

Dated 10 APRIL 2019

**LONDON UNDERGROUND LIMITED (1)**  
**and**  
**Morganite Electrical Carbon Limited**  
(A Morgan Advanced Materials plc group company) **(2)**

**FRAMEWORK AGREEMENT**  
**for the supply of Brushes, Carbon**  
**Components and related parts CONTRACT**  
**REFERENCE NUMBER:**

**TfL 00879**

**OA 4600006841**

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**THIS AGREEMENT** is made on  
**BETWEEN:**

10 APRIL

2019

- (1) **London Underground Limited**, a company registered in England and Wales under number 01900907 and having its registered office at 55 Broadway, London SW1H 0BD (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Morganite Electrical Carbon Limited** a company registered in England and Wales under number 01034653 and having its registered office at Upper Fforest way, Morriston, Swansea, West Glamorgan, SA6 8PP (the "**Supplier**" or "**Vendor**").

## **BACKGROUND**

- (A) The Supplier carries on the business of manufacturing and selling the Goods.
- (B) The Company wishes to buy and the Supplier wishes to supply the Goods on the terms and conditions set out in the Agreement.
- (C) This Agreement may be utilised by the Company or any other member of the TfL Group. The Greater London Authority, any of the London boroughs, the Metropolitan Police Service, or any functional body (as defined in the GLA Act) may, if the Supplier so agrees, contract with the Supplier on the terms set out in this Agreement.

**THIS DEED WITNESSES** as follows:

## **1 Definitions and Interpretation**

- 1.1 In this Agreement and each Contract the following definitions shall have the following meanings:

**"Abatement"** means a reduction in payment amount due to the Supplier, calculated in accordance with Schedule 10.

**"Accounting Period"** means the Company's accounting periods as notified from time to time by the Company to the Supplier each such period being of between 25 and 32 days and one of 13 periods during the Company's financial year.

**"Additional Goods"** means any goods which the Company requests the Supplier to provide in accordance with the terms of the Agreement and each Contract in addition to those set out in the Specification.

**"Aggregated Annual Spend"** means the total of all sums paid by the Company to the Supplier (exclusive of VAT) pursuant to the terms of the Contract annually calculated in accordance with

Clause 9.

**"Agreement"** means these terms and conditions, including the Schedules, as amended varied or supplemented from time to time.

**"Applicable Laws"** means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity), at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Agreement and each Contract, any agreement or document referred to in the Agreement and each Contract, or the Goods.

**"BAFO"** means 'best and final offer'.

**"CCSL"** the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Company from time to time.

**"Cessation Plan"** means a plan agreed between the parties or determined by the Company in accordance with Clause 49.1 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event.

**"Commencement Date"** means the date specified as such in Schedule 1.

**"Company's Representative"** (who may also be referred to as **"Contract Manager"**) means the person appointed by the Company specified in Schedule 11 or as notified to the Supplier from time to time in accordance with Clause 30.

**"CompeteFor"** has the meaning given to that term in Clause 50.

**"Competent Authority"** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the parties in connection with the performance of the Agreement.

**"Confidential Information"** means any information given orally or in writing which is a trade or business secret or method; technical know how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or other information relating to the provision of police services for any national or international purpose; information relating to the Company's obligations in accordance with sections 118 to 121 of the Railways Act 1993; confidential financial information including but not

limited to taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions.

**"Consequential Loss"** means in relation to a breach of this Agreement or any Contract or other circumstances in which a party is entitled to recover any costs, expenses or liabilities suffered or incurred, loss of profit, loss of revenue, loss of contract, loss of goodwill and/or other financial loss resulting from such breach and whether or not the party committing the breach knew, or ought to have known, that such loss would be likely to be suffered as a result of such breach.

**"Contract"** means a contract as defined in Clause 3.1.

**"Contractual Documentation"** means all documentation and information agreed to be delivered by the Supplier in accordance with each Contract including without limitation records, reports, documents, papers, unpatented designs, drawings, data specifications, manufacturing or work processes, testing procedures, relevant computer data and all other technical business and similar information originated by or on behalf of the Supplier in accordance with each Contract.

