

DATED 21ST FEBRUARY 2017

(1) TUBE LINES LIMITED

and

(2) THALES TRANSPORT AND SECURITY LIMITED

and

(3) THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED

Deed of Novation and Restatement

to a

Technical Support and Spares Supply Agreement

(Contract No: TLL 7658)

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THIS AGREEMENT is made as a DEED on 21ST FEBRUARY 2017

BETWEEN:

- (1) **TUBE LINES LIMITED (Company No. 3923425)** whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("the **Client**"); and
- (2) **THALES TRANSPORT AND SECURITY LIMITED (Company No. 03132438)** whose registered office is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Weybridge, Surrey, KT15 2NX ("the **Outgoing Supplier**"); and
- (3) **THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (Company No. 05805963)** whose registered office is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Weybridge, Surrey, KT15 2NX ("the **New Supplier**"),

together referred to as the "**Parties**" and individually a "**Party**".

WHEREAS:

- (A) The Client and the Outgoing Supplier entered into a contract dated 18 August 2013 for the provision of technical support and supply of spares as amended by supplemental agreements dated 23 May 2014 and 12 August 2016 (reference TLL 7658) (the "**Original Contract**").
- (B) The Outgoing Supplier wishes to transfer all its rights, obligations and liabilities under the Original Contract to the New Supplier.
- (C) The Parties have agreed to amend and restate the terms of the Original Contract as set out hereinafter.

NOW IT IS AGREED as follows:

1. **INTERPRETATION**

1.1 **Definitions in Contract**

Unless the context otherwise requires and save as mentioned below, words and expressions defined in the Contract shall have the same meanings when used in this Agreement. In this Agreement:

"**Original Contract**" means the contract referred to in Recital (A) above

"**Restated Contract**" means the Original Contract as amended and restated by this Agreement in the form set out in the Annex to this Agreement.

1.2 **Interpretation of Contract**

In this Agreement:

1.2.1 references in the Contract to "this Contract" shall, with effect from the Effective Date and unless the context otherwise requires, be references to the Contract as amended

and restated by this Agreement and words such as “herein”, “hereof”, “hereunder”, “hereafter”, “hereby” and “hereto”, where they appear in the Contract, shall be construed accordingly.

1.2.2 where there is any inconsistency between this Agreement and the Contract the terms of this Agreement shall prevail.

1.2.3 references to clauses are to clauses of this Agreement;

1.2.4 reference to any statute of statutory provisions shall be construed as a reference to it as it may have been or may in the future be amended, modified or re-enacted and to any statutory instrument, order, bye-law or other provisions that may have been or may in future be made under it.

1.2.5 reference to any document or to any provision of any document is to that document or provision as amended, varied, supplemented, re-stated or novated from time to time; and

1.2.6 headings to clauses are for convenience only and do not affect the interpretation of this Agreement.

2. EFFECTIVE DATE

The amendments to be made to the Contract by this Agreement shall take effect on and from 18 February 2017 (the “**Effective Date**”).

3. NOVATION

With effect from the Effective Date:

3.1 the Outgoing Supplier transfers all of its rights and obligations under the Contract to the New Supplier;

3.2 the New Supplier undertakes to perform the obligations of the Outgoing Supplier under the Contract and be bound by their terms in every way as if the New Supplier is and had been named at all times as a party to the Contract in lieu of the Outgoing Supplier;

3.3 the Client releases and discharges the Outgoing Supplier from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Supplier in relation to the Contract in lieu of the liability of the Outgoing Supplier and agrees to perform the Contract and be bound by their terms in every way as if the New Supplier were and had been a party to the Contract at all times in lieu of the Outgoing Supplier;

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

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

3.4.2 any and all rights, claims, counter-claims, demands and other remedies of the Outgoing Supplier against the Client accrued under or in connection with the Contracts prior to the date hereof shall be exercisable by the New Supplier against the Client;

- 3.5 each of the Client and the New Supplier shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date, as though the New Supplier were the original party to the Contract instead of the Outgoing Supplier; and
- 3.6 the Contract shall in all other respects remain in full force and effect as between the Client and the New Supplier in accordance with its terms.

4. AMENDMENTS TO THE CONTRACT

The New Supplier and the Client agree that the Contract shall, with effect from the Effective Date be amended and restated in the form set out in Annex 1 to this Agreement so that the rights and obligations of the parties to the Restated Contract shall, on and from that date, be governed by and construed in accordance with the provisions of the Restated Contract.

5. CONTINUATION OF CONTRACT

Save as amended by this Agreement, the provisions of the Original Contract shall continue in full force and effect and the Restated Contract and this Agreement shall be read and construed as one instrument.

6. NOTICES

The provisions of clause 40 of the Original Contract shall apply to this Agreement as if set out in full and so that references in those provisions to "this Agreement" shall be construed as references to this Agreement and references to "party" or "parties" shall be construed as references to parties to this Agreement.

7. COUNTERPARTS

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same Agreement.

8. PARTIAL INVALIDITY

If any provision of this Agreement or its application is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications of this Agreement are not affected or impaired. If any adjudication, litigation or arbitration determines that any provision of this Agreement is in any way unenforceable, that provision is amended or modified to the extent necessary to give the provision a valid legal and enforceable effect which is as similar as possible to the ineffective provision and is reasonably consistent with the purpose and intent of this Agreement.

9. FURTHER ASSURANCE

Each of the Parties agrees to perform (or use all reasonable endeavours to procure the performance of) all further acts and things, and execute and deliver (or use all reasonable endeavours to procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable to implement and/or give full effect to this Agreement and the transaction contemplated by it.

10. AMENDMENTS IN WRITING

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by the Client or the Client Representative on its behalf and expressed to be supplemental to this Agreement.

11. THIRD PARTY RIGHTS

11.1 Subject to clause 11.2, the Parties do not intend that any of the terms of this Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

11.2 The Contracts (Rights of Third Parties) Act 1999 applies to this Agreement to the extent that: any member of the Tfl Group has the right to enforce any provision contained in this Agreement against the Supplier where such provision confers any benefit or purports to confer a benefit on such member.

12. GOVERNING LAW AND JURISDICTION

This Agreement and all matters arising from it, or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

13. LIMITATION PERIOD

Notwithstanding the execution of this Agreement as a deed, the Parties agree that the limitation period applicable under this Agreement will be six years.

1035

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

The Common Seal of
TUBE LINES LIMITED
was affixed to THIS DEED
in the presence of:

REDACTED
REDACTED



Authorised Signatory

Signature:

SHARON LEWIS

Name:

EXECUTED as a DEED by
THALES TRANSPORT AND SECURITY
LIMITED
acting by:

)
)
)
)

Authorised Signatory REDACTED
REDACTED

Signature:

Name: Karen L Hill, Commercial Director

and

Authoris REDACTED
Signatur REDACTED
Name:

MARK TERRY, DIRECTOR

EXECUTED as a DEED by
THALES GROUND TRANSPORTATION
SYSTEMS UK LIMITED
acting by:

)
)
)
)

Authorised Signatory REDACTED
REDACTED
REDACTED

Signature:

Name: Karen L Hill, Commercial Director

and

Authori: REDACTED
Signatu REDACTED
Name:

MARK TERRY, Director

ANNEX
RESTATED CONTRACT

DATED 18 August 2013, and amended and restated on 21st FEBRUARY 2017

- (1) TUBE LINES LIMITED
- (2) THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED

**TECHNICAL SUPPORT AND SPARES
SUPPLY AGREEMENT**

**CONTRACT REFERENCE NUMBER:
TLL 7658**

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THIS AGREEMENT made on 18 August 2013, and amended and restated on
21ST FEBRUARY 2017

BETWEEN

- (1) **TUBE LINES LIMITED** (CRN: 03923425), a company incorporated in England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Client**"); and
- (2) **THALES TRANSPORT AND SECURITY LIMITED** (CRN: 03132438), as novated by the Deed of Novation and Restatement to **THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED** (CRN: 05805963), a company incorporated in England and Wales whose registered office is at 2 Dashwood Lang Road, Bourne Business Park, Addlestone, Nr Weybridge, Surrey, KT15 2NX (the "**Supplier**").

BACKGROUND

- A. The Client has previously entered into an agreement with the Supplier dated 1 October 2003 for transmission based train control systems in connection with the Northern Line, Piccadilly Line, Jubilee Line and CCCP (as subsequently amended by Supplemental Agreements Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11) and the Co-Location Agreement in relation to works to be carried out by the Contractor under the TBTC Contracts. The Client has also entered into a framework agreement with the Supplier dated 13 January 2017 relating to ATC System works to the Jubilee and Northern Lines. The contracts referred to in this paragraph are together "**the TBTC Contracts**".
- B. The Supplier has agreed with the Client to provide technical and spares support for the TBTC System on the terms set out in this Agreement.
- C. For the avoidance of any doubt, this Agreement is not supplemental to, and does not amend or in any way affect, the rights and obligations of the Supplier and the Client under the TBTC Contracts.
- D. The Client and the Supplier have agreed to vary the scope and terms of this Agreement, with effect from the Restatement Effective Date, by entering into a deed of amendment and restatement on or around the Restatement Effective Date (the "**Deed of Novation and Restatement**").

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms shall have the following meanings :

"**Access**" means access to the LUL Network;

"**Access Procedure**" means the procedure of that name governing rights of Access to the LUL Network included in the TBTC Contracts;

"**Accounting Period**" means the Client's accounting periods as set out in SCHEDULE 19 or as notified from time to time by the Client to the Supplier each such period being of between 25 and 32 days and one of 13 periods during the Client's Financial Year;

"**Act**" is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

"**Adjudication Rules**" means the rules referred to in clause 48.3;

"**Assessment Date**" means the last day of each Accounting Period;

"**Associated Company**" means any division or subsidiary of the Supplier or any division or subsidiary of the Supplier's parent company or any other company in the same group as the Supplier and includes TRSSL;

"**Best Industry Practice**" means the standards of performance and care which pertain from time to time in the upper quartile of the rail signalling support services industry;

"**Cessation Plan**" means a plan agreed between the parties or determined by the Client in accordance with clause 9.7 to give effect to a Declaration of Ineffectiveness;

"**Client Representative**" means such person as nominated in writing by the Client or such other person as may replace them in accordance with clause 23A;

"**Computer Viruses**" means viruses, worms, time locks or anything else that would impair performance of any software and/or the Supported Systems as they might reasonably be expected to operate;

"**Confidential Information**" means information not generally available to the public disclosed or caused to be disclosed, either orally or in writing, pursuant to this Agreement (including, without limitation, any financial data, business and other plans, specifications, equipment designs, electronic configurations, design information, product architecture, algorithms, quality assurance plans, inventions (whether or not the subject of pending patent applications but excluding patents or patent applications published by the relevant patent office), ideas, discoveries, formulae, models, requirements, standards, trade, know-how and manufacturing secrets, drawings, samples, devices, computer programs, demonstrations, technical information) which is marked confidential, or otherwise specified as confidential at the time of disclosure or which, in the circumstances, would reasonably appear to be confidential, including any information or records referred to in clause 19.1;

"**Connected Persons**" means all and any of the Supplier's and Associated Company's employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

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

"**Corporate IPRs**" means the trade marks, trade names and other Intellectual Property Rights notified by the Client from time to time;

"**COTS**" means commercial off the shelf software or hardware which is standard, freely commercially available and not developed or modified by the Supplier;

"**Critical Defect**" means a Defect in Spares, Materials and Equipment which appears during the applicable Warranty Period and which is:

(a) critical to the operation and safety of the LUL Network;

or

(b) critical to the carrying out the Services and/or the work of Others;

"**Date of Commencement**" means the date for commencement of this Agreement as specified in Schedule 1 (Agreement Particulars);

"**Declaration of Ineffectiveness**" means a declaration of ineffectiveness in relation to this Agreement made by a court of competent jurisdiction in accordance with Regulation 99 of the Public Contracts Regulations 2015 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended);

"**Defect**" means, subject to paragraph 2.7 of Schedule 6, a non-compliance of the Spares, Materials or Equipment with the Spares and Repairs Catalogue, the Specification or any other requirement of this Agreement in each case being discovered or becoming manifest during the relevant Warranty Period, and to the extent not caused or contributed to by (1) the Client's failure to act in accordance with any express operational and/or maintenance instructions contained in the Documentation or otherwise delivered by the Supplier, or (2) the Client's breach of this Agreement;

"**Deliverables**" means any Documentation, software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services;

"Documentation" means the operating manuals, user instructions, technical literature and all other related materials supplied to the Client by the Supplier or TRSSL for aiding the use and application of the Spares, Materials and Equipment and any Software;

"Duty Operations Engineer" means the duty operations engineer named in Schedule 1 (Agreement Particulars) or any other person so appointed from time to time;

"Economic and Consequential Loss" means:

- (a) any special, indirect, incidental or consequential damages of any kind; and
- (b) any loss of an economic or financial nature (whether direct or indirect) including but not limited to any loss of use, profit, income, revenue (including but not limited to abatements, adjustments or loss of bonus) business, anticipated savings or reputation, whether actual or prospective, even if foreseeable and/or arising from the indemnifying Party's negligence;

"Expiry Date" means the date being five years from the Restatement Effective Date;

"Financial Year" means each year commencing on 1st April and ending on 31st March the following calendar year;

"Fixed Price Period" means the period during which the Support Fees will not be adjusted for indexation in accordance with clause 3.6, being the period of three years immediately following the Restatement Effective Date;

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

"Force Majeure Events" 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 this Agreement 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 this Agreement 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, strikes, lock outs other than where such action is being undertaken by the affected Party's own workforce, or the workforce of Subcontractors or suppliers, an Associated Company or a member of the TfL Group;
- (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 LUL network;
- (d) lightning, earthquake or, subject to the proviso in relation to flooding 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;
- (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; and
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs;

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

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

"Infraco" means any of or all of LUL Nominee BCV, LUL Nominee SSL and the Client and their respective successors in title and assigns;

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

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights in any part of the world and shall include: patents (including supplementary protection certificates), utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, registered designs, unregistered rights in designs, semiconductor and topography rights, copyrights and neighbouring rights, database rights, trade secrets, know-how, inventions, technical or commercial knowledge, and manufacturing or business processes, methods and procedures and in each case rights of a similar or corresponding character, all applications and rights to apply for the protection of any of these rights and Confidential Information relating to these rights together with any material embodying these rights;

"KPIs" means the key performance indicators set out in the Performance Schedule;

"Licensed Programs" means the systems, applications and computer programs specified in the Specification, and all releases upgrades, updates and versions thereof;

"Losses" means any expense, liability, loss (excluding Economic and Consequential Losses) claims, fines, damages, costs (including reasonable legal and other professional fees and disbursements), penalties, settlements and judgments directly incurred;

"LUL" means London Underground Limited (No. 1900907) whose registered office is at 55 Broadway, London SW1H 0BD, or its successor in title or assignee;

"LUL Network" means the stations and depots (wherever situated), assets, systems, track and other infrastructure which are used at any time in the maintenance and provision of the underground service known as "London Underground";

"LUL Nominee BCV" means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee;

"LUL Nominee SSL" means LUL Nominee SSL Limited (No. 06242508) or its successor in title or assignee;

"Modification" means any modification to the Supported Systems acquired by the Client (whether under the TBTC Contracts or this Agreement or any other agreement between the Supplier and the Client);

"Non-GBP Spares, Materials and Equipment" means those items of Spares, Materials and Equipment identified in the Spares and Repairs Catalogue from time to time as being priced for the Supplier in Canadian Dollars or Euros in accordance with clause 3.2;

"**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;

"**Optional Service**" means any of the services listed in Schedule 4 as optional services with a separate rate for the same;

"**Order**" means an order for Optional Services referred to in clause 6A and in the form set out in Schedule 5;

"**Organisation Chart**" means a chart showing the structure and organisation of the Support Staff and other relevant staff as may be updated from time to time in accordance with clause 23.8 and clause 25;

"**Others**" are people or organisations who are not the Client, the Supplier, an Associated Company (whether working under this Agreement, the TBTC Contracts or any other contract related to the Project) or any employee, Subcontractor or supplier of the Supplier or an Associated Company;

"**Party**" or "**Parties**" are the Client (which expression includes its successors in title and assigns) and the Supplier;

"**Pay Less Notice**" means the notice referred to in clause 3.11;

"**Permitted Purposes**" means the purposes referred to in clause 32.3(a);

"**Performance Schedule**" means Schedule 8, unless later changed in accordance with clause 31;

"**PFI Contract**" means, in each case, the main project contract entered into or to be entered into by the Client and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion Order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);

"**PFI Contractors**" means those contractors who have entered into or will enter into PFI Contracts and as notified in writing from time to time by the Client;

"**Prohibited Act**" means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or the Client or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with LUL or the Client; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with LUL or the Client;
- (b) entering into this Agreement or any other contract with LUL or the Client in connection with which commission has been paid or has been agreed to be paid by the Supplier or an Associated Company or on its behalf or to its knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Client;
- (c) committing any offence:
- (i) under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - (ii) under any law or legislation creating offences in respect of fraudulent acts,
 - (iii) at common law in respect of fraudulent acts, or
 - (iv) in relation to this Agreement or any other contract with LUL or the Client; or
- (d) defrauding or attempting to defraud LUL or the Client;

"Project" means the provision of transmission based train control systems in connection with the Northern Line, Piccadilly Line, Jubilee Line and the CCCP;

"QUENSH" means the Client's Quality, Environmental, Safety and Health conditions (as updated and amended from time to time) and the associated QUENSH Conditions Menu attached at Schedule 11;

"Release Event" means an event the occurrence of which shall entitle the Supplier to apply to the third party for release of the Source Code Material from escrow in accordance with the provisions of the software escrow agreement referred to in clause 32.13;

"Repair/Replacement Date" REDACTED REDACTED REDACTED REDACTED
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"Responsible Procurement Principles" mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;

"Restatement Effective Date" means the date of amendment and restatement of this Agreement as specified in Schedule 1 (Agreement Particulars);

"Safety Breach" means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the Supplier or any Subcontractor (or anyone employed or acting on behalf of the Supplier or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the works, the safe operation of the LUL Network and/or the safety of LUL's customers, staff or any other person;

"Services" means the services performed or to be performed under this Agreement as identified in the Specification and elsewhere in this Agreement and includes (as appropriate) the Standard Support Service and any Optional Services or Variations;

"Site" means any location on the LUL Network where the Supplier carries out the Services in accordance with this Agreement;

"Software" means the stand-alone software or the software bundled with or embedded in the Spares, Materials and Equipment;

"Source Code Material" means the source code of any software provided or supplied by the Supplier in relation to Spares, Materials and Equipment (or any component part thereof) pursuant to the terms of this Agreement and all technical information and documentation required to enable the Supplier to modify and operate such software, provided that for the purposes of this Agreement "Source Code Material" will not include such source code, technical information and/or documentation to the extent that the same has already been deposited, and is being retained, in an escrow account in favour of the Client pursuant to the TBTC Contracts;

"Spares, Materials and Equipment" means all equipment, goods, materials, software and things of all kinds to be supplied, repaired and/or overhauled by the Supplier to or for the Client under this Agreement including those items specified in the Spares and Repairs Catalogue but excluding Supplier's Equipment;

"**Spares and Repairs Catalogue**" means a comprehensive catalogue including the information referred to at paragraph 2.2 of the Specification, as may be updated and accepted by the Client Representative from time to time;

"**Specification**" means the specification for the Services at Schedule 6;

"**Standards**" means the various standards documents and associated codes of practice identified in the Specification as applicable to the Services;

"**Standard Support Service**" means all of the services to be provided under this Agreement which are not Optional Services, including the support service more particularly described in paragraphs 4 (save where there is a reference to the Variation process) and 5 (save where there is a reference to the Variation Process) of the Specification;

"**Subcontractor**" is a person or corporate body who has a contract or purchase order with the Supplier or an Associated Company to provide part of the Services, or to supply Spares, Materials and Equipment and/or services specifically for the Services;

"**Supplier Representative**" means such person as nominated in writing by the Supplier or such other person as may replace them in accordance with the terms of this Agreement;

"**Supplier's Equipment**" means items provided by the Supplier and used by him to carry out the Services which this Agreement does not require him to provide to the Client in the performance of the Services;

"**Support Fees**" means the fees payable for the Services under this Agreement, being (where the context so requires) each or any of the following:

- (a) the charges for the Standard Support Service in accordance with the agreed rates set out in Schedule 2;
- (b) any charges for Optional Services in accordance with the agreed rates set out in Schedule 4; and/or
- (c) any Variations;

in each case as the same may be amended from time to time in accordance with clause 30;

"**Support Manager**" means the person appointed by the Supplier from time to time in order to fulfil the role described in clause 23;

"**Support Payment**" means the amount payable by the Client in consideration of the due performance of the Services calculated in accordance with this Agreement;

"**Supported Systems**" has the meaning set out in clause 5;

"**Support Staff**" means those officers, employees, agents or subcontractors of the Supplier connected with this Agreement, including those individuals who perform the Supplier's obligations under this Agreement and (where the context permits) the Support Manager;

"**TBTC Contracts**" has the meaning given in Recital A;

"**TBTC System**" means the Thales Seltrac Transmission Based Train Control (TBTC) system designed and installed by TRSSL as the Contractor under the TBTC Contracts;

"**TfL Group**" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The Client is a member of the TfL Group;

"**Technical Support and Spares Plan**" means the plan referred to in clause 25;

"**Transfer Regulations**" means all or any of the following:

- (a) the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- (b) the Transfer of Employment (Pension Protection) Regulations 2005;
- (c) any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies,

as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations;

"**Variation**" has the meaning given in clause 30 of this Agreement; and

"**Warranty Period**" means the period of 12 months (or such other period as may be specified in respect of the relevant Spares, Materials and Equipment to the Client in the Spares and Repairs Catalogue) from the Repair/Replacement Date of the relevant Spares, Materials and Equipment (and such period shall continue to apply regardless of whether the Expiry Date has occurred), provided that where Defects in or damage to Spares, Materials and Equipment have been made good by the Supplier under this

Agreement, the relevant period shall apply in full to the repaired or replaced Spares, Materials and Equipment from the Repair/Replacement Date.

- 1.2 This Agreement shall comprise these conditions of agreement (clauses 1 to 58) together with the Schedules and other documents referred to herein. In the event of any conflict between these conditions of agreement and the Schedules hereto, the terms of these conditions of agreement shall take precedence to the extent of such conflict.
- 1.3 Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded. For the avoidance of doubt, nothing in this sub-clause shall prevent or restrict the Supplier from performing the Services or correcting Defects on any day.
- 1.4 Week means a continuous period of 7 days.
- 1.5 Unless the context otherwise requires:
- (a) words importing the singular include the plural and vice versa;
 - (b) words importing persons or parties include firms, companies, corporations and any organisations having legal capacity;
 - (c) capitalised terms in the recitals have the meanings set out in clause 1.1;
 - (d) references to the Supplier and the Client include their permitted successors and assigns;
 - (e) references to statutory provisions include those statutory provisions as amended or re-enacted;
 - (f) references to clauses, sub-clauses and schedules are references to the clauses, sub-clauses and schedules of this Agreement;
 - (g) references to one gender includes a reference to the other genders;
 - (h) references to a "Party" mean the Client or the Supplier;
 - (i) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.6 The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.

2. DATE OF COMMENCEMENT AND TERM

2.1 This Agreement shall commence upon the Date of Commencement and, save in the event of earlier termination, shall continue until the Expiry Date.

3. SUPPORT FEES

3.1 In consideration of the Services to be provided by the Supplier under this Agreement, the Client shall pay the Supplier the Support Payment in accordance with SCHEDULE 2 and as otherwise specified in this Agreement.

3.2 The Client acknowledges that the Non-GBP Spares, Materials and Equipment are procured by the Supplier from its Affiliates in Canada or Europe (excluding the UK), as applicable, and that such supply is paid for by the Supplier in Canadian Dollars or Euros, as applicable. The Spares and Repairs Catalogue shall indicate in respect of each item of Non-GBP Spares, Materials and Equipment the currency applicable to that item for the purposes of clause 3.6A

3.3 The Supplier warrants and undertakes to the Client that the rates included in the Support Fees under this Agreement (including any rates in the Spares and Repairs Catalogue) shall be no less favourable to the Client than any fees for comparable services in comparable volumes carried out by the Supplier for any non-associated company of it from time to time.

3.4 The Client shall, to the extent that the relevant activities are not agreed by the parties to constitute Variations to be paid for by way of the Support Fees, reimburse the Supplier its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) for correcting faults not related to the Supported Systems and faults resulting from operation other than in accordance with instructions for use except where the fault has been caused by the Supplier or an Associated Company or by the Client acting with the approval of or in accordance with the Documentation and/or any directions from the Supplier or an Associated Company. The reimbursement of such costs shall be in addition to the Support Fees.

3.5 The Support Fees are inclusive of all disbursements, costs, and expenses incurred by the Supplier in the discharge of its obligations hereunder in relation to the Services other than the correction of faults to the extent described in clause 3.4, but exclusive of Value Added Tax. Save as set out in clause 3.6 below and clause 30 (Variations), the Support Fees shall not be adjusted in respect of any increase or decrease of costs to the Supplier in performing the Services or otherwise. The Support Fees are deemed to be inclusive of all ancillary and other works and services necessary to provide the Services, whether separately or specifically mentioned or described in this Agreement or reasonably implied.

