to notify any Sub-Contractors of the relevant demobilisation procedures set out in this Schedule 14 and/or the Demobilisation Plan set out in Appendix 1.
10. In relation to any Necessary Consents, these will not transfer from the Supplier to an incoming supplier or suppliers and the incoming supplier or suppliers shall be required to obtain these in accordance with Clause 6 (Consents) of this Contract.

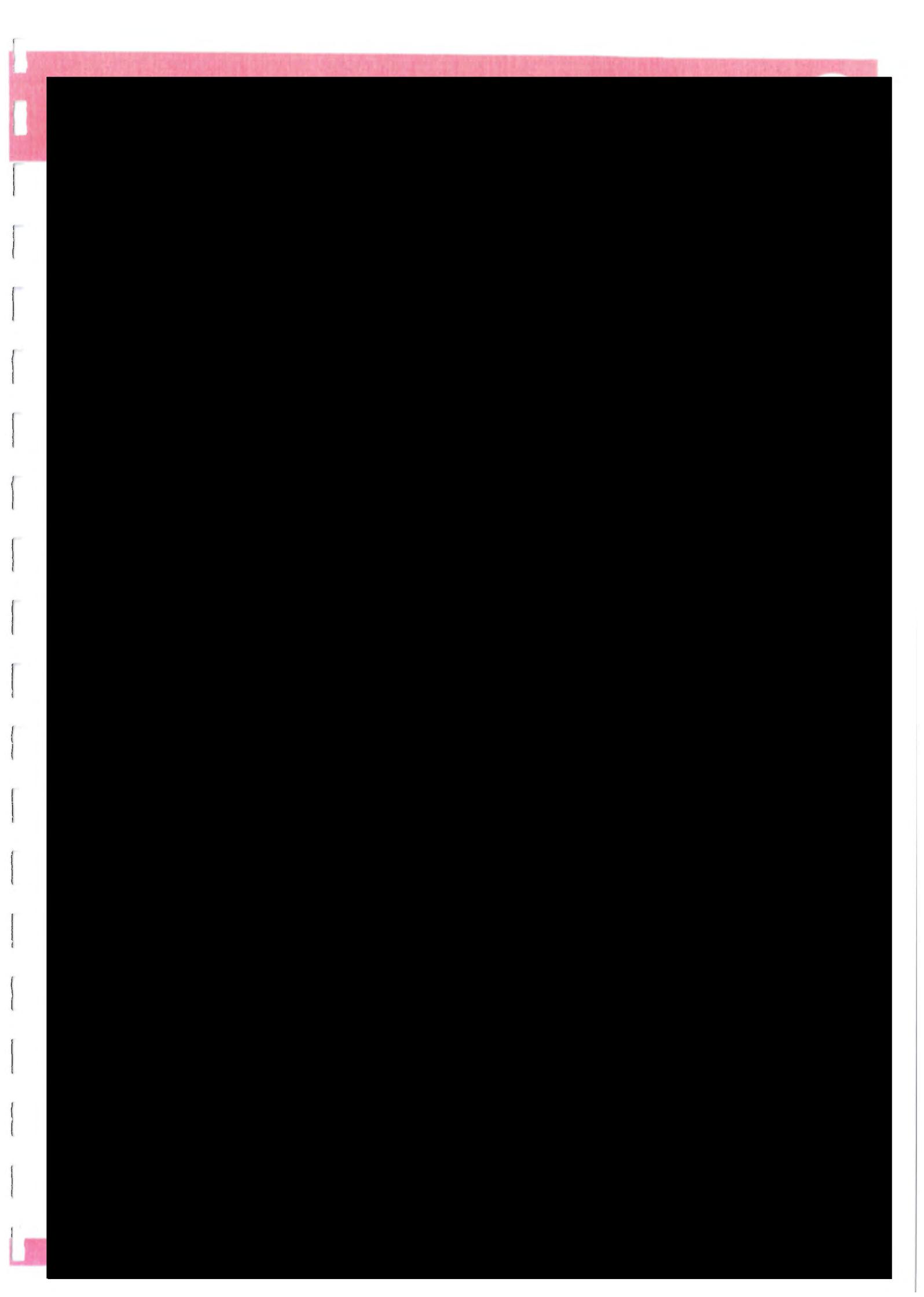
[Note: IT systems that need specific exit provisions i.e. migration of data to incoming supplier to be confirmed.]

