

PURCHASE ORDER STANDARD CONDITIONS OF CONTRACT

for the purchase of goods and/or services

REFERENCE NUMBER: TFL GROUP []

1. Definitions and Interpretation

In these standard terms and conditions of contract:

1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

- “Approved Progressive Training”** means an ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:
- 1.1.1 Safe Urban Driving (“**SUD**”) training to be undertaken every five years; or
 - 1.1.2 A training course, which in the reasonable opinion of the Purchaser is an acceptable substitute to SUD; and
 - 1.1.3 One safety related FORS e-learning module to be undertaken every twelve (12) months;
- “Bronze Accreditation”** means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;
- “Business Day”** means any day excluding Saturdays, Sundays or public or bank holidays in England;
- “Car-derived Vans”** means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
- “Cessation Plan”** means a plan agreed between the Parties or determined by the Purchaser pursuant to:
- (a) Clause 19 to give effect to a Declaration of Ineffectiveness; or
 - (b) Clause 40 to give effect to a Public Procurement Termination Event;

“Collision Report”	means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Contract”	means this contract between the Purchaser and the Contractor for the supply of the Goods and/or the Services and comprises these conditions of contract, the Purchase Order, where appropriate any Delivery Request Form and any specification, description, drawing or sample of the Goods or Services, delivery schedule or other document referred to in the Contract;
“Contract Information”	means: <ul style="list-style-type: none"> (i) the Contract in its entirety (including from time to time agreed changes to the Contract); and (ii) data extracted from the invoices submitted under this Contract which shall consist of the Contractor’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Contractor”	means the person, firm or company to whom the Purchase Order is addressed and includes any assignee permitted by the Purchaser;
“Data Protection Legislation”	means: <ul style="list-style-type: none"> (a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) from 25 May 2018 only, the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data (the “General Data Protection Regulation”); (c) any other legislation in force from time to time in the United Kingdom relating to privacy

and/or the Processing of Personal Data; and

(d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation;

“Declaration of Ineffectiveness”

means a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulations 98(2)(a) and 103(3) of the Public Contracts Regulations 2015 or Regulations 113(2)(a) or 118(3) of the Utilities Contracts Regulations 2016;

“Delivery and Servicing Vehicle”

means a Lorry, a Van or a Car-derived Van;

“Delivery Request Form”

means the Purchaser’s form under which the Purchaser requests Goods and/or Services as specified on such form to be delivered and/or performed under the terms of a Purchase Order which is expressed to be a framework agreement;

“Driver”

means any employee of the Contractor (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Contractor while delivering the Goods and/or Services;

“DVLA”

means the Driver and Vehicle Licensing Agency;

“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 Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

“Force Majeure Event”

means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the party relying on the Force Majeure Event (“**Affected Party**”) to perform its obligations in

accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

“FORS”

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

“FORS Standard”

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

“Front Underrun Protection”

means devices that are fitted at the front of Lorries and which comply with EC Directive 2000/40/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

“Gold Accreditation”

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

“Goods”

means the goods (if any) to be provided by the Contractor as specified in the Purchase Order;

“Information”

means information recorded in any form held by the Purchaser or by the Contractor on behalf of the Purchaser;

“Information Request”

means a request for any Information under the FOI Legislation;

“Insolvency Event”

any of the following occurring in relation to the Contractor or its holding company:

- (a) either or both making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being

appointed over all or part of the business of either or both;

- (c) being a company, either or both having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Contractor becoming bankrupt or dying; or
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Contractor or its holding company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

means any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Losses”

means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Lorry”

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

“MAM”	means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Parties”	means the parties to this Contract;
“Personal Data”	has the meaning given to it in Data Protection Legislation;
“Processing”	has the meaning given to it in Data Protection Legislation;
“Public Procurement Termination Event”	has the meaning given to it in Clause 40.1;
“Public Procurement Termination Grounds”	any one or more of the grounds described either in Regulation 73(1) of the Public Contracts Regulations 2015 or Regulation 89(1) of the Utilities Contracts Regulations 2016;
“Purchase Order”	means the Purchaser’s order form (which is subject to these conditions) setting out details such as the specification, quantity, price, delivery time, place, date and invoicing requirements which may be expressed either: <ul style="list-style-type: none"> (iii) to be a framework agreement covering a period during which the Contractor undertakes to provide Goods and/or Services upon receipt of a Delivery Request Form or at specified times; or (iv) as a single order;
“Purchaser”	means the member of the TfL Group named in the relevant Purchase Order acting for itself and/or for any other member of the TfL Group;
“Purchaser Contact”	means the person named on the Purchase Order in relation to queries about this Contract or any other person notified in writing to the Contractor from time to time;
“Purchaser’s Requirements”	means the requirements of the Purchaser set out in the Purchase Order or in any schedule attached to the Purchase Order;
“Services”	means the services and/or works (if any) to be provided by the Contractor as specified in the Purchase Order;