3.6 Following the expiry of the Fixed Price Period, the Supplier may increase the following agreed rates in accordance with the terms of this clause 3.6 and any such increases shall be calculated with effect from 1 April of each year during the remaining currency of this Agreement (the "**Indexation Date**"):

- (a) the rates for Optional Services referred to in Schedule 4 may be increased by an amount equal to the percentage increase of the 1980 BEAMA Electrical Engineering Labour Index for Main Contract and Sub-Contract Labour (or its successor from time to time) in the 12 month period immediately preceding the relevant Indexation Date; and
- (b) the rates for any Spares, Materials and Equipment which are listed in the first accepted Spares and Repairs Catalogue may be increased by an amount equal to the percentage increase of the RPIX for Main Contract and Sub-Contract Materials, Equipment and Plant Table RP05, January 1987 = 100 (CHMK) (or its successor from time to time) in the 12 month period immediately preceding the relevant Indexation Date.

For the purposes of this clause 3.6, the versions of the relevant indices to be used for the calculation of any increase in the respective rates will be the versions of each index most recently published prior to, respectively, the commencement and expiry of the relevant 12 month period preceding the Indexation Date

PROVIDED THAT for the purposes of the Indexation Date falling on 1 April 2020 the words "12 month period immediately preceding the relevant Indexation Date" in sub-clauses 3.6(a) and 3.6(b) above shall be deemed to have been substituted with "period from the end of the Fixed Price Period to 1 April 2020" and in those circumstances the versions of the relevant indices to be used for the calculation of any increase in the respective rates will be the versions of each index most recently published prior to, respectively, the third anniversary of Restatement Effective Date and 1 April 2020.

3.6A The rates for any Non-GBP Spares, Materials and Equipment which are listed in the then current Spares and Repairs Catalogue shall, at the request of either party, be adjusted by an amount equal to the percentage change (increase or decrease) in the exchange rate of Canadian Dollars or Euros (as applicable) to Sterling in the 12 month period immediately preceding and ending on the relevant Indexation Date. For the purposes of this clause 3.6A, the versions of the relevant exchange rates to be used for the calculation of any adjustment to the respective rates will be those quoted on the relevant Bloomberg BFIX screen at 10.00 on the first and last days of the relevant 12 month period.

3.7 The Supplier shall submit an application for payment of:

- (a) the relevant Support Fees in respect of the supply of Spares, Materials and Equipment according to the applicable rates and prices determined in accordance with paragraph 2 of the Specification after the delivery date of such Spares, Materials and Equipment; and
- (b) the remaining Support Payment for an Accounting Period on the relevant Assessment Date,

in each case stating the sum that the Supplier considers to be due to it and the basis on which the sum has been calculated. An application by the Supplier for a payment shall clearly show the Contract Reference Number and, if applicable, any associated AVC, and must be supported by any supporting information reasonably requested by the Client to enable the Client to check the payment application (including, without limitation, the appropriate Accounting Period report for any application submitted under paragraph (b)).

- 3.8 The due date for payment shall be fourteen (14) days after: (i) the Client's receipt of the Supplier's application under clause 3.7, or (ii) if later in respect of an application submitted under clause 3.7(b), the relevant Assessment Date. Not later than five days after the due date, the Client or the Client Representative shall issue a Contract Payment Approval Form ("**CPAF**") stating the amount the Client or Client Representative considers is due to the Supplier and the basis on which it is calculated. The CPAF is the Client's notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is due.
- 3.9 Within seven (7) days of receipt of a CPAF, the Supplier shall deliver to the Client a VAT invoice in the amount stated in the CPAF. The Client shall reimburse the Supplier in respect of the amount due under the VAT invoice (subject to any Pay Less Notice given under clause 3.11) on or before the final date for payment which shall be thirty (30) days from the relevant due date. The Supplier shall also deliver a corrected VAT invoice where required within seven (7) days of receipt of a Pay Less Notice.
- 3.10 If the CPAF is not given in accordance with clause 3.8, the amount of the payment to be made by the Client shall, subject to any Pay Less Notice given by the Client under clause 3.11, be the sum stated as due in the application referred to in clause 3.7.
- 3.11 If either Party intends to pay less than the notified sum, it shall not later than five (5) days (the prescribed period) before the final date for payment give the other Party a notice stating the amount considered to be due and the basis on which that sum is calculated (the "**Pay Less Notice**"). A Party does not withhold payment of an amount due under this Agreement unless it has notified its intention to pay less than the notified sum as required by this Agreement. In the case of the Client, the Pay Less Notice may be given by the Client Representative. In relation to the requirements for the giving of

notices under this clause 3, it is immaterial that the amount then considered to be due may be zero.

3.12 No fee shall be chargeable for time loss due to illness, voluntary leave or statutory, public or local holidays.

4. SPARES AND REPAIRS REQUISITIONS AND THE SPARES AND REPAIRS CATALOGUE

4.1 The Supplier agrees to provide the spares and repairs service pursuant to paragraph 2 of the Specification for:

- (a) the rates and prices set out in the Spares and Repairs Catalogue (as may be increased for indexation and/or currency exchange rate movements in accordance with clause 3.6 and clause 3.6A); or
- (b) where the Client requires the repair, overhaul or supply of Spares, Materials and Equipment in connection with the TBTC System and that service or supply is not priced, or is not referred to, in the Spares and Repairs Catalogue, at competitive, open-market rates and prices,

in each case if requested by the Client in accordance with clause 4.2.

4.2 Whenever the Client requires the provision of the spares and repairs service pursuant to paragraph 2 of the Specification, it shall issue a written requisition for such spares and repairs service to the Supplier in the form of the purchase order set out in Schedule 3.

4.3 The terms of this Agreement shall apply to any requisition for the spares and repairs service pursuant to paragraph 2 of the Specification. The Supplier shall be entitled to payment for the spares and repairs service properly supplied in accordance with this Agreement at the rates and prices referred to in clause 4.1 provided that the Supplier is in receipt of a written requisition in the form referred to in clause 4.2 signed by the Client Representative or his delegate. The Client shall not be obliged to request any spares and repairs service or any Optional Services.

4.3A The Supplier shall submit a revised Spares and Repairs Catalogue to the Client Representative for acceptance as soon as practicable after the Restatement Effective Date.

4.4 The Supplier shall, to the extent necessary, revise the Spares and Repairs Catalogue annually to take into account:

- (a) changes in technology, supply chain and obsolescence; and

- (b) changes in the relevant indices and/or exchange rates in accordance with clauses 3.6 and 3.6A,

and shall resubmit it to the Client Representative for acceptance, in accordance with paragraph 2.2 of the Specification.

4.5 Within three (3) weeks of the Supplier submitting a revised Spares and Repairs Catalogue for acceptance, the Client Representative shall either accept the Spares and Repairs Catalogue or shall notify the Supplier of his reasons for not accepting the document. The reasons which permit the Client Representative to refuse to accept the Spares and Repairs Catalogue are:

- (a) it does not comply with the Specification or this Agreement;
- (b) Not used;
- (c) where the Supplier has submitted a revised Spares and Repairs Catalogue pursuant to clause 4.4, the rates and prices for the spares and repairs service have changed from those shown in the immediately preceding version of the Spares and Repairs Catalogue (other than in accordance with clauses 3.6 and/or 3.6A above); and/or
- (d) the change in the Spares and Repairs Catalogue has been caused by a failure by the Supplier to comply with this Agreement.

4.6 If the Client Representative does not accept the Spares and Repairs Catalogue he shall confirm why the Spares and Repairs Catalogue is not accepted and shall provide reasons. The Supplier shall then further revise the Spares and Repairs Catalogue to incorporate the Client Representative's comments and resubmit the revised Spares and Repairs Catalogue for acceptance by the Client Representative in accordance with clause 4.4. Once the Spares and Repairs Catalogue is accepted it will supersede any previous accepted Spares and Repairs Catalogue and shall become the accepted Spares and Repairs Catalogue for the purposes of clause 4.1 and this Agreement.

5. **SUPPORTED SYSTEMS**

5.1 The Supported Systems are:

- (a) the TBTC System;
- (b) any Modification; and
- (c) any other software which the Supplier and Client agree should be Supported Systems for the purposes of this Agreement;

6. THE SERVICES

6.1 The Supplier shall supply the following Services:

- (a) the Standard Support Service; and
- (b) such of the Optional Services as are included from time to time within an Order for Optional Services issued to the Supplier and the Client under clause 6A,

as may be adjusted in each case in accordance with clause 30 (Variations).

6.2 In relation to the Standard Support Service:

- (a) the Standard Support Service shall be provided in accordance with this Agreement and the Specification and shall comprise:
 - (i) spares and repairs service as set out at paragraph 2 of the Specification;
 - (ii) log analysis as set out at paragraph 3 of the Specification (being up to 50 log analysis events per year);
 - (iii) not used;
 - (iv) obsolescence service as set out at paragraph 5 of the Specification;
 - (v) not used; and
 - (vi) technical support as set out at paragraph 4 of the Specification,
- all as more particularly defined in the Specification.

6.3 If the Supplier requires Access to the LUL Network to perform any of the Services, it notifies the Client Representative at the earliest possible opportunity and complies with the Access Procedure.

6A. ORDERS FOR OPTIONAL SERVICES

6A.1 The Client may from time to time at its sole discretion require the Supplier to supply Optional Services of the type set out in Schedule 4 and at the rates set out in Schedule 4. Provided that the Client gives the periods of notice specified in the Specification the Supplier shall use its best endeavours to provide the requested services promptly or at the times requested by the Client.

6A.2 Where the Client requires Optional Services it shall from time to time issue Orders in the form contained in Schedule 5. Each Order for Optional Services shall be made under, and shall incorporate, the terms of this Agreement. No amount shall be payable in respect of Optional Services unless expressly instructed in writing in the form set out in Schedule 5.

6B COMPUTER VIRUSES, ETC

6B.1 The Supplier acknowledges that there is a risk to the Client's business as a result of damage caused by such hazards as Computer Viruses, dongles, trojan horses or similar programs or parts of programs and hacking generally. The Supplier undertakes to use its best endeavours in performing the Services to minimise the risk to the Client as a consequence of the actions of such hazards.

6B.2 Without prejudice to Supplier's obligations under clause 6B.1 and the other warranties in this Agreement, the Supplier warrants, represents and undertakes to the Client that:

- (a) at the time of installation, any Spares, Materials and Equipment and any software provided by the Supplier in the performance of the Services will be free from Computer Viruses; and
- (b) it will not introduce any Computer Viruses into the Supported Systems or any other software owned or operated by the Client.

7. DISRUPTION

7.1 The Supplier shall provide the Standard Support Services under this Agreement.

7.2 The Supplier shall use all reasonable endeavours to provide the Services so as to cause the minimum disruption to the Client's business operations. Where there is a substantial failure of the TBTC System that significantly disrupts, or otherwise significantly adversely affects, the delivery of the Client's business operations or the LUL Network, the Client may request support from the Supplier. As soon as reasonably practicable following such a request, the Supplier shall use all reasonable endeavours to apply available internal labour, spares, and materials as may be reasonably necessary to restore the TBTC System to operation. If and to the extent that the failure of the TBTC System was caused or contributed to by the Client's breach of this Agreement or the TBTC Contract or its negligence then the Supplier shall be entitled to recover from the Client its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) of complying with this clause, to the extent that the costs do not relate to items for which the Supplier is already entitled to payment under this Agreement.

8. WARRANTIES, INDEMNITIES AND UNDERTAKINGS

8.1 The Supplier acknowledges that the Client has entered into this Agreement in reliance on the Supplier's expertise in supplying services fit to meet the Client's requirements.

8.2 For the purposes of construing the warranties in clause 8.3, references to Spares, Materials and Equipment or the Services will include any part of the Spares, Materials and Equipment or Services. Each warranty in this Agreement will be construed as a separate warranty and will not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other term of the Agreement.

8.3 Without prejudice to any other warranties expressed elsewhere in this Agreement or any contract or implied by law, the Supplier warrants, represents and undertakes to the Client that:

- (a) the Supplier will provide the Services:
 - (i) in a good and workmanlike manner in accordance with this Agreement;
 - (ii) retaining sufficient skilled resources, spares and materials to ensure that the Services can be delivered without disrupting or delaying the Client;
 - (iii) with the skill, care and diligence to be expected of appropriately qualified and expert professionals with experience in carrying out work of a similar type, nature and complexity to the Services; and
 - (iv) in accordance with the Spares and Repairs Catalogue, the Technical Support and Spares Plan and any method statements accepted from time to time by the Client Representative;
 - (v) in such a way as not to cause any fault or malfunction in the Supported Systems (or any related software or system of the Client);
 - (vi) in such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner); and
 - (vii) so that the Supported Systems are capable of being used, operated and maintained in a safe, economic and efficient manner.

- (b) Spares, Materials and Equipment shall conform in all respects with any sample approved by the Client and in the absence of a sample, all the Spares, Materials and Equipment supplied shall be within the normal limits of industrial quality;
- (c) the Services and the Spares, Materials and Equipment supplied under this Agreement shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification, the Standards and with any particulars specified in this Agreement and the TBTC Contracts;
- (d) the Services and the Spares, Materials and Equipment shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force, and shall conform fully to the Standards and to all relevant applicable British (BS) and International (ISO) standards;
- (e) all obligations of the Supplier pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to Best Industry Practice, in accordance with its own established internal procedures and in accordance with the Specification and Standards (without limiting the generality of this clause);
- (f) the Services and the Spares, Materials and Equipment will be provided using materials and equipment that are of sound and satisfactory design and quality and in accordance with the Specification and the Standards;
- (g) the Services will be provided in a safe manner and free from any unreasonable risk to the health and wellbeing of persons using, operating or subsequently maintaining the Spares, Materials and Equipment and for this purpose 'unreasonable risk' shall include a risk which the Supplier could reasonably have provided against;
- (h) the Services and Spares, Materials and Equipment will in all respects be fit and sufficient for all the purposes for which they are ordinarily used or for which they are intended (awareness of which purposes the Supplier acknowledges) and for any other purpose stated in this Agreement and in particular but without limitation will be capable of operation as part of the TBTC System and any other system referred to in the Specification;
- (i) the Spares, Materials and Equipment will 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;
- (j) not used;

- (k) the possession or use of the Deliverables will not infringe the Intellectual Property Rights of any third party.

With respect to clause 8.3 (c), (d), (h) and (i), the Client shall, and shall ensure that other members of the TfL Group, store, operate and maintain the Spares, Materials and Equipment in accordance with the operation and maintenance manuals issued to the Client by the Supplier as amended from time to time.

- 8.4 The provisions of this clause 8 are without prejudice to the Client's other rights under this Agreement or any contract.

- 8.5 If the Supplier receives written notice from the Client of any breach by the Supplier or an Associated Company of the representation and warranties contained in clause 8.3, the Supplier shall, at its own expense, remedy that breach within 30 days following receipt of such notice, failing which the Client may pursue such rights and remedies as are available to it.

- 8.6 The Supplier shall indemnify the Client, its employees and agents and LUL against all liabilities, costs, expenses, damages and losses (including any interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred in respect of:

- (a) death or injury to any person whatsoever; and
- (b) loss or damage to property (including property belonging to the Client or LUL or for which they are responsible including the LUL Network),

arising out of or in connection with the Supplier's breach of this Agreement or any negligent act or omission of the Supplier, its officers, employees, contractors or agents.

- 8.7 The Supplier's indemnity under clause 8.6 is without prejudice to Client's other rights and remedies under or in connection with this Agreement (including the right to damages at common law) and remains in force for the duration of this Agreement and continues to survive expiry or termination along with any other clauses or schedules of the Agreement necessary to give effect to them.

- 8.8 The Supplier is not responsible for, and does not indemnify the Client, its employees and agents and LUL and shall have no liability under any other provision of this Agreement for Losses to the extent that they are caused or contributed to by a breach of this Agreement by the Client or any negligence of the Client or LUL.

- 8.9 For the avoidance of doubt, the Supplier shall not be regarded as the responsibility of the Client (as employer) in the TBTC Contracts or as agent for the Client when carrying out its role pursuant to this Agreement.

9. TERMINATION EVENTS

9.1 Subject to clause 59 (Survival), this Agreement shall continue until:

- (a) the Expiry Date; or
- (b) earlier termination.

9.2 Not used.

9.3 The Client may at any time give the Supplier 90 days' written notice terminating this Agreement.

9.4 The Client may terminate this Agreement forthwith if the Supplier has defaulted in any of the following ways and not put the default right within 30 days of being notified in writing of that default by the Client Representative:

- (a) it is in material breach of any of its obligations under this Agreement, where "material breach" means a breach which materially adversely affects the benefit the Client receives from the provision of the Services, or otherwise materially adversely affects the Client;
- (b) it has appointed a subcontractor for the whole or a substantial part of the provision of the Services without the consent of the Client Representative in accordance with clause 20.2;
- (c) it is in persistent breach of its obligation to perform the Services or any part of them, where "persistent breach" means the breach of the same particular obligation on three separate notified occurrences;
- (d) without reasonable excuse, it has failed to commence the provision of the Services or any part of the Services in accordance with this Agreement or has suspended the provision of the Services or any part of the Services; or
- (e) it fails to rectify a Defect within the times referred to in clause 28.4 and the Client has not within 30 days of notification of the Defect exercised its option to correct (or employ Other(s) to correct) the Defect under clause 28.3(a).

9.5 The Client may terminate this Agreement on giving seven days' written notice if the Supplier has defaulted in one of the following ways:

- (a) it has substantially breached a health or safety regulation or requirement of this Agreement, committed a Safety Breach or Prohibited Act;

- (b) it has abandoned this Agreement;
 - (c) it has assigned the benefit of this Agreement or any part of this Agreement without the written consent of the Client first having been obtained;
 - (d) the Supplier's total aggregate liability referred to in clause 35.3 (but excluding the matters referred to in clauses 35.4 and 35.5) has reached or exceeded an amount equivalent to the limitation of liability in that clause, provided that where, as a consequence of any Variation(s), that limitation has been reduced from its amount at the date of execution of this Agreement the Client may not terminate this Agreement pursuant to this sub-clause (d) if the Supplier's total aggregate liability would not have reached or exceeded the limitation but for such reduction;
 - (e) the Supplier has breached clause 17 (Confidentiality);
 - (f) there has been a conflict of interest which has not been resolved to the Client's satisfaction in accordance with the provisions of clause 53; or
 - (g) the Supplier has persistently breached clause 55.2 and/or 55.3 (Criminal Record Declarations), entitling the Client to terminate the Agreement in whole or in part with immediate effect pursuant to clause 55.6, where "persistent breach" shall have the same meaning as in clause 9.4(c) of this Agreement.
- 9.6 If the Client Representative has notified the Client that a Safety Breach or Prohibited Act has been committed by an employee of the Supplier acting independently of the Supplier, the Client may either require the Supplier to remove the employee from performing Services under this Agreement within one week of the date of receipt of written notice to that effect or may terminate this Agreement on giving seven (7) days' written notice.

9.7 Declaration of Ineffectiveness

- (a) Without prejudice to the Client's right to terminate this Agreement under clause 9.3, 9.4 or at common law, the Client may terminate this Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 9.7.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Client shall notify the Client Representative and the Supplier in writing. The parties agree that the provisions of this clause 9.7 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clause 9.4

and this clause 9.7 or the Cessation Plan, the provisions of this clause 9.7 and the Cessation Plan prevail.

- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
 - (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Client shall reasonably determine an appropriate Cessation Plan with the object of achieving:
 - (i) an orderly and efficient cessation of the provision of the Services or (at the Client's request) a transition of the provision of the Services to the Client or such other entity as the Client may specify; and
 - (ii) minimal disruption or inconvenience to the Client or to public passenger transport services or facilities, in accordance with the provisions of this clause 9.7 and to give effect to the terms of the Declaration of Ineffectiveness.
 - (e) Upon agreement, or determination by the Client of the Cessation Plan, the parties shall comply with their respective obligations under the Cessation Plan.
 - (f) The Client shall pay the Supplier's reasonable costs in assisting the Client in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Agreement or as otherwise reasonably determined by the Client. Provided that the Client shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of this Agreement in accordance with this clause 9.7.
- 9.7A The Client may terminate this Agreement forthwith if TRSSL's appointment under the TBTC Contracts (or any of them) is terminated for a contractor default reason.
- 9.8 Either Party may terminate if:
- (a) a Force Majeure Event has substantially affected the Services for 26 consecutive weeks and such Party has given not less than 28 days' notice in writing to the other Party; or
 - (b) the Parties have, or either of them has, been released under the law from further performance of the whole of this Agreement.

9.9 Either Party may terminate if any of the following or its equivalent occurs in respect of the other Party (including its equivalent in any jurisdiction to which the other Party is subject) (“Insolvency Events”):

- (a) a petition is presented, a meeting convened or an effective resolution passed (otherwise than with the other Party’s prior written consent as part of a solvent reconstruction or amalgamation) for its winding-up;
- (b) the Party has a provisional liquidator appointed to it;
- (c) a distress, execution or other legal process is levied against its assets and not discharged or paid out in full within three days;
- (d) an application is made for an administration order or there is a purported appointment of, or the filing at court or issue of any notice of intention to appoint, an administrator in relation to it;
- (e) possession is taken of, or a receiver, sequestrator or similar officer is appointed in respect of the whole or any part of its assets or undertaking;
- (f) the Party's directors make a proposal that it enter into a voluntary arrangement (within the meaning of section 1 of the Insolvency Act 1986) or take any steps to obtain a moratorium under section 1A of that Act or it takes or is subject to any proceedings under the law for the readjustment, rescheduling or deferment of all or any of its debts, or proposes or enters into any general assignment or composition with or for the benefit of its creditors;
- (g) the Party suspends or threatens to suspend payment of its debts as they fall due or is unable to pay its debts, whether within the meaning of section 123 of the Insolvency Act 1986 or otherwise; or
- (h) the Party ceases or threatens to cease to carry on all or a substantial part of its business or operations or sells, transfers or otherwise disposes of the whole or a substantial part of its undertaking or assets either by a single transaction or by a number of transactions.

9.10 This Agreement may not be terminated, rescinded or treated as repudiated other than in accordance with the express provisions of this clause 9.

10. PROCEDURE ON TERMINATION AND ITS CONSEQUENCES

10.1 If either Party wishes to terminate, it shall notify the other Party giving details of its reason for terminating.

- 10.2 On termination or expiry of this Agreement for any reason, the Supplier shall:
- (a) promptly refund such portion of the Support Payment as relates to the period after termination on a pro rata basis;
 - (b) subject to any applicable legal or statutory requirements, return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the Client containing, reflecting, incorporating or based on Confidential Information belonging to the Client. If required by the Client, it shall provide written evidence (in the form of a letter signed by its Company Director) no later than six (6) weeks after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 17);
 - (c) return all of the Client's equipment and materials;
 - (d) assist the Client and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the Services to the Client or the replacement supplier. If termination is by the Client in accordance with clause 9.4, 9.5, 9.6 or 9.9, such co-operation and assistance shall be provided at no cost to the Client. In all other cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;
- 10.2A The Client shall not in any circumstances be liable to the Supplier for:
- (a) redundancy payments,
 - (b) staff termination costs or
 - (c) loss of profit (whether direct or indirect) arising from termination or expiry of this Agreement (including in circumstances where the Client terminates for convenience and/or to engage another supplier to perform the Services).
- 10.3 Termination or expiry of this Agreement shall be without prejudice to any causes of action accrued to the date of such termination and any other accrued rights of the Parties at that date. A final payment shall be made as soon as possible after termination.
- 10.4 The amount due on termination shall be the amount due assessed as for normal payments in accordance with clause 3 prior to the date of termination (including any deductions or additional payments as may be due in accordance with this Agreement) and:

- (a) in the case of termination by the Client in accordance with clause 9.3 and 9.7:
- (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
 - (ii) other costs reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement;
 - (iii) the cost of removal of the Supplier's Equipment; and
 - (iv) in respect of each of
 - (A) log analysis events; and
 - (B) technical support hours

requested by the Client and properly provided by the Supplier in the Year of Termination, a sum calculated by multiplying the excess of the Actual Services Received to Date of Termination over the Budgeted Services to Date of Termination by the relevant rates for such services set out in Schedule 4, such rates to be prorated per event or hour (as the case may be),

where, for the purpose of this clause 10.4(a)(iv) only:

- "Actual Services Received to Date of Termination" means the level of log analysis events or technical support hours (as the case may be) actually requested by the Client as Standard Support Services and properly provided by the Supplier in the Year of Termination in accordance with this Agreement up to the date of termination;
- "Budgeted Services to Date of Termination" means the level of log analysis events or technical support hours (as the case may be) to which the Client would have been entitled in the Year of Termination up to the date of termination had such Standard Support Services been prorated up to the date of termination.
- "Year of Termination" means the Financial Year in which the Agreement was terminated.

- (b) in the case of termination by the Client for the default of the Supplier in accordance with clauses 9.4, 9.5, 9.6, 9.7A and 9.9, less the Client Termination Losses, where "Client Termination Losses" shall mean the aggregate of:
 - (i) the losses reasonably and properly incurred by the Client arising out of the termination including where applicable and where the Supplier has been given reasonable opportunity but refused or failed to remove it within a reasonable time the cost of removing the Supplier's Equipment from the Site; and
 - (ii) the additional cost to the Client of performing or procuring the performance of the Services;

- (c) in the case of termination by the Supplier for the default of the Client in accordance with clause 9.9:
 - (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
 - (ii) other cost reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement; and
 - (iii) the cost of removal of the Supplier's Equipment.

