

Dated FRIDAY 19<sup>TH</sup> ~~July~~ <sup>JUNE</sup> 2015

LONDON UNDERGROUND LIMITED (1)

and

RAINHAM INDUSTRIAL SERVICES (2)

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CONTRACT  
FOR THE SUPPLY OF SCAFFOLDING, THERMAL INSULATION  
AND LAGGING SERVICES  
CONTRACT REFERENCE NUMBER: LU-COO-STIL

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TFL 00507

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THIS CONTRACT is made on *Friday 19th June* 2015  
BETWEEN:

- (1) **London Underground Limited** (company number 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors and assigns); and
- (2) **Rainham Industrial Services Limited** (company number 4582381) whose registered office is at Rainham House, 795 London Road, Queens Bridge Industrial Park, West Thurrock, Essex RM20 3LH (the "**Supplier**").

## BACKGROUND

- (A) The Supplier carries on the business of providing the Services.
- (B) The Company wishes to buy and the Supplier wishes to provide the Services on the terms and conditions set out in the Contract.

THIS DEED WITNESSES as follows:

## 1 Definitions and Interpretation

### 1.1 In the Contract the following definitions shall have the following meanings:

"**Additional Services**" means services which are requested by the Company to be provided by the Supplier in accordance with the terms of the Contract in addition to those set out in the Specification.

"**Applicable Laws and Standards**" means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) at any time or from time to time in force in the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract (including for clarity, the standards referred to in Schedule 1 (if any)), or the Services.

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

"**Cessation Plan**" means a plan agreed between the parties or determined by the Company in accordance with Clause 46.1 to give effect to a Declaration of Ineffectiveness.

**"Charges"** means the charges payable by the Company in consideration of the due performance of the Services as specified in or calculated in accordance with the provisions of Schedule 11, and as may be adjusted or varied in accordance with Clause 7 and Schedule 4.

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

**"Company Documents"** means any plans, drawings, documents, handbooks, codes of practice or other information provided by the Company to the Supplier in accordance with the Contract.

**"Company's Representative"** means the person appointed by the Company and named as such in Schedule 1.

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

**"Completion Date"** means the date specified as such in Schedule 1 or such other date as may be agreed between the parties in accordance with the terms of the Contract.

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

**"Contract"** means this contract made between the Company and the Supplier.

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

**"Contract Information"** means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 8.2 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

**"Contract Price"** means the total of the Charges payable in accordance with this Contract.

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

**"Contract Variation Procedure"** means the procedure set out in Schedule 4.

**"Declaration of Ineffectiveness"** means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

**"Dispute"** has the meaning given to that term in Clause 36.1.

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

**"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 or otherwise amended or replaced).

**"Environmental Claim"** means receipt by the Company in connection with any pollution or contamination of the environment of:

- (a) any written claim, demand, suit or notice from a third party, including a Regulatory Authority ("**Regulatory Authority**" means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the environment, or Environmental Law) or any order of the court of competent jurisdiction in connection with an alleged breach of Environmental Law; or
- (b) any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Company unless the Company agrees to carry out Remediation voluntarily).

**"Environmental Law"** means all and any laws, including common law, legislation, codes of practice, notices, judgments, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the environment or the conditions of the work place

**"Excess Costs"** has the meaning given to that term in Clause 21.5.

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

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

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



- (i) nuclear, chemical or biological contamination including ionizing radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (j) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (k) strikes, lock outs or other industrial action being in each case industry-wide.

**"Free Issue Materials"** means materials, apparatus and components supplied by the Company to the Supplier without charge and intended for use by the Supplier exclusively in the provision of Services under the Contract.

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

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

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

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

**"Key Personnel"** means Supplier Personnel and any changes to the same that are made in accordance with Clause 16.

**"London Living Wage"** means the basic hourly wage (before tax, other deduction and any increase for overtime) as may be revised from time to time by the Mayor or any other relevant Competent Authority.

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

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

**"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.

**"Nominated Representatives"** has the meaning given to that term in Clause 36.2.

**"Notice to Proceed"** has the meaning given to that term in Clause 21.6(b).

**"Notified Sum"** has the meaning given to that term in Clause 8.5.

**"Payment Application"** has the meaning given to that term in Clause 8.1.

**"Policies"** means the policies set out in Clause 18.3.

**"Prescribed Period"** has the meaning given to that term in Clause 8.6.

**"Programme"** means the programme of work set out in **Error! Reference source not found.** for the provision of the Services which has been submitted by the Supplier and approved by the Company. The programme may be varied from time to time subject to the terms and conditions of the Contract or otherwise by agreement in writing between the Supplier and the Company.

**"Prohibited Act"** means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with the Company; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Company; or
- (b) entering into the Contract or any other contract with the Company with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its

knowledge unless, before the Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or

(c) committing an offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts,

in relation to the Contract or any other contract with the Company; or

(d) defrauding or attempting to defraud the Company.

**"QUENSH"** means the Supplier's Quality, Environmental, Safety and Health) conditions set out in Schedule 5 as amended from time to time.

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

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

**"Replacement Supplier"** means any replacement provider of the Services appointed by the Company from time to time.

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

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

**"Service Cessation"** means the Completion Date or any other cessation of the Services or part thereof.

**"Services"** means the services stated in the Specification to be performed by the Supplier and any Additional Services.

**"Specification"** means the description of the services to be provided by the Supplier in accordance with the Contract contained in 0.

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

**"Supplier Personnel Information"** means information about Supplier Personnel including the numbers of Supplier Personnel involved in providing the Services and their approximate full time equivalents; their location; the skill sets in each location; role definitions; employment status; details of any previous transfer(s) pursuant to the Employment Regulations; information regarding overall annual remuneration (including benefits); length of service; notice period; details of terms and conditions of employment (including pension schemes, annual leave, bonus entitlement, share options, car allowance, health insurance, life assurance and trade union recognition); details of any current grievances or disciplinary issues and any other information relating to Supplier Personnel reasonably requested by the Company.

**"Supplier's Representative"** means the person appointed by the Supplier and named as such in Schedule 1.

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

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

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

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

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

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

**"Variation Proposal"** means the written proposal put by the Company or the Supplier to vary the Contract in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 4.

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

- 1.2 The headings in the Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Contract and references to the Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Contract or any other document shall be construed as references to the Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Contract.
- 1.6 Reference to any Applicable Laws and Standards also includes a reference to the Applicable Laws and Standards as from time to time amended, extended or re-enacted.
- 1.7 References to the **"Company"** shall include its successors, transferees and assignees.
- 1.8 References to a person, firm or company shall include any individual company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having a separate legal personality.
- 1.9 In the event that a conflict, ambiguity or inconsistency exists between the documents comprising the Contract, the order of priority for the purpose of construction in descending order shall be:
  - (a) the Clauses of the Contract;
  - (b) the Schedules to the Contract (equal priority, but subject to Clause 1.10); and

(c) any other document referred to in, or incorporated by reference into, the Contract.

- 1.10** The documents that make up the Schedules shall be taken as being mutually explanatory of one another. In the event of any conflict between any provision of the Clauses of the Contract and a provision of any other Schedule then the Clauses of the Contract shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Clauses of the Contract.

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

- 2.1** The Contract shall commence on the Commencement Date and shall be performed by the Supplier in accordance with the terms of the Contract (save in the event of earlier termination).
- 2.2** The Company shall at its own discretion be entitled at any time prior to the Completion Date to inform the Supplier of its intention to extend the duration of the Contract by a period of up to two years. The provisions of the Contract shall continue to apply mutatis mutandis to any such extension of the Contract duration (other than this Clause 2.2 containing the option to extend). On receipt of such notice from the Company by the Supplier the Contract shall be deemed extended accordingly.

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

- 3.1** The Supplier shall provide the Services to the Company in accordance with the terms of the Contract.
- 3.2** The Supplier shall ensure and warrants to the Company that the Services will:
- (a) be performed by appropriately qualified and trained personnel exercising the highest standard of diligence, care and skill;
  - (b) be in accordance with the standards or methods (if any) detailed in Schedule 1 and where standards or methods are not detailed in Schedule 1, the Services shall be carried out in accordance with best appropriate industry practices. The Supplier shall immediately upon request, advise the Company, in writing of the best appropriate industry practices it is using or proposes to use. The Supplier shall use all reasonable endeavours to incorporate any suggestions recommended by the Company in this respect;
  - (c) be performed in accordance with the Programme;

- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable to the Company or the Underground Network); and
- (e) comply with the requirements of the Company set out in the Contract and all lawful and reasonable directions of the Company.

- 3.3** The Supplier warrants to the Company that it has entered into and executed the Contract by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents.
- 3.4** The Supplier warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Contract.
- 3.5** The Supplier shall perform its obligations under the Contract in accordance with the Quality and Safety Plan, and comply with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Services, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.
- 3.6** It shall be the responsibility of the Supplier to obtain, at its cost, all necessary approvals, licences, permits and consents in relation to the performance of the Services, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.7** Unless otherwise stated in the Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under the Contract.
- 3.8** For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.
- 3.9** The Supplier shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Supplier shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.

## **4 Records and Audit**

- 4.1** The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Contract

and all transactions related to the Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than £5,000;
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

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

**4.3** The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 4.1 at any time during the period referred to in Clause 4.2.

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



- (a) granting or procuring the grant of access to any premises used in performance of the Contract, whether the Supplier's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under the Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under the Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract.

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

**4.6** The Supplier shall permit the Company's authorised representatives access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 4.1, free of charge within thirty (30) days of the Company's request for the same.

**4.7** The Supplier shall, and shall ensure that his subcontractors shall, ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of, or alteration to, data during any audit undertaken pursuant to the Contract.

## **5 Company's Obligations**

**5.1** The Company shall pay the Supplier the Charges for the Services in accordance with the terms of the Contract.

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

- 5.3 The Contract is not an exclusive arrangement and nothing in the Contract operates to prevent the Company from engaging any other organisation or person to perform services similar to, or the same as, the Services.

## 6 Additional Services

The Company may, at any time during the term of the Contract, request the Supplier to provide a quotation for the supply of Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Services, Schedule 1, Clause 1.1 and **Error! Reference source not found.** shall be amended to include such Additional Services, the expected date of performance for them and the quoted price.