- “Side Underrun Protection”** devices that are fitted between the front and rear axles of Lorries and which comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
- “Silver Accreditation”** means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk;
- “Supply Chain Finance Option”** has the meaning given to it in Clause 5.2;
- “TfL Group”** means Transport for London and all of its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **“member of the TfL Group”** shall refer to TfL or any such subsidiary;
- “Transparency Commitment”** means the Purchaser’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Purchaser’s own published transparency commitments;
- “Van”** means a vehicle with a MAM not exceeding 3,500 kilograms; and
- “VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.
- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;
- 1.4 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.5 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.6 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. Acceptance of Purchaser's Conditions of Contract

The Contractor shall be deemed to have accepted all the terms and conditions of the Contract to the exclusion of any other terms or conditions contained in any quotation, tender, acknowledgement, acceptance of order, delivery note, or any other document of the Contractor 48 hours after issue of the Purchase Order or delivery of the Goods and/or performance of the Services, whichever is sooner, unless agreed otherwise in writing by the Purchaser.

3. Agreement to provide Goods and/or Services

3.1 The Contractor shall provide the Goods and/or the Services and the Purchaser shall pay the Contractor in accordance with the Contract. The Contractor shall not depart from any aspect of the Contract unless approval to do so has been obtained in writing from the Purchaser Contact.

3.2 It is the responsibility of the Contractor to acquaint itself with the purposes for which the Goods and/or Services are supplied.

3.3 The Contractor warrants to the Purchaser that the Goods:

3.3.1 will be of satisfactory quality and fit for any purpose held out by the Contractor or made known to the Contractor (orally or in writing) at the time the Contract is made;

3.3.2 will be free from defects in design, material and workmanship;

3.3.3 will correspond in every respect with any relevant specification, sample, drawing and/or description which form part of the Contract;

3.3.4 will comply with all applicable quality assurance standards, statutory requirements and regulations relating to the Goods; and

3.3.5 will be so formulated, designed, constructed, finished and packaged so as to be safe and without risk to health.

3.4 The Contractor warrants to the Purchaser that the Services will be performed by appropriately qualified, trained and experienced personnel, with due care, skill and diligence, to such a high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances, and in accordance with all relevant standards and statutory requirements and regulations relating to the provision of the Services.

3.5 Where in the reasonable opinion of the Purchaser the Contractor has failed to provide the Services or any part of them in accordance with the Contract, the Contractor shall, without prejudice to any of the Purchaser's other rights, re-perform the Services or part thereof as

requested by the Purchaser at no additional cost and within such period of time as reasonably specified by the Purchaser.

4. Timber Standards

The Contractor shall ensure so far as reasonably practicable that any timber used in the Goods or in the delivery of the Services (including but not limited to timber hoardings) is recycled, reclaimed or is certified as sustainable timber by the Forest Stewardship Council or equivalent and shall retain documentary evidence of the same.

5. Variations and Additional Changes

5.1 The Contract may only be varied or amended with the written agreement of the Parties, including any amendment pursuant to the Contractor's exercise of any Supply Chain Finance Option.

5.2 The Purchaser is developing a scheme and system whereby the Contractor may be permitted, at the Purchaser's sole discretion, to seek payment of invoices under the Contract within a time period less than the 30 days of receipt set out Clause 13.3.1 in consideration for a reduction in the monies due thereunder (the "**Supply Chain Finance Option**").

5.3 The Contractor hereby agrees that where such requests are made by the Contractor and approved by the Purchaser, by way of such process and/or systems put in place by the Purchaser acting either on its own behalf or by or via its employees, agents, contractors or otherwise such request, approval and resulting accelerated and reduced payment shall constitute the Contractor's exercise of the Supply Chain Finance Option and the valid and legally binding:

5.3.1 variation by the Parties of the related monies due and payable to the Contractor under the Contract; and

5.3.2 waiver by the Contractor of any right held previously by it to invoice for and be paid the amount by which the monies due are reduced pursuant to its exercise of the Supply Chain Finance Option.

5.4 Unless otherwise stated in the Purchase Order and/or the Contract is amended pursuant to the Contractor's exercise of any Supply Chain Finance Option, the price of the Goods and/or Services shall be fixed for the duration of the Contract and no variation in the price nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Purchaser.

6. Assignment and Sub-Contracting

6.1 The Contractor shall not assign or sub-contract all or any part of the Contract without the prior written consent of the Purchaser identifying

the relevant sub-contractor which may be refused or granted consent subject to such conditions as the Purchaser sees fit.

6.2 Where the Contractor sub-contracts all or any part of the Contract to any person, the Contractor shall:

6.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under the Contract insofar as they relate to the Goods and/or Services or part of them (as the case may be) which that sub-contractor is required to provide;

6.2.2 be responsible for payments to that person;

6.2.3 remain solely responsible and liable to the Purchaser for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Good and/or Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor;

6.2.4 on or before the Commencement Date, notify the Purchaser in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Contractor to the Purchaser under the Contract;

6.2.5 promptly notify the Purchaser in writing of any change to the information notified under Clause 6.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Commencement Date;

6.2.6 without prejudice to the provisions of Clause 24, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;

6.2.7 include a term in each sub-contract (of any tier):

6.2.7.1 requiring payment to be made by the Contractor, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;

6.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Contractor, or (in respect of a sub-

contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;

6.2.7.3 entitling the Contractor or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and

6.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as Clause 6.2.7.3 above in any sub-contract it awards.