- (d) in the case of termination by the Client or the Supplier due to the occurrence of a Force Majeure Event in accordance with clause 9.8:
 - (i) the cost of Spares, Materials and Equipment reasonably ordered for the provision of the Services which have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such Spares, Materials and Equipment becoming the property of the Client upon such payment being made by it;
 - (ii) other cost reasonably incurred by the Supplier in the expectation of providing the Services insofar as such expenditure has not been covered by other payments under this Agreement; and
 - (iii) the cost of removal of the Supplier's Equipment.

10.4A If the amount of the Client Termination Losses pursuant to clause 10.4(b) exceeds the amount which would otherwise have been payable to the Supplier, the Supplier shall pay the excess to the Client on demand and the amount of the excess shall be deemed to be a debt due from the Supplier to the Client. For the avoidance of doubt the Client Termination Losses shall count towards and be subject to the limit of liability in clause 35.3.

10.5 The Supplier shall not be entitled to receive payments or compensation other than expressly described in this clause 10 in the event and as a consequence of termination of this Agreement under clause 9.

10.6 The Client shall not be entitled to receive payments or compensation other than expressly described in this clause 10 in the event and as a consequence of termination of this Agreement under clause 9.

11. CORRUPTION, GIFTS AND PAYMENTS OF COMMISSION

11.1 The Supplier does not, and procures that its Associated Company, Subcontractors and agents do not, enter into any business arrangement with employees, officers or agents of the Client other than as a representative of the Client, without the Client Representative's prior written approval.

11.2 The Supplier does not, and shall use reasonable endeavours to procure that its Subcontractors, Associated Company and agents do not, commit any Prohibited Act or cause the Client or the Client Representative to commit any equivalent act.

11.3 The Client has the right to audit any and all records necessary to confirm compliance with sub-clauses 11.1 and 11.2 at any time during the performance of this Agreement and during the 3 year period following the Expiry Date or termination, whichever is the later. In addition the Client also has the right to appoint an independent auditor to audit any and all such records necessary to confirm compliance with clause 11.1 and 11.2 at any time during performance of this Agreement and during the 6 year period following completion of such performance. If the audit shows that the Supplier, its agents or Subcontractors are in breach of clause 11.1 or 11.2 then the Client shall be entitled to recover its reasonable costs in employing the independent auditor.

11.4 Breach of clause 11.2 shall entitle the Client to terminate this Agreement pursuant to clause 9.5. The Supplier acknowledges that if a Prohibited Act has been committed by an employee of the Supplier acting independently of the Supplier, the Client may either require the Supplier to terminate the employee's involvement in the provision of Services under this Agreement or may terminate this Agreement, pursuant to clauses 9 and 10.

12. DOCUMENTATION

If requested by the Client Representative, the Supplier shall update and reissue the Documentation and shall issue new Documentation to the extent reasonably necessary. Save where the Documentation requires updating due to an error, act, omission or default by the Supplier, the Client shall pay the Supplier's reasonable costs of updating and reissuing the Documentation. The Supplier shall provide the Client with 1 copy of a set of any revisions to the Documentation and any new Documentation containing sufficient information to enable proper use of Spares, Materials and Equipment and all the facilities and functions set out in the Specification. If requested by the Client Representative, the Supplier shall issue further copies of the Documentation and the Client shall pay the Supplier's reasonable costs for the issue of such copies.

13. DATA PROTECTION

13.1 Without prejudice to clause 19, the Supplier at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the Client from time to time in relation to the processing of data and does not by any act or fault cause the Client to be in breach of these requirements.

13.2 The Supplier:

- (a) takes appropriate technical and organisational security measures satisfactory to the Client against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act 1998) and against accidental loss, destruction of, or damage to such Personal Data,
- (b) provides the Client with such information as it may reasonably require to satisfy itself of compliance by the Supplier with the requirements of this clause 13, and
- (c) cooperates with the Client in complying with requests or enquiries made pursuant to the Data Protection Act.

14. NOT USED

15. AGENCY, PARTNERSHIP

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

16. **AMENDMENTS**

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by the Client or the Client Representative on its behalf and expressed to be supplemental to this Agreement.

17. **CONFIDENTIALITY**

17.1 Each Party (the “Receiving Party”) undertakes to keep confidential, and not to disclose to any third party without the other Party (the “Disclosing Party”)’s prior written consent any and all Confidential Information disclosed or obtained directly or indirectly, in connection with this Agreement. In doing so, each Party shall use at least the same degree of care as it uses with its own confidential information, but in any case no less than reasonable care.

The Parties shall not disclose the Confidential Information or any part thereof to any other person, corporation or other third party other than to those employees having a "need to know", provided that the Confidential Information is used solely in connection with the Agreement and that such employees are subject to confidentiality obligations at least as stringent as those in the Agreement.

This clause 17.1 shall not apply to any information which:

- (a) is already in the public domain at the time of its disclosure, or thereafter becomes part of the public domain other than in breach of this clause 17.1;
- (b) is required by any applicable law, regulation of a recognised stock exchange, the arbiter of the public private partnership between LUL and the Client pursuant to the Greater London Authority Act 1999, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body;
- (c) was previously known by the Receiving Party without restriction prior to receipt from the Disclosing Party;
- (d) any information disclosed by the Client for the purpose of performing its obligations under or in connection with this Agreement and/or the TBTC Contracts;
- (e) any Contract Information (as defined in clause 52.3) disclosed by the Client pursuant to clause 52 (Data Transparency);

- (f) any information required to be disclosed by the Client pursuant to clause 54 (Freedom of Information);
- (g) is subsequently received from a third party without restriction on its use and disclosure and without breach of these or other confidentiality undertakings; or
- (h) is independently developed by the Receiving Party, provided that the Receiving Party can demonstrate that such development was carried out by persons without access to information.

Notwithstanding this clause 17.1, the Parties agree that the Client may disclose on a “need to know” basis,

- (i) to LUL, subcontractors to LUL, any other member of the TfL Group, Her Majesty’s Railway Inspectorate and the Client’s financiers, bankers and shareholders from time to time, this Agreement and Confidential Information relating to it; and
- (ii) to any member of the TfL Group or their subcontractors such Confidential Information on technical and operational matters relating to this Agreement as is reasonably required by the Client,

and the Supplier consents to such disclosure provided that such disclosure is in relation to this Agreement and that the recipients of the Confidential Information are subject to confidentiality restrictions similar to those contained in this Agreement.

17.1A On the request of the Disclosing Party, the Receiving Party shall, so far as reasonably possible:

- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Disclosing Party any Confidential Information in its possession or control supplied by the Disclosing Party to the Receiving Party;
- (b) return to the Disclosing Party all copies (whether hard copy or other media) of such Confidential Information; and
- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes, tax purposes or is held in any archived computer system in accordance with the Receiving Party’s security or disaster recovery procedures.

- 17.2 Each Party ensures that all its Subcontractors, suppliers, employees, agents and other third parties to whom Confidential Information is disclosed under the terms of this Agreement (including any Associated Company of the Supplier) agree to terms of confidentiality no less stringent than the terms in clauses 17.1 and 17.2, and do not use or divulge any such information obtained, whether directly or indirectly, in connection with this Agreement or the Project, except for the purposes of this Agreement or as may be required by law.
- 17.2A The Receiving Party shall notify the Disclosing Party promptly if the Receiving Party becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent of the Receiving Party, and shall give the Disclosing Party all assistance the Disclosing Party reasonably requires in connection with any proceedings the Disclosing Party brings, or other steps the Disclosing Party takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 17.3 The Supplier does not, either alone or jointly with others, publish any material relating to the Client, LUL or any other member of the TfL Group, this Agreement or the Project without the prior written consent of the Client.
- 17.4 In the event that consent is granted by the Client in accordance with clause 17.3 all material published to the local community should be branded as Tube Lines material.
- 17.5 The Supplier does not, either alone or jointly with Others, make any press, television, radio or other media announcement in connection with this Agreement or the Project, or any dispute arising under or in connection with this Agreement.

18. ASSIGNMENT

- 18.1 The Client may assign or transfer this Agreement or all or any of its rights and/or all of its liabilities under this Agreement to any member within the TfL Group at any time without the consent of the Supplier but subject to having provided the Supplier with at least fourteen (14) days' prior written notice containing all relevant details of such assignment or transfer of its rights and/or liabilities. If the Client requires the transfer of its liabilities to another member of the TfL Group, each Party shall enter into a novation agreement in the form set out in Schedule 12 to achieve such a transfer. The Client may not assign or transfer this Agreement or all or any of its rights and liabilities under this Agreement to any other person without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 18.2 The Supplier shall not assign or transfer this Agreement or any of its rights and/or liabilities under this Agreement to any Associated Company without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed). The Supplier shall not assign or transfer this Agreement or any of its rights and/or liabilities

under this Agreement to any other person without the prior written consent of the Client.

19. ACCOUNTS AND RECORDS

19.1 The Supplier shall maintain a true and correct set of the following records to the extent they relate to all aspects of its performance of this Agreement, in a form and to the extent reasonably appropriate and proportionate to the nature and value of the Services:

- (a) all personnel involved with providing the Services including names, training records and National Insurance numbers,
- (b) all subcontracts (including proposals of successful and unsuccessful bidders, bids, rebids, etc), manufacturer's specifications and details, purchase orders and data relating to procurement of the Services or any part of the Services,
- (c) all necessary information for the evaluation of claims or Variations,
- (d) Not used,
- (e) accounting records (in hard copy as well as computer readable data),
- (f) general ledger entries detailing cash and trade discounts and rebates,
- (g) commitments (agreements and leases) greater than £20,000,
- (h) detailed inspection records,
- (i) in respect of any Spares, Materials and Equipment assessed on the basis of cost incurred by the Supplier, documents prepared in relation to the invitation to tender and subsequent tendering process and the contract extension process prior to the Restatement Effective Date relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Client, and
- (j) all such other information specified in this Agreement but excluding any financial or commercial audits carried out by a third party on the instruction of the Supplier or an Associated Company.

19.2 The Supplier shall retain all records referred to in clause 19.1 for the duration of this Agreement and for a period of not less than six (6) years from the Expiry Date in an orderly and logical fashion.

- 19.3 The Client and its authorised representatives and any party legally authorised to inspect any part of the LUL Network, may in good faith inspect and audit any of the records referred to in clause 19.1 at any time during the period referred to in clause 19.2.
- 19.4 The Supplier shall also permit the Client and LUL and its authorised representatives the right in good faith to audit or check any claims brought by or defended by the Supplier, its Subcontractors and subcontractors of its Subcontractors.
- 19.5 The Supplier shall, upon receipt of reasonable prior notice from the Client, promptly provide the Client and/or LUL with 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 during normal working hours to any premises used in performance of this Agreement, whether the Supplier's own premises or otherwise;
 - (b) granting or procuring the grant of access during normal working hours 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 this Agreement, wherever situated and whether the Supplier's own equipment or otherwise;
 - (c) providing a reasonable number of copies of any or all of the information, records and documents listed in clause 19.1 reasonably required by the Company's and/or LUL's auditor and/or granting copying facilities to the Company's and/or LUL's auditor for the purposes of making such copies; and
 - (d) complying with the Company's and/or LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract,

in each case at the Client's cost, and within thirty (30) days of the Client's request for the same.

- 19.6 The Supplier ensures that its Subcontractors and Associated Companies comply with the requirements in clauses 19.1, 19.2 and 19.3 and uses its best endeavours to ensure that the subcontractors of its Subcontractors and Associated Companies comply with this requirement.
- 19.7 Nothing in this clause 19 shall require the Supplier or any Associated Company, or any Subcontractor or subcontractor of any tier of any of them, to disclose or provide, nor entitle the Client or any other person to inspect or audit, any document, record or any other information that is the subject of legal professional privilege, joint privilege or common interest privilege.

19.8 The Client shall treat any documents, records or other information provided, made available or otherwise received pursuant to this clause 19 as Confidential Information in accordance with clause 17.

20. SUBCONTRACTING

20.1 If the Supplier subcontracts work, it is responsible for carrying out the Services as if it had not subcontracted. This Agreement applies as if a Subcontractor's employees and equipment were the Supplier's.

20.2 The Supplier shall not sub-let the whole of the Services. The Supplier shall not sub-let any part of the Services (including to any Associated Company) without the prior written consent of the Client Representative, such consent not to be withheld unreasonably.

20.3 The Supplier shall provide the Client Representative with full particulars of the parts of the Services it proposes to sub-let and the proposed subcontractors, so that the Client Representative may investigate the capability, capacity and suitability of the proposed subcontractors. Such investigation and any subsequent consent shall not affect the Supplier's liability to provide the Services in accordance with this Agreement. Particulars to be provided by the Supplier shall include the following:

- (a) the proposed sub-contract terms and conditions,
- (b) where applicable, specifications, schedules, bills of quantities, drawings, and any other documents which it is proposed will form the sub-contract,
- (c) details of the proposed subcontractor's relevant experience, resources, head office location, technical ability, financial standing and corporate structure, and
- (d) a list of previous and existing contracts which the proposed subcontractor has or has had with the Client or any member of the Tfl Group.

21. DEEDS OF WARRANTY

21.1 Not used.

21.2 Not used.

21.3 Unless informed by the Client in writing that such warranties are not required, the Supplier uses its best endeavours to procure that all Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the Client may advise) duly execute and deliver to the Client, within 21 days of the date of

their appointment, deeds of warranty in the form attached at Schedule 13 in favour of the Client.

21.4 If the Supplier is unable to procure and deliver to the Client any requisite deed of warranty in the appropriate form within 21 days of the relevant appointment the Supplier without prejudice to the Client's rights and remedies consults with the Client as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the Client's interests.

21.5 The Supplier shall transfer to the Client the benefit of any product guarantees which it obtains from any Subcontractor or sub-subcontractor or supplier whilst carrying out the Services.

22. **NOT USED**

23. **SUPPORT STAFF**

23.1 The Supplier ensures that at all times a competent and experienced person is appointed to act as the Support Manager.

23.2 The Support Manager acts on behalf of the Supplier under this Agreement and is responsible for coordination of all matters relating to the Services and shall carry out the duties and exercise the authority and powers of the Supplier as specified in or implied from this Agreement. The Support Manager may, after notifying the Client and the Client Representative, delegate any of his actions and may cancel any delegation. A reference to an action of the Support Manager in this Agreement includes an action by his delegate.

23.3 All communications, documentation and materials relating to this Agreement shall be sent as appropriate by the Support Manager to the Client Representative.

23.4 The Support Manager shall not be replaced (except in the event of sickness, incapacity or resignation) without the prior written consent of the Client (which is not to be unreasonably withheld or delayed).

23.5 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this Agreement. The Support Staff shall be suitably trained and experienced in technical support and supply of Spares, Materials and Equipment in relation to the Supported Systems. They shall be familiar with the working of the Supported Systems at the Client's premises and on the LUL Network and in performing the Services they shall conform to the Standards, QUENSH, Best Industry Practice and other standards of behaviour and ability to be reasonably expected of such persons. The Supplier shall take all reasonable steps to maintain continuity in relation to the Support Staff team.

- 23.6 In the absence of the Support Manager or of any other member of the Support Staff for any reason (including the replacement of such person with the consent, or at the request, of the Client), the Supplier shall supply a replacement person who:
- (a) is appropriately trained and competent to fulfil the role required; and
 - (b) has undergone a suitable period of familiarisation with the Services (at no cost to the Client) to enable him to perform the functions of the person whom he is replacing.
- 23.7 Not used.
- 23.8 The Supplier shall provide the Client with an updated Organisation Chart as part of the Technical Support and Spares Plan to be submitted following the Restatement Effective Date, and subsequently if any change is made to it. Changes to the Organisation Chart shall only be made if any member of the Support Staff retires, is dismissed by the Supplier, dies or voluntarily leaves the employment of the Supplier (save for where such person transfers to another division of the Supplier or an Associated Company) or can no longer work due to illness/disability.
- 23.9 Not used.
- 23.10 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Manager and the Support Staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Client.

23A CLIENT REPRESENTATIVE

The Client authorises the Client Representative to act as its representative for all purposes of this agreement and the Supplier shall deal with the Client Representative (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The Client may replace the Client Representative at any time by notice to the Supplier. The Client Representative may delegate any one or more of its functions pursuant to this Agreement to any person by notice to the Supplier and may at any time revoke any such delegation. The Client Representative is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

24. QUALITY PLANS AND SAFETY

- 24.1 The Supplier, and such of its Subcontractors and Suppliers as the Client shall consider appropriate, shall submit to the Client for approval quality plans in respect to the provision of the Services in accordance with QUENSH. Such approval does not affect

- the Supplier's liability to provide the Services in accordance with this Agreement. The Supplier shall also maintain an effective and economical quality control programme in accordance with the requirements set out in this Agreement and/or as notified from time to time by the Client.
- 24.2 The Supplier shall provide the Services in accordance with:
- (a) Not used;
 - (b) the most recent issue of QUENSH at the time the Services are undertaken (including all health and safety requirements contained therein);
 - (c) all applicable health and safety law; and
 - (d) any reasonable requirements notified to the Supplier from time to time by the Client in accordance with this Agreement.
- 24.3 The Designated Project Manager for the purposes of QUENSH is the individual named in Schedule 1 (Agreement Particulars) or any replacement notified to the Supplier from time to time by the Client. The Designated Project Manager shall delegate authority in accordance with the relevant QUENSH requirements to act on its behalf generally in respect of this Agreement to the Duty Operations Engineer. This delegation shall continue in force unless and until the Designated Project Manager notifies the Supplier in writing that it has ended in accordance with the relevant QUENSH requirements.
- 24.4 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to this Agreement as if the term "LU Premises" means the Site and references to "LU" are references to LUL and the Client.
- 24.5 The Client may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, Subcontractors or agents for drugs or alcohol which this Agreement requires the Supplier to carry out where the Supplier has failed to do so. The reasonable cost to the Client of carrying out the testing shall be paid by the Supplier and is not a Variation for the purposes of clause 30.
- 24.6 The Supplier shall not cause the Client to be in breach of any applicable safety requirements, standards or legislation and shall advise the Client if it is aware of the Client being so in breach.
- 24.7 Throughout the duration of this Agreement the Supplier shall take full responsibility and have full regard for the safety of all of the Supplier's persons or other persons to the extent that they are present in the vicinity of the Supplier's operations on the Site and shall keep the Site in an orderly state conducive to the avoidance of danger and hazards to persons and property.

24.8 The Supplier shall be responsible for providing, maintaining and updating all necessary documentation to enable the Client to comply with its obligations under any applicable health and safety law in relation to the Services.

24.9 The Supplier shall co-operate with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities.

25. TECHNICAL SUPPORT AND SPARES PLAN AND METHOD STATEMENTS

25.1 The Supplier shall submit to the Client Representative within 28 days of the Restatement Effective Date a Technical Support and Spares Plan, which shall detail all matters dealt with in this Agreement and as set out further in this clause, updated and revised in accordance with clauses 25.3 and 25.4 to give a high degree of confidence that by complying with such plan the Supplier will achieve, deliver and comply with the Specification and its obligations under this Agreement until the Expiry Date.

25.2 The Technical Support and Spares Plan shall include but not be limited to the following:

- (a) Not used;
- (b) a quality plan that includes references to:
 - (i) specific processes to ensure competence of staff with training and certification details; and
 - (ii) procedures to assure competency of supply chain and details of arrangements;
 - (iii) a process by which the Supplier will notify the Client and keep the Client informed about technical changes to Spares, Materials and Equipment which affect the revision status, form fit or function of any component part or parts of the Spares, Materials and Equipment;
- (c) a current Organisation Chart;
- (d) Not used;
- (e) Not used;
- (f) details of logistics and transportation to and from the Site;
- (g) details of quality control and goods inspection systems to check form, fit and function against order(s) placed;

- (h) Not used;
- (i) Not used;
- (j) Not used;
- (k) Not used;
- (l) Not used;
- (m) the dates and time on which the Supplier will need the following in order to provide the Services:
 - (i) information provided by the Client or Others,
 - (ii) acceptances, approvals, licences and consents,
 - (iii) access to parts of the Site, to be booked in accordance with the Access Procedure and clause 6.3;
- (n) processes (where the same are not already covered in the Specification) for:
 - (i) the return and repair of defective Spares, Materials and Equipment,
 - (ii) the order and supply of on-site technical support,
 - (iii) the order and supply of TBTC log analysis,
 - (iv) the order and supply of telephone technical support,
 - (v) the order and supply of Spares, Materials and Equipment,
 - (vi) quality assurance of Spares, Materials and Equipment supplied, and
 - (vii) informing the Client that any Spares, Materials and Equipment are beyond economic repair,

provided always that the Supplier shall ensure that any processes and other information that it includes in the Technical Support and Spares Plan pursuant to this clause 25.2 are consistent with the requirements of the Specification. In the event of any conflict between the Technical Support and Spares Plan and the Specification, the terms of the Specification shall take precedence to the extent of such conflict.

- 25.3 The Technical Support and Spares Plan shall be updated and submitted to the Client Representative for acceptance at intervals no less frequent than every 12 months.
- 25.4 Within 2 weeks of receiving the Supplier's initial Technical Support and Spares Plan and any subsequent Technical Support and Spares Plan, prepared in accordance with clause 25.1 and 25.2, the Client Representative shall advise the Supplier of its consent to the same or otherwise such consent not to be unreasonably withheld. The Client Representative shall notify the Supplier of his reasons for not accepting the initial Technical Support and Spares Plan and the Supplier shall revise the Technical Support and Spares Plan to take account of the Client Representative's comments and re-submit it to the Client Representative for his consent within 2 weeks of receipt of the notification. Once the Technical Support and Spares Plan is accepted by the Client Representative it shall supersede the previous accepted Technical Support and Spares Plan and shall become the accepted Technical Support and Spares Plan for the purposes of this Agreement.
- 25.5 When the Client Representative (acting reasonably) considers it appropriate for specific tasks and notifies the Supplier accordingly, the Supplier shall at its own cost submit and update at such times and in such detail as the Client Representative may reasonably require method statements setting out:
- (a) the Supplier's arrangements for providing the Services,
 - (b) details of Supplier's Equipment, and other resources that the Supplier proposes to use; and
 - (c) such other information pertaining to the Supplier's proposed method of providing the Services.
- 25.6 The method statement referred to in clause 25.5 shall address the specific tasks referred to in the notice by the Client Representative and be in a form and in sufficient detail to enable the Client Representative to decide whether, if the proposed methods are adhered to, the Services can be executed in accordance with this Agreement and without detriment to the safe working of the railway, to the property of the Client and Others or to the TBTC System.
- 25.7 Within 2 weeks of receiving a Supplier's method statement, in accordance with clause 25.6, the Client Representative shall advise the Supplier of his approval or otherwise. The Client Representative shall notify the Supplier of his reasons for not accepting a method statement and the Supplier shall promptly revise and re-submit the method statement to take account of the Client Representative's comments. The Supplier shall not start an operation until the method statement for that operation has been approved by the Client Representative.

25.8 The Supplier shall submit method statements and detailed programmes at such times as stated in this Agreement or if no times are stated then at such times as to allow the Client Representative to review and comment on the Supplier's proposals, and if necessary for the Supplier to revise the method statements and detailed programmes without delaying or disrupting the provision of the Services.

26. TESTING AND INSPECTION

26.1 All Services to be supplied under this Agreement (including supply of Spares, Materials and Equipment) may be subject from time to time upon first giving reasonable notice to such tests, inspections and process audits as the Client may consider necessary to ensure that the Services are carried out in accordance with this Agreement.

26.2 Testing and inspection may take place at the place of manufacture or fabrication or on Site or at any other place as may be specified in any of the Schedules or approved by the Client Representative.

26.3 The Supplier shall provide the Client Representative with copies of all test results and inspection certificates which it obtains in connection with the tests and inspections referred to in this clause 26.

26.4 The costs of any test ordered by the Client Representative which are not provided for in the Specification, clause 26.1 or clause 26.5 below shall be borne by the Client unless the tests show that Services (including Spares, Materials and Equipment) provided by the Supplier are not in accordance with this Agreement.

26.5 Notwithstanding clause 26.4 all Spares, Materials and Equipment to be supplied by the Supplier under this Agreement shall be inspected or tested before delivery to Site, as provided for in the Specification, or as may be agreed with the Client. The Supplier shall notify the Client in writing when any Spares, Materials and Equipment are ready for inspection or testing and shall agree with the Client on the time and place for the inspection and testing. The Supplier shall bear its own costs in relation to such inspections and tests.

26.6 When any Spares, Materials and Equipment have passed the tests referred to in this clause 26, the Supplier shall provide the Client with an inspection certificate in writing to that effect.

26.7 The Supplier shall provide such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as may be required to carry out efficiently the tests referred to in this clause 26.

26.8 The Supplier shall give to the Client ten (10) days written notice of the date it intends to undertake any of the tests referred to in this clause 26. Unless otherwise agreed, the tests shall take place within ten (10) days after the said date or at such other time as the Client notifies the Supplier in writing.

26.9 If the Client considers that the results of any tests show that the Supplier has not complied with its obligations under this Agreement, the tests shall be repeated, if so required by the Client. The repeated tests shall be made within a reasonable time of the first test and the Client's reasonable expenses in respect of such repetition shall be payable by the Supplier to the Client.

26A. DELIVERY, PROPERTY AND RISK

26A.1 The Spares, Materials and Equipment shall be delivered at the Supplier's cost on the date or dates and at or within the times and dates specified in the Specification and/or the accepted Spares and Repairs Catalogue.