## 7 Variation

- 7.1 Unless the parties agree otherwise in writing, any variation to the Contract shall be made under the Contract Variation Procedure.
- 7.2 The Supplier shall not proceed to implement any variation unless there has been a Variation Order.

## 8 Price and Payment

- 8.1 The Supplier shall submit an application for payment of the relevant portion of the Contract Price to the Company's Representative for the Services following the completion of the Services to the satisfaction of the Company (a "**Payment Application**"). Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.
- 8.2 The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company's Representative receives the Payment Application.
- 8.3 The Company's Representative shall assess the Payment Application and shall notify the Supplier in writing not later than five (5) days after the date of receiving the Payment Application of:

- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
- (b) the basis on which the amount was calculated.

It is immaterial for the purposes of this Clause 8.3 that the amount referred to in Clause 8.3(a) may be zero. A notification given under this Clause 8.3 shall constitute a payment notice for the purposes of section 110A of the HGCRA.

**8.4** The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application.

**8.5** Subject to Clauses 8.6 and 8.7, the Company shall pay the Supplier the sum referred to in the Company's Representative's payment notice pursuant to Clause 8.3 (or, if the Company's Representative has not served a payment notice, the sum referred to in the Supplier's Payment Application under Clause 8.1) (the "**Notified Sum**") on or before the final date for payment.

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

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

It is immaterial for the purposes of this Clause 8.6 that the amounts referred to in Clause 8.6(a) and Clause 8.6(b) may be zero. Where a notice is given under this Clause 8.6, the Company's obligation to pay the Notified Sum under Clause 8.5 applies only in respect of the sum specified pursuant to this Clause 8.6.

**8.7** Notwithstanding Clauses 8.5 and 8.6, if the Supplier is subject to an event set out in Clause 21.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Supplier the Notified Sum on or before the final date for payment.

**8.8** The Charges shall be inclusive of costs, expenses and disbursements.

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

**8.10** In addition to any other rights of the Company whether at law or equity under this Contract, whenever under or arising out of this Contract or any other contract between the Company and the Supplier

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

(b) any Losses are reasonably and properly owed to, or incurred by, the Company or any member of the TFL Group

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

**8.11** All Payment Applications shall clearly show the Contract Reference Number and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.

**8.12** All sums payable to the Company by the Supplier under the Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

## **9 Supplier Performance**

**9.1** At the end of the Company's first full accounting period after the Commencement Date (and for the duration of the Contract) every four (4) weeks after that date the Company shall assess the Supplier's performance under the Contract in accordance with Schedule 10.

## **10 Access and Time for Performance of the Services**

**10.1** The Company shall upon reasonable notice from the Supplier, provide access for the Supplier to the Company's premises and information records and other materials as the Supplier may reasonably require in order to provide the Services, provided that the Company shall only be obliged to procure such access during the normal working hours applicable to the premises/location at which the Services are to be performed and provided that such access shall not cause undue commercial disruption to the Company.

**10.2** In the event that access is required to the premises of any third party for the purpose of provision of the Services, the Company shall use its reasonable endeavours to secure such rights of access for the Supplier provided that the Supplier shall be responsible for arranging such access on a day to day basis with the third party.

**10.3** The Supplier shall ensure that the Services are satisfactorily completed by the Completion Date. The time of the performance of the Services shall be of the essence of the Contract.

## **11 Work on Company's Sites**

**11.1** During the term of the Contract, the Supplier shall:

- (a) ensure the personnel used in the provision of the Services are competent, properly trained and supervised and hold appropriate qualifications or certifications in accordance with any Applicable Laws and Standards;
- (b) ensure that all employees and agents of the Supplier including any of the Supplier's subcontractors working on the Company's or third parties' sites comply with the sites' local safety arrangements and undergo any relevant induction or training necessary and comply with all reasonable instructions of the Company or third party;
- (c) notwithstanding the terms of Clause 11.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of the Contract;
- (d) supply the Company with a list of all personnel working on the Company's or third parties' site and notify the Company in writing of any changes to the identity of such personnel within one (1) Working Day of such change taking place;
- (e) ensure that no employees or agents of the Supplier including any of the Supplier's subcontractors use the Company's or a third parties' site equipment without the prior written consent of the Company or the relevant third party;
- (f) carry out the Services in such a manner as not to endanger or interfere in any way with the railway, the Company or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Contract and any further instructions, rules and regulations which it may from time to time receive from the Company's Representative for the working, protection and return of the railway or for the protection of persons on or adjacent to the railway; and

- (g) attend the Company or any third party in order to advise on the effects of the Supplier's actions or proposed actions in respect to the Services on the integrity and/or functionality of any other aspect of the railway.

- 11.2 Without prejudice to Clauses 11.1(a) to (g) the parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under the Contract.

## **12 Free Issue Materials**

- 12.1 In the event of the Company supplying Free Issue Materials to the Supplier the cost of which has been included in calculating the Charges, the Charges shall be reduced by the amount included in the Charges for the materials which have been replaced by such Free Issue Materials.
- 12.2 Any Free Issue Materials supplied by the Company to the Supplier shall remain the property of the Company and the Supplier shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed with any materials owned or in the possession of the Supplier or with any materials supplied to it by third parties.
- 12.3 The Supplier shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Supplier shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Supplier's possession or in the possession of any subcontractor of the Supplier except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

## **13 Environmental Claims**

- 13.1 The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non performance or part performance of the Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, its employees, subcontractors or agents.
- 13.2 The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.

- 13.3** Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 13.4** In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 13.5** The Supplier shall provide to the Company's Representative:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Services (for the purposes of this Clause 13.5, the "**authorisations**");
  - (b) copies of any amendments to the authorisations;
  - (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
  - (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

## **14 Safety**

- 14.1** The Supplier shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 14.2** The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the Company's category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to the Contract in the QUENSH menu set out in Schedule 5 as amended from time to time; and

(b) the Company's drug and alcohol principles as amended from time to time.

**14.3** Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to the Contract as if the term "LU Premises" means any of the Company's property where the Services are carried out and as if references to "LU" are references to the Company.

**14.4** The Company 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 the Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

## **15 Independent Supplier**

The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier's employees or subcontractors or their employees hold themselves out as, an agent of the Company. All personnel used by the Supplier in the performance of its obligations under the Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

## **16 Supplier Personnel**

### Commencement of the Services

**16.1** The Company and the Supplier agree that the commencement of the Services on the Commencement Date will not constitute a relevant transfer for the purposes of the Employment Regulations.

**16.2** If the contract of employment of any individual is found or alleged to have effect on or after the Commencement Date as if originally made with the Company by reason of the Employment Regulations, the Supplier agrees that:

- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the Commencement Date; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Commencement Date; and



(c) it will do nothing to discourage the acceptance of the offer.

- 16.3** Upon that offer being made in accordance with Clauses 16.2(a) and 16.2(b) (or after fourteen (14) days, if the offer is not made as requested), the Company may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company in respect of (i) the employment of such person after the Commencement Date until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv) any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 or Regulation 13A (as applicable) of the Employment Regulations.

Supplier Personnel

- 16.4** The Supplier will be responsible and liable for the recruitment, training, management, removal and termination of all Supplier Personnel and the acts and omissions of the Supplier Personnel in the provision of the Services and will indemnify the Company on demand in respect of all Losses that may be suffered or incurred by the Company in connection with the acts or omissions of Supplier Personnel in connection with or relating to the provision of the Services and/or when dealing with any individuals employed or engaged in any capacity by the Company.
- 16.5** The Supplier will, to the extent required, secure the consent of Supplier Personnel to the disclosure of data falling within the scope of the Data Protection Act 1998.

Supplier Personnel Information and Supplier Personnel Indemnity

- 16.6** The Supplier
- 16.6.1** will, on request at any time (including for the avoidance of doubt after the expiry of the Contract), provide to the Company, the Supplier Personnel Information. Such Supplier Personnel Information shall be provided to the Company as soon as reasonably practicable and in any event no later than twenty eight (28) days after such a request;
- 16.6.2** warrants and undertakes to the Company that any Supplier Personnel Information disclosed pursuant to Clause 16.6.1 above is complete and accurate; and
- 16.6.3** will indemnify and hold harmless the Company and any Replacement Supplier from and against all Losses incurred or suffered by the Company and any Replacement Supplier in connection with, or as a result of, any claim or demand:
- (a) by any Supplier Personnel which relates wholly or in part to the Supplier Personnel's employment in the period on or after the Commencement Date;

- (b) by any Supplier Personnel which relates to the Supplier's failure or alleged failure to employ such Supplier's Personnel on the terms and conditions which they enjoyed immediately prior to the Commencement Date;
- (c) by or on behalf of any Supplier Personnel which relates to a breach of any of the warranties and undertakings given by the Supplier in this Clause 16; or
- (d) relating to any incomplete or incorrect information relating to the Supplier Personnel which the Supplier has provided to the Company pursuant to this Clause 16 or otherwise and which the Company has relied upon.

**16.7** The Company will keep any Supplier Personnel Information supplied by the Supplier in accordance with Clause 16.6.1 confidential although such information may be disclosed to a prospective Replacement Supplier in any tender exercise.

**16.8** Surplus Supplier Personnel

**16.8.1** The Supplier shall deal with any surplus Supplier Personnel as follows:

- (a) where Supplier Personnel become surplus to requirements and are displaced, the Supplier shall use reasonable endeavours to identify and offer one suitable alternative job to each such Supplier Personnel elsewhere in the Supplier's organisation;
- (b) where within one (1) month of the displacement of Supplier Personnel, the Supplier is unable to identify a suitable alternative job within its respective organisation the Supplier shall ask the Company whether there are any suitable vacancies within its organisation or other subcontractor organisations;
- (c) where the Company is asked by the Supplier whether there are any suitable vacancies within its organisation, the Company shall use reasonable endeavours to identify a suitable alternative job and shall notify the Supplier in writing within one (1) month of the request being made whether such an alternative position has been identified;
- (d) where the Supplier is asked by another subcontractor whether there are any suitable vacancies within its organisation, the Supplier shall use reasonable endeavours to identify a suitable alternative job and shall notify the other subcontractor in writing within one (1) month of the request being made whether such an alternative position has been identified; and
- (e) where the Company or another subcontractor has a suitable vacancy for that Supplier Personnel and is prepared to offer that vacancy to such employee, it shall provide full

details of that vacancy to the Supplier (together with the notification as to whether the position has been identified) and that Supplier Personnel shall upon accepting an offer from the Company or the other subcontractor (as the case may be) transfer on the standard terms and conditions for that organisation unless otherwise agreed between the Supplier Personnel and, as the case may be, the Company or the other subcontractor.