**"Contract Information"** means (i) each Contract and Agreement in its entirety (including from time to time agreed changes to any Contract and/or Agreement) and (ii) data extracted from the invoices submitted pursuant to Clause 9.2 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

**"Contract Reference Number"** means the number shown on the front page of this Agreement.

**"Contract Variation Procedure"** means the procedure set out in Schedule 5.

**"CPI"** means the Consumer Prices Index published by the Office for National Statistics or, failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in a no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with Clause 38.

**"Data Protection Legislation"** means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such

legislation; and

- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

**"Declaration of Ineffectiveness"** means a declaration of ineffectiveness in relation to any Contract made by a court of competent jurisdiction in accordance with Regulation 98 of the Public Contracts Regulations 2015 (as amended) or Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 (as amended).

**"Defect"** means that the Goods or any part of them do not comply with the requirements of any Contract, or are not fit for their intended purpose, or are of unsatisfactory quality whether in consequence of faulty design, faulty materials, negligence, bad workmanship or in consequence of any other reason attributable to the Supplier or its suppliers or the employees of any of them. For the avoidance of doubt, this shall include damage which occurs during transit from the Supplier to the Company.

**"Delivery Address"** means the address at which the Supplier shall deliver the Goods to the Company and which is set out in the Order or such other destination as may be notified by the Company to the Supplier.

**"Delivery Note"** has the meaning given to that term in Clause 10.6.

**"Dispute"** has the meaning given to that term in Clause 38.1.

**"Documentation"** means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Supplier in the performance of each Contract and whether in paper form or stored electronically.

**"Excepted Liabilities"** means the liability of the Supplier for:

- (a) any Liquidated Damages payable;
- (b) any abatements for performance levied in accordance with this Agreement or any Contract;
- (c) Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance);
- (d) Losses caused by fraudulent acts or acts of a criminal nature; and
- (e) Losses caused by the Supplier committing a Prohibited Act or Safety Breach.

**"Excess Costs"** has the meaning given to that term in Clause 17.6.

**"Existing Contracts"** means any and all contracts, whether current, expired or terminated, pursuant to which goods and/or the services have been supplied and/or provided by the Supplier (in the capacity of contractor or subcontractor) to the Company and/or any other member of the TfL Group.

**"Expected Order Delivery Date"** means the date set out in each Order upon which the Goods or any part of them are to be delivered by the Supplier to the Company.

**"Force Majeure Event"** means any of the following (or any circumstances arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a party affected by such an event or circumstances and which have an adverse effect on the party affected by such an event or circumstances and such party's ability to perform its obligations under the Agreement or any Contract and is not an event or circumstances (i) whose effect the party affected by such an event is otherwise required to avoid or provide against (other than by way of insurance) under the Agreement or any Contract or (ii) which the party affected by such an event could reasonably have avoided or provided against:

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the Underground Network;
- (d) lightning, earthquake or subject to (f) below, extraordinary storm;
- (e) fire;
- (f) flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);
- (g) tunnel collapse;
- (h) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or

nuclear component thereof;

(j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and

(k) strikes, lock outs or other industrial action being in each case industry-wide.

**"Goods"** means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 7.

**"Greater London"** has the meaning ascribed to it in the GLA Act.

**"Greater London Authority Act"** or **"GLA Act"** means the Greater London Authority Act 1999 relating to the formation of the Greater London Authority.

**"Infrastructure Manager"** has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

**"Initial Period"** means the number of years from the Commencement Date stated in Schedule 1.

**"Intellectual Property Rights"** means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character.

**"Interest Rate"** means the percentage above the base rate from time to time of the Bank of England as specified in Schedule 1.

**"Key Personnel"** means Supplier Personnel identified as such in Schedule 11 and any changes to the same that are made in accordance with Clause 25.

**"Liquidated Damages"** means the sums identified and calculated in accordance with each Order.

**"London Living Wage"** the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk)).

**"Losses"** means any expense, liability, loss, claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments incurred by the Company, its employees or agents (which, for the avoidance of doubt, shall include a Replacement Employer).

**"Mayor"** means the person from time to time holding the office of Mayor of London as established by the GLA Act.

**"Nominated Representatives"** has the meaning given to that term in Clause 38.2.

**"Notice to Proceed"** has the meaning given to that term in Clause 17.7(b).

**"Notified Sum"** has the meaning given to that term in Clause 9.8.

**"Operator"** means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements.

**"Order"** means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 4, entered into by the Company and the Supplier.

**"Order Delivery Date"** means the date upon which the Goods or any part of them are actually delivered to the Delivery Address by the Supplier to the Company.