7. Records and Quality Assurance

7.1 The Contractor shall, and shall procure that its subcontractors shall, maintain a complete and correct set of records including personnel records pertaining to all activities relating to their performance of the Contract and all transactions related thereto. The Contractor agrees, and shall procure that its subcontractors agree, to retain all such records for a period of not less than 6 years after completion of performance under the Contract. The Purchaser shall have the right to audit any and all such records at any time during, and during the 6 year period following completion of, the performance of the Contract.

7.2 The Contractor shall maintain an effective and economical program for quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy the Contract requirements.

7.3 The Contractor shall permit the Purchaser's authorised representatives access and facilities (as required and when notified) for the purpose of systems and product quality audits.

8. Inspections and Tests

8.1 The Contractor shall give the Purchaser's authorised representatives access at all reasonable times to the Contractor's premises and permit such representatives to inspect and test the Goods to be supplied during the manufacture thereof and the material and any equipment to be used in the manufacture. If part or the whole of the Goods are being manufactured on other premises the Contractor shall obtain permission for the Purchaser to inspect and test as if the Goods were being manufactured on the Contractor's premises.

- 8.2 Such representatives shall have the right to reject any Goods or part thereof which in their opinion fails to meet the specification contained in the Contract.
- 8.3 All inspection, tests and analysis of material that may be required by the Purchaser shall be undertaken at the Contractor's expense.
- 8.4 Notwithstanding any such inspection or testing, the Contractor will remain fully responsible for the Goods and the provisions of this Clause shall not release the Contractor from any of its obligations under the Contract.

9. Specialist Tooling

- 9.1 All jigs, tools, fixtures, moulds, patterns and/or equipment (the "**Specialist Tooling**") (if any) which is supplied, or paid for by the Purchaser or developed at the Purchaser's expense shall remain or become the Purchaser's property.
- 9.2 The Contractor shall be responsible for maintaining Specialist Tooling in good condition and except in respect of fair wear and tear shall immediately replace at its own cost any such items which are lost, damaged or destroyed. In addition the Contractor shall be responsible for adequate insurance for full replacement value of all Specialist Tooling against loss damage or destruction.
- 9.3 Whilst such Specialist Tooling is on the Contractor's premises the Contractor shall clearly label it as the Purchaser's property.
- 9.4 The Contractor may not at any time move Specialist Tooling from their premises or dispose of Specialist Tooling belonging to the Purchaser without prior written approval from the Purchaser Contact.
- 9.5 The Purchaser shall have the option to purchase any Specialist Tooling which is not the Purchaser's property as mentioned in the above paragraphs at a fair price less any sum already paid by the Purchaser towards the cost of Specialist Tooling.
- 9.6 The Contractor may not use any such Specialist Tooling for the production, manufacture or design of any materials other than those contracted for with the Purchaser.

10. Responsibility for Goods and Insurance

The Contractor shall be responsible for and insure against the loss, destruction and damage of Goods completely or partially manufactured and for all materials acquired by or delivered to the Contractor in connection with the Contract whether or not the property of the Contractor or the Purchaser and until such time as the Goods are delivered to and accepted by the Purchaser and/or the Services are completed.

11. Indemnity and Insurance

- 11.1 Subject to Clause 11.2, the Contractor is responsible for and shall indemnify, keep indemnified and hold harmless the Purchaser and the other members of the TfL Group (including their respective employees, sub-contractors and agents) (the “**Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of the Contract by the Contractor (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Contractor (or any of its employees or sub-contractors).
- 11.2 The Contractor is not responsible for and shall not indemnify the Purchaser for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under the Contract by the Purchaser and/or any other member of the TfL Group including by any of their respective employees or agents.
- 11.3 Without prejudice to its obligations in Clauses 11.1 and 11.2 above the Contractor shall comply with all statutory obligations to maintain insurance and shall at its sole cost arrange and maintain with a reputable insurer or insurers authorised to underwrite such risk in the United Kingdom public liability and products liability insurance which in each case provides indemnity of not less than £5,000,000 (five million pounds) for any one incident or series of incidents arising out of any one event in respect of liability for death of or injury to any person and loss of or damage to property, such insurance to contain an “indemnity to principals” provision and financial loss extension.
- 11.4 The sum of £5,000,000 (five million pounds) in Clause 11.3 above shall be reduced to £2,000,000 (two million pounds) where the sums payable to the Contractor under this Purchase Order do not exceed £50,000 and that the Goods and/or Services are not directly connected with the provision of transport or with any interface with the Purchaser’s customers (whether such interface is physical or virtual).
- 11.5 The Contractor shall provide to the Purchaser upon reasonable notice evidence that the policies of insurance referred to in Clause 11.3 (including statutory insurances) are in force.
- 11.6 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies:
- 11.6.1 the Contractor additionally shall maintain professional indemnity insurance of not less than £5,000,000 (five million pounds). Any professional indemnity insurance or “financial loss” extension shall be renewed for a period of 6 years (or such other period as the Purchaser may stipulate) following the expiry or termination of the Contract; and

11.6.2 notwithstanding Clauses 11.3 and 11.4, the Purchaser may, at its discretion, elect to provide construction all risks and public liability insurance for the Services. In such circumstances the Contractor will be liable for the deductibles under such policies, and the Purchaser shall notify the Contractor of the same.