- 16.8.2** In the event that the Supplier, having complied with its obligations under this Clause 16.8 is unable to identify a suitable alternative job for the displaced employee or the displaced employee rejects any suitable alternative job offer (including any job offer made by the Company or another subcontractor), then the Supplier may dispense with the services of the displaced employee.

#### Key Personnel

- 16.9** The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Services. The Supplier shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 16.10** The Supplier agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Supplier's employment.
- 16.11** The Supplier shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key

Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.

**16.12** A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.

**16.13** The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.

#### Service Cessation

**16.14** The Company and the Supplier agree that no Service Cessation will constitute a relevant transfer for the purposes of the Employment Regulations.

**16.15** If the contract of employment of any Supplier Personnel is found or alleged to have effect on or after a Service Cessation as if originally made with the Company or a Replacement Supplier by reason of the Employment Regulations, the Supplier agrees that:

- (a) in consultation with the Company, it will, within fourteen (14) days of being so requested by the Company (as long as the request is made no later than fourteen (14) days after the Company becomes aware of such finding or allegation), make to that person an offer in writing to employ him or her under a new contract of employment to take effect from the relevant Service Cessation; and
- (b) the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provision of that person's contract of employment immediately before the Service Cessation; and
- (c) it will do nothing to discourage the acceptance of the offer.

**16.16** Upon that offer being made in accordance with Clauses 16.15(a) and 16.15(b) (or after fourteen (14) days, if the offer is not made as requested), the Company or the Replacement Supplier may terminate the employment of the person concerned and the Supplier undertakes to indemnify the Company and the Replacement Supplier against any Losses in respect of (i) the employment of such person after the Service Cessation until any termination of employment of this nature; (ii) any Losses relating to such person which transfer to the Company or the Replacement Supplier under Regulation 4 of the Employment Regulations; (iii) such termination of employment; and (iv)

any Losses relating to any failure to inform and consult with such person or his representatives as required by Regulation 13 or Regulation 13A (as applicable) of the Employment Regulations.

**16.17** The Supplier shall indemnify the Company and any Replacement Supplier against any Losses in respect of any claim to the extent that it is in relation to:

- (a) the employment and termination of the employment of any Supplier Personnel up to and including the Service Cessation;
- (b) all emoluments and other benefits of Supplier Personnel arising in respect of the period up to and including the Service Cessation regardless of when they fall due for payment;
- (c) any act, fault or omission up to and including Service Cessation in respect of the employment of Supplier Personnel;
- (d) any claim by any Supplier Personnel relating to that person's employment or its termination after the date of the Service Cessation; and
- (e) any inaccurate or incomplete Supplier Personnel Information disclosed by the Supplier (or on its behalf) to the Company pursuant to Clause 16.6.

**16.18** The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 16 at any time during performance of the Contract and during the twelve (12) year period following completion of performance.

## **17 London Living Wage**

**17.1** The Supplier shall, to the extent the Contract is for the provision of Services to be undertaken within Greater London or on the Underground Network:

- (a) ensure that none of its employees engaged in the provision of services under the Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;

- (d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and
- (e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 17 and the provisions of this Clause 17 are included in any subcontract (of any tier).

**17.2** The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 17.

## **18 Responsible Procurement**

**18.1** The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

**18.2** 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 Company to enable the Company to comply with, the Responsible Procurement Policy.

**18.3** The Supplier acknowledges and agrees that the Company 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 relevant principles of the Responsible Procurement Policy 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 Policy.

**18.4** The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

**18.5** The Supplier shall not be entitled to any addition to the Charges in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

**18.6** The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 18 and the provisions of this Clause 18 are included in any subcontract (of any tier).

- 18.7** The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 18.

## **19 Failure to Perform**

- 19.1** If the Supplier has not performed the Services in accordance with the terms of the Contract, without prejudice to any other rights the Company shall have under the Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.
- 19.2** Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 19.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 19.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.
- 19.3** For the purposes of Clause 19.2 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 19.2 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 19.2.

## **20 Intellectual Property Rights**

### **20.1 Existing Contracts**

This Contract is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.

### **20.2 Vesting of Intellectual Property Rights created under this Contract**

All Intellectual Property Rights created wholly or mainly in connection with the performance of, or in order to perform, the Contract shall vest in the Company. The Supplier shall procure that each

of its subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Company.

**20.3** Ownership of the Supplier's Intellectual Property Rights

Without prejudice to Clause 20.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 20.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

**20.4** Company's Licence to use the Supplier's Intellectual Property Rights

The Company shall have and the Supplier hereby grants, and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 20.3 for the purposes of:

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

**20.5** Provision of Supporting Documentation and Other Materials

The Supplier shall:

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



copying of, the Intellectual Property Rights referred to in Clauses 20.2, 20.3 and 20.4 above; and

- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

#### **20.6 Company's Rights of Retention**

If the Supplier has not complied with its obligations under Clause 20.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under Clause 20.5(a).

#### **20.7 Company's Rights to the Software**

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 21.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors 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 Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

#### **20.8 Company's Rights in relation to Other Procurement Activities**

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 20.5 and anything in which the Intellectual Property Rights referred to in Clauses 20.2, 20.3 and 20.4 subsist for the purposes of inviting tenders or of procuring services similar to the Services for the carrying out of any activities in connection with the licence under Clause 20.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

#### **20.9 Supplier's Indemnity against Third Party Intellectual Property Rights Infringement**

- (a) The Supplier shall indemnify and hold harmless the Company against any actions, claims, losses, demands, costs, charges or expenses that arise from, or are incurred by reason of, any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If

required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.

- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim.

#### **20.10 Ownership of the Company's Intellectual Property Rights**

Intellectual Property Rights in all Documentation and in all other material and items supplied by the Company to the Supplier in connection with the Contract shall remain vested in the Company or the person owning such rights at the time the Documentation, material or items were supplied. The Supplier shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Company the rights referred to in this clause.

### **21 Termination and Suspension**

#### **21.1 The Company may terminate the Contract immediately by notice in writing to the Supplier if:**

- (a) the Supplier commits a breach of the Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay liquidated damages is reached or exceeded; or
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Contract) or is deemed unable to pay its debts as they fall due in accordance with Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its

administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same.

**21.2** Without prejudice to Clause 21.1, the Company shall have the right:

- (a) to terminate the Contract at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend provision of the Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

**21.3** In the event that the Company terminates the Contract for any reason under this Clause 21, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Contract or under general law, permit the Company, at the Company's option, to:

- (a) enter the Supplier's premises and take possession of any equipment or goods which are the property of the Company, the Specification and any applicable Company Documents; and
- (b) place an order for the remaining Services with any other person or persons or complete the provision of such Services by its own workmen.

In either such case, the Company shall be entitled to retain the benefit of any part of the Services already provided by the Supplier in accordance with the Contract, at the material time.

**21.4** In the event that the Contract is terminated, the liability of the Company shall be limited to payment to the Supplier for those Services provided in accordance with the Contract up until the date of such termination.

**21.5** Where the Company exercises its rights under Clause 21.3(b), following a termination in accordance with Clause 21.1 (but not a termination in accordance with Clause 21.2(a)) and in so doing and securing the full provision of the Services, incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Services under the Contract ("**Excess Costs**"), the Supplier shall be liable to the Company for such Excess Costs in addition to being liable to the Company for any Losses of whatever nature arising out of or in connection with the relevant breach.

**21.6** In the event that the Contract is suspended in accordance with Clause 21.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of those Services provided to the Company in accordance with the Contract up until the date of such suspension; and
- (b) not carry out any further work in connection with the provision of the Services until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").

**21.7** In the event that the Contract is suspended in accordance with Clause 21.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.

**21.8** In the event that the parties are unable to agree upon the variation requested under Clause 21.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 36.

**21.9** Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

**21.10** If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

## **22 Co-operation in Handover**

**22.1** The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Contract and in the three (3) months after the Completion Date (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Contract termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the performance of the Services and in such a manner so as not to unduly disrupt or hinder the Company's business.

**22.2** Without prejudice to the generality of Clause 22.1 above, the Supplier shall on or prior to the Completion Date transfer to the Company such Documentation relating to the Services or full copies thereof as the Company may request.

## **23 Indemnity and Insurance**

**23.1** The Supplier acknowledges that the Company shall in the course of the provision of the Services be relying on:

- (a) the Supplier's skill, expertise and experience in the provision of the Services;
- (b) the accuracy of all representations or statements made by the Supplier to the Company;
- (c) the advice given by the Supplier to the Company in connection with the Services; and
- (d) the accuracy of the Contractual Documentation.