**"Order Price"** means the amount stated under the heading "Total Price" in the relevant Order.

**"Payment Application"** has the meaning given to that term in Clause 9.2.

**"Personal Data"** has the meaning given to it in the Data Protection Legislation **"Policies"**

means the policies set out in Clause 28.3.

**"Prescribed Period"** has the meaning given to that term in Clause 9.9.

**"Processing"** or **"processing"** has the meaning given to it in the Data Protection Legislation.

**"Prohibited Act"** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Agreement or any Contract or any other contract with

the Company; or

- (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any Contract or any other contract with the Company; or
- (b) entering into the Agreement or any Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before such Contracts were entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or
- (c) committing an offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts,in relation to the Agreement or any Contract or any other contract with the Company; or
- (d) defrauding or attempting to defraud the Company.

**"Public Procurement Termination Event"** means:

- (a) the Agreement or any Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
- (b) if the Company determines that the Agreement or any Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement Regulations.

**"Quality and Safety Plan"** means the Supplier's quality and safety plan set out in Schedule 6 as amended from time to time.

**"QUENSH"** has the meaning given to it in Schedule 6.

**"Regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

**"Rejected Goods"** has the meaning given to that term in Clause 14.2. **"Rejection"**

**Notice**” has the meaning given to that term in Clause 14.2.

**“Remediation”** means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).

**“Responsible Procurement Policy”** means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2006, updated in January 2008 and as may be amended.

**“Safety Breach”** means a material breach of any obligation under any Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on behalf of the Supplier) or any of its agents which has materially affected the safe operation of the Underground Network or the safety of the Company's customers, staff or any other person.

**“Specification”** means the description of the Goods set out in Schedule 3 Appendix 1 and to be provided by the Supplier in accordance with the Agreement.

**“Standards”** means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by the Company for the Supplier to supply the Goods in accordance with good industry practice. A full set of current Standards is available for the Supplier's use on-line at the LU Standards e-library or as notified to the Supplier.

**“Supplier Personnel”** means all employees, agents or consultants of the Supplier and the Supplier's subcontractors from time to time.

**“Supplier's Representative”** means the person appointed by the Supplier specified in Schedule 11 or as notified to the Company from time to time in accordance with Clause 30.

**“Term”** means the period specified as such in Schedule 1 to this Agreement.

**“TfL”** or **“Transport for London”** means Transport for London, a statutory body set up by the Greater London Authority Act.

**“TfL Group”** means Transport for London and all of its subsidiaries and their subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any **“member of the TfL Group”** refers to TfL

or any such subsidiary.

**"Transparency Commitment"** means TfL's commitment (applying to TfL, the Company and the rest of the TfL Group) to publish contracts, tender documents, and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments.

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

**"VAT"** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto, or in any primary or secondary legislation promulgated by the European Union or any official body or agency of the European Union, and any similar sales, consumption or turnover tax replacing or introduced in addition to the foregoing.

**"Variation Order"** means the written authorisation from the Company to a Variation Proposal in accordance with the Contract Variation Procedure.

**"Variation Proposal"** means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 5.

**"Volume Discount"** is the figure calculated annually in accordance with Clause 9.17.

**"Volume Discount Percentage"** is the volume discount percentage set out in Schedule 1 to the Contract.

**"Warranty Period"** the period specified as such in Schedule 1.

**"Working Day"** means any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday.

1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.

1.3 Where appropriate, the singular includes the plural and vice versa.

1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement and each Contract include its recitals and Schedules.

- 1.5 References to (or to any specified provision of) the Agreement and each Contract or any other document shall be construed as references to the Agreement and each Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and each Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the "**Company**" shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company includes any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Agreement and each Contract, the order of priority for the purpose of construction in descending order is:
- (a) the Clauses of the Agreement and each Contract;
  - (b) the Schedules to the Agreement and each Contract (equal priority but subject to Clause 1.10); and
  - (c) any other document referred to in, or incorporated by reference into, the Agreement and each Contract.
- 1.10 The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the clauses of the Agreement and each Contract and a provision of any other Schedule then the clauses of the Agreement and each Contract will take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Agreement and each Contract.