12. Delivery and Acceptance

12.1 The Goods shall be delivered at the Contractor's cost and the Services shall be performed, at the place, on the date or dates and within the times stated in the Contract.

12.2 The Contractor acknowledges that i) time for delivery and/or performance of the Services, and ii) precise conformity of the Goods and/or Services with the Contract (including but not limited to quantity and quality) is of the essence of the Contract and that any breach of this Clause (however slight) is deemed a material breach and shall entitle the Purchaser to reject the Goods and/or Services (or part thereof) or terminate the Contract.

12.3 On delivery the Purchaser shall not be deemed to have accepted all or part of the Goods and/or Services (whether or not an advice note is signed) until the Purchaser has had reasonable opportunity to inspect and/or test the same.

12.4 The Contractor and the Purchaser agree that where there is a breach of a Clause or warranty (whether express or implied) by the Contractor the Purchaser's remedies are not to be limited in any way notwithstanding the fact that the breach of the Clause may be slight.

12.5 Property in the Goods shall pass to the Purchaser upon delivery of the Goods at the place specified in the Purchase Order or the Delivery Request Form as the case may be without prejudice to any rights of rejection which the Purchaser may have.

12.6 Where the Goods are supplied by weight all containers, cases or packaging shall be deducted from the gross weight and only the net weight of the goods supplied shall be invoiced and paid for. No charge shall be made for any containers, cases or packaging. If the Contractor desires the return of any containers, cases or packaging the advice note shall be clearly marked to that effect whereupon the Purchaser, without incurring any legal liability, shall make such return at the Contractor's expense and risk.

13. Advice Notes, Invoices and Payment

13.1 An advice note bearing all information required by the Purchaser including the Purchase Order or Contract number, any Delivery Request Form number and a description of the Goods (including part numbers if any) and/or Services shall be delivered by the Contractor accompanying the Goods and/or Services and a duplicate shall be

posted to the place of delivery at the time of dispatch. If requested by the Purchaser, the Contractor shall provide a certificate of conformity.

- 13.2 An invoice bearing all information required by the Purchaser including the Purchase Order or Contract number, any Delivery Request Form number, supplier code, delivery address and a brief description of the Goods and/or Services (including part numbers, if any) shall be sent by the Contractor to the address for invoices contained in the Purchase Order after the delivery of Goods and/or performance of the Services. Invoices shall be clear, concise, accurate and adequately descriptive to avoid delays in processing and subsequent payment. VAT shall be identified as a separate item and the Contractor shall comply with any other invoicing requirements specified in writing by the Purchaser.
- 13.3 The Purchaser shall consider and verify each invoice, which is submitted by the Contractor in accordance with Clause 13.2, in a timely manner. If the Purchaser considers that the sums claimed by the Contractor in any invoice have:
- 13.3.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Purchaser may choose from time to time within 30 days of receipt of such invoice;
 - 13.3.2 not been calculated correctly or if the invoice contains any other error or inadequacy, the Purchaser shall notify the Contractor and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Contractor shall submit a revised invoice to the Purchaser.

The Purchaser shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

- 13.4 The Contractor undertakes to pay all its sub-contractors (and shall ensure that its sub-contractors undertake to pay their sub-contractors) within thirty days of receiving an undisputed invoice relating to the Goods and/or Services supplied under this Contract.
- 13.5 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies the following provisions replace Clauses 13.2 to 13.3 above:
- 13.5.1 The agreed fee for those Goods and/or Services set out in the Purchase Order is identified in the Purchase Order;
 - 13.5.2 The fee shall be payable in monthly instalments for Goods supplied and Services properly performed, or in such other instalments as the Purchaser may specify in the Purchase Order;

- 13.5.3 On the final working day of each month or at such other times as the Purchaser may specify in the Purchase Order, the Contractor shall submit an application for payment, in the form of an invoice, to the Purchaser to the address for invoices contained in the Purchase Order. The application shall state the sum that the Contractor considers to be due to him, the date when on which the payment becomes due and the basis on which that sum has been calculated (the **“Notified Sum”**);
- 13.5.4 Without prejudice to Clause 13.5.3 each application for payment shall bear all information required by the Purchaser including the Purchase Order or Contract number, any Delivery Request Form number, supplier code, delivery address and a brief description of the Goods and/or Services (including part numbers, if any). Applications for payment shall be clear, concise, accurate and adequately descriptive to avoid delays in processing and subsequent payment. VAT shall be identified as a separate item and the Contractor shall comply with any other invoicing requirements specified in writing by the Purchaser;
- 13.5.5 The date on which a payment becomes due is the date of receipt by the Purchaser of the Contractor’s application for payment in accordance with Clauses 13.5.3 and 13.5.4. The final date for payment is thirty days after the date on which a payment becomes due;
- 13.5.6 Subject to Clause 13.5.7, the Purchaser shall pay the Contractor the Notified Sum on or before the final date for payment. The Purchaser’s obligation to pay the Contractor shall be conditional upon the Contractor providing the Purchaser with their bank account details. Payments shall be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that the Purchaser may choose from time to time;
- 13.5.7 If the Purchaser intends to pay less than the Notified Sum, the Purchaser must notify the Contractor not later than one day before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. The Purchaser shall not withhold payment of an amount due under this contract unless it has notified the Contractor of its intention to pay less than the Notified Sum as required by this contract.