**23.2** The Supplier shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers on an after-tax basis against all Losses suffered or incurred by the Company and/or any third party, arising from or in connection with the performance or non-performance of the Supplier under the Contract:

- (a) in respect of sickness, disease, death or injury to any person;
- (b) in respect of loss of or damage to any property (including any rail vehicles and property belonging to the Company or for which it is responsible);
- (c) in respect of a non-performance claim made under Clause 19;
- (d) in respect of the presence of the Supplier, its employees or agents on the Company's premises whether such Losses be caused by negligence or otherwise;
- (e) arising out of or in the course of or by reason of any negligence or breach of contract or breach of statutory duty, wilful misconduct or other wrongful act or omission of the Supplier, its employees, agents or subcontractors, except to the extent that such Losses result solely from the negligence, breach of contract or other wrongful act or omission of the Company, its employees and agents;
- (f) arising out of or in the course of or by reason of the Supplier's performance, non performance or part performance of the Contract; and
- (g) in respect of any liability under the Consumer Protection Act 1987 or any other similar statutory provisions,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

- 23.3** The Supplier shall keep the Company indemnified against all claims arising as a result of the Supplier failing to comply with any relevant Applicable Laws and Standards, including but not limited to any liquidated damages claims made against the Company by an operator of a rail vehicle in circumstances where that rail vehicle is taken out of service as a result of the Supplier failing to comply with a relevant Applicable Law and Standard, provided always that the Supplier shall not be required to indemnify the Company for claims directly arising solely out of the wrongful acts or omissions of the Company, its employees or agents and provided further that the Supplier's liability to indemnify the Company shall be reduced proportionately to the extent that the wrongful acts or omissions of the Company, its employees or agents may have contributed to the said claims.
- 23.4** The Supplier's indemnity under Clause 23.2 and all other indemnities under the Contract shall remain in force for the duration of the Contract and for the period of twelve (12) years after the Completion Date or earlier termination of the Contract.
- 23.5** The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clauses 23.2 to 23.3 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.
- 23.6** Neither party shall have any liability to the other for any indirect or consequential loss arising out of the performance of its obligations under or in connection with the Contract.
- 23.7** Without prejudice to the obligation to indemnify the Company set out in Clauses 23.2 and 23.3, the Supplier undertakes to:
- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
  - (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;
  - (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence and in the aggregate per annum;
  - (d) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than twelve (12) years after the completion of the Services;

- (e) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (f) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under the Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 23.

**23.8** The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 23.7.

**23.9** If the Supplier fails to maintain the insurance policies as provided in this Clause 23, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

## **24 Force Majeure and Permitted Delay Events**

### **24.1 Force Majeure**

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

### **24.2 Permitted Delay Events**

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Completion Date, within seven (7) days after the cause of any delay has arisen.

- (b) For the purposes of the Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
  - (i) any act of prevention, omission, default, neglect or breach by the Company of an express obligation under this Contract; or
  - (ii) any variation of the Contract under Clause 7; or
  - (iii) the suspension of the Contract in accordance with Clause 21 (other than where the suspension is necessary by reason of default of the Supplier).
- (c) Where any delay in achieving the Completion Date arises, the Supplier shall be entitled to an extension to such Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Supplier's ability to perform the Services by the Completion Date and provided that the Supplier:
  - (i) notifies the Company of the Permitted Delay Event in accordance with Clause 24.2(a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
  - (ii) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
  - (iii) uses its reasonable endeavours to mitigate the delay to the Completion Date; and
  - (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of the Contract by the Supplier, its subcontractors or employees.

## **25 Confidentiality**

- 25.1** The Supplier undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Supplier and shall use such information only for the purpose of the performance of his obligations under the Contract.
- 25.2** On the Company's request, the Supplier shall, so far as is reasonably possible:
  - (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Supplier;



- (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.

- 25.3** The Supplier shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 25.1 and 25.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.
- 25.4** The Supplier shall notify the Company promptly if the Supplier becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Company all assistance the Company reasonably requires in connection with any proceedings the Company brings, or other steps the Company takes, against that subcontractor, supplier, employee or agent for such breach of confidence.
- 25.5** The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, the Contract or the Services without the prior written consent of the Company.
- 25.6** The Supplier shall not, either alone or jointly with others, make any press, television, radio or other media announcement in connection with the Contract or the Services, or any Dispute arising under or in connection with the Contract.
- 25.7** The provisions of Clauses 25.1 to 25.6 shall not apply:
- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of the Contract; or
  - (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 25.8** The Supplier acknowledges that damages would not be an adequate remedy for any breach of this Clause 25 by the Supplier and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

## **26 Assignment and Subcontracting**

- 26.1** The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Contract or any part thereof without the prior written consent of the Company.
- 26.2** The subcontracting of all or any part of the Services to a subcontractor shall not relieve the Supplier of its obligations to perform the Services under the Contract. The Supplier shall be responsible for the acts and omissions of its subcontractors.
- 26.3** The Company may novate, assign, transfer or subcontract the Contract or any part thereof to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.
- 26.4** Within seven (7) days of any written request by the Company to the Supplier, the Supplier shall execute a deed of novation in the form set out in Schedule 6 in favour of any person to whom the Contract is being novated.

## **27 Company's and Supplier's Representative**

Each party shall appoint one or more representatives to act on its behalf under the Contract. Each party shall advise the other party, in writing, of the names and contact details of its representatives and these shall be recorded in Schedule 1. The Supplier shall not appoint such a representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Supplier may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

## **28 Costs**

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

## **29 Severance**

If a provision of the Contract is, or becomes, invalid, unenforceable or illegal, that will not affect the legality, validity or enforceability of any other provision of the Contract, provided that the

operation of this Clause 29 would not negate the commercial interest and purpose of the parties under the Contract.

### **30 Publicity**

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

### **31 Corrupt Gifts and Payments of Commission**

- 31.1** The Supplier undertakes that it shall not and procures that its subcontractors and suppliers shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.
- 31.2** The Supplier undertakes that it shall not, and uses reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.
- 31.3** The Company shall have the right to audit any and all records necessary to confirm compliance with this Clause 31 at any time during performance of this Contract and during the twelve (12) year period following completion of performance.

### **32 Criminal Record Declarations**

- 32.1** For the purposes of this Clause 32:

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

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

- 32.2** The Supplier shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions ("**Declaration**") or disclosure of any Relevant Convictions. A Declaration shall be procured prior to a Relevant Individual carrying out any of the Services. The Supplier shall confirm to the Company in writing on request or in any event not less than

once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if he commits a Relevant Conviction and the Supplier shall notify the Company in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 32.3** The Supplier shall not engage or allow to act on behalf of the Supplier or any subcontractor in the performance of any aspect of the Services any Relevant Individual who has disclosed a Relevant Conviction.
- 32.4** The Company shall have the right in accordance with the audit rights set out in Clause 4 to audit and inspect the records of the Supplier and its subcontractors and its and their respective employees and agents in order to confirm and monitor compliance with this Clause 32 at any time during performance of this Contract.
- 32.5** If the Supplier fails to comply with the requirements under Clauses 32.2 and/or 32.3 the Company may, without prejudice to its rights under Clause 21.1, serve notice on the Supplier requiring the Supplier to remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Contract and/or Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services unless (in the case of non-compliance with Clause 32.2) within seven (7) days of receipt of the notice the Supplier confirms to the Company that he has procured all of the relevant Declarations required under Clause 32.2.
- 32.6** A persistent breach of Clause 32.2 and/or Clause 32.3 by the Supplier shall entitle the Company to terminate the Contract in whole or in part with immediate effect in accordance with Clause 21.1(a).
- 32.7** In the event the Company becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of such Relevant Individual from the Contract and/or the Company's site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the Services.
- 32.8** Nothing in this Clause 32 shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Contract and the Supplier's responsibilities in respect of performance of the Services remain in full force and effect and the Supplier cannot claim any extra costs or time as a result of any actions under this Clause 32.

### **33 No Waiver**

- 33.1** No failure or delay on the part of either party to exercise any right or remedy under the Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 33.2** No payment made by the Company shall indicate or be taken to indicate the Company's acceptance or approval of any part of the Services or any act or omission of the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Contract or otherwise.

### **34 Entire Contract**

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

### **35 Notices and Service of Process**

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

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

The address and fax numbers of the Company and the Supplier are set out in Schedule 1 as follows (or such other address or facsimile number which may be subsequently notified by the relevant party

If a party's details change, it must notify the other party promptly in writing of any such changes. The parties agree that proceedings arising out of or in connection with the Contract may be served in accordance with this Clause 35.1.

## **36 Dispute Resolution**

- 36.1** Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause 36.
- 36.2** The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between the Company’s Representative and a suitably qualified and duly authorised representative of the Supplier (together the “**Nominated Representatives**”) which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one party to the other of a matter in dispute.
- 36.3** If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 36.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one party on the other), the Dispute shall be referred as soon as practicable to *[the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director]* or in the absence or unavailability of these personnel, persons of similar status deputed to resolve disputes on behalf of their respective companies.
- 36.4** If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company’s Contracts and Procurement Manager and the Supplier’s Managing Director or their deputies in accordance with Clause 36.3 either party may refer the matter for resolution in accordance with the provisions of Clause 39.
- 36.5** Clauses 36.1 to 36.4 are subject to the Supplier’s rights (if any) under the HGCRA to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company’s Adjudication Rules. For the purposes of this Clause 36.5, “**Adjudication Rules**” means the most recent edition of the Company’s adjudication rules on the date of the notice referring adjudication.

## **37 Counterparts**

- 37.1** This Contract may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same document.

## **38 Partnerships and Joint Ventures**

- 38.1** If the Supplier is a partnership, the rights, obligations and liabilities of the partners in the partnership under the Contract are joint and several. The Contract and the liabilities of the partners under the Contract shall not automatically terminate upon the death, retirement or

resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming his/her acceptance of the rights, obligations and liabilities of the Supplier under the Contract.

- 38.2** If the Supplier comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under the Contract are joint and several.
- 38.3** Nothing in the Contract shall constitute, or shall be deemed to constitute, a partnership between the parties. Except as expressly provided in the Contract, neither party is deemed to be the agent of the other, and neither party holds itself out as the agent of the other.

## **39 Governing Law and Jurisdiction**

The Contract and any non-contractual obligations connected with the Contract shall be governed by and interpreted in accordance with the laws of England and the Company and the Supplier submit, subject to the provisions of this Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Supplier is incorporated or in which any asset of the Supplier may be situated.

## **40 Contracts (Rights of Third Parties) Act 1999**

- 40.1** Subject to the Replacement Supplier's Rights in accordance with Clause[s] 16.6.3, no person except any member of the TfL Group may enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any other right or remedy of a third party arising at law.
- 40.2** The Company and the Supplier may agree to vary or rescind the Contract without the consent of any third party.

## **41 Bonds, Warranties and Guarantees**

- 41.1** Where stated in Schedule 1, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:
- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 1 in favour of the Company;

- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Supplier (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 1 in favour of the Company.