Appendix 1: Demobilisation Plan

[Note to Bidders: This shall be provided by the Bidder as part of the tender process as detailed in the ITT.]

SCHEDULE 15: ETHICAL TRADING INITIATIVE BASE CODE

<http://www.ethicaltrade.org/resources/eti-base-code>



Contents

1. Lanes Group Commitments
2. Demobilisation Manager
3. Planning for Demobilisation
4. Demobilisation Plan
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6. Stakeholder Communication
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8. Management of risks, issues and change
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1. Lanes Group Commitments

The demobilisation period of a contract has the potential to be a difficult time.

Lanes Group builds long-term and lasting relationships with our customers. While we are naturally disappointed to lose contracts, we take the long view and engage positively until the end.

We do so as we owe it to staff who have shown commitment and loyalty and because we owe it to our customer with whom we may have other contracts or with whom we wish to partner again in the future.

Reputation is incredibly important to us and it therefore influences the way we approach demobilisations.

We consider a seamless transition to the new provider to be the minimum requirement for Transport for London and we commit to playing an active part in achieving a smooth transition from Lanes Group to the new provider.

2. Demobilisation Manager

Early in 2021 we will appoint a senior manager to act as demobilisation manager. He or she will have extensive experience of demobilising contracts and of our business. He or she will also have authority to take business decisions that make the process as easy as possible for Transport for London, the new supplier and staff.

3. Planning for Demobilisation

Our planning for demobilising the contract by 31st March 2022, or indeed by 31st March 2025.

One of the outputs of the mobilisation programme will be to ensure that a Demobilisation Plan is agreed with you so that we have the mechanism to manage the end of the contract using an approach that is recognised by all parties as offering the best for those affected.

By reviewing the mobilisation of the contract and capturing precisely what went well, and more importantly where improvements could be made, we will improve the outcome for the end of the contract.

We will use the direct experience of transferees from the incumbent to inform our own arrangements for de-mobilisation, at the time that it remains fresh in our team's memories.

We will also invite colleagues who have direct and recent experience of

demobilising similar contracts to contribute to shaping the Demobilisation Plan.

There is no doubt that some things will alter over a five-year period so the Demobilisation Plan will be formally reviewed during March 2021, one year from the likely end of contract; it will be revised and updated accordingly.

4. Demobilisation Plan

Our Demobilisation Plan details:

Key milestones for successful transfer to the new provider

Resources dedicated to demobilisation activities including:

Increased HR support for colleagues subject to potential TUPE

Increased resources dedicated to Quality Assurance during the final month of delivery to provide a good legacy condition and prevent the need for any revisits to site after transfer

Effective production of all documentation and records required at handover.

We have assumed that the next contract will also have a 90-day mobilisation period and confirm that we will easily be able to demobilise properly within this timeframe.

The following table provides a summary of key milestones.

Transfer 1 year out	Operational team review draft De-mobilisation Plan. De-mobilisation to become an agenda item for monthly contract meetings until handover	31 st March 2021
Issue De-mobilisation Plan	Publish updated Plan for review and approval by TfL	April 2021
Stakeholder engagement	Commence engagement with stakeholders advising of procurement process and ramifications	April 2021
Procurement	Assist Transport for London procurement team as required	2021 - 2022
Contract Award	New provider – <i>Could be Lanes Group again</i>	1 st January 2022 (estimated)
TUPE	Provide TUPE data during ITN phase	June 2021
Appoint De-mobilisation Manager	Plus identify key personnel to form de-mobilisation team including part-time roles	Date of notification of preferred bidder
ICT	System updates completed to reflect contract requirements and transferring staff	On-going so that at 31 st March 2022 seamless transition achieved for ICT
Sub-Contract Agreements	Continued liaison with suppliers and any subcontractors to ensure they provide any required information for tender process	2021 - 2022
Service Commencement	TUPE transfer completed	31 st March 2022