14. Defects

- 14.1 The Contractor shall replace free of charge to the Purchaser any Goods or any part thereof which is found within a period of twelve months (or other period stated in the Purchase Order) after the date

the Goods were delivered to be defective. Defective Goods shall be returned at the Contractor's expense and risk.

- 14.2 The Contractor shall as required re-perform free of charge to the Purchaser any Services or any part thereof which in the Purchaser's reasonable opinion fails to meet the standards set out in Clause 3 and the Purchase Order as the case may be.
- 14.3 Nothing in this Clause shall prejudice any rights which the Purchaser may have including rights of rejection and termination.

15. Attendance at the Purchaser's Premises

- 15.1 While on the Purchaser's premises, or at any other location where the Goods are to be delivered or the Services performed the Contractor and its employees and agents shall comply with all of the Purchaser's health and safety and security requirements and all other policies, standards and requirements of the Purchaser that are relevant to the performance of the Contract and the Purchaser reserves the right to refuse to admit to its premises any person who fails to comply with such requirements. The Purchaser Contact may instruct any of the Contractor's employees or agents to leave the Purchaser's premises at anytime for any reason.

16. Delivery Request Forms

- 16.1 Where a Purchase Order is expressed to be a framework agreement, the Purchaser may from time to time send to the Contractor Delivery Request Forms requesting such Goods and/or Services as the Purchaser may specify and stating when and where such Goods and/or Services shall be provided.
- 16.2 The Purchaser shall not be bound by any order or request for Goods and/or Services or any variation thereof unless issued on one of the Purchaser's official Delivery Request Forms.
- 16.3 Any Delivery Request Forms from the Purchaser to the Contractor shall be subject to and governed by these conditions of contract.

17. Framework Duration

- 17.1 In the event these conditions of contract are used in respect of a framework agreement, unless otherwise stated, the Contract will run for a period of twelve months from the date of the Purchase Order and shall continue thereafter subject to three months' notice in writing of termination by either party up to a maximum period of twenty four months when the Contract will automatically expire.
- 17.2 Notwithstanding Clause 17.1, if the Purchaser continues to send Delivery Request Forms to the Contractor under the Contract any supplies made by the Contractor shall be subject to and governed by these conditions of contract provided that if there are then no dealings

between the Parties under the Contract for a period of eighteen consecutive months, the Contract will be deemed to have expired.

18. Termination of Contract

18.1 Without prejudice to the Purchaser's right to terminate at common law, the Purchaser may terminate the Contract immediately upon giving notice in writing to the Contractor:

18.1.1 if the Contractor:

18.1.1.1 fails at any time to perform the Contract with due diligence and expedition, including any material or persistent breach;

18.1.1.2 breaches the Contract in any other way;

18.1.1.3 is subject to an Insolvency Event;

18.1.1.4 or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;

18.1.1.5 commits any of the money laundering related offences listed in the Public Contract Regulations 2015; or

18.1.1.6 fails to comply in the provision of the Goods and/or Services with legal obligations in the fields of environmental, social or labour law;

18.1.2 following a Declaration of Ineffectiveness in accordance with the provisions of Clauses 19.1 to 19.5 (inclusive);

18.1.3 following the occurrence of a Force Majeure Event.

18.2 Upon termination of all or any part of the Contract, the Purchaser shall be at liberty to enter into any agreement with such other persons, companies or firms as the Purchaser may think fit in respect of the provision of the Goods and/or Services and the Purchaser shall be entitled to recover from the Contractor all costs and damages incurred by the Purchaser in consequence of the termination of the Contract.

18.3 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.

19. Declarations of Ineffectiveness

19.1 In the event that a court makes a Declaration of Ineffectiveness, the Purchaser shall promptly notify the Contractor. The Parties agree that the provisions of Clauses 18 and Clauses 19.1, 19.2, 19.4 to 19.6

(inclusive) and 40.6 shall apply from the time when the Declaration of Ineffectiveness is made.