## **2 Duration and Option to Extend**

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement and subject to Clause 2.3
- 2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of the Contract and each Contract shall continue for the term set out in the relevant Contract.

- 2.3 The Company shall at its own discretion be entitled at any time prior to the expiry of the Term to inform the Supplier of its intention to extend the Term of the Agreement [REDACTED] [REDACTED] by a period of up to 4 (four) years. The provisions of the Agreement shall continue to apply mutatis mutandis to any such extension of the Term (other than this Clause 2.3 containing the option to extend) and subject to Clause 2.4. On receipt of such notice from the Company by the Supplier and the subsequent written agreement of the Supplier to any such extension by the Company, the Agreement shall be deemed extended accordingly.
- 2.4 At least twelve (12) weeks before an extension of the Agreement under Clause 2.3, the Company and the Supplier shall meet to discuss pricing for the extension of the Term. If the Supplier fails to attend any meeting to discuss, the prices shall remain unchanged for the extension of the Term. The price of any Goods may increase or decrease subject to a maximum increase reflecting the CPI for the month two months before the month in which the extension period commences and if no agreement is reached between the parties, the price of Goods shall increase by the CPI for the month two months before the month in which the extension period commences. This clause is without prejudice to other relevant provisions in this Agreement, including Clause 9.16 and Clause 9.17.

### **3 Supplier's Primary Obligations**

- 3.1 The Supplier shall supply the Goods to the Company in accordance with:
- (a) the terms set out in the Agreement (including the Schedules); and
  - (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,
- each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a "**Contract**".
- 3.2 When Goods are required by the Company, the Company shall give the Supplier an Order for the goods to be delivered and each Order so given shall be final, unless amended by oral or email agreement between the parties and followed up by an amended copy of the Order which the Company will issue to the Supplier and include the wording "updated Order" in the header text. All Orders, whether in the original or amended state (as contemplated by Clause 3.2) will be recorded in the order book sent by the Company Representative to the Supplier Representative each Accounting Period (or more often as the Company requires) and the Supplier shall acknowledge receipt of the order book and confirm details of the Orders included in it promptly to the Company and within three Working Days in any event.

In the case of the Company requesting Goods to be expedited, the Supplier will endeavour to meet this request, without altering delivery dates for other goods, unless agreed in writing in advance by the Company.

- 3.3 The Supplier shall ensure and warrants to the Company that the Goods will:
- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description; be of satisfactory quality and fit for the purpose for which they are intended;
  - (b) comply with all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network);
  - (c) comply with all Standards and any additional standards listed in Schedule 1 or in the Specification;
  - (d) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company;
  - (e) have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials, goods and equipment.
- 3.4 The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term, and comply with the minimum stock holding requirements, both in accordance with the requirements set out in the Specification
- 3.5 The Supplier warrants and undertakes that the Supplier has entered into and executed this Agreement and any Contract by the Supplier's duly authorised representative in accordance with all procedures required by its governing laws and contractual documents.
- 3.6 The Supplier warrants to the Company that, as at the date of this Agreement and each Contract, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016.
- 3.7 The Supplier shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the supply of Goods and the Quality and Safety Plan any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.8 It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals,

licences, permits and consents in relation to the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.

- 3.9 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.10 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Agreement or any Contract.
- 3.11 The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial works necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.
- 3.12 The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Agreement.
- 3.13 Not Used
- 3.14 Not Used

#### **4 Not Used**

### **5 Records and Audit**

- 5.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Agreement and each Contract and all transactions related to the Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:
- (a) all necessary information for the evaluation of claims or variations;
  - (b) management accounts, information from management information systems and any other management records;
  - (c) accounting records (in hard copy as well as computer readable data);
  - (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);

- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

5.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.

5.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 5.1 at any time during the period referred to in Clause 5.2.

5.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
- (b) 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 each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records

reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and

- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.

5.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.

5.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 5.1, free of charge within thirty (30) days of the Company's request for the same.

5.7 The Supplier shall and shall ensure that any sub-contractor or sub-supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

## **6 Company's Obligations**

6.1 The Company shall pay the Supplier the Order Price for the Goods in accordance with the terms of the relevant Contract.

6.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.