**41.2** The Supplier shall ensure that any bond required under Clause 41.1 provides, in aggregate, credit protection for the Company in an amount of not less than the amount specified in Schedule 1 at all times until the Completion Date.

**41.3** If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 41.1 and 41.2 then the Supplier shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

**41.4** If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 41.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form attached to Schedule 7.

**41.5** If any performance bond and/or parent company guarantee required by the Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 41.1, one quarter of the Contract Price shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.

**41.6** If required by the Company, the Supplier shall procure that the terms of any subcontract require the subcontractor, within seven (7) days of a written request by the Company to the subcontractor, to enter into:

- (a) a collateral warranty in the form set out in 0 in favour of:
  - (i) the Company;
  - (ii) any persons who have entered into or may enter into an agreement for the provision of finance in connection with the Services;
  - (iii) any persons who have acquired or may acquire an interest in or over the Contract or any part of the Services or in relation to any infrastructure or works to which the Services relate;

and if requested by the Company, the Supplier shall require the subcontractor to provide an accompanying Legal Opinion completed and signed by a qualified lawyer from the



country in which the subcontractor is resident in the form attached to the collateral warranty set out in 0; and

- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the subcontractor's obligations under any collateral warranty required under this Clause 41.6.

**41.7** In addition to the obligation to procure warranties as set out in Clause 41.6(a), the Supplier shall within seven (7) days of any written request provide collateral warranties as required by the Company in respect of the Services in favour of any of the parties referred to in Clause 41.6(a)(ii) and (iii). Any such collateral warranty shall be in the format that the Company shall request.

**41.8** If any of the warranties (including any accompanying parent company guarantee) required under Clauses 41.6 and 41.7 are not delivered to the Company in accordance with the provisions of those clauses:

- in the case of subcontractor warranties required under Clause 41.6, one quarter of the Contract Price relative to the Services supplied by the relevant subcontractor; and
- in the case of the Supplier warranties required under Clause 41.7, one quarter of the Contract Price,

shall be retained in assessments of the amount due and is not payable until such warranties have been delivered.

## **42 Default Interest**

**42.1** If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Default Interest Rate. Any interest accruing under this Clause 42.1 shall be immediately payable by the paying party on demand.

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

## **43 Freedom of Information**

**43.1** For the purposes of this Clause 43:

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

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

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

**43.2** The Supplier acknowledges that the Company:

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

**43.3** Without prejudice to the generality of Clause 43.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

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

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

## **44 Data Transparency**

- 44.1** The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 25 and Clause 43, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 44.2** The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to Clause 44.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

## **45 Survival**

- 45.1** The provisions of Clauses 4 (Records and Audit), 8.10 (Set-Off), 13 (Environmental Claims), 16 (Supplier Personnel), 18.2 (Responsible Procurement), 19 (Failure to Perform), 20 (Intellectual Property Rights), 21 (Termination and Suspension), 23 (Indemnity and Insurance), 25 (Confidentiality), 29 (Severance), 30 (Publicity), 31 (Corrupt Gifts and Payments of Commission, 33 (No Waiver), 34 (Entire Contract), 35 (Notices and Service of Process), 36 (Dispute Resolution), 39 (Governing Law and Jurisdiction), 40 (Contracts (Rights of Third Parties) Act 1999), 43 (Freedom of Information), 44 (Data Transparency), 45 (Survival), 46.1 and 46.5 (Transport for London Group) will survive the termination or expiry of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

## **46 Transport for London Group**

### **46.1 Declaration of Ineffectiveness**

- (a) Without prejudice to the Company's right to terminate the Contract under Clause 21.1, Clause 21.2(a) or at common law, the Company may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 46.1.
- (b) In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this Clause 46.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of

Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 21.1 and this Clause 46.1 or the Cessation Plan, the provisions of this Clause 46.1 and the Cessation Plan prevail.

- (c) The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.
- (d) As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
  - (i) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and
  - (ii) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this Clause 46.1 and to give effect to the terms of the Declaration of Ineffectiveness.
- (e) Upon agreement, or determination by the Company of the Cessation Plan, the parties shall comply with their respective obligations under the Cessation Plan.
- (f) The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the Contract in accordance with this Clause 46.1.

## **46.2 Crime and Disorder Act 1998**

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 (as amended by the Police and Justice Act 2006 and the Policing and Crime Act 2009) to:

- (a) have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;
- (b) where appropriate, identify actions to reduce levels of crime and disorder; and

- (c) without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, 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 Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

#### **46.3 The Company's business**

The Supplier acknowledges that it:

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

#### **46.4 Best value**

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

reasonably) with the Company any changes to the Contract in order for the Company to achieve best value.

#### **46.5 Data Protection**

- (a) The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("**Company Personal Data**"), the Supplier shall only carry out such processing in order to carry out the Services and at all times in accordance with any instructions from the Company.
- (b) When the Supplier receives a written request from the Company for information about, or a copy of, Company Personal Data, the Supplier shall supply such information or data to the Company within such time and in such a form as is specified in the request (such time to be reasonable) or if no period of time is specified in the request, then the Company shall supply the information or data within fourteen (14) days from the date of the request.
- (c) The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement in place which requires the subcontractor or third party to:
  - (i) only process Company Personal Data in accordance with the Company's instructions to the Supplier; and
  - (ii) comply with the same data protection requirements that the Supplier is required to comply with under the Contract.

#### **46.6 Conflict of Interest**

- (a) The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or with any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Company.
- (b) The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services under the Contract or with any member of the TfL Group and shall work with the Company to do

whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Contract.

#### **46.7 Equality and Diversity**

- (a) The Supplier, at no additional cost to the Company:
- (i) shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
  - (ii) acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Company where possible in satisfying this duty;
  - (iii) acknowledges that the Company is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
    - promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
    - eliminate unlawful discrimination; and
    - promote good relations between persons of different racial groups, religious beliefs and sexual orientation.
- (b) The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

#### **46.8 Work Related Road Risk**

**46.8.1** For the purposes of Clauses 46.8.2 to 46.8.9 (inclusive) of this Contract, the following expressions shall have the following meanings:

**“Bronze Accreditation”** the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

[www.fors-online.org.uk](http://www.fors-online.org.uk)

**“Car-derived Vans”** 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”** a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

**“Delivery and Servicing Vehicle”** a Lorry, a Van or a Car-derived Van;

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

**“DVLA”** Driver and Vehicle Licensing Agency;

**“FORS”** the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and 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”** 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](http://www.fors-online.org.uk)



**“Gold Accreditation”** the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

[www.fors-online.org.uk](http://www.fors-online.org.uk)

**“Lorry”** a vehicle with an MAM exceeding 3,500 kilograms;

**“MAM”** 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”** 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”** the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

[www.fors-online.org.uk](http://www.fors-online.org.uk)

**“Van”** a vehicle with a MAM not exceeding 3,500 kilograms.

#### **Fleet Operator Recognition Scheme Accreditation**

**46.8.2** Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Commencement Date:

- (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Company, 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.

### **Safety Equipment on Vehicles**

**46.8.3** 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 Company 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.

### **Driver Licence Checks**

**46.8.4** 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 Drivers 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 of 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 Company 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.

#### **Driver Training**

- 46.8.5** Where the Supplier operates Delivery and Servicing Vehicles to provide 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 Contract.

#### **Collision Reporting**

- 46.8.6** Where the Supplier operates Delivery and Servicing Vehicles to provide 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 Commencement Date, provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report within five working days of a written request from the Company.

#### **Self Certification of Compliance**

- 46.8.7** Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Company detailing its compliance with Clauses 46.8.3, 46.8.4 and 46.8.5 of this Contract (the "WRRR Self-certification Report"). The Supplier shall provide updates of the WRRR Self-certification Report to the Company on each three month anniversary of its submission of the initial WRRR Self-certification Report.

#### **Obligations of the Supplier Regarding Subcontractors**

- 46.8.8** The Supplier shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to provide the Good and/or Services shall:
- (a) comply with Clause 46.8.2; and

(b) where its subcontractors operates the following vehicles to provide the Services shall comply with the corresponding provisions of this Contract:

(i) For Lorries – Clauses 46.8.3, 46.8.4, 46.8.5 and 46.8.6; and

(ii) For Vans – Clauses 46.8.4, 46.8.5, and 46.8.6,

as if those sub-contractors were a party to this Contract.

#### **Failure to Comply with Work Related Road Risk Obligations**

**46.8.9** Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with Clauses 46.8.2, 46.8.3, 46.8.4, 46.8.5, 46.8.6, 46.8.7 and 46.8.8:

(a) the Supplier has committed a material breach of this Contract; and

(b) the Company may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

### **47 CompeteFor**

**47.1** Without prejudice to Clause 26, the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Company may direct from time to time) ("**CompeteFor**") to make available to other suppliers all appropriate opportunities, arising in connection with the Contract, to supply goods, works or services to the Supplier.

**47.2** The Supplier will use all reasonable endeavours to ensure that its subcontractors (for the purposes of this Clause, the "**Supplier's Subcontractors**") use CompeteFor, on a non-exclusive basis, to make available to other subcontractors all appropriate opportunities, arising in connection with the Contract, to supply goods, works and services to the Supplier's Subcontractors.

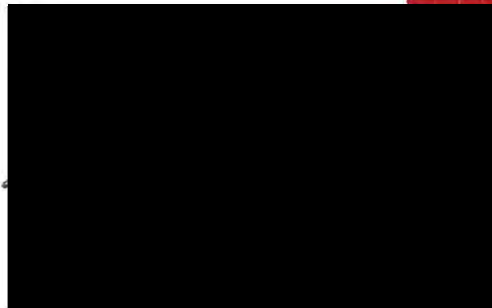
**47.3** The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier's Subcontractors, as required by this Clause 47.3, and will report this information on a quarterly basis by way of email to the Company's Representative.

**THIS CONTRACT** has been executed as a Deed and delivered by the Parties on the day and year written above.

Print name of Authorised Signatory  
**THE COMMON SEAL** of  
**LONDON UNDERGROUND LIMITED**  
was affixed to **THIS DEED**  
in the presence of:

..... 3805  


Signature of Authorised Signatory  
.....  
Print name of Authorised Signatory  
.....