- 19.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 19.1 to 19.6 inclusive.
- 19.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Purchaser may require the Contractor to prepare a Cessation Plan in accordance with this Clause 19.3 by issuing a notice in writing. As from the date of receipt by the Contractor of such notification from the Purchaser, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Purchaser shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 19.3.1 an orderly and efficient cessation of the Services and/or supply of Goods or (at the Purchaser's request) a transition of the Services to the Purchaser or such other entity as the Purchaser may specify;
 - 19.3.2 minimal disruption or inconvenience to the Purchaser or to customers of the Services or to public passenger transport services or facilities; and
- in accordance with the provisions of Clauses 19.2 to 19.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 19.4 Where there is any conflict or discrepancy between the provisions of Clause 18 and Clauses 19.2 to 19.6 (inclusive) and 40.6 or the Cessation Plan, the provisions of these Clauses 19.2 to 19.6 (inclusive) and 40.6 and the Cessation Plan shall prevail.
- 19.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by the Purchaser) in the event that a Declaration of Ineffectiveness is made.
- 19.6 The Purchaser shall pay the Contractor's reasonable costs in assisting the Purchaser in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise reasonably determined by the Purchaser. Provided that the Purchaser shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.

20. Intellectual Property

- 20.1 The Contractor hereby assigns with full title guarantee to the Purchaser all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by or on behalf of the Contractor under the Contract (the “**Products**”) provided that such assignment shall not include items not prepared or developed for the purposes of this Contract.
- 20.2 The Contractor shall provide the Purchaser with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 20.3 The Contractor shall have no right (save where expressly permitted under the Contract or with the Purchaser’s prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the TfL Group.
- 20.4 The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within its charges to the Purchaser.
- 20.5 All intellectual property rights in all items including, without limitation, documents, drawings, data, computer software and any other materials and/or supplied by the Purchaser to the Contractor in connection with the contract shall remain the property of the Purchaser (to the extent that such rights are owned by the Purchaser).

21. Confidentiality and Transparency

- 21.1 The Contractor undertakes to maintain in strictest confidence and not to disclose to any third party without the prior written consent of the Purchaser any trade or business secret or other information by its nature or expressed to be confidential supplied by the Purchaser to the Contractor. The provisions of this will survive any termination of the Contract for a period of five years from termination.
- 21.2 The Contractor acknowledges that the Purchaser is subject to the Transparency Commitment. Accordingly, notwithstanding Clauses 21.1 and 33, the Contractor hereby gives its consent for the Purchaser to publish the Contract Information to the general public.
- 21.3 The Purchaser 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 Purchaser may take account of the exemptions/exceptions that would be available in relation to information requested under FOI Legislation. The Purchaser may in its absolute discretion consult with the Contractor regarding any

redactions to the Contract Information to be published pursuant to Clause 21.2. The Purchaser shall make the final decision regarding both publication and redaction of the Contract Information.

21.4 The Contractor shall not without the prior written consent of the Purchaser announce or publicise that it provides the Goods and/or Services to the Purchaser.

21.5 The provisions of this Clause 21 will survive any termination of this Contract for a period of 6 years from termination.

22. Corrupts Gifts and Payment of Commission

22.1 The Contractor shall not, and shall procure that its subcontractors shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Purchaser nor favour employees, officers or agents of the Purchaser with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Purchaser other than as a representative of the Purchaser, without the Purchaser's written approval. The Purchaser shall have the right to audit any and all such records necessary to confirm compliance with this Clause at any time during performance of the Contract and during the 6 year period following completion of performance. Breach of this Clause shall entitle the Purchaser to terminate the Contract and other contracts between the Contractor and any member of the TfL Group immediately.

23. Right to Withhold/Recover Payment

23.1 Any payment made by the Purchaser under the Contract including the final payments under the Contract shall not prevent the Purchaser from recovering any amount over paid or wrongfully paid however such payment may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Purchaser shall be entitled to withhold such amount from any sums due or which may become due to the Contractor from the Purchaser or the Purchaser may recover such amount as a debt.

24. Statutory Requirements

24.1 The Contractor shall in the performance of the Contract (at no additional cost to the Purchaser) ensure compliance in all respects with relevant and binding UK and European Community laws or any other regulation or by-law from time to time in force which is or may become applicable during the period the Contract is in force.

24.2 Without limiting the generality of Clause 24.1, the Contractor shall not unlawfully discriminate, and shall procure that its employees and agents do not unlawfully discriminate, within the meaning and scope of the Equality Act 2010.

- 24.3 Where applicable and without limiting the generality of Clause 24.1, the Contractor shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.
- 24.4 Where possible, the Contractor shall provide the Services in such a manner as to:
- 24.4.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 24.4.2 eliminate unlawful discrimination; and
 - 24.4.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation.
- 24.5 The Contractor acknowledges that the Purchaser 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.
- 24.6 In performing the Contract the Contractor shall assist and cooperate with the Purchaser where possible in satisfying this duty and the Contractor shall assist and co-operate with the Purchaser and the TfL Group where possible to enable the Purchaser to satisfy these duties.
- 24.7 In all cases the costs of compliance with this Clause 24 shall be borne by the Contractor.