6.3 The Agreement is not an exclusive arrangement and nothing in the Agreement or any Contract operates to prevent the Company from engaging any other organisation or person to supply goods similar to or the same as the Goods.

## **7 Additional Goods**

7.1 The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Goods in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods, the relevant Contract shall be amended to include such Additional Goods, the Expected Order Delivery Date and the quoted price.

## 8 Variation

- 8.1 Unless the parties agree otherwise in writing, any variation to the Agreement or any Contract shall be made under the Contract Variation Procedure.
- 8.2 The Supplier shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

## 9 Price and Payment.

- 9.1 The prices for the Goods shall be the Order Price set out in the Order using the rates and prices set out in Schedule 2 and shall be inclusive of costs of packaging, carriage and insurance. The prices for the Goods in this Agreement or in respect of any Order shall only be changed in accordance with the Contract Variation Procedure.
- 9.2 The Supplier shall submit an application for payment to the Company's Representative for the Goods after the Order Delivery Date of such Goods (a "**Payment Application**"). If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application to the Company's Representative after the Order Delivery Date of each instalment.
- 9.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to assess and verify the Payment Application.
- 9.4 Not Used
- 9.5 The Company's Representative shall assess and verify the Payment Application in a timely manner. The Company's Representative shall notify the Supplier in writing not later than seven (7) days after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
  - (b) the basis on which the amount was calculated,

a "**Payment Certification**". It is immaterial for the purposes of this Clause 9.5 that the amounts referred to in Clauses 9.5(a) or 9.5(b) may be zero. Where the Company fails to comply with its obligations under this Clause 9.5 and there is an undue delay in assessing and verifying the Payment Application, the Payment Certification shall be regarded as issued for the purposes of Clause 9.8 after a reasonable time has passed.

9.6 Within six (6) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company. Any Loss or additional costs incurred by the Supplier or the Company in the correction or resubmission of a Payment Application or invoice will be at the Supplier's expense

9.7 The final date for payment ("**Final Date for Payment**") shall be ten (10) days after the date on which the Company's Representative received the applicable VAT invoice.

9.8 Subject to Clause 9.9 and any Abatement applied the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 9.5 (the "**Notified Sum**") on or before the Final Date for Payment. Payments shall be made by bank transfer (Bank Automated Clearance System - BACS) or such other method that the Company may choose and notify to the Supplier from time to time

9.9 If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Supplier in writing not later than one (1) day (the "**Prescribed Period**") prior to the Final Date for Payment of:

- (a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or
- (b) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 9.9 that the amounts referred to in Clause 9.9(a) or Clause 9.9(b) may be zero. The Company shall specify any applicable Abatement in such notice. Where a notice is given under this Clause 9.9, the Company's obligation to pay the Notified Sum under Clause 9.8 applies only in respect of the sum specified pursuant to this Clause 9.9.

9.10 Not Used

9.11 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. The Order Price for the Goods shall only be changed in accordance with the Contract Variation Procedure.

9.12 The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

9.13 In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the

Company and the Supplier:

- (a) any sum of money is recoverable from or payable by the Supplier; or
- (b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the Tfl Group

then the same may be set-off against and/or deducted and/or withheld from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any Contract.

- 9.14 Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.
- 9.15 All sums payable to the Company by the Supplier under each Contract and any applicable Abatement shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 9.16 The Supplier agrees that if at any time during the Initial Period it supplies any Goods to a comparable customer for less than the Order Price, it shall reduce the relevant rates and prices to match the lower price for so long as the lower price is available (but for no longer) and shall refund the Company the difference between the Order Price and the lower price in respect of its purchases of the Goods after the Supplier began charging the lower price. For the purposes of this Clause 9.16, 'comparable' means a customer that purchases products in substantially similar volumes as the Company on broadly similar terms and conditions.
- 9.17 The Company calculates the Volume Discount annually by applying the relevant Volume Discount Percentage to the Aggregated Annual Spend. The Company issues an invoice to the Supplier for the Volume Discount. The Supplier pays the Volume Discount to the Company within 30 days of receipt of the invoice.
- 9.18 No payment made by the Company will indicate or be taken to indicate the Company's

acceptance or approval of any part of the Goods delivered or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement and any Contract or otherwise.