**EXECUTED AND DELIVERED AS A DEED**  
for and on behalf of **Rainham Industrial Services Ltd**  
acting by:

Signature of Authorised Signatory  
.....  
Print name of Authorised Signatory

.....  


John Staples

Signature of Authorised Signatory  
.....  
Print name of Authorised Signatory

.....  


Charlie Painter





Rainham House  
795 London Road  
Queensbridge Industrial Park  
West Thurrock  
Essex RM20 3LH  
Tel: 01708 683 483 Fax: 01708 683 490  
Vat Registration: 805 9197 10  
Company Reg: 04582381

**Schedule 1**  
**Detailed Terms**

Contract Reference Number:	LU-COO-STIL
Supplier Reference:	
Commencement Date:	Friday 19th June 2015
Completion Date:	Tuesday 18th June 2018
Supplier's Representative: Address:  Telephone: Email:	Mr Jeff Phillimore Rainham House, 795 London Road, Queensbridge Industrial Park, West Thurrock, Essex RM20 3LH  
Company's Representative: Address:  Telephone: Email	Sonia Minott 81-87 High Holborn, London, WC1V 6NU  
<b>Service of Notices</b> For the Company:	Head of Commercial, COO 15 Westferry Circus London E14 4HD Fax: 020 7088 6457
<b>Service of Notices</b> For the Supplier:	Name: Charlie Painter, Support Services Manager Address: Rainham House, 795 London Road, Queensbridge Industrial Park, West Thurrock, Essex RM20 3LH  Fax: 01708 683 490
Programme	In accordance with Schedule 3

Specification:	In accordance with Schedule 2
Charges:	In accordance with Schedule 11
Standards under Clause 3.2(b)	LUL Category Standards 1 and 2.
Insurance provisions held by Supplier in accordance with Clause 23.	<p><b>Public and Product Liability:</b>  Insurer: Brit Syndicates Ltd &amp; Dual Corporate Risks Ltd  Limit of Indemnity: £10,000,000.00  Policy Number: VD517Z15B000,  GL03235315G1 &amp; GL14359715G0</p> <p><b>Employer's Liability:</b>  Insurer: Brit Syndicates Ltd &amp; Dual Corporate Risks Ltd  Limit of Indemnity: £10,000,000.00  Policy Number: VDS17Z15A000 &amp;  GL03235315G1</p>
Security required pursuant to Clause 41.1	Not Used



## **Schedule 2**

### **Specification**

The Contractor is asked to provide scaffolding, lagging and thermal insulation to meet the working requirements of Greenwich Generating Station and various other locations around the London Underground Network in relation to installation works, gas turbine inspections and general maintenance of LUL's assets in relation to power property and lifts and escalators.

A provision of the necessary equipment is to be stored at Greenwich Generating Station for ease of access, be stored securely and be maintained in line with industry standards for a prompt response to ensure all works can be undertaken safely, without delay and in compliance with LUL Standards.

The Contractor shall be responsible for the installation, setup and maintenance of all equipment used for the provision of their services.

#### **1. Scaffolding services**

- To supply, erect, dismantle and certify access scaffold to undertake works
- To supply and install scaffolding platforms to allow for the manual handling of heavy plant including purpose built load bearing designed structures by a competent person
- The works will be at the required height to allow the safe working of operatives to undertake a task
- Provide pre-site evaluations prior to commencement of planned works

#### **2. Thermal Insulation**

- Removal/strip/re-fit of (where usable) old thermal insulation materials and containment such as aluminium over-cladding.
- Supply and installation of new thermal insulation materials up to a rated temperature of 700°C suitable for gas turbine environments, including any required new containment such as aluminium over-cladding.

#### **3. On Site storage of scaffolding equipment**

- The Supplier will hold scaffolding equipment on site at Greenwich Generating Station.
- The equipment will be stored at Greenwich Generating station at the Suppliers own risk.
- The levels of scaffolding equipment held at Greenwich Generating Station will be mutually agreed between the Company and the Supplier.
- The Supplier will be responsible for ensuring that all Scaffolding and associated equipment stored at Greenwich Generating Station is fit for purpose and complies with industry standards.

#### 4. Response times

The supplier will fully comply with the following response times in accordance with Schedule 10:

<b>Description</b>	<b>Measure</b>
<i>Emergency call-out</i>	<i>On Site 4 hours from call being logged</i>
<i>Ad-hoc/ unplanned works</i>	<i>On site 48 hours from call being logged</i>
<i>All works</i>	<i>Job completed to agreed timescales</i>

#### 5. Standards

The Contractor shall comply with all relevant legislation, British, European and LUL Standards including but not limited to:

- Health and Safety at Work Act 1974
- Working at Height Regulations 2005
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Provision and Use of Work Equipment Regulations 1998 (PUWER)
- Compliance with National Access and Scaffolding Confederation (NASC) health and safety guidance
- Control of Substances Hazardous to Health Regulations (COSHH)
- LUL Category Standard 1
- LUL Category Standard 2

#### 6. Locations of Work

Works may be requested at any location in or around the London Underground Network.

### **Schedule 3**

#### **Programme**

This framework will be operated on a 'call off' basis. Each job will be agreed in line with the terms of this framework, as and when the works become known.

Works may be requested at any location in or around the London Underground Network. Any request which comes from another member of TfL staff other than the person named as the Company Representative in Schedule 1, should be validated by said Company Representative before commencement of works.

## **Schedule 4**

### **Contract Variation Procedure**

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

- 8.1 All authorised additional work resulting from any Variation Proposal shall be priced in accordance with the rates set out in Schedule 11.
- 8.2 The Supplier shall at all times act reasonably and shall price each Variation Proposal at the least possible additional cost to the Company that it is reasonably and economically practicable for the Supplier to offer and which has the least possible impact on the terms of the Contract, including but not limited to, the Specification and the Programme.
- 9 Strict adherence to the procedure described in this Schedule 4 shall be a condition precedent to any addition to the Charges for the Services. If the Supplier does not adhere to each paragraph in this Schedule 4 then the Supplier shall not be entitled to any addition to the Charges notwithstanding that the Supplier may have supplied additional or varied Services.

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

<b>To:</b>	<b>From:</b>
------------	--------------

**Contract Reference:**  
**Variation Number:**  
**Variation Title:**

<b>PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)</b>	
Description of change:	
Reason for changes and impact (if any) on Contract:	
Variation Proposal Authorised by:	Proposal Date:
<b>PART B (TO BE COMPLETED BY THE SUPPLIER)</b>	
<b>Price Breakdown</b>  Note: If a further breakdown is needed please append details as a separate sheet.	
Expected Delivery Date:	
Supplier's Representative:	
Print Name: .....	Signature: ..... Date: .....
Completed document to be returned to the Company's Representative	
<b>PART C (TO BE COMPLETED BY THE COMPANY'S REPRESENTATIVE)</b>	
Comment on Parts A and B:	
Variation Authorisation	
Company's Representative:	
Print Name: .....	Signature: ..... Date: .....

**Schedule 5**  
**QUENSH Menu**



Transport for London  
London Underground



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# **F0780      Contract Menu**

**This Contract Menu must be used in conjunction with Category 1  
Standard S1552 "Contract QUENSH Conditions"**



# Contract Menu

**Contract No:** LU-COO-STIL

**Contract Name** Supply of Scaffolding, Thermal Insulation and Lagging Services

**Client:** London Underground Limited

**Supplier:** Rainham Industrial Services

**Principal Contractor:** Yes ☐ No ☐

## 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 compiled 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.

**Contract Menu**  
**Requirements in QUENSH**

Applicable requirements identified by Client			Identified by Supplier		
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
4	Agreement of the applicable QUENSH contract conditions				
5	Supplier's selection of sub-contractors		Y	Y	
6	Identification of Safety Critical Activities		N	Y	Working at Height
7	Works Environmental Management	Only if works fall under the criteria of CDM	Y	Y	
8	Emergency Plan	Greenwich Generating Station Emergency Plan (GEN-OPS-GR-WI-021/00)	N	N	
9	Method Statements	Greenwich RAMS template to be used	Y	Y	
10	Health, Safety and Environment File	Only if works fall under the criteria of CDM	Y	Y	
11	Pre-start health, safety and environment meeting	Only if works fall under the criteria of CDM	Y	Y	
12	Supplier's site induction	Only if works fall under the criteria of CDM	Y	Y	
13	Site Person in Charge	Company headed letter	Y	Y	