26A.2 Except where otherwise provided in the Agreement, delivery shall include the unloading at the Supplier's sole risk of the Spares, Materials and Equipment by the Supplier or the Supplier's carriers. The delivery location will be the Client's stores at Neasden Service Control Centre (NSCC) unless a different location is specified by the Client in the requisition. Unless otherwise clearly stated in the Specification the point of delivery shall be when the Spares, Materials and Equipment are removed from the transporting vehicle at the delivery location.

26A.3 Time of delivery shall be determined in accordance with clause 26A.1 and, subject to any specific extension or alteration by agreement in writing signed by the Client Representative, failure to deliver within the time specified shall enable the Client to make performance related adjustments in accordance with the Performance Schedule.

26A.4 Legal and beneficial title in the Spares, Materials and Equipment shall vest in the Client from the earlier of:

- (a) the date they are delivered; or
- (b) the date the Client makes payment to the Supplier in order to purchase such items.

26A.5 Without prejudice to clause 26A.4, the risk of loss or damage to the Spares, Materials and Equipment shall remain with the Supplier until the later of the date of delivery or the date of issue of the inspection certificate referred to in clause 26.6.

27. FAILURE TO PROVIDE THE SERVICES

- 27.1 Without prejudice to any other right or remedy of the Client, if the Supplier fails to perform all or any part of the Services in accordance with this Agreement or to the Client's reasonable satisfaction, the Client may give the Supplier not less than fourteen (14) days' notice in writing (except where there is a Critical Defect where no notice is required) requiring the Supplier to remedy such failure. If the Supplier fails to comply with the requirements of the Client specified in such a notice, the Client shall be entitled to perform such Services itself or procure the performance of such Services by Others. All expenditure properly and reasonably incurred by the Client exercising its rights under this clause 27 shall be recoverable by the Client from the Supplier and the Client shall be entitled to deduct such amounts from any amount due or which may become due to the Supplier from the Client pursuant to this Agreement, provided that such amounts that are recoverable or deducted shall count towards the limit of liability in clause 35.
- 27.2 For the purposes of this clause 27 the Supplier shall grant the Client and/or any such third party the right to use any Supplier's Equipment and (to the extent that payment has not already been made for such items, subject to the Client or the third party making reasonable payment to the Supplier for the same) any Spares, Materials and Equipment and (subject to and in accordance with clause 32) any Intellectual Property Rights belonging to the Supplier in connection with this Agreement and provide all co-operation and assistance as may be required by the Client to exercise its rights under this clause 27.

28. WARRANTY

- 28.1 Subject to clause 28.6, the Supplier shall, at its own expense and within two weeks (or such longer period as agreed by both Parties, acting reasonably having regard to the nature of the activities required and of the affected Spares, Materials and Equipment), upon a request by the Client to do so, repair or replace any Spares, Materials and Equipment in which a Defect has occurred, provided that such request is made during the applicable Warranty Period.
- 28.2 For the avoidance of doubt, where any Spares, Materials and Equipment are replaced or repaired in accordance with this clause 28, such repaired or replaced items shall be redelivered to the Client in accordance with the terms of this Agreement, and the provisions of clause 26A and of paragraph 2.8 of Schedule 6 shall apply to such re-delivered Spares, Materials and Equipment. The Warranty Period for these purposes shall commence on the Repair/Replacement Date that applies in respect of the Supplier's re-delivery of the Spares, Materials and Equipment in accordance with this clause 28.

- 28.3 Subject to sub-clause 28.6, the Client shall notify the Supplier of each Defect in Spares, Materials and Equipment as soon as it finds it during any applicable Warranty Period, and the Supplier shall notify the Client of each Defect as soon as it finds it. In each case, the notifying party shall provide details of the Defect.
- 28.4 If any Defect notified, or of which the Supplier was aware or ought reasonably to have been aware, during the applicable Warranty Period is not corrected by the Supplier within the time stated therefor in Schedule 1 or such longer period as the Client may (acting reasonably and having regard to all relevant circumstances) agree, the Client shall be entitled, after giving written notice to the Supplier, to:
- (a) correct the Defect itself or employ Others to correct the Defect, in which case clause 28.5 shall apply; or
 - (b) terminate the Agreement pursuant to clause 9.4(e).
- 28.5 Where the Client employs Others to correct the Defect in accordance with clause 28.4, the Client shall be entitled to recover the cost of the materials and labour reasonably and properly incurred by Others in correcting such Defect as a debt due from the Supplier to the Client. Where the Client corrects the Defect itself, the Client may recover from the Supplier the cost of materials and labour reasonably and properly incurred by the Client. Where the Client's own staff are used to carry out the remedial works, the Client Representative shall assess the value of such labour reasonably expended in correcting the Defect and the Supplier shall pay such amount in lieu of labour costs. If any Spares, Materials or Equipment are found to contain a Defect during the applicable Warranty Period, then without prejudice to any other rights and remedies, the Client shall be entitled to recover from the Supplier its reasonable costs and expenses in recovering and returning such defective Spares, Materials and Equipment to the Supplier. Such costs and expenses shall include the value of the time reasonably incurred by the Client's own staff in recovering and returning the defective Spares, Materials and Equipment. To avoid doubt, any liability of the Supplier under or pursuant to this clause 28.5 shall count towards and be subject to the limit of liability in clause 35.3.
- 28.6 Where it is not possible to allow the Supplier an opportunity to rectify a Critical Defect, the Supplier acknowledges and agrees that the Client may correct or may arrange for a Critical Defect to be corrected by Others, instead of by the Supplier. Without prejudice to any other right or remedy of the Client, the Supplier shall pay to the Client all costs of labour and materials reasonably and properly incurred by the Client and proportionate in all the circumstances and/or paid by the Client to such Others for correcting a Critical Defect. Where the Client's own staff are used to correct a Critical Defect, the Client Representative shall assess the value of such labour reasonably expended in correcting the Critical Defect and the Supplier shall pay such amount in lieu of labour costs. The Client notifies the Supplier of a Critical Defect as

- soon as reasonably practicable. To avoid doubt, any liability of the Supplier under or pursuant to this clause 28.6 shall count towards and be subject to the limit of liability in clause 35.3.
- 28.7 If the Spares, Materials and Equipment or any part of them has a Defect, is damaged in transit or is otherwise not in accordance with this Agreement when delivered, as identified by the Client in accordance with paragraph 2.8 of Schedule 6, the Client Representative may reject such Spares, Equipment and Materials or affected part of them by giving the Supplier notice of such rejection in accordance with paragraph 2.8 of Schedule 6. Following receipt of any such rejection the Supplier shall, at its own expense, as soon as practicable make good or otherwise repair or replace the rejected Spares, Materials and Equipment and the provisions of clause 26A and of paragraph 2.8 of Schedule 6 shall apply to such re-delivered Spares, Materials and Equipment. All expenses incurred by the Client in consequence of any re-testing or inspection of such Spares, Materials and Equipment shall be recoverable by the Client from the Supplier and shall count towards and be subject to the limit of liability in clause 35.3.
- 28.8 Any activities under this clause 28 in respect of Defects notified to the Supplier within the applicable Warranty Period will be at the sole cost of the Supplier, including removal and reinstallation from service, shipment to and from the Client and any necessary repairs and/or further tests and inspections required. The Supplier shall not be entitled to payment or any relief for Defects or the consequences thereof and neither shall the same be deemed to form part of any pre-agreed quota for the Services set out in Schedule 6.
- 28.9 The Supplier and the Client may each propose to the other that this Agreement should be changed so that a Defect does not have to be corrected.
- 28.10 If the Supplier and the Client are prepared to consider the change, the Supplier submits a quotation for an amount to be deducted from the Support Fees to the Client for acceptance. If the Supplier accepts the quotation, the Client gives an instruction to change the Agreement and the Support Fees accordingly.
- 28.11 Nothing in this clause 28 shall prejudice any rights or remedies in respect of Defects appearing after the Warranty Period or other express rights and remedies under this Agreement.
29. **NOT USED**
30. **VARIATIONS**
- 30.1 The Client Representative may at any time before the expiry or earlier termination of this Agreement, request and/or order any Variation to be made to the Services or this

Agreement. Variations shall be requested and processed through the process described in clauses 30.2 and/or 30.5 and/or 30.7. Such Variations may include the following:

- (a) the addition, omission or substitution of any Services;
- (b) changes in the type, standard or quality of the Services;
- (c) changes to the order, sequence or timing of the provision of the Services or any part of the Services;
- (d) the postponement of any part of the Services desired by the Client; and/or
- (e) suspension of the Services or any part of the Services.

For the avoidance of any doubt, orders for Optional Services and requisitions for Spares, Materials and Equipment are not Variations.

- 30.2 In any case where the Client is considering the introduction of a Variation, whether at the request of the Supplier or not, but does not wish to proceed until the effect, if any, of the proposed Variation on the Support Fees is known, the Client Representative will complete the top portion of a Notification of Proposed Variation to Contract ("NPVC") in substantially the form set out in Part 1 of Schedule 14 and send two copies to the Supplier. Within five (5) days of receipt of such NPVC or such longer period as the Parties may agree (acting reasonably, given the nature and complexity of the proposals and all other relevant circumstances) the Supplier shall complete the form detailing the additional Support Fees, if any, and any other proposed changes or implications for each Variation, and shall return one copy to the Client Representative.
- 30.3 The Supplier shall be entitled to reject a proposed Variation on the grounds that it would or could reasonably be expected to:
- (a) be technically not achievable; or
 - (b) be legally impermissible.
- 30.4 If the Supplier's proposed valuation pursuant to either clause 30.2 or clause 30.5 is acceptable then the Client Representative shall issue an Authority for Variation to Contract ("AVC") in substantially the form set out in Part 3 of Schedule 14 and the Support Fees (and other items set out in the Supplier's response under clause 30.2 or request under clause 30.5) shall be varied on the basis set out in such NPVC or SRVC (as the case may be) as completed by the Supplier and the Supplier shall immediately proceed with the Variation. Alternatively, if the proposed valuation of the Variation and/or the other items set out in the Supplier's response under clause 30.2 or request under clause 30.5 are not acceptable to the Client Representative it shall either:

- (a) withdraw or reject (as the case may be) the proposed Variation and in such circumstances the Supplier shall not proceed with the proposed Variation and shall not be entitled to any costs in relation to the completion of the NPVC or the SRVC (as the case may be); or
 - (b) determine a valuation of the Variation (including any other items set out in the Supplier's response under clause 30.2 or request under clause 30.5 as the case may be) in accordance with clause 30.10 and notify this to the Supplier pursuant to an AVC whereupon the Supplier shall immediately, subject to the Supplier's agreement of the valuation proposed, proceed with the Variation and the Support Fees (and other items set out in the Supplier's response under clause 30.2 or request under clause 30.5) shall be varied as set out in the AVC.
- 30.5 In any case where the Supplier wishes to recommend a Variation, the Supplier shall complete and send to the Client Representative one copy of a Supplier's Recommended Variation to Contract ("SRVC") in a form to be agreed between the Parties, detailing the proposed Variation and any other proposed changes or implications for such Variation, including its effect, if any, on the Support Fees.
- 30.6 Subject to clause 30.7 below, the Supplier must not implement any Variation until it has been duly authorised by the Client Representative by the issue of an AVC.
- 30.7 In cases where the Client requires a Variation to be implemented by the Supplier, whether at the suggestion of the Supplier or not, as soon as possible and before the effect on the Support Fees is established (such cases being limited to circumstances where that Variation has become necessary to comply with any applicable Law or for safety reasons or because of a Critical Defect or other emergency situation) the Client Representative will complete the top portion of a Notification of Required Variation to Contract ("NRVC") in substantially the form set out in Part 2 of Schedule 14, and send two copies to the Supplier. The Supplier will take the same action as detailed in clause 30.2 above in respect of the completion and return of the form but shall immediately proceed to implement such Variation and the consequences of such Variation for the Support Fees shall either be agreed with the Supplier or, in the absence of such agreement, shall be determined by the Client Representative in accordance with clause 30.10. In either case the Client Representative shall notify the agreement reached or determination made by notification of an AVC.
- 30.8 All forms referred to in this clause 30 shall be completed and returned by the Supplier to the Client Representative as soon as possible and in any event within twenty-eight (28) days of receipt by the Supplier from the Client Representative.
- 30.9 Any NRVC issued by the Client Representative may be issued to the Supplier with an express limitation in financial amount. The express limitation in the NRVC shall be replaced by a sum either agreed or determined as described in clause 30.5 and 30.7 in

due course. Prior to issue of an AVC notifying the agreement reached or determination made in respect of the Variation described in the NRVC the Supplier shall only implement such a Variation to the extent that the Supplier's costs in respect of such Variation remain below such express financial limitation. Until the financial limit in the NRVC is replaced the Supplier shall not incur costs in excess of the financial limit in respect of such Variation and, if it does so, the Client shall have no liability for payment of any costs in excess of the limitation specified in the NRVC in respect of such Variation. When the AVC is issued in respect of the Variation described in the NRVC the Supplier shall (if it has ceased implementation of the Variation) immediately complete the implementation of the Variation in full and the Support Fees shall be varied as set out in the AVC.

- 30.9A Where agreed between the Parties that a Variation is to be valued on a rates basis, the Parties shall use the rates and prices as set out in this Agreement (including, where applicable, the Specification and/or the Spares and Repairs Catalogue) (and such rates and prices are deemed to be inclusive of overheads and profit).
- 30.10 In the absence of agreement the valuation of Variations ordered by the Client Representative shall be determined by the Client Representative in accordance with the following principles:
- (a) to the extent that the effect of the Variation includes activities which are similar to the Services then so far as is possible the effect of the Variation is assessed using the rates and prices as set out in this Agreement (including, where applicable, the Specification and/or the Spares and Repairs Catalogue); and
 - (b) in all other cases the change to the Support Fees in respect of the Variation is assessed based upon a fair valuation (and such assessment is deemed to be inclusive of all overheads and disbursements).

If the Supplier disagrees with the determination it may subject the matter for resolution in accordance with clause 48.

- 30.11 For clarity the Parties acknowledge that the Client's power to order and/or request a Variation under clause 30 includes the power to omit any Services from this Agreement, provided that such Services have not been carried out or any Spares, Materials and Equipment have not been supplied on the date that any such omission is ordered, and subject to clause 30.3. The Client may contract with another person to provide any such omitted Services. The reduction in the Support Fees shall be agreed by the Parties (or in the absence of agreement determined in accordance with clause 48) in accordance with clause 30.10 to reflect a proportional reduction in the relevant charge set out at SCHEDULE 2 and the Supplier is not entitled to claim loss of profit

- (iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client.

32.4 The Supplier indemnifies the Client at all times during and after termination or expiry of this Agreement against any and all Losses incurred or suffered by the Client in relation to any infringement, alleged infringement or unauthorised use of its or any Other's Intellectual Property Rights by the Supplier or any person under its control in connection with the Services, the Spares, Materials and Equipment or the Agreement, provided that the Client:

- (a) gives the Supplier written notice of any claims being made or actions threatened to be brought as soon as reasonably practicable thereafter;
- (b) makes no admission in respect of infringement of any Other's Intellectual Property Rights which may be prejudicial to the defence of such claim or action without the prior written consent of the Supplier;
- (c) gives the Supplier the authority to conduct any litigation in that regard, at its cost; and
- (d) provides the Supplier with all reasonable assistance in respect of such litigation.

32.5 The indemnity in clause 32.4 shall not apply to the extent such Losses were caused by:

- (a) the Client's design;
- (b) the Client's design instructions;
- (c) modification of the Spares, Materials and Equipment or Software by the Client;
- (d) combination of the Spares, Materials and Equipment or Software with equipment, materials or software not supplied by the Supplier and contrary to the Supplier's instructions; or
- (e) the negligence of the Client, his employees or agents or Others (other than those Others under the direction and control of the Supplier).

32.6 The Supplier notifies the Client as soon as it becomes aware that

- any Intellectual Property Rights used in relation to the Services and/or the Spares, Materials and Equipment are infringed,
- any Intellectual Property Rights used in relation to the Services and/or the Spares, Materials and Equipment are likely to be infringed, or
- the Client is prevented from using the Services and/or the Spares, Materials and Equipment as a result of the infringement of any Intellectual Property Rights.

32.7 The Client shall give an instruction to obviate any infringement referred to in sub-clause 32.4 and the Supplier:

- (a) obtains from the Client the right to continue using the Services and/or the Spares, Materials and Equipment or any part thereof;
- (b) modifies or replaces the Services or any infringing parts (including the Spares, Materials and Equipment) to avoid the infringement; or
- (c) removes the infringing part of the Services and/or the Spares, Materials and Equipment and the Support Fees and/or the relevant rates and prices set out in the Spares and Repairs Catalogue (as the case may be) are adjusted accordingly.

32.8 Not used.

32.9 Save for the licence granted under clause 32.3, no Intellectual Property Rights or rights in them shall pass from the Client to the Supplier.

32.10 The Supplier warrants that as of the Restatement Effective Date, other than COTS or as set out in or notified pursuant to the TBTC Contracts, no Intellectual Property Rights owned by any Party other than the Supplier or any Associated Company are used or included in the Spares, Materials and Equipment. In the event that the Supplier uses or includes in the Spares, Materials and Equipment Intellectual Property Rights, other than COTS, owned by any Party other than the Supplier or any Associated Company, then the Supplier shall use its best endeavours to procure from such third parties a right to sublicense to the Client those Intellectual Property Rights on the terms of the licence granted under clause 32.3. Further, if after the Restatement Effective Date, the Supplier, having used its best endeavours, is unable to procure such rights from additional third parties, the Supplier shall notify the Client and shall provide the sublicences on the terms available. The Client agrees that any sublicense provided by the Supplier to the Client under the TBTC Contracts from time to time that pertains to the Spares, Materials and Equipment shall be deemed to satisfy the Supplier's obligations under this clause 32.10.

Corporate IPRs

- 32.11 The Supplier shall use and shall procure that its Subcontractors and suppliers shall use the Corporate IPRs in compliance with any relevant Standards from time to time in force.
- 32.12 The Supplier shall not use and shall procure that its Subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trade marks, trade names and other Intellectual Property Rights without the Client's and LUL's prior written consent.

Software

- 32.13 The Supplier shall enter into a software escrow agreement in the form of the NCC Group Single Licensee Software Escrow Agreement current at the date of this Agreement with a third party acceptable to the Client for deposit and retention of the Source Code Material by no later than 2 month(s) after the first occasion on which software containing Source Code Material has been supplied pursuant to this Agreement and shall thereafter maintain the software escrow agreement for a minimum period of 12 years from completion of the Services or earlier termination of this Agreement. The Supplier further ensures that all further Source Code Material created by or on behalf of the Supplier after the Date of Commencement is also deposited and retained in the software escrow agreement. The Supplier shall procure that any Subcontractor or supplier providing software for incorporation into or operation of the Supported Systems enters into a software escrow agreement on similar terms and maintains the software escrow agreement for the same period from completion or the Services or earlier termination of the Agreement. The Client shall reimburse the Supplier its reasonable, proportionate and properly incurred costs (which shall be supported by any receipts, invoices and/or any other supporting information reasonably requested by the Client) of complying with this clause 32.13. If the Supplier fails to enter into a software escrow agreement or thereafter ceases to maintain such agreement then, without prejudice to the Client's other rights and remedies, one quarter of the Support Fees is retained in assessments of the amount due until the Supplier has provided the same to the Client.
- 32.14 If the Supplier or any Subcontractor or supplier providing software for incorporation into or operation of the Services stops trading, is subject to any of the Insolvency Events set out in clause 9.9 or their equivalent (including their equivalent in any jurisdiction to which that Party is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this Agreement the Supplier shall, at no charge to the Client and without prejudice to the Client's rights under clause 32.13, use its best endeavours to transfer or procure the transfer to the Client of all Intellectual Property Rights in that software.

33. INSURANCE

33.1 The Supplier undertakes to:

- (a) maintain at its own cost insurance for the Supplier's liability for death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with this Agreement in an amount not less than £10,000,000 (ten million pounds) per occurrence or the amount required by the applicable law, whichever is the greater;
- (b) maintain at its own cost public and product liability insurance in respect of the Supplier's liability for loss of or damage to property and liability for bodily injury to or death of a person (not being an employee of the Supplier) caused by activity or use of Spares, Materials and Equipment arising out of or in connection with this Agreement in an amount not less than £25,000,000, (twenty five million pounds) for any one occurrence and, in respect of the product liability insurance only, in the annual aggregate;
- (c) maintain at its own cost professional indemnity insurance covering negligence, omission or default in respect of design or other professional services for which the Supplier or its Subcontractors are responsible under or in connection with this Agreement in an amount not less than £10,000,000 (ten million pounds) for each and every claim and in the annual aggregate;
- (d) ensure that the foregoing insurance policy or policies shall be or are effected:
 - (i) with a reputable insurer; and
 - (ii) on terms reasonably available in the European insurance market;

and shall, subject to clause 33.4, be maintained until the Expiry Date or the end of the Warranty Period, whichever is the later;

- (e) produce within seven (7) days of any reasonable request by the Client and in any event before the commencement of any of the Services under this Agreement satisfactory evidence, such as a broker's letter, confirming the existence of insurance in accordance with the provisions of this clause 33.

33.2 The Supplier's liabilities under the Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 33.1.

33.3 If the Supplier fails to maintain the insurance policies as provided in this clause 33, the Client may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and

from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

33.4 The professional indemnity insurance required pursuant to clause 33.1(c) above shall be maintained by the Supplier for the period from the Date of Commencement until 12 years after the date of completion of the Services, provided the coverage is available on reasonable terms and at reasonable rates such that a company operating in the relevant industrial sector could and would procure the insurance.

33.5 The provisions of this clause 33 shall survive the termination of the Agreement for whatever reason.

34. TRANSFER REGULATIONS

34.1 Obligations on the Expiry Date or earlier termination of the Agreement

For the purposes of this clause 34:

“**Replacement Employer**” means any person to whom a Subsequent Relevant Employee may or does transfer under the Transfer Regulations on termination of the contract (or part of it);

“**Relevant Claims and Liabilities**” means all liabilities, obligations, proceedings, court or tribunal orders, losses, fines and penalties, damages, expenses, costs (including reasonable legal costs and disbursements) actions, claims and demands;

“**Subsequent Transfer Date**” means the time and date on which a Subsequent Relevant Employee transfers to a Replacement Employer by virtue of the Transfer Regulations; and

“**Subsequent Relevant Employee**” means a person employed or engaged by the Supplier or relevant subcontractor from time to time in respect of any part of the supply of Goods and/or Services who would transfer to a Replacement Employer by virtue of the Transfer Regulations on termination of the contract (or part of it).

34.2 The Supplier shall comply with and procure that its Subcontractors comply with any obligations which may arise out of a transfer to the Client or to another person under the Transfer Regulations on the Expiry Date or earlier termination of the Agreement.

34.3 At any time during the 12 month period before the Expiry Date or during any period of notice terminating this Agreement or at any time after expiry or termination of this Agreement, the Client may require the Supplier to provide, within a specified period of being requested, such information as is reasonably required by the Client or such other persons relating to the potential liabilities of the Client or any other person arising

under the Transfer Regulations, including but not limited to information on the following:

- (i) the names of employees (of the Supplier or its Subcontractors) engaged in providing the Services, their salaries and other conditions of employment, ages and length of service,
- (ii) the method of organisation of the employees (of the Supplier or its Subcontractors) engaged in providing the Services and documentary evidence relating to such organisation,
- (iii) the proposals for informing and consulting with affected employees,
- (iv) details of collective agreements and union recognition agreements, and
- (v) any other employee liability information within the meaning of the Transfer Regulations,

and in addition the Supplier shall provide on request to the Client copies of any communication with any potential or intended new supplier(s) or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

34.4 The Supplier shall provide on request to the Client the name and address of the person within its organisation to whom all queries and requests for information under this clause 34 are to be sent. The Supplier shall warrant that any information provided under clause 34.3 is accurate, complete and not misleading, including any information supplied in relation to its Subcontractors.

34.5 The Supplier shall not (and procures that its Subcontractors do not) in the 10 months prior to expiry or termination of this Agreement (or, where notice of termination is given of less than 10 months, during any such period of notice) without the Client's written consent:

- (i) re-organise or substantially alter the numbers, method of organisation or identity of the employees engaged in providing the Services, except to the extent that any such change is the result of a bona fide business re-organisation of the Supplier or the relevant Subcontractor which is not related or confined to the employees engaged in providing the Services or to the expected expiry or termination of this Agreement; or
- (ii) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in providing the Services, except where such increases or changes would have

arisen in the ordinary course of the Supplier's or the relevant Subcontractor's business and are not related to the expiry or termination of this Agreement (either because they are applied to all of the Supplier's or the relevant Subcontractor's employees, whether or not engaged in providing the Services (or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant Subcontractor which is not related or confined to the employees engaged in providing the Services or to the expiry or termination of the Contract).

- 34.6 The Supplier shall indemnify the Client against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Client or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Services.
- 34.7 The Supplier shall indemnify the Client and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:
- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Client or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
 - (b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Client or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

In this clause 34.7, "Relevant Claims and Liabilities" include those incurred by the Client by reason of any contract term between the Client and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Client may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Client or the Replacement Employer for more than or with a greater scope than it

would if such Relevant Claims and Liabilities were made against or incurred by the Client in providing an indemnity under this paragraph.