## **10 Delivery of Goods**

- 10.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date and on the times stated in the Order and at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 10.2 The time of delivery of the Goods shall be of the essence in respect of each Contract.
- 10.3 Not Used.
- 10.4 Not Used
- 10.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract. Metal banding must not be used in any packaging.
- 10.6 The Supplier shall provide a detailed delivery note stating the relevant Contract Reference Number, Order number (given on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods in accordance with Clause 37. On receipt of a request from the Company's Representative, the Supplier shall send by email a duplicate copy of the Delivery Note to the Company. A certificate of conformity must be supplied with the Delivery Note setting out the following information:
- (a) the unique identification of the certificate of conformity;
  - (b) the name and contact address of the issuer of the certificate of conformity;
  - (c) the LUL Trains Division purchase order number;
  - (d) the description of the Goods to which the certificate of conformity relates (serialised items must have their individual serial numbers stated on the document);
  - (e) the statement of conformity;
  - (f) a complete and clear list of drawing numbers and standards used;
  - (g) the date and place of issue of the certificate of conformity;

- (h) the signature (or equivalent sign of validation), name and function of the authorized person(s) acting on behalf of the supplier;
  - (i) all associated documents (e.g. material analysis certification, test reports and certificates) must be referenced in the certificate of conformity to maintain traceability between documents; and
  - (j) to comply with the latest Control of Substances Hazardous to Health (COSHH) Regulations the Supplier must provide, if applicable, a material data sheet with this product.
- 10.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 10.8 Not Used.
- 10.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 13.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of subcontractors and other persons dealing with any such Goods.
- 10.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over- delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate
- 10.11 Notwithstanding Clause 10.6 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) days notice of the revised Delivery Date (the "Revised Delivery Note").

## **11 Supplier Performance**

- 11.1 On the date that the Company's Representative receives the first Payment Application and every 4 weeks after that date, the Company assesses the Supplier's performance under the Agreement and each Contract in accordance with Schedule 10.
- 11.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 10; and
  - (b) use the escalation process stated in Schedule 10 to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 10.

## **12 Failure to Supply**

- 12.1 Without prejudice to any other right or remedy of the Company under this Agreement and each Contract, and its rights under Clause 17, if the Supplier fails to supply the Goods or any part to the Company's satisfaction the Company may give the Supplier at least seven (7) days' notice in writing (except in an emergency when no notice need be given) requiring the Supplier to remedy such failure. If the Supplier fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the supply of the Goods or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 12 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 12.2 For the purposes of Clause 12.1 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 12.1 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 12.1.

## **13 Risk and Ownership**

- 13.1 Risk of damage to or loss of, the Goods shall pass to the Company upon counter-signature by

the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 14.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 14.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.

13.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

#### **14 Inspection of the Goods**

14.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.

14.2 If, following the inspection referred to in Clause 14.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, conforming to the Specification and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").

14.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company's option:

- (a) replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
- (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
- (c) pay the Company's Losses resulting from the Supplier's delivery of Goods that were not in conformity with the terms of the relevant Contract.

14.4 The Company's rights and remedies under this Clause 14 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the relevant Contract by the Sale of Goods Act 1979.

14.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 14.3(a), the Company may, without affecting its rights under Clause 14.3(c), obtain substitute goods from a

third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall promptly reimburse the Company for the costs it incurs in doing so.

- 14.6 The Goods shall conform in all respects with any sample approved by the Company and in the absence of a sample; all the Goods provided shall be within the normal limits of industrial quality.

## **15 Warranty**

- 15.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.
- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of the relevant Contract and the provisions of Clauses 10, 13 and 14 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 10 or, where applicable, re-delivers the Goods in accordance with this Clause 15.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.

## **16 Intellectual Property Rights**

- 16.1 Existing Contracts  
The Agreement is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.
- 16.2 Vesting of Intellectual Property Rights created under this Agreement or any Contract

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

### 16.3 Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 16.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 16.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

### 16.4 Company's Licence to use the Supplier's Intellectual Property Rights

The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 16.3 for the purposes of:

- (a) understanding the Goods;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Goods;
- (c) extending, interfacing with, integrating with, connecting into and adjusting the Goods;
- (d) enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) executing and completing the provision of the Goods; and
- (f) enabling the Company to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

### 16.5 Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 16.2, 16.3 and 16.4 above; and