Applicable requirements identified by Client			Identified by Supplier		
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
		stating that the nominee is competent to perform the duties of a Site Person in Charge			
<b>14</b>	<b>Staff requirements</b>		Y	Y	
<b>14.1</b>	<b>Behaviours</b>		Y	Y	
14.1.1	Alcohol and drugs		Y	Y	
14.1.2	Control of hours worked		Y	Y	
<b>14.2</b>	<b>Knowledge</b>		Y	Y	
14.2.1	English language		Y	Y	
14.2.2	Access Card and Worksite Briefing	Greenwich site induction pass	Y	Y	
14.2.3	Visitors to sites		Y	Y	
<b>14.3</b>	<b>General competence</b>		Y	Y	
14.3.1	Evidencing competence of safety critical staff		N	Y	Working at Height
14.3.2	Identification of safety critical staff		N	Y	Working at height
14.3.3	Competent external safety critical personnel		N	N	
14.3.4	Training	May require Complex certification if carry out works in an area if site	Y	Y	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
		classified as and explosive atmosphere			
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	Flame retardant overalls	Y	Y	
15	<b>Permits and licences</b>		Y	Y	
15.1	LU specific permits and licences	Acceptor (M) Licence to accept safety documentation (Permit to Work etc) under the Greenwich Mechanical and Electrical (Non-HV) Safety Rules	Y	Y	
15.2	Permits, licences and certificates for Supplier's staff	IPAF, PASMA, Fire Watchman	Y	Y	
16	<b>The Principles of Access</b>		N	N	
16.1	Introduction		N	N	
16.2	Access to Stations		N	N	
16.3	Access to Track		N	N	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
16.4	Access to depots		N	N	
<b>17</b>	<b>Applying for Planned Access</b>		N	N	
17.1	Introduction		N	N	
17.2	Private Finance Initiative Suppliers and Third parties		N	N	
17.3	Suppliers contracting with Tube Lines		N	N	
18	Applying for Generic Access		N	N	
18.1	Constraints that apply to Generic Access		N	N	
19	Access for fault repair		N	N	
20	Operational Assurance		N	N	
<b>21</b>	<b>Closures and possessions</b>		N	N	
21.1	Requirements for closures		N	N	
21.2	Requirements for possessions		N	N	
<b>22</b>	<b>Controls at point of access</b>		N	N	
22.1	Publication of works		N	N	
22.2	Checks at point of access		N	N	
22.3	Signing-on with the Station Supervisor - The Station Visitors Record Sheet and Person in Charge Evacuation Register (PICER)		N	N	
<b>22.4</b>	<b>Track specific requirements</b>		N	N	
22.4.1	Protection Master		N	N	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
22.4.2	Possessions (Possession Master, Technical Officer, Cable Lineman, Signal Operator, etc.)		N	N	
23	Removal of supplier's personnel from LU Premises		N	N	
24	Incidents		N	N	
25	Notification of regulatory concern or action		N	N	
26	Confidential Incident Reporting and Analysis System (CIRAS)		N	N	
27	<b>Monitoring</b>		Y	N	
27.1	LU inspections		Y	N	
27.2	Monitoring the supply chain		N	N	
27.3	Health, safety and environmental audits, inspection and tours by the Supplier's personnel		Y	Y	
27.4	Work location inspection and audit		Y	Y	
27.5	Timescales for rectifying non-compliances		Y	Y	
28	Radio transmitters and transceivers		N	N	
29	Mobile phones	Only permitted to be used in areas which are not classified as an explosive atmosphere	Y	Y	
30	Knives		N	Y	Used by TIE's
31	Site health, safety and environment committee		N	N	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
32	Site housekeeping and security		N	Y	RIS site
33	Accidental damage, obstruction or interference with assets		Y	Y	
34	Delivery of materials		Y	Y	
35	<b>Conveyance of loads</b>		N	Y	Ginny Wheels
35.1	Conveyance of loads on lifts and escalators		N	N	
35.2	Conveyance of hazardous materials and substances		N	N	
36	Asbestos (non asbestos removal projects)		N	N	
37	Working in or near lifts and escalators		N	N	
38	Work on or adjacent to utilities and High Voltage cables (buried services)		N	N	
39	Working on or about the track		N	N	
40	Access to electrical sub-stations, working equipment, relay and other secure rooms		Y	Y	
41	Entering areas with gaseous fire suppression systems		N	N	
42	<b>Fire prevention</b>		Y	Y	
42.1	General requirements		Y	Y	
42.2	Temporary fire points		Y	Y	
42.3	Timber		N	Y	
42.4	Composites		N	Y	



Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
42.5	Sheeting materials		N	Y	
<b>42.6</b>	<b>Gas cylinders</b>		N	N	
42.6.1	Use of gas cylinders in below ground locations		N	N	
42.6.2	Storage of gas cylinders (above ground)		N	N	
<b>42.7</b>	<b>Flammable and highly flammable materials</b>		N	N	
42.7.1	Use of flammable and highly flammable materials below ground		N	N	
42.7.2	Storage of flammable and highly flammable materials below ground		N	N	
<b>43</b>	<b>Hot work and fire hazards</b>		Y	N	
43.1	Hot work		Y	Y	
43.2	Reasonable notice of works		N	N	
<b>43.3</b>	<b>Precautions</b>		Y	Y	
43.3.1	Buildings, assets etc.		Y	Y	
43.3.2	Gas cylinders		N	N	
43.3.3	Gas detection		Y	Y	
<b>44</b>	<b>Storage</b>		Y	Y	
44.1	General requirements for storage		Y	Y	
44.2	Trackside storage		N	N	
44.3	Hazardous materials and substances		Y	Y	
44.4	Allocation of space on operational property	Form 131 Greenwich	Y	Y	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
		Storage Licence needs to be completed for permanent storage requests			
45	Plant and equipment		Y	Y	
46	Clearance approvals		N	N	
47	Access equipment		N	Y	Scaffolding
48	Temporary works		N	Y	Scaffolding
49	Temporary fences and hoardings		N	Y	Heras Fencing
50	<b>Temporary lighting and power supplies</b>		Y	Y	
50.1	General requirements		Y	Y	
50.2	Lighting in tunnels and shafts		N	N	
51	Screening of flights and positioning		N	N	
52	<b>Environmental requirements</b>		Y	Y	
52.1	General environmental requirements		Y	Y	
52.2	Environmental nuisance		Y	Y	
52.3	Water		Y	Y	
52.4	Waste management		Y	Y	
52.5	Noise and vibration		Y	Y	
52.6	Archaeology, historical interest and listed buildings		N	N	

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
52.7	Wildlife and Habitats		N	N	
52.8	Resource Use		N	N	
52.9	Pest control		N	N	
52.10	Land and water pollution prevention		Y	Y	
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		Y	Y	
53.13	Computer aided design		Y	Y	
53.14	Asset commissioning and handover		Y	Y	

**Other requirements**

All staff are required to have Police National Computer (PNC) security clearance (Basic Disclosure Scotland security check). A scanned colour copy of the Basic Disclosure Scotland Certificate is to be sent to the email address [SMBSubstationSecurit@tfl.gov.uk](mailto:SMBSubstationSecurit@tfl.gov.uk) for recording on the security database.

Note: the certificate must be within the last 3 months to be accepted.

Qualified First Aider within the working party

Confined Space Training (if required to work in an area on site designated as a confined space)

For electrical works – hold certification in:

BS7671 Wiring Regulations

NICEIC

CompEX (for work in areas classified as an explosive atmosphere)

Specialist training certification will be required for working on fire detection/suppression and gas detection systems


Specialist training certification will be required for work requiring certain types of welding (coded welder etc)

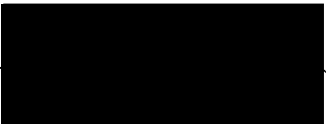
Specialist training certification will be required for working on pressure systems (gas compressor and air compressor equipment/systems)

Specialist training certification will be required for working on chimney stacks (steeplejacks etc)

## Client/Supplier approval


### Client Menu


Prepared by: Russell Fleetwood Signature: 

Approved by (the Client's representative): Russell Fleetwood Signature: 

Title: Generation Manager


Address: Greenwich Generating Station  
Old Woolwich Road  
Greenwich  
London  
SE10 9NY

Phone No: 

Email: 

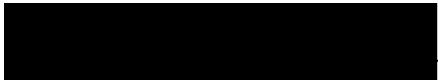
Revision of this menu: A15

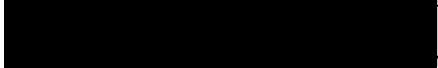
### Supplier Menu

Approved by (the Supplier's): Charlie Painter Signature: 

Title: SUPPORT SERVICES MANAGER

Address: 795 London Road, Queensbridge Industrial Park, West Thurrock, RM20 3LH

Phone No: 

Email: 

Revision of this menu: \_\_\_\_\_

## Deed of Novation

201[ ]

- 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:
- 2.3.1 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
- 2.3.2 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.
- 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.

**EXECUTION PAGE:**

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

Executed as a deed by affixing the Common Seal of )

London Underground Limited )

in the presence of:- )

.....

*[Authorised Signatory]*

Executed as a Deed by ) .....

[SUPPLIER] ) Authorised Signatory

acting by )

and ) .....

) Authorised Signatory



## **Schedule 7**

**Not used**

## Form of Collateral Warranty

201[ ]

**BETWEEN : -**

- (3) [ ] (Company registration number: [.....]) whose registered office/principal place of business is at [.....] (the “**Supplier**”).

**WHEREAS :-**

- (B) The Sub-Contractor has submitted a tender to the Supplier 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:

- (b) reasonable skill and care has been and will continue to be exercised in connection with:

- (i) the design of any goods, works or services to the extent that the Sub-Contractor has or will be responsible for such design;
  - (ii) 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);
  - (iii) the satisfaction of any performance specification or requirement in so far as the same are included or referred to in the contract between the Supplier and the Sub-Contractor in relation to the Sub-Contract Services (the "**Sub-Contract**");
  - (iv) the execution and completion of the Sub-Contract Services;
  - (v) the Sub-Contract Services will, on completion of the Main Contract, comply with all Applicable Laws and Standards (as such capitalised terms are defined in the Main Contract);
- (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 reasonably to be expected of high quality, reliable, well designed and engineered goods, materials and construction; and
- (d) it has the right to grant to the Company all licences (including without limitation all rights to sub-licence) of all intellectual property rights as contemplated in this Agreement.

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 Supplier is granted an extension of time under the Main Contract for completion of the Services:

- (a) execute, complete and maintain the Sub-Contract Services in accordance with the provisions of the Sub-Contract; and
  - (b) ensure that the Supplier 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 Supplier with such information as either may reasonably require.
- 4. To the extent that the intellectual property rights in any and all Documents have not already vested in the Company or the Supplier, the Sub-Contractor hereby grants to the Company an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of 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 re-tendering the Services;
  - (c) extending, interfacing with, integrating with, connecting into and adjusting the Services;
  - (d) enabling the Company to carry out the operation, maintenance repair, renewal and enhancement of the Underground Network (as such capitalised terms are defined in the Main Contract);
  - (e) executing and completing the Services; and
  - (f) enabling the Company to perform its functions 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 Supplier 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 Sub-Contractor agrees:

- (a) on request at any time to give the Company or any persons authorised by the Company access to the material referred to in Clause 4 and at the Company's expense to provide copies of any such material; and
- (b) at the Sub-Contractor's expense to provide the Company with a set of all such material on completion of the Sub-Contract Services.

6. 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.