- 34.8 The Client shall (1) procure that each Replacement Employer that is a member of the TfL Group, or (2) use its reasonable endeavours to procure that each Replacement Employer that is not a member of the TfL Group, shall indemnify the Supplier against all Relevant Claims and Liabilities arising from or related to any claim by a Subsequent Relevant Employee who transfers to the relevant Replacement Employer on termination of this Agreement (or part of it) in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment on or after a Subsequent Transfer Date, in respect of which the Supplier incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- 34.9 The provisions of this clause 34 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Client for any breach by the Supplier of any provision of this clause 34 shall be in addition to and not in substitution for any remedies available to the Client under any provision of the Transfer Regulations.

35. LIMITS ON LIABILITY

- 35.1 Subject to clause 35.2 below, neither Party shall be liable to the other Party for Economic and Consequential Loss.
- 35.2 The Parties acknowledge and agree that the following categories of loss will be treated for all purposes as direct losses and nothing in this Agreement excludes or restricts liability in respect of the same:
- (a) liability for death or bodily injury;
 - (b) loss of or damage to the property of the Client or LUL;
 - (c) adjustments or abatements to the Support Fees in accordance with clauses 3, 28.6, 30, 31, 32.7(c), and 36.1;
 - (d) amounts due under the indemnities in clauses 8.6 (liability of the Client in respect of the Supplier's breach of this Agreement) and 32 (Intellectual Property Rights) and 34 (Transfer Regulations); and
 - (e) amounts due on termination or expiry under clause 10; and
 - (f) liabilities to Others, to the extent that such liabilities to Others are due to any negligence, breach of contract, breach of statutory duty, error, act omission or

default by the Supplier and provided that the Client has used reasonable endeavours to mitigate the same.

35.3 Notwithstanding any other caps on the liability of the Supplier or anything to the contrary contained in this Agreement, and subject to clause 35.4 and clause 35.5 below, the Supplier's total aggregate liability arising out of or in connection with the performance of its obligations under the Agreement, whether based on breach of contract, statutory warranty or otherwise shall in no event exceed the final total of:

(a) REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED
REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED
REDACTED REDACTED and any other amounts paid or payable under this Agreement to which the Supplier has or will become entitled during the term of this Agreement; and

(b) REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED
REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED
REDACTED REDACTED REDACTED) and any other amounts paid or payable under this Agreement to which the Supplier would have been entitled during the term of this Agreement but for:

(i) the Supplier's breach or failure to comply with the terms of this Agreement; or

(ii) any termination of this Agreement in whole or in part by either Party.

35.4 The Supplier does not exclude or restrict its liability for any of the following and no liability for the same shall be taken into account in determining whether the limit of liability has been reached or exceeded:

(a) payments made by the Supplier in relation to its liability under this Agreement to the extent corresponding payments are received by the Supplier pursuant to insurance policies required to be maintained under this Agreement (or would have been received but for any breach or failure by the Supplier to maintain such insurance);

(b) interest due under this Agreement as a result of late payment of amounts;

(c) deductions or abatements for failure to meet Key Performance Indicators in accordance with clause 31;

(d) liability directly arising from the Supplier committing a Prohibited Act or Safety Breach or from its breach of health and safety laws;

- (e) liability directly arising from the Supplier's abandonment, with no intent of resuming, of the Services where the Supplier's reasons are disputed by the Client and referred to the courts and the courts' decision is that the Supplier's reasons for abandonment are not due to the actions or omissions of the Client for which the Client is culpable;
 - (f) liability directly arising from the Supplier's abandonment, with no intent of resuming, of the Services where the Supplier has not given the Client four (4) weeks' notice; and
 - (g) amounts due under the indemnities at clauses 8.6, 32 and 34.
- 35.5 Nothing in this clause 35 limits the Supplier's obligations under clause 28 to correct notified Defects in the applicable Warranty Period or (save as expressly provided to the contrary in clause 28) its liability for a failure to perform these obligations.
36. **CHANGE OF LAW**
- 36.1 If the cost to the Supplier of the provision of the Services increases or reduces by reason of the passing into law after the Replacement Effective Date of any Law applicable to the Services, then the amount of such increase or decrease is added to or deducted from the Support Fees as the case may be pursuant to the variation procedure set out in clause 30, provided that in the case of any increase in the Support Fees:
- (a) such passing into law after the Restatement Effective Date of any Law applicable to the Services could not reasonably have been foreseen by a supplier experienced in the provision of Services of a similar size, nature and complexity as the Services at the Restatement Effective Date;
 - (b) the Parties shall use reasonable endeavours to mitigate the effect of the passing into law after the Restatement Effective Date of any Law applicable to the Services; and
 - (c) such increase does not relate to tax or employment law (including but not limited to the minimum wage, pensions, PAYE or National Insurance).
- 36.2 In this clause 36:
- (a) "**Law**" means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, other applicable law or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, principle of common law or equity, rule of court or directives or requirements of any

Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body; and

- (b) "**Regulatory Bodies**" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the TfL Group and "Regulatory Body" shall be construed accordingly.

37. RIGHTS OF THIRD PARTIES

37.1 Subject to clause 37.2, the Client and the Supplier do not intend that any of the terms of this Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Agreement.

37.2 The Contracts (Rights of Third Parties) Act 1999 applies to this Agreement to the extent that: (a) any member of the TfL Group has the right to enforce any provision contained in this Agreement against the Supplier where such provision confers any benefit or purports to confer a benefit on such member; and (b) clause 34.7 (Transfer Regulations) confers a benefit on any Replacement Employer.

38. ENTIRE AGREEMENT

38.1 This Agreement sets out the entire agreement and understanding between the Client and the Supplier and supersedes all other oral and/or written communications and representations. It is agreed that:

- (a) no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out or referred to in this Agreement; and
- (b) no Party has any remedy in respect of misrepresentation or untrue statement made by any other Party which is not contained in this Agreement, or for any breach of warranty which is not contained in this Agreement.

38.2 This clause does not exclude or limit any liability for fraudulent misrepresentation.

39. FORCE MAJEURE

39.1 If either Party is prevented from, hindered or delayed in performing any of its obligations under this Agreement by a Force Majeure Event then:

- (a) that Party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that Party is so prevented, hindered or delayed;
 - (b) as soon as reasonably practicable (and in any event within seven days after commencement of the Force Majeure Event) that Party shall notify the other Party in writing of the occurrence of the Force Majeure Event, the date of its commencement and the effect on its ability to perform its obligations under the Agreement;
 - (c) that Party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement;
 - (d) as soon as reasonably practicable but within seven days after the cessation of the Force Majeure Event that Party shall notify the other Party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement.
- 39.2 If the Force Majeure Event continues for more than twenty-six (26) weeks after its commencement the other Party may terminate this Agreement pursuant to clauses 9 and 10 of this Agreement by giving no less than twenty-eight days' notice in writing to the other Party.
- 39.3 If any additional costs are incurred by either the Supplier or the Client as a direct result of a Force Majeure Event taking place then such costs will be borne by the Party which has incurred them.

40. NOTICES

- 40.1 All notices provided for under this Agreement are to be in writing and delivered by hand or sent by first class pre-paid letter, by facsimile, e-mail or by any other recognised and accepted electronic means accepted by the Parties to the addresses of the Parties set out above or at such other addresses as the Parties may specify from time to time by written notice to each other.
- 40.2 Such notice is deemed to have been received on the date of delivery if delivered by hand, on the second working day after the date of posting if sent by first class pre-paid letter, and on the day if sent by facsimile, e-mail or other recognised and accepted electronic means accepted by the Parties.

41. SCHEDULES

The provisions of the Schedules to this Agreement shall form part of this Agreement.

42. SEVERANCE

If any provision of this Agreement or its application is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications of this Agreement are not affected or impaired. If any adjudication, litigation or arbitration determines that any provision of this Agreement is in any way unenforceable, that provision is amended or modified to the extent necessary to give the provision a valid legal and enforceable effect which is as similar as possible to the ineffective provision and is reasonably consistent with the purpose and intent of this Agreement.

43. NOT USED

44. NON-WAIVER

44.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver or forbearance of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

44.2 No term or provision of this Agreement shall be considered waived by any Party to it unless a waiver is given in writing by that Party. No waiver in accordance with this clause by either Party of any default by the other Party in relation to this Agreement operates as or is to be construed as or deemed to be a waiver of further, other or continuing defaults, whether of similar or different nature and whether of a past or future default, nor shall it amend, delete or add to the terms, conditions or provisions of the remaining parts of this Agreement except where expressly provided in this Agreement.

44.3 Each of the Parties' rights and remedies under this Agreement are cumulative and may be exercised as often as either of them considers appropriate.

45. COUNTERPARTS

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same Agreement.

46. COSTS AND EXPENSES

Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

47. **SET-OFF**

47.1 In addition to any other rights of the Client whether at law or equity under this Agreement, whenever

(a) under this Agreement any sum of money is recoverable from or payable by the Supplier;

(b) any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the Client arising out of or attributable to this Agreement;

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

48. **PROPER LAW, JURISDICTION AND DRP**

48.1 This Agreement and all matters arising from it, or in connection with it or its subject matter or formation and any dispute resolutions referred to below shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.

48.2 Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from senior management ('representatives') of each of the parties shall meet in person or communicate by telephone within 7 days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or by telephone, to facilitate an agreement within 10 days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 7 days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

48.3 Notwithstanding clauses 48.1 to 48.2, either Party may at any time refer a dispute under or in connection with the Agreement to adjudication. Any such adjudication shall be in accordance with the Client's Adjudication Rules current on the date of the notice of adjudication. For the purposes of this clause 48.3, "**Adjudication Rules**" means the Client's adjudication rules as appended to this Agreement at Schedule 20, as the same may be revised and updated with the agreement of the Parties from time to time..

49. **RESPONSIBLE PROCUREMENT**

- 49.1 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Client to enable the Client and LUL to comply with, the Responsible Procurement Principles.
- 49.2 The Supplier acknowledges and agrees that the Client is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the “**Ethical Sourcing Policy**”) which shall reflect and be consistent with the Responsible Procurement Principles, and the Supplier shall and shall procure that all of its subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Principles.
- 49.3 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Principles (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Principles).
- 49.4 The Supplier shall not be entitled to any additional payment in the event of any change to the Responsible Procurement Principles (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Principles) unless the Client issues an instruction and states in its instruction that additional payment is due.
- 49.5 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this clause 49 and the provisions of this clause 49 are included in any subcontract (of any tier).
- 49.6 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Client, who shall not give consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this clause 49.

50. **CRIME AND DISORDER**

- 50.1 The Supplier acknowledges that Transport for London is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 (as amended) to
- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties,
 - (b) where appropriate, identify actions to reduce levels of crime and disorder,

- (c) without prejudice to any other obligation imposed on the Client, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent in its area:
 - (i) crime and disorder (including anti-social and other behaviour adversely affecting the local environment);
 - (ii) the misuse of drugs, alcohol and other substances; and
 - (iii) re-offending,

and in the performance of the Agreement the Supplier shall assist and co-operate with the Client and relevant members of the TfL Group, and use reasonable endeavours to procure that its Subcontractors (and sub-sub-contractors) assist and co-operate, with the Client and relevant members of the TfL Group, to enable TfL to satisfy its duty.

51. LONDON LIVING WAGE

51.1 In this clause:

"**GLA Act**" means the Greater London Authority Act 1999;

"**Greater London**" means that term as it is used in the GLA Act;

"**London Living Wage**" means the basic hourly wage current at the date of this Agreement (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the Client; and

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

51.2 The Supplier acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the Client) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the LUL Network.

51.3 Without prejudice to the generality of clause 51.2, the Supplier shall and shall procure that its Subcontractors (if any) shall:

- (a) ensure that none of its employees engaged in the performance of the Services in Greater London or on the LUL Network (but not otherwise) is paid an

hourly wage (or equivalent of an hourly wage) less than the London Living Wage,

- (b) ensure that none of its employees engaged in the performance of the Services is paid less than the amount to which they are entitled in their respective contracts of employment,
 - (c) provide to the Client such information concerning the application of the London Living Wage as the Client or its nominees may reasonably require;
 - (d) disseminate on behalf of the Client to its employees engaged in the performance of the Services in Greater London or on the LUL Network (but not otherwise) who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Client or its nominees may reasonably require and promptly collate and return to the Client responses to such questionnaires;
 - (e) co-operate and provide all reasonable assistance to the Client and its nominees in monitoring the effect of the London Living Wage; and
 - (f) procure that any subcontractor (of any tier) is required to comply with the provisions of this clause 51 and the provisions of this clause 51 are included in any subcontract (of any tier).
- 51.4 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Client, who shall not give consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this clause 51.

52. DATA TRANSPARENCY

- 52.1 The Supplier acknowledges that the Client is subject to the Transparency Commitment. Accordingly, notwithstanding clauses 17 and 54, the Supplier hereby gives its consent for the Client to publish the Contract Information to the general public.
- 52.2 The Client may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Client may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Client may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to clause 52.1. The Client shall make the final decision regarding publication and/or redaction of the Contract Information.
- 52.3 In this clause:

“**Contract Information**” means (i) the Agreement in its entirety (including from time to time agreed changes to the Agreement) and (ii) data extracted from the invoices submitted pursuant to clause 3 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount; and

“**Transparency Commitment**” means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received.

53. **CONFLICT OF INTEREST**

53.1 The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with carrying out the Services or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Client.

53.2 The Supplier undertakes ongoing and regular conflict of interest checks throughout the duration of the Agreement and in any event not less than once in every six months and notifies the Client in writing immediately on becoming aware of any actual or potential conflict of interest with carrying out the Services or any member of the TfL Group and works with the Client to do whatever is necessary (including the separation of staff working and/or data relating to the Services from the matter in question) to manage such conflict to the Client's satisfaction and provided that, where the Client is not so satisfied (in its absolute discretion), the Client shall be entitled to terminate the Agreement.

54. **FREEDOM OF INFORMATION**

54.1 Notwithstanding clause 17, the Supplier acknowledges that the Client:

- (a) is subject to FOI Legislation and agrees to assist and co-operate with the Client to enable the Client to comply with its obligations under the FOI Legislation, and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Supplier.

54.2 Without prejudice to the generality of clause 54.1, the Supplier agrees and procures that its Subcontractors will agree to:

- (a) transfer to the Client or such other persons as may be notified by the Client to the Supplier each Information Request relevant to this Agreement, the Services

or any member of the TfL Group that the Supplier or its Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and

- (b) in relation to Information held by the Supplier on behalf of the Client, provide the Client with details about and/or copies of all such Information that the Client requests and such details and/or copies are provided within 6 days of a request from the Client (or such other period as the Client may reasonably specify), and in such forms as the Client may reasonably specify.

54.3 The Client (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Supplier shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Client.

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

55. CRIMINAL RECORD DECLARATIONS

55.1 In this clause:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of the Supplier, an Associated Company or any Subcontractor carrying out, or intended to carry out, any aspects of the Services.

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

55.2 The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“Declaration”) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the Services. The Supplier shall confirm to the Client in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction throughout the duration of this Agreement and the Supplier shall notify the Client in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 55.3 The Supplier is not permitted to engage or allow to act on behalf of the Supplier or any Subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 55.4 The Client may in accordance with the audit rights set out in clause 19 audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this Agreement.
- 55.5 If the Supplier fails to comply with the requirements under clauses 55.2 and/or 55.3, the Client may, without prejudice to its rights under clause 9, serve notice on the Supplier requiring the Supplier to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with clause 55.2) within 7 days of receipt of the notice the Supplier confirms to the Client it has procured all of the Declarations required under clause 55.2.
- 55.6 A persistent breach of clause 55.2 and/or 55.3 by the Supplier shall constitute a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part with immediate effect in accordance with clause 9.
- 55.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services and the performance of this Agreement.
- 55.8 Nothing in this clause 55 in any way waives, limits or amends any obligation of the Supplier to the Client arising under this Agreement and the Supplier's obligation to carry out the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this clause 55.

56. BEST VALUE

The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the Client are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier assists the Client (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this Agreement in order for the Client (and, where appropriate, TfL) to achieve best value.

57. **PROHIBITED ACTS**

- 57.1 The Supplier does not and uses its reasonable endeavours to procure that its Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- 57.2 Without prejudice to its rights under clause 19 the Client may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this Agreement and during the 12 years thereafter.
- 57.3 If the Supplier, any of its shareholders or any Subcontractor or anyone employed by or acting on behalf of the Supplier or any of its agents commits any Prohibited Act, this constitutes a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part in accordance with clause 9.5(a).
- 57.4 If a Prohibited Act is committed by an employee of the Supplier or by any Subcontractor (or employee or agent of such Subcontractor) then the Client may (at its sole discretion) choose to serve a warning notice upon the Supplier instead of exercising its right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Supplier removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected Services by another person or Subcontractor this constitutes a material breach of this Agreement and entitles the Client to terminate the Agreement in whole or in part with immediate effect in accordance with clause 9.

58. **WORK RELATED ROAD RISK**

- 58.1 For the purposes of this clause 58, the following expressions shall have the following meanings:

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

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

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

"Delivery and Servicing Vehicle" means a Lorry, a Van or a Car-derived Van;

"**Driver**" means any employee of the Supplier (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Services;

"**DVLA**" means the Driver and Vehicle Licensing Agency;

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

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

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

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

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

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

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

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

58.2 **Fleet Operator Recognition Scheme Accreditation**

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

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Client, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and

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

58.3 Safety Equipment on Vehicles

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

- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Client that the Lorry will not perform the function for which it was built if Side Guards are fitted;
- (b) have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- (c) have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- (d) have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

58.4 Driver Licence Checks

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

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

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

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

58.5 Driver Training

Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, the Supplier shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Agreement.

58.6 Collision Reporting

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

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

58.7 Self Certification of Compliance

Where the Supplier operates Delivery and Servicing Vehicles to supply the Services, within 90 days of the Restatement Effective Date, the Supplier shall make a written report to the Client detailing its compliance with clauses 58.3, 58.4 and 58.5 of this Agreement (the "**WRRR Self-certification Report**"). The Supplier shall provide updates of the WRRR Self-certification Report to the Client on each three month anniversary of its submission of the initial WRRR Self-certification Report.

58.8 Obligations of the Supplier Regarding Subcontractors

The Supplier shall ensure that those of its subcontractors who operate Delivery and Servicing Vehicles to supply the Services shall:

- (a) comply with clause 58.2; and
- (b) where its subcontractors operate the following vehicles to supply the Services shall comply with the corresponding provisions of this Agreement:
 - (i) For Lorries – clauses 58.3, 58.4, 58.5 and/or 58.6; and
 - (ii) For Vans – clauses 58.4, 58.5 and/or 58.6,

as if those subcontractors were a party to this Agreement.

58.9 Failure to Comply with Work Related Road Risk Obligations

Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with any of clauses 58.2, 58.3, 58.4, 58.5, 58.6, 58.7 and/or 58.8:

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

59. SURVIVAL

In this Agreement the provisions of clauses 1, 2, 5, 6, 6B, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20.1, 21, 22, 23A, 26, 27, 28, 32, 33, 35, 37, 38, 40, 41, 42, 44, 45, 46, 47, 48, 50, 52, 53, 54, 57 and this clause 59 and any other clauses or Schedules that are necessary to give effect to those clauses survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement does so.

THIS AGREEMENT has been executed on the date first above written

SIGNED by)
for and on behalf of)
TUBE LINES LIMITED)

Name:

Title:

SIGNED by
for and on behalf of
**THALES GROUND TRANSPORTATION
SYSTEMS UK LIMITED**

REDACTED
REDACTED
REDACTED

Name: *K. L. Hill*

Title: *Commercial Director*

SCHEDULE 1

AGREEMENT PARTICULARS

Date of Commencement: 18 August 2013

Restatement Effective Date: 18 February 2017

Expiry Date: 17 February 2022

Designated Project Manager: REDACTED

Client Representative: REDACTED REDACTED REDACTED

Supplier Representative: REDACTED REDACTED REDACTED REDACTED

Time for correction of Defects: 2 weeks or such other timescale as the Parties may agree in writing.

SCHEDULE 2

SUPPORT FEES AND PAYMENT PROCEDURE

The Support Fees payable for the Services shall comprise the following rates and charges (in each case as the same may be amended from time to time in accordance with clauses 3.6 and/or 30):

Charges for the Standard Support Service

The rate for the Standard Support Service shall comprise the following elements:

Service	Fee payable
Provision of: Annual obsolescence report in accordance with paragraph 5 of the Specification.	A fixed sum of REDACTED per report, payable upon acceptance of report delivered in accordance with the terms of the Specification.
Provision of: 50 log analysis events per annum in accordance with paragraph 3 of the Specification	A fixed sum of REDACTED per Financial Year during the term of this Agreement (or pro-rata for any part of a Financial Year falling within the term of this Agreement), such sum to be invoiced in arrears at the rate of REDACTED per Accounting Period. Note: Reclaimed and unused log analysis events cannot be rolled forward by the Client and used in subsequent Financial Years
Provision of: spares and repairs service in accordance with paragraph 2 of the Specification	Charged in accordance with the approved Spares and Repairs Catalogue in force at the time the relevant order is placed or, where the Client requires the repair, overhaul or supply of Spares, Materials and Equipment in connection with the TBTC System that are not referred to in the Spares and Repairs Catalogue and/or where no initial Spares and Repairs Catalogue has been agreed in accordance with clause 4 of the Agreement, the Supplier shall repair, overhaul or supply (as the case may be) such items at competitive, open-market rates and prices. Any fees to be paid in respect of such spares and repairs services shall become payable upon such services having been properly supplied in accordance with this Agreement, provided that the Supplier is in receipt of a written requisition in the form referred to in clause 4.2 of this Agreement signed by the Client Representative or his delegate.

Charges for Optional Services

Any Optional Services ordered pursuant to clause 6A of this Agreement shall be charged in accordance with the rates set out in Schedule 4. For the avoidance of doubt, any Optional Services ordered by the Client may be used by the Client at any time during the term of this Agreement. Any fees to be paid in respect of Optional Services shall become payable in full following the Assessment Date falling at the end of the Accounting Period in which the Optional Services were ordered in accordance with clause 6A and provided always that the Optional Services in question have been expressly instructed in writing in accordance with clause 6A.2.

Schedule of Rates

Labour Hourly Rate	Hourly Rate
Maintainer (Services)	REDACTED
Fault Finder (Services)	REDACTED
Tester (Construction)	REDACTED
Installer (Construction)	REDACTED
Technical Specialist (Engineering/Systems)	REDACTED
Project Engineer (BPMO)	REDACTED
Project Management	

Charges for Variations

The treatment of Variations shall be as set out in clause 30 of this Agreement. Any amounts payable in respect of such Variations shall become payable upon the Services to which the relevant Variation relates having been properly supplied in accordance with this Agreement.

Key Performance Indicators

The Service Payment may be adjusted to take into account the Supplier’s performance measured against the KPIs in accordance with clause 31 and the Performance Schedule.

NOTE: For the avoidance of doubt, references in this Schedule 2 to sums becoming “payable” are all subject to the terms of clause 3 and the process set out therein for payment of the Support Payment.

SCHEDULE 3

SPARES AND REPAIRS SERVICE PURCHASE ORDER

**TLL TBTC Technical Support and Spares Supply Agreement
Schedule 3 – Spares and Repairs Service Purchase Order
Execution Version**

PURCHASE ORDER
NO:

Supplier
THALES TRANSPORT AND
SECURITY SERVICES
THALES FINANCIAL SHARED
SERVICES
ACCOUNTS RECEIVABLE
MAIL CODE AR001
MANOR ROYAL
United Kingdom

Invoice To
Accounts Payable
P.O. Box 45276
14 Pier Walk
Greater London SE10 1AJ
United Kingdom

Deliver To
See Below for Deliver Address



Transport for London (TfL) has incorporated mandatory safety requirements in all its standard forms of contract with the aim of improving the safety of cyclists. All TfL contractors are required to comply with these requirements (which are available on request) including registering for membership of the Fleet Operator Recognition Scheme (FORS). Information on FORS is available at www.fors-online.org.uk

Order Date: []	Buyer: []	Terms & Conditions/Important Information : Unless otherwise stated on this Purchase Order or in any attachment to it, this Purchase Order is subject to the Tube Lines' Standard Conditions of Contract for the Purchase of Goods and Services under a Purchase Order, in place at the Order Date stated below, a copy of which can be provided upon request.
Order Type: [STANDARD]	Payment Terms – in Days: 30 Net	
Rev. No: [0]	Tender/Quotation Ref: []	PO Header Note or Release Header Note (For releases against planned or blanket PO's only) : Contract "TLL7658 - Technical Support and Spares Supply Agreement" Terms and conditions apply
Rev. Date:	Agreement Number: TLL7658	
	Contract Number: []	Purchase Order Cancellation Date :

Tube Lines Ltd, Registered No. 3923425 in England and Wales, Windsor House, 42-50 Victoria Street, London SW1H 0TL. REDACTED

TLL TBTC Technical Support and Spares Supply Agreement
 Schedule 3 – Spares and Repairs Service Purchase Order
 Execution Version

Line Number	TLL Part No.	Supplier Product Code	Item Description	Inspection Category	Delivery Due Date	Quantity	U.O.M.	Unit Price	Extended Line Price
			[Delivery Address: [Attn of REDACTED Neasden Depot off Neasden Lane NEASDEN, Greater London NW10 1PH United Kingdom Deliver to: REDACTED (Qty = [])]						

SCHEDULE 4

OPTIONAL SERVICES

Optional Service Description	Rate
Log analysis (per paragraph 7 of Specification) - additional 25 events	REDACTED

SCHEDULE 5

ORDER FOR OPTIONAL SERVICES

<p>TUBE LINES LIMITED</p> <p>Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB</p> <p>TELEPHONE : REDACTED</p>	
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<p>TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)</p>

Contract No.: TLL 7658
 Variation No.:
 Date.:
 F.A.O.:
 Tel:
 Fax:

ORDER FOR OPTIONAL SERVICES

Authority is hereby given for the optional services requirement for the fixed price set out below. A copy of the completed order is to be retained by the Supplier, and the original returned to: Tube Lines Limited, Company Representative, Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB.

DETAILS OF AUTHORITY FOR OPTIONAL SERVICES	AMOUNT	
	(£)	(p)
TOTAL COST TO Tube Lines Limited £		

 Tube Lines Limited Procurement Authority

 Tube Lines Limited Company Representative

ACCEPTANCE BY THE SUPPLIER

Signed _____
 on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

SCHEDULE 6

SPECIFICATION

**TBTC TECHNICAL SUPPORT AND
SPARES SUPPLY AGREEMENT**

Technical Specification

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1. Introduction

The purpose of this document is to detail the Technical Specification of the services to be delivered under the Technical Support and Spares Supply Agreement following the Restatement Effective Date by the Supplier in support of the Client's TBTC System on the LUL Network. For the avoidance of doubt this can be defined as the TBTC System as installed by Thales Ground Transportation Systems on the Jubilee Line, Northern Line, TransPlant (Engineering Vehicles) & associated Service Control Centres at Neasden and Highgate as well as the various Second Line Maintenance Devices (SLMD), both the Train-Bourne and Wayside version.

For the purposes of this schedule only, the rights, obligations and activities of the parties under this Agreement that apply following the Restatement Effective Date are described as the "TSSSA 2", and the activities of the parties under this Agreement prior to the Restatement Effective Date are described as the "TSSSA 1".

Furthermore, the Agreement is completely separate from any other contract / agreement between the Supplier and the Client or any other part of TfL or LUL, for example 4LM or JNUP and as such it is expected no element of the service provided by the Supplier should be reliant upon or depend on any other separate contract / agreement.

In summary, the Supplier will provide the following services:

- TBTC Spares and Repairs service – SECTION 2
- TBTC log file analysis – SECTION 3
- TBTC technical support – SECTION 4
- Obsolescence Services – SECTION 5
- Moves, Changes and Project Services – SECTION 6
- Optional services – SECTION 7

These services are described in more detail in the following sections below.

The Supplier's call centre (the "Call Centre") will be the primary point of contact for the Client to invoke the technical support services and will be available 24 hours per day, 7 days per week. The Supplier shall notify the Client of the telephone number for the Call Centre prior to the Restatement Effective Date.

2. Spares and Repairs Service

2.1 Introduction

The Supplier will provide a dedicated TBTC System spares and repairs service which includes the repair, overhaul, procurement and supply of Spares, Materials and Equipment in connection with the installed TBTC System as may be required by the Client.

The Supplier will repair, overhaul and supply the Spares, Materials and Equipment if requested by the Client and such Spares, Materials and Equipment and services shall be provided for the rates and prices set out in the accepted version of the Spares and Repairs Catalogue applicable at the time of the request, or appropriate quotation.

All parts subject to repair, overhaul or new spares provided under this Agreement shall be delivered by the Supplier (or the Supplier's Shipping Agent) to the Client's stores at the Neasden Service Control Centre (NSCC) or to such other UK address as may be specified in the relevant Purchase Order.

For the avoidance of doubt all shipping / handling or other relevant costs shall be deemed to be included within the agreed purchase price for the parts and no additional costs will be levied on the Client.

2.2 Spares and Repairs Catalogue

The Supplier will provide a Spares and Repairs Catalogue detailing all the parts and equipment (including any specialist tools) forming part of or used in connection with the TBTC System including all support equipment such as SLMDs.

The Spares and Repairs Catalogue will detail the following information for parts not subject to obsolescence:

- Item part number (Supplier and third party supplier part number)
- Item description
- The currency in which the Supplier pays for such item – Only Non-GBP Spares, Materials and Equipment as per clause 3.2
- Replacement price – For commonly purchased items only #
- Replacement lead-time (Calendar days) – For all items
- Replacement warranty period– For all items
- Repair price (no more than 55% of replacement Price)
- Repair lead-time (Calendar days)
- Repair warranty period
- Overhaul price (if different from repair price) - Only items which require overhaul as per section 2.6
- Overhaul lead-time (Calendar days) (if different from repair lead-time) – Only items which require overhaul as per section 2.6
- Overhaul warranty period - Only items which require overhaul as per section 2.6
- Shelf Life Constraint (Years)*

Items commonly purchased shall be defined as all items purchased under TSSSA 1 as well as those quoted under TSSSA 1 and also items purchased by other equivalent TBTC system users.

*Items which have an identified “Shelf Life Constraint (Years)” the value should be that of any item where The Supplier has identified that particular item if kept in stock and unused by the Client for a given period of time should be Overhauled or Tested prior to the item being put into service within the Client’s TBTC system. Any such items shall also be identified by the Supplier as Client/Supplier Test/Overhaul every X years/months in the notes column. See also Section 2.6 “Overhaul Service” within this document for further detail.

The Spares and Repairs Catalogue will be reviewed and re-issued annually in accordance with clauses 4.4 to 4.6 of this Agreement to take into account changes in technology, supply chain and obsolescence and changes in the relevant indices and/or exchange rates in accordance with clauses 3.6 and 3.6A. The review and re-issue will be within three calendar months of the anniversary of the Restatement Effective Date.

If the re-issue of the catalogue is not delivered within three calendar months of the anniversary of Restatement Effective Date, the Client will be entitled to continue to purchase any items from the most current agreed catalogue at the agreed prices until such time as the revised catalogue is agreed between the Client and the Supplier for which agreement will not be unduly withheld.

For the avoidance of doubt, until the first issue of the Spares and Repairs catalogue to be delivered under TSSSA 2 has been agreed, the Client will be entitled to continue making purchases of Spares and Repairs using the prices and lead times in the most current version of the Spares and Repairs Catalogue as issued and agreed under TSSSA 1, at present this is version 7.1.

Unless expressly informed otherwise, the Client will be free to judge any parts not contained within the Spares and Repairs Catalogue as freely available Commercial of The Shelf (COTS) items and therefore free to purchase via any suitable supplier so long as the parts are a suitable Fit Form Function replacement. This does not affect the Client’s right to request a quotation as defined in section 2.3.2 of this schedule.

The Client also reserves the right to request via provisions of this Agreement, namely those under section 4.3 of this schedule, that the Supplier identifies, in respect of any parts which the Client intends to procure via provisions of this Agreement, any COTS item which is a suitable alternative to that provided by the Supplier where using the provisions of this Agreement adds little or no benefit to either party, irrespective of the parts’ inclusion or exclusion in or from the Spares and Repairs Catalogue.

2.3 Quotations

2.3.1 **Items Contained within the Spares and Repairs Catalogue**

Any item contained within but not priced in the Spares and Repairs Catalogue, such as those items not commonly purchased, will be subject to a quotation. The Supplier will provide upon request from the Client a quotation for such item(s) within the Spares and Repairs Catalogue within 7 Calendar days for Spares and 30 Calendar days for Repairs from request from the Client. The lead time shall include the time taken by the Supplier to issue the quotation to the Client and the time taken to deliver the item

2.3.2 **Items not contained within the Spares and Repairs Catalogue**

Where the Client requires the repair, overhaul or supply of Spares, Materials and Equipment in connection with the TBTC System where such parts or service(s) are not included within the

Spares and Repairs Catalogue, the Supplier shall, where requested, provide a quotation for the repair, overhaul or supply (as the case may be) at competitive, open-market rates and prices.

The Supplier will provide a quotation within 45 calendar days from request by the Client. The quotation will contain the unit price per item, lead time and any warranty information if different from the standard warranty as set out in section 2.7 of this Schedule and clause 28 of this Agreement. The quotation will be assumed to be valid for a period of 30 calendar days unless otherwise notified.

For the avoidance of doubt, this is expected to be used infrequently as all items used within and in association with the Client's TBTC system should be included within the Spares and Repairs catalogue, see section 2.2 above.

2.4 Repairs Service

Where an item is to be sent by the Client for repair by the Supplier, immediately prior to sending the item the Client will invoke the repairs service by contacting the Call Centre or other suitable contact as may be notified by the Supplier and request an RMA reference. A Purchase Order for the agreed value as set out in the Spares and Repairs Catalogue (or quotation) will be issued to the Supplier referencing the RMA Number. The item will then be dispatched by the Client to the Supplier's nominated location with the RMA reference clearly identified.

The repair will be undertaken at the agreed cost and in accordance with the lead-time stated in the current accepted version of the Spares and Repairs Catalogue or appropriate quotation and will benefit from the warranty as set out in section 2.7 of this schedule and clause 28 of this Agreement.

Where the item sent for repair is deemed to be Beyond Economical Repair (BER), the Supplier will advise the Client in writing. Within 7 days of such notification, the Client will agree one of the following actions:

- Proceed with the repair (at an agreed cost); or
- Replace the item with a new part (at the cost identified in the Spares and Repairs Catalogue).

In the case of the second action, the Supplier will be entitled to recover any reasonable costs incurred as a result of any necessary and reasonable surveying and disposing of the BER item, provided that such cost is less than the applicable repair price.

2.5 Spares Service

Where the Client requires new parts these may be selected from the current version of the Spares and Repairs Catalogue and requested at the rate set therein or the rate notified via an appropriate quotation. A Purchase Order for the appropriate value will be issued to the Supplier Representative. The Supplier will acknowledge receipt of the instruction and procure the items requested.

New parts will be provided at the price and in accordance with the lead-time stated in the current accepted version of the Spares and Repairs Catalogue or appropriate quotation and will benefit from the warranty as set out in Section 2.7 of this schedule and clause 28 of this Agreement.

2.6 Overhaul Service

Where an item is identified by the Supplier and/or the Client as requiring regular overhaul this will be interpreted to mean, but not limited to, items requiring regular attention such as battery replacement or relay replacement and testing or any other action which cannot be undertaken by the Client.

Where the Client requires overhauled parts these may be selected from the current version of the Spares and Repairs Catalogue and requested through a Purchase Order to the Supplier Representative. The Supplier will acknowledge receipt of the instruction and the item will then be dispatched by the Client to the nominated location with the Purchase Order reference clearly identified.

The overhaul will be undertaken at the cost and in accordance with the lead-time stated in the current accepted version of the Spares and Repairs Catalogue and will benefit from the warranty as set out in section 2.7 of this Schedule and clause 28 of this Agreement.

Where an item has been identified by the Supplier as requiring a regular overhaul or testing regime which is to be carried out by the Client, the Supplier will be required to identify these items in the Spares and Repairs Catalogue as ‘Client Test/Overhaul every X years/months’ in the appropriate notes column for the item concerned.

Furthermore, those items identified ‘Client Test/Overhaul every X years/months’ also require detail from the Supplier stating the processes to be used as well as the testing to validate the item as working, which the Client is to carry out. The Client expects the Supplier to draw upon documentation provided as part of the TBTC Installation process such as O&M Manuals as well as previous documents delivered under this Agreement such as the “Revised Shelf Life Report for the JL” as provided by the Supplier in August 2015.

2.7 Warranty

Where any parts are provided, repaired or overhauled by the Supplier in accordance with relevant provisions within this Agreement such as those in the sections 2.4, 2.5 and 2.6 above then, unless otherwise noted, the provisions of clause 28 of this Agreement shall apply in respect of such parts, with the applicable Warranty Period generally being 1 year from the applicable Repair/Replacement Date of those parts. In relation to any parts where a Warranty Period of different duration is specified in the Spares and Repairs Catalogue (see section 2.2 of this Schedule), the Warranty Period in the catalogue shall take precedence. For the avoidance of doubt, this includes items subject to quotation under section 2.3.1 of this schedule. Parts provided subject to a quotation provided under section 2.3.2 of this schedule will, unless otherwise noted in the relevant quotation, be subject to a Warranty Period of 1 year from the applicable Repair/Replacement Date.

The warranty under clause 28 of this Agreement for Spare parts shall be deemed to cover all materials and workmanship associated with the complete parts.

The warranty under clause 28 of this Agreement for Repaired and Overhauled parts shall be deemed to cover only materials and workmanship directly involved with the repair or overhaul completed under this Agreement.

2.8 Goods In / Quality Inspection

Any parts provided by, repaired under or overhauled using provisions within this Agreement such as those in sections 2.4, 2.5 and 2.6 above will be subject to the following Goods in / Quality Inspections upon delivery by the Supplier. The provisions discussed below do not remove or change any liabilities as may be appropriate under the warranty described in section 2.7 above.

2.8.1 Goods In

Within a period of 10 working days from receipt of the parts the Client will notify the Supplier of any issues with the delivery. This includes but is not limited to, damage arising from shipping / handling, quantity discrepancies or parts without the required paperwork (C of Cs etc).

Where the Client identifies any delivery issue and provides notification to the Supplier within the appropriate timescale, the Supplier will be required to rectify the issue in an appropriate manner and at no additional cost to the Client within a timescale to be agreed between both parties at the time.

Where delivery issues are identified, the Client will use best endeavours to preserve and/or document as may be appropriate any evidence of damage due to shipping / handling of the parts to assist the Supplier with any potential insurance claim, however it is acknowledged that this may not always be possible where the issue is concealed by other items or further packaging meaning the issue is not apparent until fully unpackaged.

2.8.2 Quality Inspection

Within a period of 30 working days of receipt of the parts, the Client will notify the Supplier of any Quality issues associated with the parts, including but not limited to parts being mislabelled with incorrect part numbers or revision numbers, or any parts which fail the Client's initial testing regime.

Where the Client identifies any quality issue and provides notification to the Supplier within the appropriate timescale, the Supplier will be required to rectify the issue in an appropriate manner and at no additional cost to the Client within a timescale to be agreed between both parties at the time.

3. Log Analysis

3.1 Introduction

The Client will provide the Supplier with access to a web based portal where all TBTC System logs and other system artefacts are uploaded, known as the ‘S3 Storage Cloud’, and from there are available to be analysed as requested in the event of a failure mode or operating scenario that cannot be readily explained.

The Client will normally upload TBTC System logs and other system generated artefacts to the portal within 24 hours of the Log generation i.e. Logs generated at 1300 Tuesday will normally be available by 1300 Wednesday.

The Supplier will provide an initial response to the requester and the Client Representative within 24 working hours and a detailed response to the requester and the Client Representative within 72 working hours. Expectations for each report are detailed below.

For the avoidance of doubt Working Hours is defined as Monday – Friday 06:00 – 18:00 hrs (these times are UK GMT/BST specific as applicable at the time).

3.2 24 Hour Analysis

Within the first 24 Working Hours period:

- The Supplier should produce an initial response to the investigation, indicating what is believed to be the likely cause (where known) and any further steps (if any) that are required to conclude the investigation in the format of an interim report.
- If the issue is an existing known issue which already has a Supplier Change Request number allocated to it, the Client would expect confirmation and the issue of the final report rather than an interim report.

3.3 72 Hour Analysis

If not already concluded within the first 24 working hours, a final report should conclude details of the problem(s) identified and should where reasonably practicable include the following:

- Acknowledgment that the problem reported did actually occur;
- Confirmation on whether the problem can be readily re-produced;
- Any change request numbers created as a result of the investigation;
- Any operational guidance for a work-around to prevent such an issue re-occurring; and
- Enough relevant Log Event Sequence information to enable the Client to self-diagnose a repeat occurrence where the same sequence of Log events has been recorded demonstrating the same technical problem

3.4 Log Analysis Detail

The Client may request up to 50 log analysis events per year.

The Client will be informed of the status and any change to those Change Requests previously raised under TSSSA 1 as well as any resulting from TSSSA 2 log file analysis investigations via the periodic supplier contract reports.

It is assumed the Supplier has access to all log files and background information required via the S3 Storage Cloud prior to starting the initial 24 hour response period, if a request is made before the Logs and other data have been uploaded to the S3 Storage Cloud (see section 3.1 above) alternative provisions will be made to ensure these files are provided to the Supplier. The Supplier will need to confirm any shortfalls in this information as part of the interim 24 hour response so the Client can address this shortfall.

If the supplier becomes aware of any delay in providing either the 24 hour analysis (section 3.2) or 72 hour analysis (section 3.3) then the Supplier will as soon as reasonably practicable inform the Client's Representative of the delay and cause of delay. For example, but not limited to cases where the Supplier believes to provide confirmation on whether the problem can be readily re-produced will require further analysis causing the Supplier to miss the appropriate KPI deliverable. In any such occurrence, the Clients representative will acting reasonably discuss the delay with the Supplier and where applicable agree a mutually agreeable timescale for delivery of the appropriate analysis.

Additional log analysis events required by the Client will be provided on request by the Supplier as Optional Services (see section 7) and will be charged at the rate agreed and in the quantities agreed.

4. Technical Support

4.1 Introduction

The Supplier will provide a Time and Materials based technical support service consisting of the provision of subject matter sub-system experts (SMSEs). These resources are experienced on the TBTC System and its application. These resources can be accessed via:

- Telephone Technical Support Request
- Technical Specialists Request
- On-site Technical Support Request

The Supplier will provide a set of hourly rates for the provision of Technical Support. When the Client requests Technical Support, the Supplier will review this request and provide an estimate for completion and associated cost based upon the agreed rates within 14 calendar days unless notified within 72 Working hours of request. This will then be reviewed by the Client and accepted or returned for further work. The Schedule of rates can be found in schedule 2 of the Agreement.

The Supplier personnel able to respond to requests for technical support may include any combination of the following subject matter sub-system experts (SMSEs) available. The list is indicative to their primary area of expertise only and each individual will have a broader understanding and competence of the TBTC System as a whole;

- Central SMSE – VCC & SCS related faults
- Wayside SMSE – Axle Counters, DIs, ESPs and other wayside equipment faults
- Train borne SMSE – VOBC and other train borne equipment faults
- Communications SMSE – DCS and LAN related faults
- Scheduling and Management Systems SMSE – SMC & ATS related faults

4.2 Telephone Technical Support

The telephone technical support service will provide but not be limited to the following type of support:

- Assistance with problems experienced during reboots
- Assistance with commands carried out during maintenance and fault rectification
- Assistance with interpreting logs
- Technical issues associated with the TBTC Systems

The Client will be required to contact the Call Centre to invoke the telephone technical support service. The Call Centre will answer the call for telephone technical support within 10 minutes.

The Call Centre will log the request for technical support and arrange for the appropriate SMSEs to respond, dependent upon the primary area of support required or specific request from the Client. The SMSEs will respond to the original request within 30 minutes during the hours of 08:00 to 18:00 Monday to Friday (except on days which are statutory holidays in England). For the avoidance of doubt these times are UK GMT/BST specific as applicable at the time.

4.3 Technical Specialists

The technical specialist service will provide the following type of support:

- Assistance with interpreting system generated logs and artefacts.
- Advice and guidance on maintenance practise and procedures.
- Technical guidance for configuration and enhancements.
- Technical issues associated with the TBTC Systems

It is expected that this type of support would be of a non-priority nature and issues raised would not require the immediate availability of the Supplier's personnel and any request for technical specialist support is therefore to be completed within a mutually agreed timescale with work to be completed in line with normal Working Hours which for the avoidance of doubt is defined as Monday – Friday 06:00 – 18:00 hrs (these times are UK GMT/BST specific as applicable at the time).

The Client will be required to contact the Call Centre to invoke the technical specialist service. The Call Centre will answer the call for the technical specialist within 10 minutes.

The Call Centre will log the request for technical specialist support and arrange for the appropriate SMSEs to respond, dependent upon the primary area of support required or specific request from the Client.

4.4 On-Site Technical Support

The primary aim of the on-site technical support service will be to assist the Client's first line maintenance personnel in diagnosing and rectifying any TBTC System related faults. This may be through the provision of advice and guidance in fault finding, assisting in the replacement of faulty LRUs or support in the restoration of the TBTC System to full working order.

The Client will contact the Call Centre to invoke the on-site technical support service.

The Call Centre will log the request for on-site technical support and arrange for the appropriate SMSEs to respond, dependent upon the primary area of support required or specific request from the Client. The SMSE and Client Representative will arrange a mutually convenient time for the on-site attendance, subject to access availability, nominally between 48 and 72 hours from the original request.

5. **Obsolescence Service**

The Supplier will provide, on an annual basis, a two-year rolling obsolescence and technology management report, which will:

- Detail the obsolescence risks and issues that are expected to arise in respect of the TBTC System taking account of the full design and operational life of the TBTC System.
- Consider the impact of these risks and issues in the TBTC System.
- Outline the Supplier’s recommendations as to how to mitigate obsolescence risks.

The report will detail the steps being taken, and to be taken, by the Supplier to mitigate the risks and will report on progress.

The report will cover both equipment manufactured by the Supplier and the Associated Companies and equipment manufactured by its sub-contractors or third parties.

The Client may request a proposal for detailed analysis of the options and associated costs to mitigate the obsolescence, such work may be instructed via the variation process.

The first issue of the obsolescence and technology management report will be delivered within 6 weeks following the Restatement Effective Date.

Subsequent reports will be delivered, each contract year, within 6 weeks of the anniversary of the Restatement Effective Date.

If the Client does not accept the obsolescence report, the Client shall make the Supplier aware within 14 calendar days from the date the Supplier submits the report to the Client

Where items are known by the Supplier to become obsolete between issues of the yearly obsolescence report, the Supplier will provide an Obsolescence Notification to the Client including any details of Last time to buy. This Obsolescence Notification would be expected to be reflected in the next issue of the full obsolescence report.

6. Moves, Changes and Project Services

Where the Client requires a move, change or project to be undertaken on the TBTC System this may be requested using the Variation Process.

The Client will provide the Supplier with a sufficiently detailed scope of works containing expected outcomes of the works and sufficient detail of the requirement for support from the Supplier to enable the Supplier to produce a priced proposal for completion.

When the Supplier has a full understanding of the requirements of the move, change or project, it will prepare a proposal for the execution of the move, change or project using the following references:

Materials costs will be as per the current accepted revision of the Spares and Repairs Catalogue, unless agreed otherwise. Labour costs will be as per the agreed rates, unless agreed otherwise.

The proposal will detail the following:

- Programme for delivery
- Resources used
- Materials supplied
- A suitably detailed quotation including agreed relevant build up as requested within NPVC.

The Client will, subject to acceptance of the proposal, issue an Authority for Variation to Contract or a Notification of Required Variation to Contract (as the case may be) to the Supplier.

7. Optional Services

If the Client requires further log analysis in addition to the core quantities set out in section 3.4 of this schedule, these will be provided by the Supplier at the Client's request as Optional Services and will be charged at the rates agreed and be delivered in the volumes agreed.

The Rates and quantities for Optional Services can be found in schedule 4 of the Agreement.

SCHEDULE 7

NOT USED

SCHEDULE 8

KEY PERFORMANCE INDICATORS / PERFORMANCE SCHEDULE

**TBTC TECHNICAL SUPPORT AND
SPARES SUPPLY AGREEMENT**

Performance Schedule

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1. Introduction

This Performance Schedule sets out the performance regime and deliverables that are required from the Supplier in order to successfully provide the Services.

The Supplier's performance shall be measured according to the Key Performance Indicators (KPIs) set out in this Performance Schedule.

This Performance Schedule sets out the consequences where the Supplier fails to meet the target performance levels, which may include (but is not limited to) adjustments to the Support Payment. For the avoidance of doubt, Support Payment refers to any payment due to the Supplier in relation to services provided under this Agreement including, but not limited to, Support Fees in relation to the provision of Spares & Repairs or Overhauls.

Where the context permits, terms and definitions defined the conditions of this Agreement shall have the same meanings herein.

2. Key Performance Indicators (KPIs)

Key Performance Indicators (KPIs) shall be used to monitor the Supplier's performance in delivery of the services within this Agreement in key areas of performance deemed critical to the successful delivery of this Agreement. The KPIs can be found in the KPI Matrix within this schedule under section 2.1

The KPIs will be used to measure performance on a periodic basis and the Support Payment to the Supplier will be adjusted dependent upon the performance levels achieved in the relevant Accounting Period.

The KPIs, unless otherwise stated, will be monitored for each Accounting Period in accordance with a 'traffic light' score as follows:

Green = Target Performance
Amber = Performance Concern
Red = Serious Performance Improvement Required

At the end of each Accounting Period the Client Representative will assess the Supplier's performance based upon the adherence to the KPIs and provide an assessment to the Supplier's Representative for discussion at the applicable period review meeting. This assessment will be used to make any adjustments to any Support Payment that is otherwise due, such adjustments to be made as set out in section 3 of this schedule

For the avoidance of doubt, where a technical support request is raised at the end of an Accounting Period and the request is not due to be closed until the following Accounting Period, the KPI score will be applied to the period in which the request is completed.

The KPI Matrix contains:

- a KPI ID for each KPI
- a description of the KPI
- the criteria that will be used to assess the performance against the traffic light score
- the frequency of assessment

2.1 KPI Matrix

2.1 KPI Matrix		Traffic Light Score			Frequency of Review
KPI ID	KPI Description	Target Performance	Performance Concern	Serious Performance Improvement Required	
Safety 1	Safety Supplier shall deliver contractual obligations without causing safety related incident.	Zero safety related incidents or near misses resulting due to Supplier's failure to perform under the Agreement	n/a	One or more safety related incident or near miss resulting due to Supplier's failure to perform under the Agreement	Periodically
Delivery 1	Log Analysis - 24 Working Hours The Supplier will provide an initial response to the requester and The Client's Representative with 24 Working Hours. <i>See Schedule 6 Section 3.2</i>	100% acceptable responses within designated timescale	Between 95% and 85% of acceptable responses within designated timescale	Less than 85% of acceptable responses within designated timescale	Periodically
Delivery 2	Log Analysis - 72 Working Hours The Supplier will provide a detailed response to the requester and The Client's Representative with 72 Working Hours. <i>See Schedule 6 Section 3.3</i>	100% acceptable responses within designated timescale	Between 95% and 85% of acceptable responses within designated timescale	Less than 85% of acceptable responses within designated timescale	Periodically
Delivery 3	Technical Support - Quotation The Supplier will provide The Client a sufficiently detailed proposal for technical support within 14 calendar days of request unless notified within 72 working hours. <i>See Schedule 6 Section 4.1</i>	100% acceptable responses within designated timescale	Between 95% and 85% of acceptable responses within designated timescale	Less than 85% of acceptable responses within designated timescale	Periodically
Delivery 4	Technical Support - Delivery The Supplier will provide subject matter sub-system experts (SMSEs) with suitable level of knowledge and experience of the TBTC System and close the request within the agreed timescales. <i>See Schedule 6 Sections 4.3, 4.4 & 4.5</i>	100% acceptable responses within designated timescale	Between 95% and 85% of acceptable responses within designated timescale	Less than 85% of acceptable responses within designated timescale	Periodically
Delivery 5 (€)	Spares and Repairs - Delivery The Supplier provides deliveries of equipment (repairs / Overhauls / New Spares) within the agreed lead time. <i>See Schedule 6 Sections 2.4, 2.5 & 2.6</i>	100% of deliveries provided within schedule	Between 95% and 85% deliveries provided within schedule	Less than 85% deliveries provided within schedule	Periodically
Delivery 6	Spares and Repairs - S&R Catalogue Supplier provides updated S&R catalogue on an annual basis. <i>See Schedule 6 Section 2.2</i>	S&R Catalogue Updated and accepted within three calendar months of the anniversary of the Services Commencement Date	S&R Catalogue Updated and accepted between three and five calendar months of the anniversary of the Services Commencement Date	S&R Catalogue Updated and accepted more than five calendar months from the anniversary of the Services Commencement Date	Annually
Delivery 7	Spares and Repairs - Quotations 1 The Supplier provides a quotation for items contained within the S&R Catalogue. <i>See Schedule 6 Section 2.3.1</i>	100% of quotations provided within 7 calendar days	Between 95% and 85% of quotations provided within 7 calendar days	Less than 85% of quotations provided within 7 calendar days	Periodically
Delivery 8	Spares and Repairs - Quotations 2 The Supplier provides a quotation for items not contained within the S&R Catalogue. <i>See Schedule 6 Section 2.3.2</i>	100% of quotations provided within 45 calendar days	Between 95% and 85% of quotations provided within 45 calendar days	Less than 85% of quotations provided within 45 calendar days	Periodically
Delivery 9 (€)	Obsolescence Report The Supplier shall provide the annual Obsolescence Report within 6 weeks following the Restatement Effective Date or anniversary of the Restatement Effective Date. <i>See Schedule 6 Section 6**</i>	Obsolescence Report provided within 6 weeks following the Restatement Effective Date or anniversary of the Restatement Effective Date	Obsolescence Report provided between 6 and 12 weeks following the Restatement Effective Date or anniversary of the Restatement Effective Date	Obsolescence Report provided more than 12 weeks following the Restatement Effective Date or anniversary of the Restatement Effective Date	Annually
Financial Accuracy 1	Financial accuracy shall be measured by the timely and accurate submission of all requested financial information to include (but not be limited to) applications for payment, variations and final accounts.	The Supplier provides all financial information in a timely manner and accuracy of the information is consistent with good practice*	An occurrence of 1Nr submission being late by less than 3 days and/or the accuracy of the information is frequently inconsistent with good practice*	More than 1Nr occurrence of a submission being late and/or an occurrence of a submission being late by 3 days or more and/or the accuracy of the information is frequently inconsistent with good practice* and has a significant adverse impact on the Client.	Periodically
Communications 1	Measure: the contractor providing full and detailed formal responses to Communications by the Required Response date	No more than 1Nr response provided after the Required Response date or provided with insufficient detail	2Nr response provided after the Required Response date or provided with insufficient detail	More than 2Nr response provided after the Required Response date or provided with insufficient detail	Periodically
Notes:					
This matrix should be read in conjunction with Schedule 6 of The Agreement.					
See schedule 8 of The Agreement for actions and penalties to be taken where performance falls below target					
*(Delivery 5) At the end of each financial year the Client will review the Supplier's performance. If the Supplier delivered >90% volume of TBTC Parts within the prescribed timescales then the Client will release the full value of the amount retained during that financial year. If the Supplier fails to achieve this threshold then the Client will be entitled to keep all of the monies retained pursuant to this Performance Schedule during the financial year.					
** Delivery 9 – Retention to be released after Obsolescence Report is submitted.					

3. Actions where performance falls below target

3.1 Introduction

Key Performance Indicators (KPIs) shall be used to monitor the Supplier's performance of this Agreement in key areas of performance deemed critical to the successful delivery of this Agreement. The KPIs will be used to measure performance on a periodic basis and the payment to the Supplier will be adjusted dependent upon the performance score achieved in the relevant Accounting Period.

3.2 Adjustments

The Supplier's Support Payment will be adjusted by the Client pursuant to the provisions set herein where the Supplier fails to meet the target performance levels for the delivery Services under this Agreement.

KPIs which have an associated payment adjustment are detailed below, these KPIs are also identified on the KPI Matrix with a £ symbol next to the KPI ID

3.2.1 *Non-Payment Adjustments*

Delivery 2 - Log Analysis: 72 Working Hours

The Supplier will provide a detailed response to the requester and the Client's Representative within 72 Working Hours - See Schedule 6 Section 3.3

Action to be taken:

Where an acceptable detailed report is not delivered by the Supplier within the agreed KPI timescale, the Client will be entitled to reclaim 1no. Request from the appropriate yearly allowance, for example where 10no requests have been raised and 5no are delivered late the remaining requests will be 45no..

For the avoidance of doubt, the Client will consider an 'acceptable detailed report' to be a report issued by the Supplier which meets the requirements set out in Schedule 6 Section 3.3.

3.2.2 *Payment Adjustments*

Delivery 5 - Spares and Repairs: Delivery

The Supplier provides deliveries of equipment (Repairs / Overhauls / New Spares) within the agreed lead time - see Schedule 6 Sections 2.4, 2.5 & 2.6

Action to be taken:

Where item(s) are delivered late (unless previously agreed in advance between the Supplier Representative and the Client's Representative) The Client shall be entitled to retain REDACTED REDACTED REDACTED REDACTED)for each TBTC part that is not delivered within the prescribed timescale set out in the applicable version of the Spares and Repairs Catalogue. the entitlement will commence on the first day of each week following late delivery (for example, if a TBTC part is delivered 8 days late, REDACTED REDACTED will be retained).

Delivery 9 - Obsolescence Report

The Supplier shall provide the annual Obsolescence Report within 6 weeks following Restatement Effective Date See Schedule 6 Section 5

Action to be taken:

Where an accepted issue of the obsolescence report is not issued to the Client within the required timescale, the Client will be entitled to retain REDACTED REDACTED from the value of the report until it is accepted. The entitlement will commence on the first day of each calendar month following the late delivery, for example if the obsolescence report is delivered 1 calendar month and 1 day late, REDACTED will be retained.

3.3 General Actions to be taken where performance fall below target

The Key Performance Indicators Matrix sets out the Supplier's target performance levels (in green) and areas of concern (in amber) and areas where serious performance improvement is required (in red).

If the Suppliers performance falls below the target performance levels the Parties will take the following actions:

3.3.1 Performance Concern - Amber

Where one or more Performance Concerns occur in any Accounting Period, the Client Representative and Supplier Representative shall discuss those issues and seek to address the underlying cause(s) to ensure a return to target performance levels. This can occur at the relevant period review meeting or a separate meeting as may be deemed appropriate at the time.

3.3.2 Serious Performance Improvement Required – Red

Where a Serious Performance Improvement Required occurs in any Accounting Period the Client Representative may submit a notice to the Supplier requiring rectification of the cause of the Serious Performance Improvement Required. Any such notice shall, for the purposes of clause 9.4(c) of this Agreement, be regarded as notification of an occurrence of a breach of the Supplier's performance obligations.

The notice shall set out:

- the deadline by which the Supplier must serve on the Client Representative a draft Serious Performance Improvement Plan setting out the steps which the Supplier has taken, or will take, to ensure that no further instances of such Serious Performance Improvement Required shall arise; and
- the period (being no greater than 2 calendar months from the time of occurrence of the Serious Performance Improvement Required) for the Supplier to put in place steps to ensure that no further instances of such Serious Performance Improvement Required shall arise.

The Supplier and the Client Representative will use all reasonable endeavours to agree an appropriate Serious Performance Improvement Plan. In the event the Supplier and the Client Representative do not agree the content of the Serious Performance Improvement Plan, the Client Representative will (acting reasonably) determine the content of the Serious Performance Improvement Plan.

If a Serious Performance Improvement Required occurrence is rectified in accordance with the applicable Serious Performance Improvement Plan to the reasonable satisfaction of the Client Representative then the Serious Performance Improvement Required occurrence will be classed as closed.

If this is not achieved, the Serious Performance Improvement Required occurrence shall be escalated to a review by Senior Managers/Directors within each organisation. Such escalation shall, for the purposes of clause 9.4(c), be regarded as notification of an occurrence of a breach of the Supplier's performance obligations.

For the avoidance of doubt, any failure to rectify a Serious Performance Improvement Required occurrence in accordance with the applicable Serious Performance Improvement Plan may also be regarded as a "material breach" pursuant to clause 9.4(a) where the breach materially and adversely affects the benefit that the Client receives from the provision of the Services, or otherwise materially and adversely affects the Client.

SCHEDULE 9

NOT USED

SCHEDULE 10

NOT USED

SCHEDULE 11

QUENSH MENU



F0780 Contract Menu

This Contract Menu must be used in conjunction with Category 1 Standard [S1552](#) "Contract QUENSH Conditions"

Issue No.: A17

Issue date: August 2015

Review date: August 2020

MAYOR OF LONDON



Title: Contract Menu
Number: F0780
Issue no: A17
Issue date: August 2015

Contract Menu

Contract No: TLL 7658

Contract Name Technical Support and spares Supply Agreement 2

Client: Tube Lines Limited

Supplier: Thales Ground Transportation Systems UK Limited

Principal Contractor: Yes No

File ref.: F0780 A17 Use in conjunction with [S1552](#)



Guidance

The menu is a tool which is used by the Client to identify conditions that apply to specific contracts and communicate these conditions to the Supplier.

How to complete the menu

1. The Client evaluates the scope of work and enters 'Y' or 'N' in the 'Identified by the Client' column of the menu against each condition selected as applicable or not applicable to the Contract. In the 'Other documents / comments' column the Client can make references to other documents which are supplementary information which is available although not contained within the QUENSH manual but should be considered by the Supplier when they review the conditions. Copies of any additional documents identified in the menu shall be made available to the Supplier. All documents referenced in the Menu shall be current issue, unless otherwise advised. This column can also be used to communicate information (comments) to the Supplier which may be of use to the Supplier when reviewing the conditions.
2. The Client fills in 'Client menu (Invitation to Tender)' section on the last page of the menu and issues the menu as part of the ITT.
 - (1) The Supplier receives the ITT, evaluates the scope of work and, as a requirement of the tendering process, inserts 'Y' or 'N' in the 'Identified by the Supplier' column of the menu against each condition selected as being applicable. These selections may be different from those identified by the Client. Where the Supplier's selection differs from the Client's selection, a clear explanation of the reason for these differences shall be given by the Supplier. A reference to these explanations shall be put in the 'Reference to explanation' column on the menu.
 - (2) The Supplier representative signs and dates the 'Supplier menu (Tender)' on the last page of the menu and submits it with the tender, for consideration by the Client.
 - (3) Differences in the Client and Supplier menu selections will be discussed and resolved with the Client at subsequent tender review meetings. The agreed final version of the menu selections shall form a mandatory part of the Contract and shall be complied with by all Suppliers and their sub-contractors.
 - (4) The menu shall be subject to project version and document control.

Queries on the menu

Any queries in relation to the Contract QUENSH Conditions selected on the menu are to be referred to the Client representative, see contact details/address on last page of the menu.

Title: Contract Menu
 Number: F0780
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**Contract menu
 Requirements in QUENSH**

Applicable requirements identified by Client		Other documents / Comments	Y / N	Identified by Supplier Agreed? Y / N	Reference to explanation
Section	Topic				
4	Agreement of the applicable QUENSH contract conditions				
5	Supplier's selection of sub-contractors		Y	Y	
6	Identification of Safety Critical Activities		Y	Y	
7	Works Environmental Management		Y	Y	
8	Emergency Plan		Y	Y	
9	Method Statements		N	N	M/S would only be required for site work such as Onsite support. Thales will always be accompanied by TLL TO and will not hold AWC. Thales work under SSoW.
10	Health, Safety and Environment File		N	N	
11	Pre-start LU health, safety and environment meeting		Y	Y	
12	Supplier's site induction		Y	Y	
13	Site Person in Charge		Y	Y	
14	Staff requirements		Y	Y	
14.1	Behaviours		Y	Y	
14.1.1	Alcohol and drugs		Y	Y	
14.1.2	Control of hours worked		Y	Y	
14.2	Knowledge		Y	Y	
14.2.1	English language		Y	Y	
14.2.2	Access Card and Worksite Briefing		Y	Y	Thales would expect to receive a worksite briefing

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Applicable requirements identified by Client		Identified by Supplier	
Section	Topic	Y / N	Agreed? Y / N
			Reference to explanation from TLL.
14.2.3	Visitors to sites	Y	Y
14.3	General competence	Y	Y
14.3.1	Evidencing competence of safety critical staff	Y	Y
14.3.2	Identification of safety critical staff	Y	Y
14.3.3	Competent external safety critical personnel	Y	Y
14.3.4	Training	Y	Y
14.3.5	Asset specific competence	Y	Y
14.4	Medical requirements	Y	Y
14.5	Identification of Suppliers staff	Y	Y
14.6	Clothing	Y	Y
15	Permits and licences	Y	Y
15.1	LU specific permits and licences	Y	Y
15.2	Permits, licences and certificates for Supplier's staff	Y	Y
16	The Principles of Access	Y	Y
16.1	Introduction	Y	Y
16.2	Access to Stations	Y	Y
16.3	Access to Track	Y	Y
16.4	Access to depots	Y	Y
17	Applying for Planned Access	N	N
17.1	Introduction	N	N
18	Applying for General Access	N	N
			Not required as Thales will not be applying for access.
18.1	Constraints that apply to Generic Access	N	N
			Not required as Thales will not be applying for access.
19	Access for fault repair	N	N
			Not required as Thales will not be applying for access.
20	Operational Assurance	Y	Y

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Applicable requirements identified by Client		Other documents / Comments	Identified by Supplier	
Section	Topic		Y / N	Agreed? Y / N
21	Closures and possessions		N	
21.1	Requirements for closures		N	
21.2	Requirements for possessions		N	
22	Controls at point of access		N	
22.1	Publication of works		N	
22.2	Checks at point of access		N	
22.3	Signing-on with the Station Supervisor		Y	
22.4	Track specific requirements		Y	
22.4.1	Person providing protection		N	
22.4.2	Possessions		N	
23	Removal of supplier's personnel from LU Premises		Y	
24	Incidents		Y	
25	Notification of regulatory concern or action		Y	
26	Confidential Incident Reporting and Analysis System (CIRAS)		Y	
27	Monitoring		Y	
27.1	LU inspections		Y	
27.2	Monitoring the supply chain		Y	
27.3	Health, safety and environmental surveillance by the supplier's personnel		Y	
27.4	Work location inspection and audit		Y	
27.5	Timescales for rectifying non-compliances		Y	
28	Radio transmitters and transceivers		Y	
29	Mobile phones		Y	
30	Knives		Y	
31	Site health, safety and environment committee		Y	
32	Site housekeeping and security		Y	
33	Accidental damage, obstruction or interference with assets		Y	
34	Delivery of materials		Y	
35	Conveyance of loads		Y	
35.1	Conveyance of loads on lifts and escalators		N	Thales will not be

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Applicable requirements identified by Client		Identified by Supplier
Section	Topic	Reference to explanation
	Other documents / Comments	Agreed? Y/N
		moving materials on escalators.
35.2	Conveyance of hazardous materials and substances	N
36	Asbestos (non asbestos removal projects)	Y
		Based on having to have an awareness of asbestos on TLL sites.
37	Working in or near lifts and escalators	N
		Thales will not be doing this.
38	Work on or adjacent to utilities and High Voltage cables (buried services)	N
		Thales will not be doing this.
39	Working on or about the track	Y
40	Access to electrical sub-stations, working equipment, relay and other secure rooms	Y
41	Entering areas with gaseous fire suppression systems	Y
42	Fire prevention	Y
42.1	General requirements	Y
42.2	Temporary fire points	N
		Thales will not be making use of temporary fire points.
42.3	Timber	N
42.4	Composites	N
42.5	Sheeting materials	N
42.6	Gas cylinders	N
42.6.1	Use of gas cylinders in below ground locations	N
42.6.2	Storage of gas cylinders (above ground)	N
42.7	Flammable and highly flammable materials	N
42.7.1	Use of flammable and highly flammable materials below ground	N

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Applicable requirements identified by Client		Identified by Supplier	
Section	Topic	Y / N	Agreed? Y / N
42.7.2	Storage of flammable and highly flammable materials below ground	N	N
43	Hot work and fire hazards	N	N
43.1	Hot work	N	N
43.2	Reasonable notice of works	N	N
43.3	Precautions	Y	Y
43.3.1	Buildings and assets	N	N
43.3.2	Gas cylinders	N	N
43.3.3	Gas detection	N	N
44	Storage	N	N
44.1	General requirements for storage	N	N
44.2	Trackside storage	N	N
44.3	Hazardous materials and substances	N	N
44.4	Allocation of space on operational property	N	N

Reference to explanation	
	Thales will not be undertaking any works on buildings or civil assets.
	Thales will not be using any gas cylinders for these works.
	Thales will not be undertaking any works requiring gas detection.
	Thales will not be storing materials on TLL sites.
	Thales will not be storing materials on TLL sites.
	Thales will not be storing materials on TLL sites.
	Thales will not be using hazardous materials or substances.
	Thales will not be requesting space allocation.

File ref.: F0780 A17 Use in conjunction with S1.552

Title: Contract Menu
 Number: F0780
 Issue no: A17
 Issue date: August 2015



Applicable requirements identified by Client		Identified by Supplier		
Section	Topic	Other documents / Comments	Agreed? Y / N	Reference to explanation
45	Plant and equipment		N	Thales will not be utilising plant or equipment at TLL sites.
46	Clearance approvals		N	Thales will not be requesting clearance approvals.
47	Access equipment		N	Thales will not be using access equipment.
48	Temporary works		N	Thales will not be undertaking any temporary works.
49	Temporary fences and hoardings		N	Thales will not be using temporary fencing or hoarding.
50	Temporary lighting and power supplies		N	Thales will not be using temporary lighting.
50.1	General requirements		Y	
50.2	Lighting in tunnels and shafts		N	This will not be required.
51	Screening of lights and positioning		N	This will not be required.
52	Environmental requirements		Y	
52.1	General environmental requirements		Y	
52.2	Environmental nuisance		Y	
52.3	Water		N	Thales will not use or need to use water.
52.4	Waste management		Y	
52.5	Noise and vibration		N	Thales will not be

File ref.: F0780 A17 Use in conjunction with SI552

Title: Contract Menu
 Number: F0780
 Issue no: A17
 Issue date: August 2015



Applicable requirements identified by Client		Identified by Supplier	
Section	Topic	Y / N	Agreed? Y / N
			Reference to explanation using plant or equipment that may generate noise or vibration.
52.6	Archaeology, historical interest and listed buildings	N	N
52.7	Wildlife and Habitats	N	N
52.8	Resource Use	N	
52.9	Pest control	N	Not required.
52.10	Land and water pollution prevention	N	Not required.
53	Quality requirements	Y	Y
53.1	Records	Y	Y
53.2	Retention period	Y	Y
53.3	Availability of records for inspection	Y	Y
53.4	Statistical process control, audit and inspection procedures	Y	Y
53.5	General quality requirements	Y	Y
53.6	Quality Plan	Y	Y
53.7	Testing and inspection	Y	Y
53.8	Certification of conformity	Y	Y
53.9	Quarantine	Y	Y
53.10	Traceability	Y	Y
53.11	Maintenance and servicing	Y	Y
53.12	Design	N	Thales will not be

File ref.: F0780 A17 Use in conjunction with S1552



Title: Contract Menu
 Number: F0780
 Issue no: A17
 Issue date: August, 2015

Applicable requirements identified by Client		Identified by Supplier	
Section	Topic	Y / N	Agreed? Y / N
53.13	Computer aided design	N	N
53.14	Asset commissioning and handover	N	N

Reference to explanation
 undertaking any design activities.
 Thales will not be undertaking any computer aided design.
 Thales will not be undertaking commissioning activities.

Other requirements / comments

File ref.: F0780.A17 Use in conjunction with [S1552](#)



Title: Contract Menu
Number: F0780
Issue no: A17
Issue date: August 2015

Client/Supplier approval

Client Menu (Invitation to Tender)

Prepared by: REDACTED Signature: REDACTED
Approved by (the Client's representative): REDACTED Signature: REDACTED
Title: Signal Engineering Manager
Address: Trakside House, Stratford Market Depot, Burdford Rd, Stratford E15 2SB
Phone No: REDACTED
Email: REDACTED
Revision of this menu: New contract award

Supplier Menu (Tender)

Approved by (the Supplier's): REDACTED Signature: 
Title: PROJECT MANAGER
Address: QUADRANT HOUSE, LONDON, E1W 1YW
Phone No: REDACTED
Email: REDACTED REDACTED
Revision of this menu:

Contract Menu (Final Approval of Menu)

Evidence shall be recorded of any amendments to the Client's menu which were agreed in establishing the Contract Menu.

Client's representative approval: REDACTED Signature: REDACTED
Supplier's representative acceptance: REDACTED Signature: REDACTED

SCHEDULE 12

DEED OF NOVATION

THIS AGREEMENT is made the _____ day of _____ 201[]

BETWEEN :-

- (1) **Tube Lines Limited** (Company registration number: 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**”); and
- (2) **Thales Ground Transportation Systems UK Limited** (Company registration number: 03132438) whose registered office/principal place of business is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Weybridge, Surrey KT15 2NX (the “**Supplier**”); and
- (3) [_____] (Company registration number: [_____]) whose registered office is at [_____] (the “**New Company**”).

WHEREAS:

- (A) The Company has entered into a contract dated 18 August 2013 and referenced TLL 7658 with the Supplier for the provision of technical support and supply of spares for the TBTC System as more particularly described in such contract (the “**Contract**”).
- (B) The Company wishes to transfer [part of] its benefit and burden under the Contract to the New Company.
- (C) The Supplier and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

1. In this Deed:
"Transfer Date" means [_____].
2. With effect from the Transfer Date:
 - 2.1 the New Company undertakes to perform the obligations of the Company under the Contract and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Contract in lieu of the Company;
 - 2.2 the Supplier releases and discharges the Company from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Company in relation to the Contract in lieu of the liability of the Company and agrees to be bound

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

- 2.3 for the avoidance of doubt, it is hereby expressly agreed that:
- (a) any and all rights, claims, counter-claims, demands and other remedies of the Supplier against the Company accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Supplier against the New Company; and
 - (b) any and all rights, claims, counter-claims, demands and other remedies of the Company against the Supplier accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Company against the Supplier; and
- 2.4 the Company transfers its rights and obligations under the Contract to the New Company.
3. A person who is not a party to this Deed may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

SCHEDULE 13

FORM OF WARRANTY FROM SUBCONTRACTOR TO CLIENT

PROJECT: Nr. TLL 7658

THIS AGREEMENT is made the _____ day of _____ 201[]

BETWEEN :-

- (1) **Tube Lines Limited** (Company registration number: 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the “**Company**”) and
- (2) [_____] (Company registration number: [.....]) whose registered office/principal place of business is at [.....] (the “**Sub-Contractor**”)
- (3) **Thales Ground Transportation Systems UK Limited** (Company registration number: 03132438) whose registered office/principal place of business is at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Weybridge, Surrey KT15 2NX (the “**Contractor**”)

WHEREAS :-

- (A) The Company has entered into a contract dated 18 August 2013 (Ref TLL 7658) with the Contractor (the “**Main Contract**”) pursuant to which the Contractor is to provide technical support and supply of spares for the TBTC System as more particularly described in the Main Contract (the “**Services**”).
- (B) The Sub-Contractor has submitted a tender to the Contractor for the carrying out and completion of certain parts (the “**Sub-Contract Services**”) of the Services referred to above as more particularly described in the tender.