25. Work Related Road Risk

Fleet Operator Recognition Scheme Accreditation

- 25.1 Where the Contractor operates Delivery and Servicing Vehicles to provide the Goods and/or Services, it shall within 90 days of the Commencement Date:
- 25.1.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Purchaser, is an acceptable substitute to FORS (the “**Alternative Scheme**”); and
 - 25.1.2 (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 Contractor has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Features on Lorries

- 25.2 The Contractor shall ensure that every Lorry, which it uses to provide the Goods and/or Services, shall have:
- 25.2.1 Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Contractor can demonstrate to the reasonable satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if the Side Underrun Protection is fitted;
 - 25.2.2 Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Contractor can demonstrate to the reasonable satisfaction of the Purchaser that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted;
 - 25.2.3 equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;
 - 25.2.4 prominent signage on the Lorry to warn cyclists and other road users of the dangers of the Lorry's near side blind spot and of getting too close to the Lorry; and
 - 25.2.5 front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of direct vision, fully operational indirect vision aids and driver audible alerts.

Driver Licence Checks

- 25.3 Where the Contractor operates Delivery and Servicing Vehicles to provide the Goods and/or Services the Contractor shall ensure that:
- 25.3.1 it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Driver's licence; and
 - 25.3.2 each of its Drivers engaged in the provision of the Goods and/or Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Goods and/or 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 Contractor's risk scale, provided

that the Contractor's risk scale has been approved in writing by the Purchaser within the last twelve (12) months:

25.3.2.1 0 – 5 points on the driving licence – six monthly checks;

25.3.2.2 6 – 8 points on the driving licence – quarterly checks; or

25.3.2.3 9 or more points on the driving licence – monthly checks.

Driver Training

25.4 Where the Contractor operates Delivery and Servicing Vehicles to provide the Goods and/or Services the Contractor shall ensure that each of its Drivers attend Approved Progressive Training throughout the term of the Contract.

Collision Reporting

25.5 Where the Contractor operates Delivery and Servicing Vehicles to provide the Goods and/or Services, the Contractor shall:

25.5.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that result in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and

25.5.2 within 15 days of the Commencement Date, provide to the Purchaser a Collision Report. The Contractor shall provide to the Purchaser an updated Collision Report within five working days of a written request from the Purchaser at anytime.

Self-Certification of Compliance

25.6 Where the Contractor operates Delivery and Servicing Vehicles to provide the Goods and/or Services, within 90 days of the Commencement Date, the Contractor shall make a written report to the Purchaser detailing its compliance with Clauses 25.1, 25.2, 25.3, 25.4, 25.5 and 25.6 of this Contract (the "**WRRR Self-Certification Report**"). The Contractor shall provide updates of the WRRR Self-Certification Report to the Purchaser on each three month anniversary of its submission of the initial WRRR Self-Certification Report.

Obligations of the Contractor Regarding Sub-contractors

25.7 The Contractor shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to provide the Goods and/or Services shall comply with the corresponding provisions of this Contract:

25.7.1 Clause 25.1;

25.7.2 for Lorries – Clauses 25.2, 25.3, 25.4 and 25.5; and

25.7.3 for Vans and Car-Derived Vans – Clauses 25.5, 25.6 and 25.7

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

Failure to Comply

25.8 Without limiting the effect of any other clause of this Contract relating to termination, if the Contractor fails to comply with Clauses 25.1, 25.2, 25.3 (where applicable), 25.4, 25.5, 25.6, 25.7, 25.8, and 25.9:

25.8.1 the Contractor has committed a material breach of this Contract; and

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

26. Conflict of Interest

26.1 The Contractor warrants that it does not and will not have at the date of this Contract any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of Goods and/or Services or any member of the TfL Group, save to the extent fully disclosed to and approved by the Purchaser.

26.2 The Contractor shall check for any conflict of interest at regular intervals throughout the term of the Contract and in any event not less than once in every six months and shall notify the Purchaser in writing immediately upon becoming aware of any actual or potential conflict of interest with the performance of the Contract or any member of the TfL Group and shall work with the Purchaser to do whatever is necessary (including the separation of staff working on, and data relating to, the Goods and/or Services from the matter in question) to manage such conflict to the Purchaser's satisfaction, provided that, where the Purchaser is not so satisfied, it may terminate the Contract in accordance with Clause 18.1.1.2.

27. Set-Off

27.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Purchaser arising out of or attributable to this Contract or any other contract between the Purchaser and the Contractor may be deducted by the Purchaser from monies due or which may become due to the

Contractor under this Contract or under any other contract with any member of the TfL Group may recover such amount as a debt.

28. Protection of Personal Data and Cyber Security

28.1 The Contractor shall comply with all of its obligations under the Data Protection Legislation and, if Processing Personal Data on behalf of the Purchaser, shall only carry out such Processing for the purposes of providing the Goods and/or Services in accordance with the Contract and shall act in accordance with instructions from the Purchaser.

28.2 The Contractor must follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

29. Dispute Resolution

The Purchaser and the Contractor shall use their best efforts to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract before resorting to litigation. The Contractor shall continue to provide the Goods and/or Services in accordance with the Contract and without delay or disruption while a dispute or disagreement is being resolved.

30. Quality and Best Value

30.1 The Contractor acknowledges that the Purchaser is a best value authority for the purposes of the Local Government Act 1999 and as such the Purchaser 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) and, as such, the Contractor shall, where reasonably requested by the Purchaser, participate in any relevant best value review.