7. Not used.

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

9. (a) Neither the Sub-Contractor nor the Supplier shall exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Sub-Contract or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Sub-Contract as determined without first giving to the Supplier or the Sub-Contractor (as applicable) not less than 35 days prior written notice of its intention to do so, with a copy to the Company, specifying the Sub-Contractor's or Supplier's grounds for terminating or treating as terminated the Sub-Contract or discontinuing or suspending its performance thereof or treating the Sub-Contract as determined.
- (b) If the Main Contract is terminated for any reason, within 35 days of such termination the Company may give written notice to the Sub-Contractor and to the Supplier (a "**Step-in Notice**") that the Company or its appointee shall henceforth become the Supplier under the Sub-Contract in accordance with the terms of sub-clause (c) below.
- (c) With effect from the date of the service of any Step-in Notice:
- (i) the Company or its appointee shall be substituted in the Sub-Contract as the Supplier thereunder in place of the Supplier and references in the Sub-Contract to the Supplier shall be construed as references to the Company or its appointee;
  - (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 Supplier thereunder which fall to be performed after the date of the Step-in Notice and shall promptly thereafter make payment of any amounts properly due to the Sub-Contractor as at the date of the Step-in Notice and still outstanding; and
  - (iv) the Supplier shall be released from further performance of the duties and obligations of the Supplier under the Sub-Contract after the date of the Step-in Notice, but without prejudice to any rights and remedies of:

- (1) the Sub-Contractor against the Supplier in respect of any matter or thing done or omitted to be done by the Supplier on or before the date of the Step-in Notice; and
  - (2) the Supplier against the Sub-Contractor in respect of any matter or thing done or omitted to be done by the Sub-Contractor on or before the date of the Step-in Notice.
- (d) Notwithstanding anything contained in this Agreement and notwithstanding any payments which may be made by the Company to the Sub-Contractor, the Company shall not be under any obligation to the Sub-Contractor and the Sub-Contractor shall not be under any obligation to the Company unless the Company shall have served a Step-in Notice pursuant to Clause 9(b) above.
- 10. The Sub-Contractor's liabilities, duties and obligations hereunder shall be no greater and of no longer duration than the liabilities, duties and obligations which the Sub-Contractor owes to the Supplier under the Sub-Contract.
- 11. The Sub-Contractor further undertakes to indemnify the Company from and against the consequences of any breach by the Sub-Contractor of any of the warranties, covenants and undertakings contained in this Agreement.
- 12. The rights and benefits conferred upon the Company by this Agreement are in addition to any other rights and remedies that the Company may have against the Sub-Contractor including, without prejudice to the generality of the foregoing, any remedies in negligence.
- 13. Nothing contained in this Agreement shall in any way limit the obligations of the Supplier to the Company arising under the Main Contract or otherwise undertaken by the Supplier to the Company in relation to the Sub-Contract Services.
- 14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
- 15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

**EXECUTION PAGE:**

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

Executed as a deed by affixing the Common Seal of )

London Underground Limited )

in the presence of:- )

.....

*[Authorised Signatory]*

Executed as a Deed by ) .....

[SUPPLIER] ) Authorised Signatory

acting by )

and ) .....

) Authorised Signatory



## **Schedule 9**

**Not used**

## Summary of Escalation Procedure

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

4.5 Issues shall be resolved locally on a day-to-day basis to the mutual satisfaction of all Parties and shall not be raised to Level 1 without prior endeavours to resolve. At this stage of the process, the Supplier may be required to supply a Root Cause Analysis and a Recovery Plan in order to determine the reasons for and best method of addressing the Non-Conformance. Performance standards to be achieved and associated processes for measuring and recording Supplier's performance are detailed in Paragraphs 2 and 3 of this Schedule.

### 4.6 Level 1

4.6.1 The Level 1 Non-Conformance will be recorded by the Company and a notice submitted to the Supplier. The Supplier shall in response (such response to be within 10 Business Days of service of the notice by the Company) prepare and submit to the Company a Level 1 Non-Conformance Report. Such report will contain:

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

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

#### 4.7 Level 2

4.7.1 Paragraph 4.7.2 shall apply where:

- (a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 2 Non-Conformance; or
- (b) the Supplier fails to notify the Company of the occurrence of a Level 1 Non-Conformance prior to the Company notifying the same to the Supplier (provided that the Company shall be entitled, having regard to the gravity of the Non-Conformance, to treat this as a Level 3 Non-Conformance rather than a Level 2 Non-Conformance); or
- (c) the Supplier fails to make available to the Company a Level 1 Non-Conformance Report within 10 Business Days of service by the Company of the notice referred to in Paragraph 4.6.1; or
- (d) the Supplier fails to undertake the Level 1 Required Action within the Level 1 Rectification Period; or
- (e) the Supplier fails to rectify the Level 1 Non-Conformance within the Level 1 Rectification Period; or
- (f) a further Non-Conformance occurs after the Level 1 Rectification Period but within 2 months of the end of the Level 1 Rectification Period and that is a Non-Conformance in relation to the same SDI or KPI ("Same Type") as the Level 1 Non-Conformance; or
- (g) a further Non-Conformance occurs during the Level 1 Rectification Period that is of the Same Type as the Level 1 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non Compliance; or
- (h) failure to meet the requirements of Schedule 4 [Quality and Safety Plan (QUENSH) Conditions].

4.7.2 Where one or more of the circumstances described in Paragraph 4.7.1 applies, then this shall be a "Level 2 Non-Conformance" and the Company may submit a notice to the Supplier. The

Supplier shall determine (acting reasonably) the steps to be taken by the Supplier to ensure there is no repetition of such Level 2 Non-Conformance (the "Level 2 Required Action") and the time within which such Level 2 Required Action is to be completed (which shall be a reasonable period and no longer than 10 Business Days (the "Level 2 Rectification Period"), and prepare and make available to the Company a report (the "Level 2 Non-Conformance Report"), which shall set out the following information:

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

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

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

#### 4.8 Level 3

4.8.1 Paragraph 4.8.2 shall apply where:

- (a) the Company determines, having regard to the gravity of the Non-Conformance, that a Non-Conformance should be treated as a Level 3 Non-Conformance; or
- (b) the Supplier fails to make available to the Company a Level 2 Non-Conformance Report within 10 Business Days of service by the Company of the notice referred to in Paragraph 4.7.2; or
- (c) the Supplier fails to undertake the Level 2 Required Action within the Level 2 Rectification Period; or
- (d) the Supplier fails to rectify the Level 2 Non-Conformance within the Level 2 Rectification Period; or
- (e) a further Non-Conformance occurs after the Level 2 Rectification Period but within 2 months of the end of the Level 2 Rectification Period and which is of the Same Type as the Level 2 Non-Conformance; or
- (f) a further Non-Conformance occurs during the Level 2 Rectification Period that is of the Same Type as the Level 2 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

4.8.2 Where one or more of the circumstances described in Paragraph 4.8.1 applies, then this shall be a "Level 3 Non-Conformance" and the Company shall inform the Supplier of the same by written notice.

4.8.3 The notice referred to in Paragraph 4.8.2 shall set out:

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

4.8.4 All Level 3 Non-Conformances will be reviewed quarterly at the Director Level Governance Group meetings.

4.9 Level 4

4.9.1 Paragraph 4.9.2 shall apply where:

- (a) the Supplier fails to make available to the Company by the deadline notified under Paragraph 4.8.3 a Level 3 Non-Conformance Report; or
- (b) the Supplier fails to undertake the Level 3 Required Action within the Level 3 Rectification Period; or
- (c) the Supplier fails to rectify the Level 3 Non-Conformance within the Level 3 Rectification Period; or
- (d) a further Non-Conformance occurs after the Level 3 Rectification Period but within 2 months of the end of the Level 3 Rectification Period and which is of the Same Type as the Level 3 Non-Conformance; or
- (e) a further Non-Conformance occurs during the Level 3 Rectification Period that is of the Same Type as the Level 3 Non-Conformance and the Supplier has wilfully permitted the occurrence of such further Non-Conformance.

4.9.2 Where one or more of the circumstances described in Paragraph 4.9.1 applies, then this shall be a "Level 4 Non-Conformance" and the Company will be entitled to terminate the Contract in whole or in part in accordance with Clause 21 of the Conditions of Contract.

## **5. Performance Reporting**

5.1 The Supplier shall report on the performance of the Services against Key Performance Indicators and Service Delivery Indicators in accordance with the contract requirements.

**Schedule 11**  
**Charges**

Labour Rates	Labour Type	Hourly Rate
Dayshift Mon - Fri (08:00-17:30)	Insulation Supervisor	
	Insulation TIE	
	Insulation Labourer	
	Trainee Insulation	
Dayshift Sat - Sun (08:00-17:30)	Insulation Supervisor	
	Insulation TIE	
	Insulation Labourer	
	Trainee Insulation	
Nightshift Mon - Fri (17:30-08:00)	Insulation Supervisor	
	Insulation TIE	
	Insulation Labourer	
	Trainee Insulation	
Nightshift Sat - Sun (17:30-08:00)	Insulation Supervisor (night)	
	Insulation TIE (night)	
	Insulation Labourer (night)	
Dayshift Mon - Fri (08:00-17:30)	Supervisor	
	Advance Scaffolder	
	Scaffolder	
	Labourer	
Dayshift Sat - Sun (08:00-17:30)	Supervisor	
	Advance Scaffolder	
	Scaffolder	
	Labourer	
Nightshift Mon - Fri (17:30-08:00)	Supervisor	
	Advance Scaffolder	
	Scaffolder	
	Labourer	
Nightshift Sat - Sun (17:30-08:00)	Supervisor- Nights	
	Advance Scaffolder - Nights	
	Scaffolder - Nights	
	Labourer	

<b>Materials</b>	<b>Unit Cost</b>
Scaffold tube	
Scaffold board	
Scaffold fittings	
Ladders	
Alloy Beams	
Steel ladder beams	
Rope	
Gin Wheels	
Monoflex (flame retardant)	
Monoflex	
Scaffold gates	
Tube Protection sleeve	
Modular Beams	
Ladder step unit (2.0m high lifts x 3m wide)	
Debris netting green	

<b>Transport Costs for works outside Greenwich Generating Station</b>	<b>Rates</b>
1. Loads up to Two (2) tonnes	
2. Loads over Two (2) tonnes	
3. Loads over Five (5) tonnes below Ten (10) tonnes	