NOW IN CONSIDERATION of the payment of £1 (one pound) by the Company to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) IT IS HEREBY AGREED as follows:

1. The Sub-Contractor warrants to the Company that:
 - (a) the Sub-Contract Services have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out work of a similar type, nature and complexity to the Sub-Contract Services;
 - (b) reasonable skill and care has been and will continue to be exercised in connection with:

- (i) the selection of all goods and materials comprised in the Sub-Contract Services (in so far as such goods and materials have been or will be selected by the Sub-Contractor);
 - (ii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Contractor and the Sub-Contractor in relation to the Sub-Contract Services (the “**Sub-Contract**”);
 - (iii) the execution and completion of the Sub-Contract Services;
- (c) the Sub-Contract Services will be reasonably fit for the purposes for which they are intended (awareness of which purposes the Sub-Contractor hereby acknowledges) and in particular but without limitation will be so fit for the period and with a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and equipment.

For the purposes of construing the warranties in this clause 1, references to the Sub-Contract Services shall include any part of the Sub-Contract Services. Each warranty shall be construed as a separate warranty and shall not be limited by reference to, or reference from, the terms of any other warranty or any other term of the Sub-Contract.

2. The Sub-Contractor shall, save in so far as he is delayed by any event in respect of which the Contractor is granted an extension of time under the Main Contract for completion of the Services:
- (a) execute and complete the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
 - (b) ensure that the Contractor shall not become entitled to any extension of time for completion of the Services or to claim any additional payment under the Main Contract due to any failure or delay by the Sub-Contractor.
3. The Sub-Contractor shall from time to time supply the Company and the Contractor with such information as either may reasonably require.
4. The intellectual property rights in all Documents shall remain vested in the Sub-Contractor but the Sub-Contractor hereby grants to the Company with the consent and approbation of the Contractor a perpetual, royalty free, non-exclusive and irrevocable licence to copy and use any and all Documents and all amendments and additions to them and any works, designs or inventions of the Sub-Contractor incorporated or referred to in them for the following purposes:
- (a) understanding the Services;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and retendering the Services;

- (c) extending, interfacing with, integrating with, connecting into and adjusting the Services;
- (d) enabling the Company or LUL to carry out the operation, maintenance, repair, renewal and enhancement of the LUL Network (as such capitalised terms are defined in the Main Contract);
- (e) executing and completing the Services; and
- (f) enabling LUL to perform its function and duties as Infrastructure Manager and Operator of the Underground Network (as such capitalised terms are defined in the Main Contract),

provided always that the Contractor shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Sub-Contractor.

For the purposes of this clause, the term “**Documents**” shall mean documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Sub-Contractor in connection with the Sub-Contract (whether in existence or to be made).

5. The parties hereby agree that:
- (a) this Agreement shall be personal to the Sub-Contractor;
 - (b) the Company may assign the benefit of this Agreement to any third party;
 - (c) the rights and remedies contained in this Agreement are cumulative and shall not exclude any other right or remedy available to either party in law or equity.
6. The Sub-Contractor warrants and undertakes to the Company that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Sub-Contract and that, insofar as he is responsible for the design of the Sub-Contract Services, he has professional indemnity insurance with a limit of indemnity of not less than £2 million 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 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.

7. 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 Contractor 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.
- 8.
- (a) Neither the Sub-Contractor nor the Contractor 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 Contractor or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Contractor'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 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Contractor (a “**Step-in Notice**”) that the Company or its appointee shall henceforth become the Contractor under the Sub-Contract in accordance with the terms of sub-clause 8(c) below.
 - (c) With effect from the date of the service of any Step-in Notice:
 - (i) the Company or its appointee shall be substituted in the Sub-Contract as the Contractor thereunder in place of the Contractor and references in the Sub-Contract to the Contractor shall be construed as references to the Company or its appointee;
 - (ii) 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;

- (iii) the Company shall become bound by the terms and conditions of the Sub-Contract in respect of all obligations and duties of the Contractor 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
 - (iv) the Contractor shall be released from further performance of the duties and obligations of the Contractor 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 Contractor in respect of any matter or thing done or omitted to be done by the Contractor on or before the date of the Step-in Notice; and
 - (B) the Contractor 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 8(b) above.
9. 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 Contractor under the Sub-Contract.
10. Nothing contained in this Agreement shall in any way limit the obligations of the Contractor to the Company arising under the Main Contract or otherwise undertaken by the Contractor to the Company in relation to the Sub-Contract Services.
11. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
12. 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.

SCHEDULE 14

VARIATIONS

Part 1

Form of NPVC

TUBE LINES LIMITED Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB TELEPHONE : REDACTED	
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TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)

Contract No.: TLL 7658
Variation No.:
Date.:
F.A.O.:
Tel:
Fax:

NOTIFICATION OF PROPOSED VARIATION TO CONTRACT (NPVC)

Price only required - **NOT AN INSTRUCTION TO PROCEED**

THE PROCEDURE SET OUT BELOW MUST BE FOLLOWED IN RETURNING THIS FORM.

- (1) This form constitutes a supplementary tender and must be completed and returned within ten days or other such time as may be expressly agreed in writing by the Company.
- (2) The prices entered onto this form shall be related to the levels of wage rates and material prices ruling at the date of tender, NOT at current price levels. In the event of the price not being affected, "nil" should be entered in the appropriate space(s).
- (3) A copy of the completed form is to be retained by the Supplier and the original returned to: Tube Lines Limited, Company Representative, Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB.

DETAILS OF NOTIFICATION OF PROPOSED VARIATION TO CONTRACT

Tube Lines Limited, Procurement Authority

Tube Lines Limited, Company Representative

TO BE COMPLETED BY THE SUPPLIER - COST OF ABOVE NPVC.

Increase _____

Decrease _____

Signed _____
on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

Part 2

Form of NRVC

<p>TUBE LINES LIMITED</p> <p>Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB</p> <p>TELEPHONE : REDACTED</p>	
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<p>TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)</p>

Contract No.: TLL 7658
 Variation No.:
 Date.:
 F.A.O.:
 Tel:
 Fax:

NOTIFICATION OF REQUIRED VARIATION TO CONTRACT (NRVC)

This form constitutes an **INSTRUCTION TO PROCEED** with the Variation on a 'price to be agreed' basis. This form is to be used for documenting the quotation on which price(s) for NRVC's must be notified.

THE PROCEDURE SET OUT BELOW MUST BE FOLLOWED IN RETURNING THIS FORM.

- (1) No price claim shall be accepted unless this form is completed and returned within ten days or other such time as may be expressly agreed in writing by the Company.
- (2) The prices entered on this form shall be related to the rates current within the Contract. In event of the price not being affected, "nil" should be entered in the appropriate space(s).
- (3) A copy of the completed form is to be retained by the Supplier, and the original returned to: Tube Lines Limited, Company Representative, Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB.

DETAILS OF NOTIFICATION OF REQUIRED VARIATION	AMOUNT	
	(£)	(p)
TOTAL COST TO Tube Lines Limited £		

 Tube Lines Limited Procurement Authority

 Tube Lines Limited Company Representative

TO BE COMPLETED BY THE SUPPLIER - COST OF ABOVE NRVC.

Increase _____

Decrease _____

Signed _____
on behalf of the Supplier

Print Name _____

Title/position _____

Date _____

Part 3

Form of AVC

<p>TUBE LINES LIMITED</p> <p>Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB</p> <p>TELEPHONE : 020 3054 5191</p>	
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<p>TO: THALES GROUND TRANSPORTATION SYSTEMS UK LIMITED (the Supplier)</p>

Contract No.: TLL 7658
 Variation No.:
 Date.:
 F.A.O.:
 Tel:
 Fax:

AUTHORITY FOR VARIATION TO CONTRACT (AVC)

Authority is hereby given for the variation in requirement to be made and for the variation in the contract price. A copy of the completed form is to be retained by the Supplier, and the original returned to : Tube Lines Limited, Company Representative, Stratford Market Depot, Trackside House, Burford Road, Stratford, London E15 2SB.

DETAILS OF AUTHORITY FOR VARIATION TO CONTRACT	AMOUNT	
	(£)	(p)
TOTAL COST TO Tube Lines Limited £		

 Tube Lines Limited Procurement Authority

 Tube Lines Limited Company Representative

ACCEPTANCE BY THE SUPPLIER.

Signed _____

Print Name _____

on behalf of the Supplier

Title/position _____

Date _____

SCHEDULE 15

NOT USED

SCHEDULE 16

NOT USED

SCHEDULE 17

NOT USED

SCHEDULE 18

NOT USED

SCHEDULE 19

CLIENT'S PERIOD DATES

Financial Year	Period	Period End Date
2016/17	1	30-Apr-16
	2	28-May-16
	3	25-Jun-16
	4	23-Jul-16
	5	20-Aug-16
	6	17-Sep-16
	7	15-Oct-16
	8	12-Nov-16
	9	10-Dec-16
	10	07-Jan-17
	11	04-Feb-17
	12	04-Mar-17
	13	31-Mar-17

Financial Year	Period	Period End Date
2017/18	1	29-Apr-17
	2	27-May-17
	3	24-Jun-17
	4	22-Jul-17
	5	19-Aug-17
	6	16-Sep-17
	7	14-Oct-17
	8	11-Nov-17
	9	09-Dec-17
	10	06-Jan-18
	11	03-Feb-18
	12	03-Mar-18
	13	31-Mar-18

Financial Year	Period	Period End Date
2018/19	1	28-Apr-18
	2	26-May-18
	3	23-Jun-18
	4	21-Jul-18
	5	18-Aug-18
	6	15-Sep-18
	7	13-Oct-18
	8	10-Nov-18
	9	08-Dec-18
	10	05-Jan-19
	11	02-Feb-19
	12	02-Mar-19
	13	31-Mar-19

TLL TBTC Technical Support and Spares Supply Agreement
 Schedule 19 – Client’s Period Dates
 Execution Version

Financial Year	Period	Period End Date
2019/20	1	27-Apr-19
	2	25-May-19
	3	22-Jun-19
	4	20-Jul-19
	5	17-Aug-19
	6	14-Sep-19
	7	12-Oct-19
	8	09-Nov-19
	9	07-Dec-19
	10	04-Jan-20
	11	01-Feb-20
	12	29-Feb-20
	13	31-Mar-20
Financial Year	Period	Period End Date
2020/21	1	02-May-20
	2	30-May-20
	3	27-Jun-20
	4	25-Jul-20
	5	22-Aug-20
	6	19-Sep-20
	7	17-Oct-20
	8	14-Nov-20
	9	12-Dec-20
	10	09-Jan-21
	11	06-Feb-21
	12	06-Mar-21
	13	31-Mar-21
Financial Year	Period	Period End Date
2021/22	1	01-May-21
	2	29-May-21
	3	26-Jun-21
	4	24-Jul-21
	5	21-Aug-21
	6	18-Sep-21
	7	16-Oct-21
	8	13-Nov-21
	9	11-Dec-21
	10	08-Jan-22
	11	05-Feb-22
	12	05-Mar-22
	13	31-Mar-22

SCHEDULE 20

CLIENT'S ADJUDICATION RULES

TUBE LINES LIMITED ADJUDICATION RULES (OCTOBER 2011 EDITION)

Incorporation of the Adjudication Rules	1.	The following rules are incorporated into any Contract with Tube Lines Limited by reference in the Contract to the “ Rules ”, which expression shall mean the most recent edition of these Rules as at the date of any notice requiring adjudication.
Definitions	2.	<p>In the Rules:</p> <p>“Contract” means the agreement which includes the agreement to adjudicate in accordance with these Rules;</p> <p>“Party” means any party to the Contract and “Parties” shall be construed accordingly.</p> <p>For the purposes of these Rules, periods of time shall be calculated as follows:</p> <ul style="list-style-type: none">• Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.• Where the period would include a public holiday, that day shall be excluded.
Conflict	3.	If a conflict arises between the Rules and the Contract, unless the Contract says otherwise, the Rules prevail.
Language	4.	The Language of any adjudication under these Rules shall be English.
Purpose of adjudication	5.	The purpose of adjudication is to resolve disputes within the scope of the adjudication as quickly and economically as possible.
Adjudication notice	6.1	<p>Either Party may give written notice to the other Party at any time requiring adjudication on any dispute arising out of, under or in connection with the Contract. The notice shall set out briefly (taking up or more than 2 single sided pages of A4.):</p> <ul style="list-style-type: none">• the issues in dispute and in respect of which adjudication is required,• a statement of the nature of the dispute and material facts to be relied on,• the Clauses in the Contract relied on, and• the redress sought (including the quantum of any monetary relief). <p>The Party giving such notice shall endeavour to secure the appointment of an adjudicator and refer the dispute to him/her within 7 days of the date of this notice.</p>
	6.2	More than one such notice may be given in relation to the Contract. Any adjudicator may act in more than one adjudication at the same time.
Appointing the adjudicator	7.1	If a person is named as adjudicator in the Contract, or if the Parties agree on the identify of the adjudicator, the Party requiring adjudication shall

send that person and the other Party:

- a copy of the notice,
- a note of the Parties names and addresses,
- a statement of the conditions of the Contract,
- a copy of the Rules, and
- a written request for him/her to confirm to the Parties his/her availability to act within 2 days of receipt.

If the person confirms to the Parties his/her availability to act, he/she is the adjudicator for any dispute stated in the notice.

7.2 If more than one person is named in the Contract, then the Party requiring adjudication shall follow the procedure set out in Rule 7.1 request the first person named to act as adjudicator.

- If that person confirms to the Parties within 2 days of a request to do so that he/she is available to act, he/she is the adjudicator for any dispute stated in the notice.
- If that person does not confirm to the Parties his/her availability to act within 2 days of a request to do so, the referring Party follows the same procedure to request the next person named to act and so on, moving down the list one at a time in the order that persons are named. The first person in the list to confirm to the Parties his/her availability to act within 2 days of a request to do so, is the adjudicator for any dispute stated in the notice.

7.3 If:

- no person is named in the Contract as adjudicator, or the named person (or each named person, if more than one) does not confirm his/her availability to act within 2 days of a request to do so, and
- the Parties cannot agree on an adjudicator within 3 days of the notice,

the Party requiring adjudication shall send to the body named in the Contract (or if none is named, the London Court of International Arbitration "**LCIA**"):

- the same information set out at Rule 7.1, and
- anything else required by the body (or the LCIA) for them to select an adjudicator.

Following selection, unless the selection adjudicator has already done so, the Party shall send a written request to the selected adjudicator for him/her to confirm to the Parties his/her availability to act, within 2 days of receipt. If he/she confirms to the Parties his/her availability to act within 2 days, he/she is the adjudicator for any dispute stated in the notice. If not, the referring Party shall send a further request to the same body.

7.4 If for any reason an adjudicator:

- resigns or is unable to act, or
- fails to reach his/her decision within the time required by these Rules,

either Party shall:

- follow the procedure at Rule 7.2 to ask the next person named in the Contract to act, or
 - if no such person is named, follow the procedure set out in Rule 7.3 to request the nominating body named in the Contract (or if none is named, the LCIA) to appoint a replacement adjudicator.
- 7.5 Unless agreed by the Parties, an adjudicator shall not act if he/she is or has been an employee, agent or consultant of either Party and shall declare any interest, financial or otherwise, in any dispute referred to in the notice.
- 7.6 If a Party objects to a person selected (by the body named in the Contract or the LCIA) being appointed as adjudicator, that objection shall not prevent the adjudicator being appointed, and it shall not invalidate the appointment or any decision he/she may reach.
- The adjudicator's appointment**
- 8.1 The adjudicator shall be appointed on the terms and conditions set out in the attached Adjudicator's Appointment. The Parties will sign the Adjudicator's Appointment within 7 days of a request from the adjudicator to do so.
- Referral of the dispute**
- 9.1 Within 7 days of the notice (or, if an adjudicator has not been appointed within the 7 day period, within 2 days of receipt of an adjudicator's confirmation of his/her availability to act), the referring Party shall refer the matter to the adjudicator by sending the adjudicator (with a copy to the other Party):
- a full copy of the Contract;
 - a copy of the Rules;
 - a list of any documentary or other evidence (limited to that provided to the Contract administrator) on which the Party will rely in the adjudication, in such detail to enable both Parties and the adjudicator to identify it easily.
- 9.2 The date of referral shall be the date on which the adjudicator receives this information. The adjudicator shall confirm this date in writing to the Parties.
- Scope of the adjudication**
- 10.1 The scope of the adjudication shall be the dispute identified in the notice, together with any further dispute which the Parties agree should be within the scope of the adjudication.
- 10.2 The adjudication may rule upon his/her own substantive jurisdiction.
- The adjudication and the decision**
- 11.1 The adjudication shall:
- decide on the dispute referred to in the notice on the basis of the Parties' legal entitlements;
 - act fairly and impartially, giving each Party a reasonable opportunity of putting his case and dealing with that of his opponents; and
 - take the initiative in ascertaining the facts and the law; and
 - avoid incurring unnecessary expense;
- but is not empowered to act as an arbitrator.
- 11.2 Any decision of the adjudicator shall be in writing and shall:

- set out his/her reasons;
 - include a copy of any advice the adjudicator receives from any legal or technical adviser.
- 11.3 The adjudicator shall reach a decision on the dispute in the notice and send a copy to each Party within 28 days of the date of referral. This 28 day period may be extended:
- to such longer period as is agreed by the Parties after the date of referral, or
 - by the adjudicator by up to 14 days, with the consent of the referring Party.
- 11.4 Decisions of the adjudicator shall be binding unless and until the dispute is finally determined by court proceedings, arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or agreement.
- 11.5 The Parties shall continue to observe and perform all obligations contained in the Contract, notwithstanding any reference to the Adjudicator.
- 11.6 The Adjudicator may allocate its fees and expenses as between the parties.
- Powers of the adjudicator**
- 12.1 The adjudicator shall establish the timetable and procedure for the adjudication, with which the Parties will comply.
- 12.2 Without prejudice to the generality of Rule 12.1, the adjudicator may if he/she thinks fit:
- make directions for the conduct of the adjudication;
 - review and revise any of his/her previous directions;
 - require delivery of a written statement of case from either Party;
 - require any Party to produce a bundle of key documents or any other documents (other than documents which would be privileged from production to a court), whether helpful or otherwise to that Party's case;
 - to draw such inference from any failure to produce any documents (other than documents which would be privileged from production to a court) as he considers appropriate;
 - limit the length of any written or oral submission;
 - reach his/her decision with or without holding an oral hearing, and with or without having endeavoured to facilitate agreement between the Parties;
 - submit lists of questions to the Parties to be answered at an oral hearing (if any) or in writing within such reasonable time as he/she may require;
 - make use of his/her own specialist knowledge;
 - with the consent of the Parties, obtain advice from legal or technical advisers, whose appointment by the adjudicator (including terms of remuneration) is subject to the approval of the Parties;
 - meet with or require the attendance before him/her of any Party (or employee or agent of any Party), provided such can reasonably be arranged within the timetable for the adjudication;

- make site visits and carry out any tests or experiments, provided the same can reasonable be arranged with the timetable for the adjudication;
- proceed with the adjudication and reach a decision even if a Party fails to comply with a request or direction with which he has been given the opportunity to comply;
- adopt any other procedures (including any variation of the procedures provided for under this Rule 12) which may be agreed between the Parties for determination of the dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of these Rules and shall be reasonable and proper for the just, expeditious and economical determination of the dispute.

12.3 The adjudicator may open up, review and revise any decision (other than that of an adjudicator, unless agreed by the Parties), certificate, statement, opinion, instruction, direction, action, in-action, assessment, or valuation made in connection with the Contract and which is relevant to the dispute being adjudicated (except any final certificate or final statement).

12.4 The adjudicator may in any decision, direct the payment of such interest from such dates and at such rates as permitted by the Contract.

12.5 The adjudicator may correct his/her decision so as to remove a clerical or typographical error arising by accident or omission.

12.6 The adjudicator may not:

- require any advance payment of or security for his/her fees;
- receive any written submissions from one Party that are not copied to the other Party;
- hear oral submissions from or meet with one Party, unless the other Party has been given a reasonable opportunity to attend;
- act or continue to act in the face of a conflict of interest.

Subcontract adjudication

13.1 Where:

- a dispute arises out of, under or in connection with each of the Contract and any subcontract relating to the Contract, and
- both the Contract and the subcontract allow for, or the Parties and the subcontractor agree to, a joint adjudication

at the same time as the dispute under the Contract is referred to the adjudicator, a Party may request that the subcontract dispute is joined into the adjudication for a decision in relation to both the Contract and its subcontract. The adjudicator shall decide the dispute under both contracts in accordance with the Rules and references in the Rules to "Parties" shall in such circumstances include the subcontractor.

Enforcement

14.1 Every decision of the adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, even if the decision is or becomes the subject of the court proceedings. No issue decided by one adjudicator may be referred to another adjudicator for a decision, unless agreed by the Parties.

Law

- 15.1 These Rules shall be governed by English law and are subject to the jurisdiction of the English courts.
- 15.2 In the event that any term, condition or provision contained in these Rules shall be held to be contrary to, inconsistent or non-compliant with the requirements of subsection (1) to (4) of Section 108 of the Housing Grants, Construction and Regeneration Act 1996, such term, condition or provision shall, to that extent be omitted from these Rules and the rest of these Rules shall stand, without affecting the remaining terms, conditions and provisions.
- 15.3 The Adjudicator, his/her employees, agents or advisors shall not be held liable for anything done omitted in discharge or purported discharge of the Adjudicator’s functions in any adjudication unless the act or omission is in bad faith.

ADJUDICATOR'S APPOINTMENT

October 2011 Edition

THIS AGREEMENT is made on theday of 20...

BETWEEN:

- (1) **Tube Lines Limited** (Company registration number 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL and
- (2) **[Contractor's name]**..... (Company registration Number) whose registered office is at

[If a subContractor is also a party to the adjudication they will need to be added as a party to the Agreement, which will need some minor amendments - please contact Tube Lines’s Legal Department]

(together called the “Parties”)

AND

- (3)[name of adjudicator].... of(the “Adjudicator”).

WHEREAS:

The Parties have entered into a contract dated in connection with which incorporates Tube Lines Limited's adjudication rules (the “Rules”).

A dispute has, or disputes have, arisen out of, under or in connection with the contract, in relation to which one of the Parties has served a notice (the “Notice”) on the other requiring it/them to be referred to adjudication.

The Adjudicator has been requested to act and has confirmed that he/she is available to do so.

IT IS AGREED AS FOLLOWS:

1. The Adjudication

- 1.1 The Adjudicator agrees to adjudicate the dispute contained in the Notice in accordance with the Rules.
- 1.2 Each of the Parties agree to comply with any directions and decisions made by the Adjudicator in the course of the adjudication.
- 1.3 The Adjudicator and the Parties shall endeavour to resolve disputes within the scope of the adjudication as quickly and economically as possible.
- 1.4 Insofar as it is reasonably possible within the timetable for the adjudication, the Parties shall provide access to sites as the Adjudicator requires.

2. Confidentiality

- 2.1 The adjudication and all disputes arising in the course thereof are and shall be kept confidential by the Parties and the Adjudicator, except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purposes of any subsequent proceedings.

3. Immunity

- 3.1 None of the following shall be liable for anything done or omitted in the discharge or purported discharge of his/her functions in the adjudication, unless the act or omission is in bad faith:
- The Adjudicator,
 - his/her employees and agents.

4. Adjudicator’s fees and expenses

- 4.1 Unless the Adjudicator resigns before sending the Parties his/her decision, he/she shall be entitled to charge the Parties his/her fees and expenses for the adjudication, calculated in accordance with the attached schedule.
- 4.2 The Parties agree that they are jointly and severally liable to pay the Adjudicator’s fees and expenses.
- 4.3 Subject to any agreement of the Parties, the Adjudicator may allocate payment of his/her fees and expenses as between the Parties. The Parties agree to be bound by the Adjudicator’s allocation of payment of his/her fees and expenses and shall pay such fees and expenses in accordance with the Adjudicator’s direction unless and until the direction of the Adjudicator is set aside or revised in accordance with Rule 11.4.
- 4.4 Following the adjudication, the Adjudicator shall submit an invoice to each of the Parties for their share of his/her fees and expenses. The Parties shall each pay the adjudicator within **[30]** days of the date of the invoice sent to them.
- 4.5 The Adjudicator may not require any advance payment or security for his/her fees and expenses.

5. Miscellaneous

- 5.1 The adjudicator shall not act if he/she is an employee, agent or consultant of either Party and shall declare any interest, financial or otherwise, in any dispute referred to in the notice.
- 5.2 The adjudicator may resign at any time prior to making his/her decision, on giving the Parties reasonable notice in writing. If the adjudicator resigns, he/she shall not be entitled to be paid any fees or expenses.

6. Law and jurisdiction

- 6.1 The Agreement shall be governed by English law and is subject to the jurisdiction of the English courts.

SCHEDULE

- a. The Adjudicator shall be paid £..... per hour in respect of all time spent on the adjudication, including travelling time, up to a maximum of £[1000.00] per day.
- b. The Adjudicator shall be reimbursed his reasonable expenses and disbursements, covering travelling expenses within the UK, hotel and similar expenses, room charges, expenses for any tests or experiments and the cost of legal or technical advice (obtained in accordance with the Rules).
- c. The Adjudicator is/is not urgently registered for VAT. If the Adjudicator is registered for VAT, the Adjudicator shall charge VAT at the rates current at the date he/she carries out the work.

Signed on behalf of Tube Lines Limited

..... **Signature**

..... **Name**

Signed on behalf of [the Contractor]

..... **Signature**

..... **Name**

Signed on behalf of [the Adjudicator]

..... **Signature**

..... **Name**