31. Survival

The provisions of Clauses 1, 5, 7, 11, 13, 15.1, 16, 19, 21, 26 - 34 (inclusive), and 39 - 41 (inclusive) and any other Clauses that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

32. Rights of Third Parties

32.1 Save that any member of the TfL Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 (the “**Third Party Act**”), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

32.2 Notwithstanding Clause 32.1, the Parties are entitled to vary or rescind the Contract without the consent of any or all members of the TfL Group.

33. Freedom of Information

33.1 The Contractor acknowledges that the Purchaser:

33.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Purchaser to comply with its obligations under the FOI Legislation; and

33.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

33.2 Without prejudice to the generality of Clause 33.1, the Contractor shall and shall procure that its sub-contractors (if any) shall:

33.2.1 transfer to the Contract Manager (or such other person as may be notified by the Purchaser to the Contractor) 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 2 Business Days of receiving such Information Request; and

33.2.2 in relation to Information held by the Contractor on behalf of the Purchaser, provide the Purchaser with details about and copies of all such Information that the Purchaser requests and such details and copies shall be provided within 5 Business Days of a request from the Purchaser (or such other period as the Purchaser may reasonably specify), and in such forms as the Purchaser may reasonably specify.

33.3 The Purchaser 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 Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Purchaser.

33.4 This Clause 33.4 will survive the expiry or termination of the Contract.

34. Illegality and Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision.

35. Waiver

The failure of either party to insist upon strict performance of any provision of the Contract, or the failure or delay of either party to exercise any right or remedy to which it is entitled under the Contract, does not constitute a waiver of such right or remedy and shall not cause a diminution of the obligations established by the Contract.

36. Construction (Design and Management) Regulations 2015

To the extent that the Construction (Design and Management) Regulations 2015 (the “**CDM Regulations**”) applies to any supply of the Goods and/or Services, the Contractor shall comply with the requirements of the CDM Regulations, including (as applicable) those as “principal designer”, “principal contractor”, “designer” and “contractor” (as defined in the CDM Regulations) and the Contractor confirms that it has the skills, knowledge, experience and organisational capability to fulfil such roles. Where the CDM Regulations require the appointment of a “principal designer” and a “principal contractor”, the Purchaser appoints the Contractor to act as the “principal designer” and the “principal contractor” (as defined in the CDM Regulations) and the Contractor accepts such appointment.

37. Purchaser’s Requirements

The Contractor shall comply with the requirements set out in the Purchaser’s Requirements and shall procure that its employees, agents, sub-contractors and sub-suppliers comply with such requirements.

38. Notices

38.1 Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated in the Purchase Order or any other address (including a facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

38.1.1 if delivered by hand, at the time of delivery;

38.1.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

38.1.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

39. Entire Agreement

39.1 Subject to Clause 39.2:

39.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Goods and/or Services. Neither party has been induced to enter into the Contract by a statement which the Contract does not contain; and

39.1.2 without prejudice to the Contractor's obligations under the Contract, the Contractor is responsible for and shall make no claim against the Purchaser in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

39.2 Nothing in this Clause 39 excludes any liability which one party would otherwise have in respect of any statement it has made fraudulently to the other party.

40. Public Procurement Termination Event

40.1 Without prejudice to the Purchaser's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Purchaser exercises its right to terminate pursuant to this Clause 40.1 (a "**Public Procurement Termination Event**"), the Purchaser shall promptly notify the Contractor and the Parties agree that:

40.1.1 the provisions of Clause 18 and these Clauses 40.1 to 40.6 (inclusive) shall apply as from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event; and

40.1.2 if there is any conflict or discrepancy between the provisions of Clause 18 and these Clauses 40.1 to 40.6 (inclusive) or the Cessation Plan, the provisions of these Clauses 40.1 to 40.6 (inclusive) and the Cessation Plan shall prevail.

40.2 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided for in Clauses 40.1 to 40.6 (inclusive).

- 40.3 As from the date of receipt by the Contractor of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Purchaser shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 40.3.1 an orderly and efficient cessation or (at the Purchaser's election) a transition to the Purchaser or such other entity as the Purchaser may specify of: (i) the Goods and/or Services; or (at Purchaser's election), (ii) the part of the Goods and/or Services which are affected by the Public Procurement Termination Grounds; and
 - 40.3.2 minimal disruption or inconvenience to the Purchaser or to customers of the Services or to public passenger transport services or facilities,
- in accordance with the provisions of this Clause 40 and to take account of the circumstances of the Public Procurement Termination Grounds.
- 40.4 Upon agreement, or determination by the Purchaser, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 40.5 The Purchaser shall pay the Contractor's reasonable costs in assisting the Purchaser in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of this Contract or as otherwise reasonably determined by the Purchaser, provided that the Purchaser shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract as a result of Public Procurement Termination Grounds.
- 40.6 For the avoidance of doubt, the provisions of Clauses 19 and 40 (and applicable definitions) shall survive any termination of the Agreement following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

41. Governing Law

The Contract shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts provided that the Purchaser has the right to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated.