

Dated 18 January 2015/6

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LONDON UNDERGROUND LIMITED (1)

and

Voith Turbo Limited (2)

**FRAMEWORK AGREEMENT
for the Overhaul, Test and Supply of Auto
Couplers and Associated Drawgear**

**CONTRACT REFERENCE NUMBER: TFL-
00046**

Reference No: TFL-00046

Invitation to Tender – The Overhaul, Test and Supply of Auto Couplers and Associated Drawgear

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THIS AGREEMENT is made on 18 January 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) **Voith Turbo Limited** (company number SC038144) whose registered office is at C/O Mitchells Robertson, George House, 36 North Hanover Street, Glasgow, G2 2AD ("the Supplier")

BACKGROUND

- (A) The Company wishes to buy and the Supplier wishes to supply the Goods and Services on the terms and conditions set out in the Agreement.

THIS DEED WITNESSES that:

1 Definitions and Interpretation

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

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

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

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

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

"**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 any Contract, any agreement or document referred to in such Contract (including for clarity the any standard referenced in any Order), or the Goods and Services.

“Cessation in the Supply of Goods or Services” means any cessation in the supply of the Goods or Services.

“Cessation Plan” means a plan agreed between the parties or determined by the Company in accordance with Clause 41.1 to give effect to a Declaration of Ineffectiveness.

“Commencement Date” means the date of the Agreement.

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

“Company’s Representative” means the person set out in the section headed ‘Company’s Representative’ in the relevant Order.

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

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

“Contract” means a contract as defined in Clause 3.1.

“Contract Information” means (i) each Contract and the Agreement in its entirety (including from time to time agreed changes to any Contract and/or the Agreement) and (ii) data extracted from the invoices submitted pursuant to Schedule 8 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

“Contract Reference Number” means the number shown on the front page of the Agreement.

“Contract Variation Procedure” means the procedure set out in Schedule 3.

“Declaration of Ineffectiveness” means a declaration of ineffectiveness in relation to any 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).

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

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

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

“Delivery Note” has the meaning given to that term in Clause 9.6.

“Disclosing Party” means the party to this Contract which discloses or makes available directly Confidential Information to the Recipient;

“Dispute” has the meaning given to that term in Clause 35.1.

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

“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.

“Ethical Sourcing Policy” has the meaning given to that term in Clause 25.3.

“Excess Costs” has the meaning given to that term in Clause 17.5.

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

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

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

- (a) war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation, or requisition by or under the order of any government or public or local authority;
- (b) civil unrest;
- (c) any act of terrorism or a specific threat of terrorism and its effects;
- (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) compliance with the provision of sections 118 to 121 of the Railways Act 1993;
- (h) 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;
- (i) the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs; and
- (j) strikes, lock outs or other industrial action being in each case industry-wide.

“Goods” means the goods stated in the Specification to be supplied by the Supplier and any Additional Goods which the Company has agreed to buy under Clause 6.

“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.

“Indirect Losses” means a) loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill, loss of anticipated savings or b) any consequential loss or indirect loss of any nature and c) any other loss which, in the context of the circumstances giving rise to that loss, is not reasonable foreseeable and d) any deductions, fines and penalties payable pursuant to contracts of the Company with third parties.

“Initial Period” means the number of years from the Commencement Date stated in Schedule 2.

“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), registered designs, design rights, patent application, 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.

"Invoice" means a request for payment bearing all information required by the Company including the Contract reference number, Supplier's name, address and a brief description of the materials supplied or services provided;

"Key Personnel" means Supplier Personnel identified as such in the Order (if any) and any changes to the same that are made in accordance with Clause 22.

"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 other than any Indirect Losses.

"Material Breach" means a breach committed by the Supplier which would have a serious effect on the benefit which the Company would otherwise derive from a substantial portion of this agreement or any breach which would entitle to the Company to terminate in accordance with Clause 17.1.

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

"Mini Competition" means a competitive process which the Company may from time to time utilise to select a Supplier to provide the Goods and/or the Services.

"Nominated Representatives" has the meaning given to that term in Clause 35.2.

"Notice to Proceed" has the meaning given to that term in Clause 17.6(b).

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

"Order" means an order which, unless the parties agree otherwise, shall be substantially in the form set out in Schedule 1, entered into by the Company and the Supplier.

"Order Completion Date" means the date by which the Services are to be performed as specified as such in each Order or such other date as may be agreed between the parties in

accordance with the terms of each Contract.

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

“Order Price” means the amount stated under the heading “Order Price” in the relevant Order.

“Order Programme” means the programme of work set out in Schedule 5 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 relevant Contract or otherwise by agreement in writing between the Supplier and the Company.

“Prescribed Period” has the meaning given to that term in Clause 8.11.

“Prohibited Act” means:

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

“Proposal” means the Supplier’s offer to provide the Goods and/or the Services in response to a Request Form.

“Protected Characteristics” has the meaning given to that term in Clause 41.8.2.

“Quality and Safety Plan” means the Supplier’s quality and safety plan set out in Schedule 4 as amended from time to time.

“Recipient” means the party to this Contract which receives or obtains directly Confidential Information from the Disclosing Party;

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

“Rejected Goods” has the meaning given to that term in Clause 14.2.

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

“Remediation” means any or all investigation, sampling, analysing, removing, remedying, cleaning up, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground waters and gases and emissions and the obtaining of expert technical, reasonable legal and other professional advice (including all project management functions) in accordance with the limitations stipulated in Schedule 1.

“Request Form” means the request form produced by the Company detailing the Company’s requirements for a Proposal from the relevant Supplier

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

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

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

"Specification" means the description of the Goods and Services set out in Appendix 1 to the relevant Order (or referenced in the relevant Order) to be provided by the Supplier in accordance with the Agreement.

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

"Supplier's Representative" means the person set out in the section headed 'Supplier Representative' in the relevant Order.

"Term" means the period specified as such in Schedule 2.

"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 (where situate), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service known as "London Underground".

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

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

"Variation Proposal" means the written proposal put by the Company or the Supplier to vary any Contract and/or this Agreement in accordance with the Contract Variation Procedure in substantially the form set out in Appendix 1 to Schedule 3.

"Warranty Period" the period specified in Schedule 1 and/or as amended in each Order.

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

- 1.2 The headings in the Agreement and each Contract are only for convenience and shall not affect its interpretation.
- 1.3 Where appropriate, the singular includes the plural and vice versa.
- 1.4 A reference to a Clause or a Schedule shall be to a Clause of or, as the case may be, a Schedule to, the Agreement and each Contract and references to the Agreement or any Contract include its recitals and Schedules.
- 1.5 References to (or to any specified provision of) the Agreement, any Contract or any other document shall be construed as references to the Agreement, that Contract, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of the Agreement and any 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 Where the Agreement is utilised by another member of the TfL Group, references in a Contract to **“the Company”** shall, unless the context otherwise requires, be to that member of the TfL Group or other entity (as the case may be).

2 Duration

- 2.1 The Agreement shall commence on the Commencement Date and continues in force for the Term unless terminated earlier in accordance with this Agreement.
- 2.2 Expiry or termination of the Agreement shall not, in and of itself give rise to an expiry or termination of any Contract and each Contract shall continue for the term set out in the relevant Contract. To the extent that any provisions of this Agreement is relevant to the Contract, such provisions shall survive expiry or termination of this Agreement.

3 Supplier’s Primary Obligations

- 3.1 The Supplier shall supply the Goods and shall perform the Services to the Company in accordance with:
 - (a) the terms set out in the Agreement (including the Schedules); and

- (b) the terms of the Orders which may from time to time be entered into by the Company and the Supplier,

each Order together with the terms of the Agreement comprising a separate and distinct contract and herein referred to as a “Contract”, and in the event of any inconsistency between the terms of the Agreement and the terms of any Order, the terms set out in the Order shall prevail.

3.2 The Supplier shall ensure and warrants to the Company that the Goods will:

- (a) conform in all respects with the Specification and the provisions of each Contract including, without limitation, specifications as to quantity, quality and description;
- (b) be of satisfactory quality and comply with the requirement for which the Goods were intended and defined under the relevant Contract;
- (c) comply with all Applicable Laws and Standards (including but not limited to any law and regulations applicable to the Company or the Underground Network);
- (d) comply with all standards referred to in each Contract;
- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.

3.2A The Supplier shall be fully responsible for the management of obsolescence in the Goods and Additional Goods throughout the Term in accordance with the requirements set out in the Specification.

3.3 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 each Contract and where standards or methods are not detailed in a Contract, 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 Order Programme;
- (d) conform to all Applicable Laws and Standards (including but not limited to any law and regulations applicable the Company or the Underground Network); and

- (e) comply with the requirements of the Company set out in each Contract and all lawful and reasonable directions of the Company.
- 3.4 The Supplier shall perform its obligations under each 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 supply of Goods and 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.
- 3.5 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 and the Goods and their delivery, including, but not limited to, those required by any Applicable Laws and Standards.
- 3.6 Unless otherwise stated in any Contract, the Supplier shall provide all equipment, support services and other facilities necessary for the performance of its obligations under each Contract.
- 3.7 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods or the Services waives limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under any Contract.
- 3.8 When Goods and Services are required by the Company, the Company shall give the Supplier an Order for the Goods to be delivered and the Services to be performed and each Order so given shall be final.

3A. Mini-Competition

3A.1 At any time during the Term, the Company may identify the Goods and/or the Services which at its sole discretion it wishes to let under the terms of the Agreement. Any decision by the Company to place a Contract under the terms of the Agreement will be preceded by a Mini-Competition save where the Company, having considered the Applicable Laws and Standards (including the Utilities Contracts Regulations 2006), considers it appropriate to issue an Order to one or more Suppliers without holding a Mini-Competition.

3A.2 If pursuant to Clause 3A.1 the Company conducts a Mini-Competition, it will issue to the Suppliers a Request Form, specifying the Goods and/or the Services it requires.

3A.3 On receipt of the Request Form, the Supplier shall:

- (a) [REDACTED] of the date of issue of the relevant Request Form, confirm receipt of such Request Form; and

(b) by the date specified in the relevant Request Form (or if no date is specified within [REDACTED] of the date of issue of such relevant Request Form) or by such other date agreed in writing between the Company and the relevant Supplier:

- (i) complete and issue to the Company a Proposal which shall include in full the information requested by the Company in the relevant Request Form and full details of the basis on which the prices have been calculated; or
- (ii) notify the Company that it does not intend to submit a Proposal.

3A.4 The Supplier acknowledges and agrees that a Proposal remains valid for at least six (6) months (or such longer period as may be specified in the relevant Request Form) from the date such Proposal is submitted to the Company.

3A.5 If the Company accepts a Proposal issued pursuant to Clause 3A.3(b)(i), it shall notify the relevant Supplier of its intention to place an Order for the Goods to be delivered and the Services to be performed and each Order so given shall be final.

3A.6 A Request Form and anything prepared or discussed by the Company constitutes an invitation to treat and does not constitute an offer capable of acceptance by the relevant Supplier. The Company is not obliged to consider or accept any Proposal submitted by the Supplier.

3A.7 The Agreement does not oblige the Company to place an Order or enter into any Contract with the Supplier.

3A.8 Unless otherwise expressly agreed in writing with the Company, the Supplier shall not charge under the Agreement for any work involved in receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this Clause 3A.

3A.9 The Supplier is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3A (the "Procurement Process"), and the Company shall not be liable for any costs, charges or expenses borne by or on behalf of the Supplier whether or not the Supplier is awarded a Contract (which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled Procurement Process).

4 Records and Audit

4.1 The Supplier shall, and shall use reasonable endeavours to procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of each Contract and all transactions related to each Contract and the

Agreement. 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) correspondence;
- (d) variation and claims files (including documentation covering negotiated settlements);
- (e) commitments (agreements and leases) greater than £5,000; and
- (f) detailed inspection records.

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

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

engaged in the Supplier's performance of each Contract.

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 each Contract's 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.

5 Company's Obligations

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

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

6 Additional Goods and Services

The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, the Order and Schedule 5 shall be amended to include such Additional Goods and/or Services, the Expected Order Delivery Date and/or Order Completion Date for them and the quoted price.

7 Variation

7.1 Unless the parties agree otherwise in writing, any variation to any Contract shall be made under the Contract Variation Procedure.

7.2 The Supplier shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

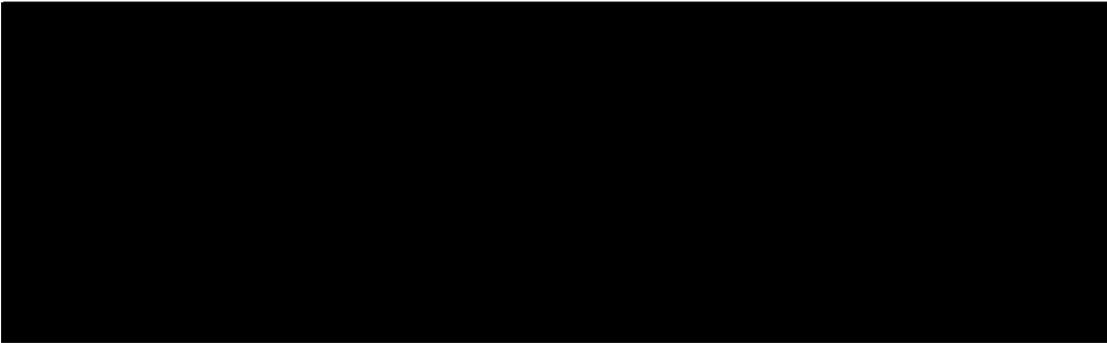
8 Price and Payment

8.1 The prices for the Goods and Services, shall be the Order Price set out in the Order using the rates and prices set out in Schedule 8 and shall be inclusive of costs of packaging, carriage and

insurance to the Delivery Address. In accordance with Clause 9.1 the Company shall unload the Goods and shall be responsible for the Goods and insurance from that point onwards. The prices for the Goods and Services in this Agreement or in respect of any Order shall only be changed in accordance with the Contract Variation Procedure.

8.2 Not used

8.3



8.4 The Supplier shall submit an invoice to the Company's Representative for the Goods after the Order Delivery Date of such Goods. If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit an invoice to the Company's Representative after the Order Delivery Date of each instalment.

8.5 The Supplier shall submit an invoice for payment to the Company's Representative for the Services on the invoice dates set out in the Order following the completion of the Services.

8.6 Each invoice 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 invoice.

8.7 Not used

8.8 The Company's Representative shall assess the invoice and shall notify the Supplier in writing not later than five (5) days after the date of receiving the invoice of:

(a) the amount (if any) the Company's Representative considers to be due at the payment due date; and

(b) the basis on which the amount was calculated.

8.9 Not used.

8.10 Subject to Clause 8.11 and Clause 8.12, the Company shall pay the Supplier the sum referred to in the Company's Representative's payment notice (or, if the Company's Representative has not

served a payment notice pursuant to Clause 8.8, the sum referred to in the Supplier's invoice under Clause 8.4 and/or Clause 8.5) (the "Notified Sum") on or before the final date for payment.

- 8.11 The Company shall not pay less than the Notified Sum unless the Company's Representative has notified the Supplier in writing not later than one (1) day (the "Prescribed Period") prior to the final date for payment of:
- (a) the amount the Company's Representative 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 8.11 that the amounts referred to in Clause 8.11(a) or Clause 8.11(b) may be zero. Where a notice is given under this Clause 8.11, the Company's obligation to pay the Notified Sum under Clause 8.10 applies only in respect of the sum specified pursuant to this Clause 8.11.

- 8.12 Notwithstanding Clauses 8.10 and 8.11, if the Supplier is subject to an event set out in Clause 17.1(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.
- 8.13 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in delivering the Goods to the Delivery Address. Any cost incurred by the Company in unloading the Goods at the Delivery Address shall be borne by the Company.
- 8.14 The Order Price will 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 invoice and will be shown as a separate item on all such invoices.
- 8.15 All Losses which the Company may have paid, suffered or incurred, and for which the Supplier is liable under any Contract, may be set off against any other amounts payable in respect of that or any other Contract, provided that the Company's Representative informs the Supplier in writing of any deductions made, if possible, prior to and in any event no later than the date upon which any such deduction is made.
- 8.16 Invoices shall be submitted separately for each Contract and all such Invoices shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Invoices raised 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 invoices and the Supplier shall provide such information as is reasonably required.

- 8.17 All sums payable to the Company by the Supplier under each 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.

8A Supplier Performance

- 8A.1 On the date that the Company's Representative receives the first invoice and every 4 weeks after that date, the Company assesses the Supplier's performance under the Agreement and any Contract in accordance with Schedule 12.
- 8A.2 The Company shall have the right to:
- (a) abate the Supplier for failure to meet the key performance indicators stated in Schedule 12; and
 - (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Supplier in its performance of any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 12.

9 Delivery of Goods and Time for Performance of Services

- 9.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date at the Delivery Address and within the times stated on the Order. The Company shall be responsible for, and shall comply with all reasonable instructions of the Supplier with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 9.2 The Supplier shall ensure that the Goods are delivered in accordance with the Specification by the Expected Order Delivery Date.
- 9.3 If the Goods are not supplied on the Expected Order Delivery Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of liquidated damages for delay the amount stated in Schedule 12 for the period of delay stated in Schedule 12 up to a maximum of the percentage stated in Schedule 1 (Part B) of the price payable for such Goods. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of liquidated damages for delay to the extent that the

delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.

- 9.4 The Supplier accepts that the amount of liquidated damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Delivery Date.
- 9.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract.
- 9.6 The Supplier shall provide a detailed delivery note stating the Contract Reference Number, Order number (as indicated on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Order Delivery Date in accordance with Clause 34.
- 9.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing. Without prejudice to the Company's rights of rejection of Goods with a Defect, after a period of two (2) weeks, the Supplier shall be entitled to invoice the Company for the full value of the Goods then being stored by the Supplier.
- 9.8 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.
- 9.9 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.
- 9.10 The Supplier shall ensure that the Services are performed in accordance with the relevant Contract by the Order Completion Date.
- 9.11 The Supplier shall ensure that the Services are satisfactorily performed by the Order Completion Date. If the Services are not performed by the Order Completion Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the

price payable for such Services or to claim from the Supplier by way of liquidated damages for delay the amount stated in Schedule 12 for the period of delay stated in Schedule 12 up to a maximum of the percentage stated in Schedule 1 (Part B) of the price payable for such Services. The Company shall not be entitled to deduct such amount from the price payable for such Services or to claim such amount from the Supplier by way of liquidated damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event.

- 9.12 The Supplier accepts that the amount of liquidated damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to perform the Services by the Order Completion Date.
- 9.13 Without limiting any other remedy, if the Services are not performed in accordance with any Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with such Contract at no extra cost within five (5) Working Days or such other mutually agreed period.
- 9.14 Subject to Schedule 1 (Part A) and Schedule 12, in the event that all or any of the obligations of the Supplier under any Contract to pay liquidated damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which liquidated damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 9 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay liquidated damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be subject to Schedule 1 (Part A).

10 Work on Company's Sites

- 10.1 During the term of each 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 10.1(d), accept full responsibility for its subcontractors and ensure that such subcontractors adhere to the terms and conditions of each 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 or any railway operator. The Supplier shall strictly observe all rules and regulations set out or referred to in the Agreement, the relevant 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.

10.2 Without prejudice to Clauses 10.1(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 each Contract.

10.3 *Not used*

11 Not used

12 Environmental Claims

12.1 Subject to Schedule 1 (Part A), 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 each 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.

12.2 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.

- 12.3 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.
- 12.4 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.
- 12.5 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 provision of the Goods and Services (for the purposes of this Clause 12.5, 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.

13 Risk and Ownership

- 13.1 Risk of damage to, or loss of, the Goods shall pass to the Company upon counter-signature by the Company of the Delivery Note. If the Company serves a Rejection Notice under Clause 14.2, risk of damage to and loss of the Goods shall pass to the Supplier on the earlier of the date that the Supplier removes the Goods from the Delivery Address (or such other address as the Company shall specify under Clause 14.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.
- 13.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

14 Inspection of the Goods

- 14.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods within three (3) Working Days of delivery.

- 14.2 If, following the inspection referred to in Clause 14.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, being of satisfactory quality and conforming to the Specification, the Quality and Safety Plan and complying with the requirement for which they are intended and defined under the relevant Contract, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").
- 14.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company's option:
- (a) Repair or replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
 - (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and
 - (c) pay the Company's Losses resulting from the Supplier's delivery of Goods that were not in conformity with the terms of the relevant Contract.
- 14.4 The Company's rights and remedies under this Clause 14 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality and correspondence with sample implied into each Contract by the Sale of Goods Act 1979.
- 14.5 If two (2) weeks following receipt of a Rejection Notice, the Supplier has failed to promptly repair or replace Rejected Goods in accordance with Clause 14.3(a), the Company may, without affecting its rights under Clause 14.3(c), obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall reimburse the Company for the costs it incurs in doing so.

15 Warranty

- 15.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract, the Supplier shall without delay, upon a request by the Company to do so, replace or (where agreed between the parties) repair all Goods in which a Defect has occurred or is likely to occur (as agreed between the parties), provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification, be of satisfactory quality and comply with the requirement for which they are intended and defined under the relevant Contract.

- 15.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 15, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of each Contract and the provisions of Clauses 9, 13 and 14 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 9 or, where applicable, re-delivers the Goods in accordance with this Clause 15.
- 15.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.
- 15.4 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such 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.

16 Intellectual Property Rights

16.1 Existing Contracts

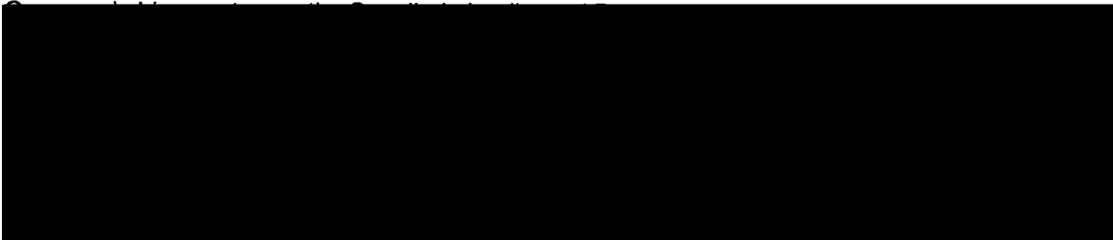
The Agreement is entirely without prejudice to, and nothing in it is intended to, nor shall, in any way prejudice the rights of any member of the TfL Group in relation to intellectual property under or pursuant to Existing Contracts.

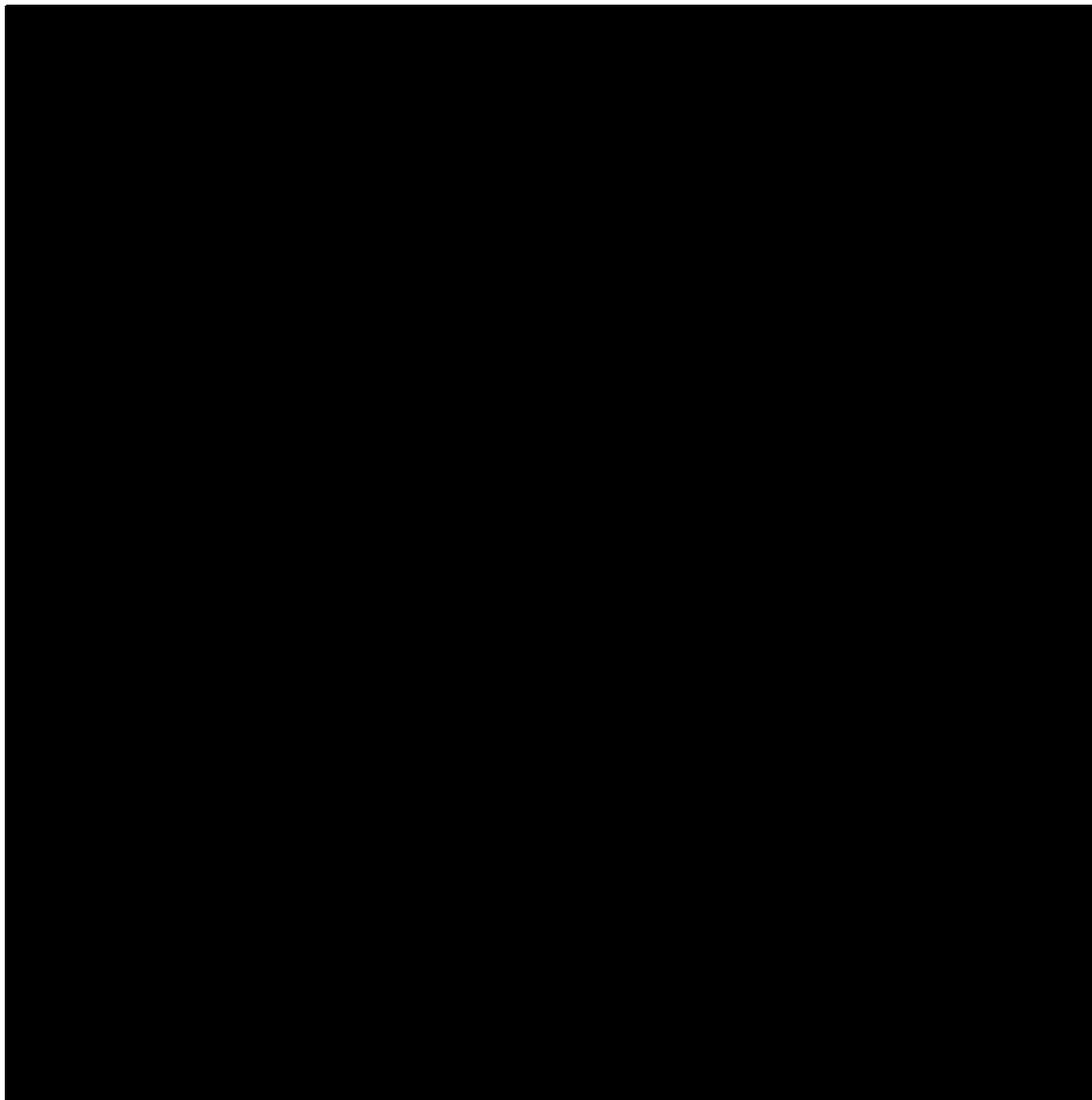
16.2 Not used

16.3 Ownership of the Supplier's Intellectual Property Rights

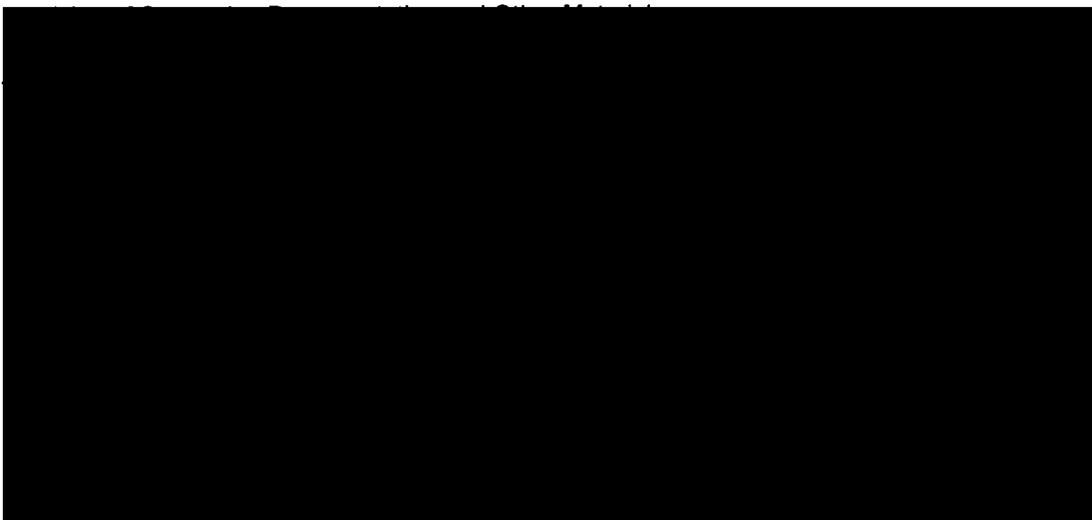
All Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party shall remain vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

16.4





16.5

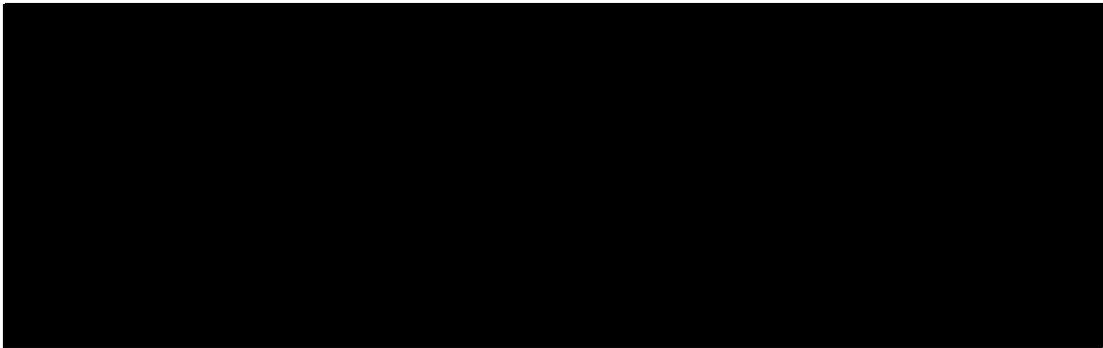


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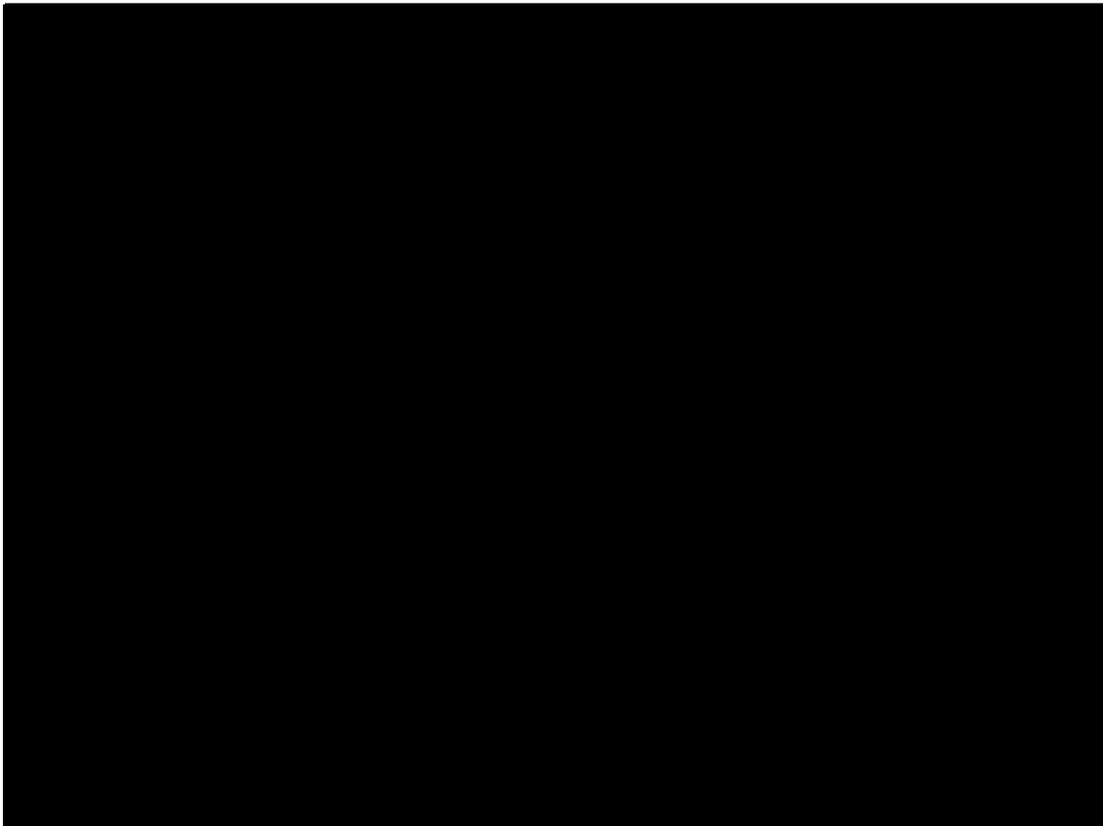


16.7 Not used

16.8



16.9



16.10 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 Agreement or any 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.

17 Termination and Suspension

17.1 The Company may terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Supplier if:

- (a) the Supplier commits a breach of any Contract which in the case of a breach capable of remedy has not been remedied within twenty (20) 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 Agreement and each Contract) or is deemed unable to pay its debts as they fall due [*in accordance with*] [*within the meaning of 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 [*or any similar or analogous procedure or step is taken in any jurisdiction*] or
- (e) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12.

17.2



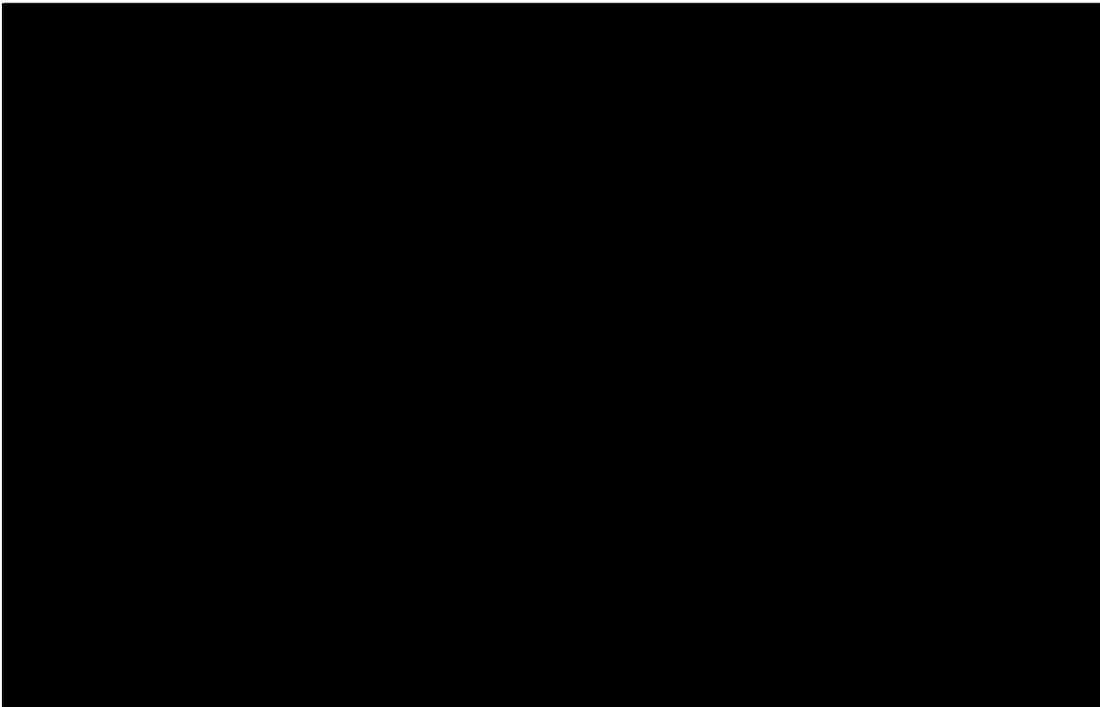


17.3 In the event that the Company terminates the Agreement or any Contract for any reason under this Clause 17, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under such Agreement or Contract or under general law, permit the Company, at the Company's option, to:

- (a) enter the Supplier's premises and, solely in respect of the Agreement or any Contract that has been terminated, 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 Goods (or equivalent goods) and Services with any other person or persons or complete the provision of such Services by its own workmen.

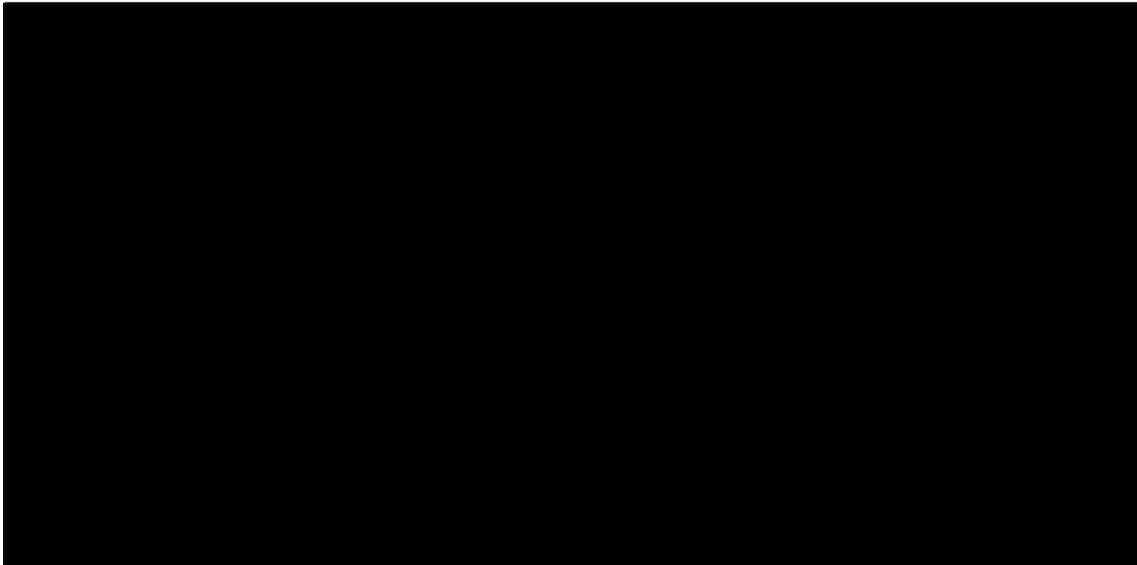
In either such case, the Company shall be entitled to retain those Goods and the benefit of any part of the Services already provided by the Supplier in accordance with the Agreement and any Contract, at the material time.

17.4.1



17.4.2

17.5



17.6 In the event that any Contract is suspended in accordance with Clause 17.2(b), the Supplier shall:

- (a) issue to the Company an application for payment in respect of any Goods and Services provided to the Company in accordance with the Agreement and the relevant Contract up until the date of such suspension and, where the suspension is not due to a Material Breach, all other justified costs reasonably and properly incurred by the Supplier in connection with the suspension; and
- (b) not carry out any further work in connection with the provision of the Goods and Services under the relevant Contract until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").

17.7 In the event that any Contract is suspended in accordance with Clause 17.2(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.

17.8 In the event that the parties are unable to agree upon the variation requested under Clause 17.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 35.

17.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and such Contract(s) as at the date of termination and in particular but without limitation the right to recover damages against the other party.

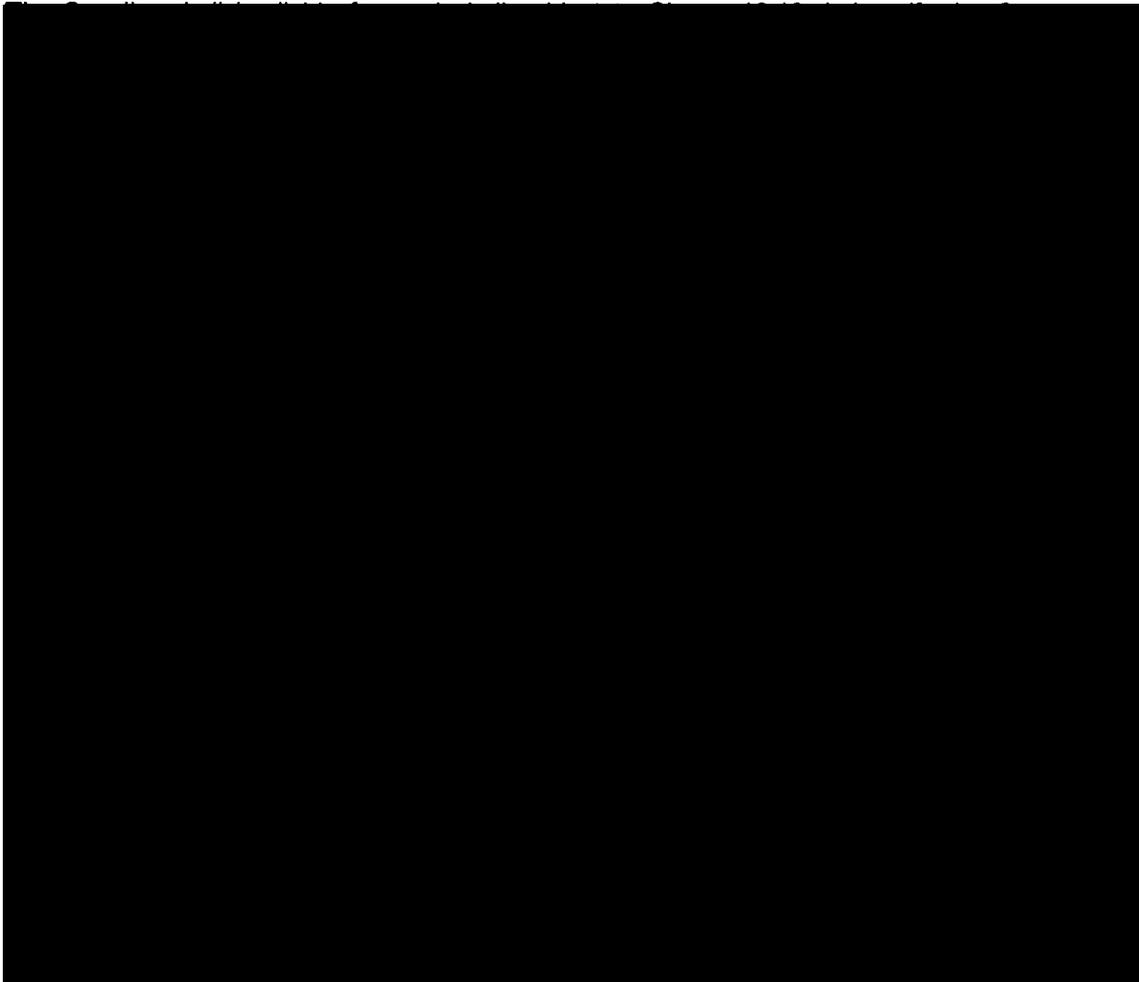
17.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision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

18 Indemnity and Insurance

18.1 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 all documentation and information agreed to be delivered by the Supplier in accordance with each Contract.

18.2



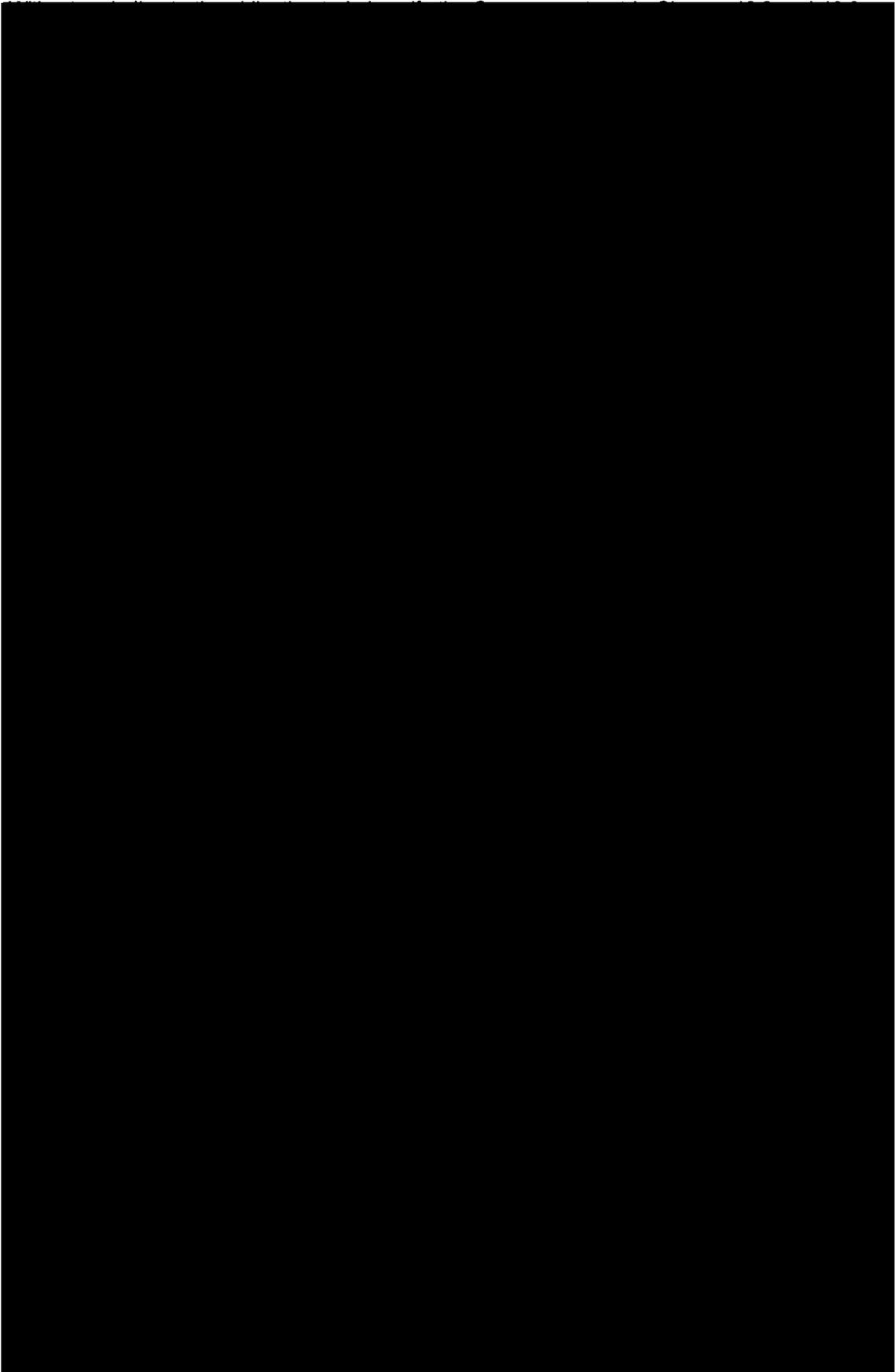
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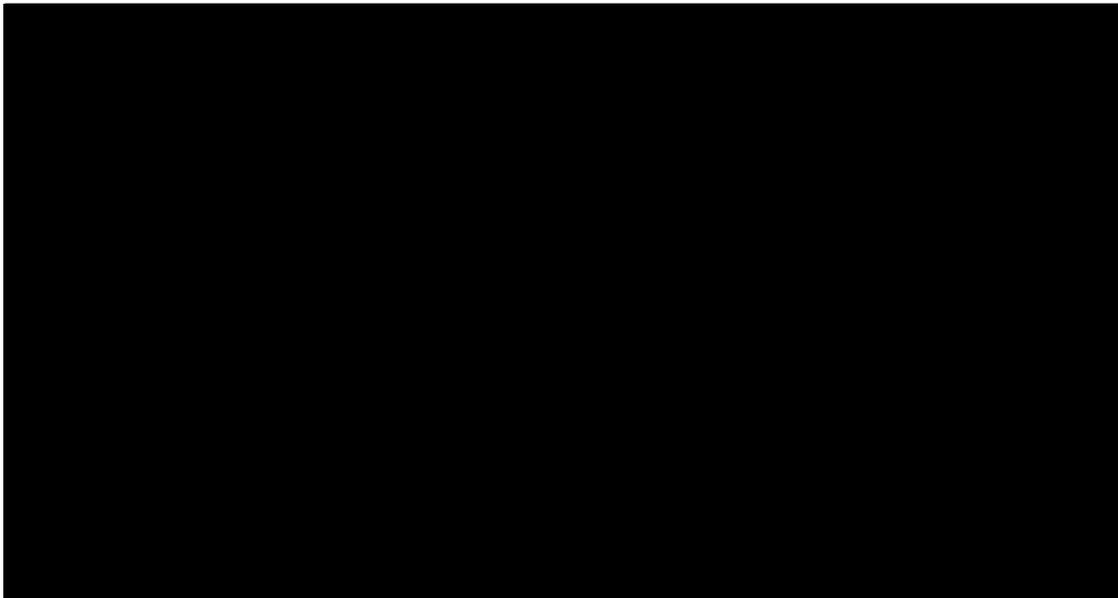
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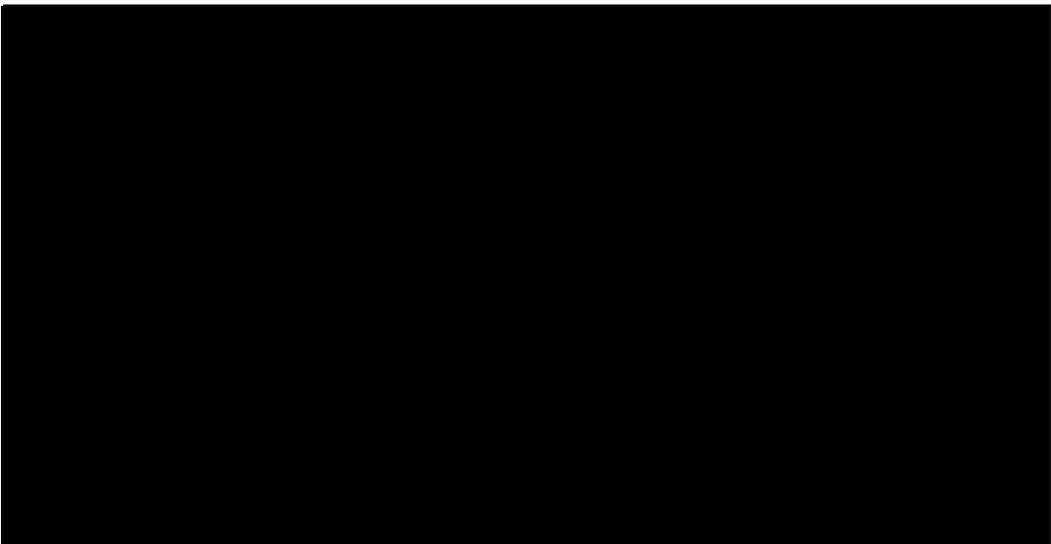
18.8

18.9

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19 Force Majeure

Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under such Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under any Contract as a direct result of a Force Majeure Event, that party shall within three (3) 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 such 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 forty-two (42) days and substantially affects the abilities of the Supplier to perform its obligations under such Contract, the Company shall

have the right to terminate such Contract immediately upon giving written notice of such termination to the Supplier.

20 Safety

- 20.1 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 Act etc. 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.
- 20.2 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 any Contract in the QUENSH menu set out in the Specification ("QUENSH") as amended from time to time; and
 - (b) the Company's drug and alcohol principles as amended from time to time.
- 20.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to each Contract as if the term "LU Premises" means any of the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.
- 20.4 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 each Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

21 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 any Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

22 Supplier Personnel

- 22.1 For the purposes of this Clause 22:

“Current Service Provider” means any person, company or other legal entity which on or before the Commencement Date was the employer of any of the Transferring Employees, and which (for the avoidance of doubt) may include the Company;

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

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

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

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

“Transfer Regulations” means all or any of the following: the Transfer of Undertakings (Protection of Employment) Regulations 2006; the Transfer of Employment (Pension Protection) Regulations 2005; any other or further regulations, order or statutory instrument which apply or are capable of applying to a person to whom section 257 of the Pensions Act 2004 applies, as amended, replaced or extended from time to time and including any regulations or other legislation which (either with or without modification) re-enacts, adopts, consolidates or enacts in rewritten form any such regulations; and

“Transferring Employees” means those employees of or those engaged by the Current Service Provider who transfer or have the right to transfer to the Supplier under the Transfer Regulations.

22.2 The Supplier complies and procures that his sub-contractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon the expiry of the Term or earlier termination of the Agreement.

22.3 At any time during the last six (6) months of the Agreement and/or during any period of notice terminating the Agreement, the Company may require the Supplier to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services, their salaries and other conditions of employment, ages and length of service;
- (b) the method of organisation of the employees (of the Supplier or its subcontractors) engaged in supplying the Goods and/or Services and documentary evidence relating to such organisation;
- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations,
- (f) and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Supplier's employees or their representatives relating to the effect on such employees of the expiry or termination of the Agreement.

22.4 The Supplier will provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 22 may be addressed. The Supplier will if required by the Company warrant that any information provided under Clause 22 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

22.5 The Supplier will not and will procure that its subcontractors will not in the six (6) months prior to the expiry of the Term or termination of the Agreement (or, where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's written consent:

- (a) re-organise or substantially alter the number or method of organisation or identity of the employees engaged in the provision of the Goods and/or Services, except to the extent that any such change is the result of a bona fide business reorganisation of the Supplier or the relevant subcontractor which is not related or confined to the employees engaged in supplying the Goods and/or Services or relates to the expected expiry of the Term or termination of the Agreement, or
- (b) make any increase to the salaries or any significant change to the terms and conditions of employment of the employees engaged in the provision of the Goods, except where such increases or changes would have arisen in the ordinary course of the Supplier's or the relevant sub-contractor's business and are not related to the expiry of the Term or termination of the Agreement (either because they are applied to all of the Supplier's or the relevant sub-contractor's employees, whether or not engaged in providing the Goods

or otherwise) or are the result of a bona fide business reorganisation of the Supplier or the relevant sub-contractor which is not related or confined to the employees engaged in supplying the Goods or relates to the expiry of the Term or termination of the Agreement.

22.6 The Supplier shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Supplier, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees before the Subsequent Transfer Date, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, or failure to provide comparable pension rates, or failure to provide information, or failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Supplier, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Goods and/or Services.

22.7 The Supplier shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

(a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by the Supplier or any of its employees, agents or subcontractors concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and

(b) any claim by any former or existing employee of the Supplier or relevant Subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.

(c) In this Clause 22.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Supplier shall not be required to indemnify the Company or the Replacement Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

22.8 The provisions of this Clause 22 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Supplier of

any provision of this Clause 22 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

Staff Travel Facilities

22.9 Not Required

Key Personnel

22.10 The Supplier shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the supply of the Goods and 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.

22.11 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.

22.12 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 supply of the Goods or 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.

22.13 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.

22.14 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.

23 Confidentiality

23.1 The Recipient undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Disclosing Party) any Confidential Information supplied to it by the Disclosing Party. Subject to Clause 23.3, this Clause does not apply to any disclosure of Confidential Information by the Company to any member of the TfL Group.

23.2 At the Disclosing Party's request, the Recipient 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 Disclosing Party any Confidential Information in its possession or control supplied by the Disclosing Party to the Recipient;
- (b) return to the Disclosing 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

23.3 The Recipient shall ensure that all his subcontractors, suppliers, employees, agents, auditors and any third party who receives Confidential Information as a result of future procurement activities (and, in the case of the Company, any member of the TfL Group and its subcontractors, suppliers, employees and agents) perform his obligations in Clauses 23.1 and 23.2 as if they were the Recipient, and the Recipient shall be responsible to the Disclosing Party for any act or omission by such third parties in breach of such obligations.

23.4 The Recipient shall notify the Disclosing Party promptly if the Recipient becomes aware of any breach of confidence by a subcontractor, supplier, employee or agent and shall give the Disclosing Party all assistance that the Disclosing Party reasonably requires in connection with any proceedings that the Disclosing Party brings, or other steps the Disclosing Party takes, against that subcontractor, supplier, employee or agent for such breach of confidence.

23.5 The Supplier shall not, either alone or jointly with others, publish any material relating to the Company, the Company's Representative, LUL, the Contract or the Goods and Services without the prior written consent of the Company.

- 23.6 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 Goods and Services, or any Dispute arising under or in connection with the Contract.
- 23.7 The provisions of Clauses 23.1 to 23.4 shall not apply to any information:
- (a) which is already in the public domain at the time of its disclosure other than by breach of the Contract;
 - (b) 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;
 - (c) which is the subject of Intellectual Property Rights granted to or vested in the Company or any other member of the TfL Group under this Contract or any other agreement between the Company or any other member of the TfL Group and the Supplier or any of its affiliates or subsidiaries;
 - (d) which the Company is required to disclose to the Mayor of London;
 - (e) published or disclosed by the Company pursuant to Clauses 40 (*Freedom of Information*) or 40A (*Data Transparency*); or
 - (f) disclosed to the Recipient's auditors and any other persons or bodies having a legal right or duty to know the information in connection with the business of the Recipient, provided that such persons or bodies are made aware prior to the disclosure of the confidential nature of the information.

24 London Living Wage

- 24.1 The Supplier shall, to the extent each Contract is for the provision of Goods and Services to be undertaken within Greater London or on the Underground Network:
- (a) ensure that none of its employees engaged in the provision of Goods and Services under any 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 24 and the provisions of this Clause 24 are included in any subcontract (of any tier).

24.2 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 24.

25 Responsible Procurement

25.1 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 to do all things reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities.

25.2 The Supplier shall use its reasonable endeavours to 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.

25.3 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 the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

25.4 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).

25.5 The Supplier shall not be entitled to any addition to the Order Price 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).

25.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 25 and the provisions of this Clause 24 are included in any subcontract (of any tier).

- 25.7 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 25.

26 Assignment and Subcontracting

- 26.1 The Supplier shall not assign, novate or subcontract any of its rights or obligations under the Agreement or any 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 Agreement and/or any 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 Agreement and/or any 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 Agreement or relevant Contract is being novated.

27 Company's and Supplier's Representative

Each party shall in respect of each Contract appoint one or more representatives to act on its behalf under each Contract. The names and contact details of the representatives shall be recorded in the relevant Order. 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 Agreement and each Contract.

29 Severance

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

operation of this Clause 29 would not negate the commercial interest and purpose of the parties under such 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 Agreement and/or any 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 procures 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 each Contract and during the twelve (12) year period following completion of performance.

31A Criminal Record Declarations

- 31A.1 For the purposes of this Clause 31A:

“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.

- 31A.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.

31A.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.

31A.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 31A at any time during performance of the Agreement and/or any individual Contract.

31A.5 If the Supplier fails to comply with the requirements under Clause 31A.2 and/or Clause 31A.3 the Company may, without prejudice to its rights under Clause 17.1, 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 any 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 unless (in the case of non-compliance with Clause 31A.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 31A.2.

31A.6



31A.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 any 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.

31A.8 Nothing in this Clause 31A shall in any way waive, limit or amend any obligation of the Supplier to the Company arising under the Agreement and/or any 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 31A.

32 No Waiver

32.1 No failure or delay on the part of either party to exercise any right or remedy under any 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 any Contract are cumulative and are not exclusive of any rights or remedies provided by law.

33 Entire Contract

Each 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 such 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 such Contract.

34 Notices and Service of Process

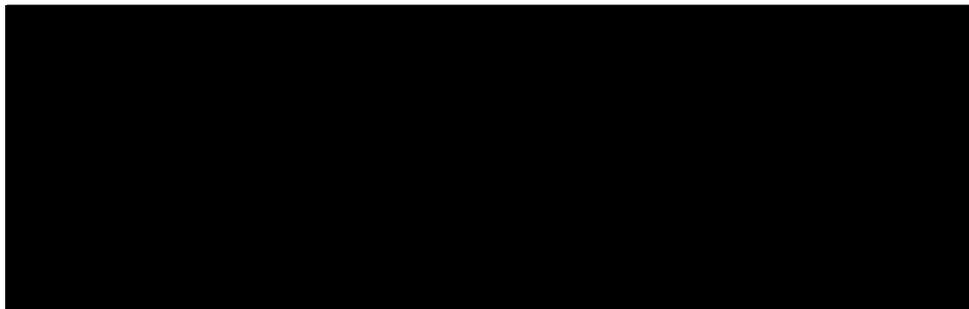
34.1 Any notice or other document given under, or in connection with, the Agreement or any Contract must be in English and in writing and sent by letter or fax or delivered by hand to the other party's representatives in each case to the address below. The notice or other document will be effective as 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 as follows (or such other address or facsimile number which may be subsequently notified by the relevant party):

Company:

Supplier:



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 Agreement or any Contract may be served in accordance with this Clause 34.1.

34 Not used

35 Dispute Resolution

- 35.1 Any question, dispute, difference or claim (a “**Dispute**”) shall be resolved in accordance with this Clause 35.
- 35.2 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.
- 35.3 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 35.2 (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.
- 35.4 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 35.3 either party may refer the matter for resolution in accordance with the provisions of Clause 36.
- 35.5 Not used

36 Governing Law and Jurisdiction

The Company and the Supplier submit, subject to the provisions of this Agreement and any 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.

37 Contracts (Rights of Third Parties) Act 1999

- 37.1 Subject to the Replacement Employer’s rights in accordance with Clause 22.7 no person except any member of the TfL Group may enforce any 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.

37.2 Notwithstanding those rights referred to in Clause 37.1, the Company and the Supplier may agree to vary or rescind the Agreement and/or any Contract without the consent of any third party.

38 Bonds, Warranties and Guarantees

38.1 Where stated in an Order, the Supplier shall at its own expense provide within seven (7) days of the Company's request the following:

(a)

(b)

38.2

38.3 If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 38.1 and 38.2 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.

38.3A If requested by the Company, the Supplier shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 38.1 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 9.

38.3B If any performance bond and/or parent company guarantee required by any Contract is not procured by the Supplier and delivered to the Company in accordance with Clause 38.1, one quarter of the aggregate of the Order Price of the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Supplier until such documents have been delivered.

38.4 Where the value of any subcontract (excluding the cost of any transportation being provided under such subcontract) [REDACTED] if required by the Company, the Supplier shall procure that the terms of any such subcontract require the subcontractor, within

seven (7) days of a written request by the Company to the subcontractor, to enter into a collateral warranty in the form set out in **Error! Reference source not found.** in favour of the Company 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 specified by the Company.

- 38.5 If any warranty required under Clause 38.4 is not delivered to the Company in accordance with Clause 38.4 one quarter of the Order Price relative to the Goods and Services provided by the relevant subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

39 Default Interest

- 39.1 If either party fails to pay to the other any amount payable in connection with any 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 39.1 shall be immediately payable by the paying party on demand.
- 39.2 Default interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

40 Freedom of Information

- (a) For the purposes of this Clause 40:

“**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.

- (b) The Supplier acknowledges that the Company:
- (i) 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

- (ii) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.
- (c) Without prejudice to the generality of Clause 40(b) the Supplier shall and shall procure that its subcontractors (if any) shall:
 - (i) 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 Agreement and/or any Contract, the supply of Goods and 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
 - (ii) 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.
- (d) 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.

40A Data Transparency

- 40A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 23 and Clause 41, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.
- 40A.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 41A.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

40B Survival

40B.1 The provisions of Clauses 4 (Records and Audit), 8.17 (Set-Off), 12 (Environmental Claims), 15 (Warranty), 16 (Intellectual Property Rights), 17 (Termination), 18 (Indemnity and Insurance), 22 (Supplier Personnel), 23 (Confidentiality), 25.2 (Responsible Procurement), 29 (Severance), 30 (Publicity), 31 (Corrupt Gifts and Payments of Commission, 32 (No Waiver), 33 (Entire Contract), 34 (Notices and Service of Process), 35 (Dispute Resolution), 36 (Governing Law and Jurisdiction), 37 (Contracts (Rights of Third Parties) Act 1999), 40 (Freedom of Information), 40A (Data Transparency), 40B (Survival), 41.1 and 41.5 (Transport for London Group) will survive the termination or expiry of this Agreement and/or any Contract and continue in full force and effect, along with any other Clauses or Schedules of this Agreement and/or any Contract necessary to give effect to them. In addition, any other provision of this Agreement and/or any 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.

41 Transport for London Group

41.1 Declaration of Ineffectiveness

- (a) Without prejudice to the Company's right to terminate the Agreement and/or any Contract under Clause 17.1, Clause 17.2(a) or at common law, the Company may terminate the Agreement and/or any Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of this Clause 41.1.
- (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 41.1 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 17.1 and this Clause 41.1 or the Cessation Plan, the provisions of this Clause 41.1 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 supply of Goods and Services or (at the Company's request) a transition of the supply of Goods and 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 41.1 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 Agreement and/or any 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 Agreement and/or any Contract in accordance with this Clause 41.1.

41.2 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 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, crime and disorder in its area,

and in the performance of the Agreement and/or any 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.

41.3 The Company's business

The Supplier acknowledges that it:

- (a) has sufficient information about the Company and the supply of Goods and 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 supply of Goods and Services in accordance with the Agreement and/or any Contract;

- (d) is aware of the purposes for which the supply of Goods and Services are required; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement and/or any Contract due to any misinterpretation or misunderstanding by it of any fact relating to the supply of Goods and Services.

41.4 **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 the supply of Goods and 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 Agreement and/or any Contract in order for the Company to achieve best value.

41.5 **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 supply of Goods and 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 Agreement and/or any Contract.

41.6 **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 supply of Goods and 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 Agreement and/or any 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 supply of Goods and Services under the Agreement and/or any 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 supply of Goods and 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 Agreement and/or any Contract.

41.7 Not used.

41.8 **Equality and Diversity**

41.8.1 Without limiting the generality of any other provision of the Agreement, the Supplier:

- (a) shall not unlawfully discriminate;
- (b) shall procure that its employees and agents do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Goods or Services,

within the meaning and scope of the Equality Act 2006, the Equality Act 2010 and any other relevant enactments in force from time to time in relation to discrimination in employment.

41.8.2 The Supplier acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to:

- (a) eliminate unlawful discrimination on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (all "**Protected Characteristics**") and marriage and civil partnership;
- (b) advance equality of opportunity between persons who share a Protected Characteristic and persons who do not share it; and

- (c) foster good relations between persons who share a Protected Characteristic and persons who do not.

In performing the Agreement and/or any Contract the Supplier shall assist and cooperate with the Company where possible in satisfying this duty.

41.8.3 The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Agreement and/or any 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.

41.8.4 To the extent that the Company is required to assist or co-operate with TfL in compliance with its duties under the Equality Act 2010 (Specific Duties) Regulations 2011, the Supplier shall assist and co-operate with the Company where possible.

41.9 **Cycling Safety**

- (a) For the purposes of this Clause 41.9:

"Approved Driver Training" means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at www.fors-online.org.uk.

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

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

"Class VI Mirror" means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC.

"Close Proximity Sensor" means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged.

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

“**Driver**” means any employee of the Supplier (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while delivering the Goods and Services.

“**DVLA**” means the Driver and Vehicle Licensing Agency.

“**FORS**” means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members 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.

“**Freight Vehicle**” means a Lorry, a Van or a Car-derived Van.

“**Fresnel Lens**” means a clear thin plastic lens that is pressed fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot.

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

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

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

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

“**Silver Accreditation**” means the intermediate level of accreditation within the FORS Standard the requirements of which are more particularly described at: www.fors-online.org.uk.

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

(b) **Fleet Operator Recognition Scheme Membership**

Where the Supplier operates Freight Vehicles, it shall within ninety (90) days of executing the Agreement:

- (i) (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Company, is an acceptable substitute to membership of FORS (the “**Alternative Scheme**”); and
 - (ii) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.
- (c) The Supplier 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.
- (d) The Supplier shall ensure that those of its subcontractors who operate Freight Vehicles shall comply with Clauses 41.9(b) and 41.9(c) as if they applied directly to the subcontractor.
- (e) **Safety Equipment on Vehicles**

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

- (i) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- (ii) have a close proximity warning system fitted comprising:
 - a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Operator has obtained the Company's approval to use the Fresnel Lens, which approval the Company may withhold in its unfettered discretion; and
 - a Close Proximity Sensor;
- (iii) have a Class VI Mirror; and
- (iv) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

The Supplier shall ensure that every Van, which it uses to provide the Goods and Services, shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

(f) Driver Licence Checks

The Supplier shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Goods and Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last twelve (12) months:

- (i) 0 – 3 points on the driving licence – annual checks;
- (ii) 4 – 8 points on the driving licence – six (6) monthly checks;
- (iii) 9 – 11 points on the driving licence – quarterly checks; or
- (iv) 12 or more points on the driving licence – monthly checks.

(g) Driver Training

The Supplier shall ensure that each of its Drivers who has not undertaken:

- (i) Approved Driver Training (or training, which in the reasonable opinion of the Company, is an acceptable substitute) in the last three (3) years, undertakes Approved Driver Training within sixty (60) days of the Commencement Date; and
- (ii) a FORS e-learning safety module in the last twelve (12) months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Company, is an acceptable substitute).

(h) Collision Reporting

Within fifteen (15) days of the Commencement Date, the Supplier shall provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report on a quarterly basis and within five (5) Working Days of a written request from the Company.

(i) FORS Reports

Within thirty (30) days of it achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Supplier shall provide a written report to the Company at fors@tfl.gov.uk detailing its compliance with Clauses 41.9(e), 41.9(f) and 41.9(g) of this

Agreement (the “**Safety, Licensing and Training Report**”). The Supplier shall provide updates of the Safety, Licensing and Training Report to the Company at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.

(j) **Obligations of the Supplier regarding subcontractors**

The Supplier shall ensure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Agreement as if those subcontractors were a party to this Agreement:

- (i) For Lorries – Clauses 41.9(e), 41.9(f), 41.9(g) and 41.9(h); and
- (ii) For Vans – Clauses 41.9(e)(iv), 41.9(f), 41.9(g) and 41.9(h).

(k) **Failure to Comply with Freight-related Obligations**

Without limiting the effect of Clause 17, if the Supplier fails to comply with Clauses 41.9(b), (c), (d), (e), (f), (g), (h), (i) and (j):

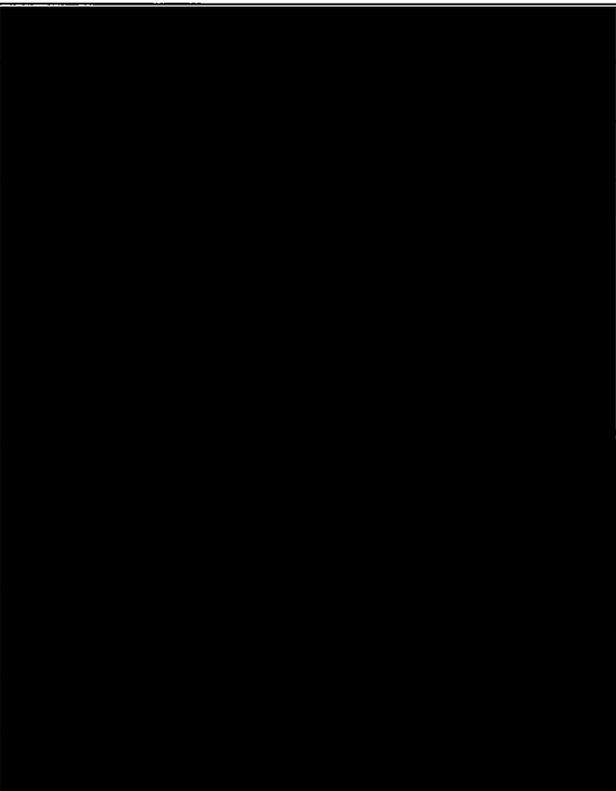
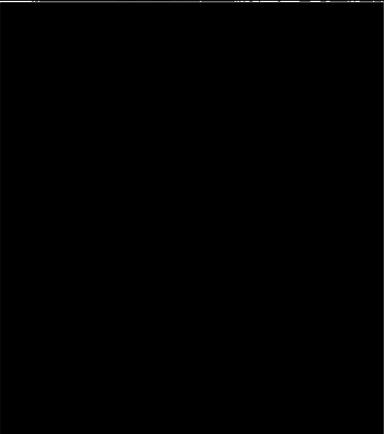
- (i) the Supplier has committed a material breach of this Agreement and/or any Contract; and
- (ii) the Company may refuse the Supplier, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to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

**Schedule 1
Form of Order**

THIS ORDER IS AGREED AND ENTERED INTO BY THE COMPANY AND THE SUPPLIER PURSUANT TO, AND STRICTLY SUBJECT TO THE TERMS OF, THE AGREEMENT REFERRED TO HEREIN (SEE CONTRACT REFERENCE NUMBER FOR DETAILS).

- Notes:**
1. Please confirm receipt of this Order immediately by signing and dating where indicated and returning to the Company's Representative.
 2. Please quote the Contract Reference Number and the Order number in all correspondence and on all applications for payment.
 3. Please address all correspondence and enquiries to the Company's Representative.

Company:	
Supplier:	
Contract Reference Number:	
Order Number:	
Order Title:	
Company's Representative:	
Address for service of notices:	
Telephone:	
Supplier Representative:	
Address for service of notices:	
Telephone:	
Delivery Address:	
Expected Order Delivery Date (Goods) and times for delivery:	
Order Completion Date:	
Standards:	

Specification:		
Order Programme:		
Warranty Period:		
Key Personnel:		
Order Price (exclusive of VAT):		
Order Payment Profile [and application for payment dates]:		
Default Interest Rate:		
PART A – Total Aggregate Liability		
		
PART B – Liquidated Damages		
PART C – Insurance		
1. Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
Product and Public Liability Insurance All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Contract.	Supplier	

Employer's Liability Insurance Liability for death of or bodily injury or illness sustained by employees of the Supplier arising out of or in the course of their employment in connection with the Contract.	Supplier	
Transit Insurance Transit Insurance to cover Goods, Materials, materials supplied by the Supplier until safe receipt at the Premises by the Company.	Supplier	
Additional Comments/Special Instructions:		

Signed by:
Title:
On behalf of:
London Underground Limited

Date:.....

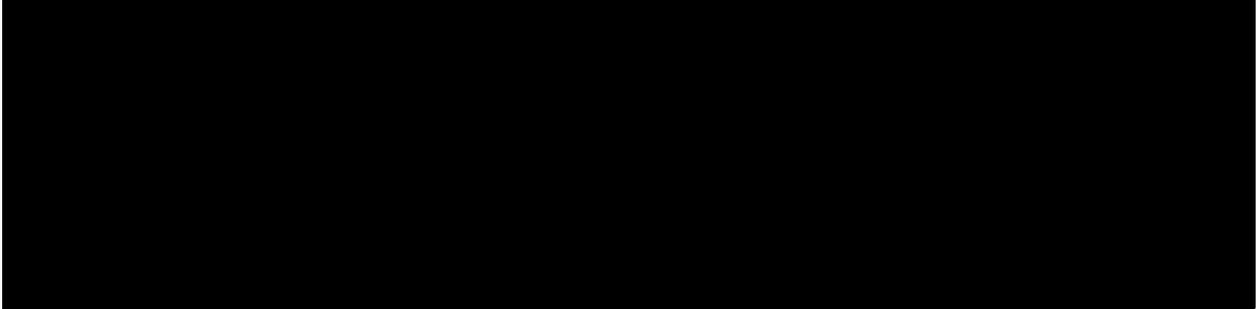
Signed by:
Title:
On behalf of:
 []

Date:.....

Appendix 1
Specification

Title:

Specification for Drawgear and Auto coupler Overhaul [REDACTED]



Drawings



Schedule 2
Framework Particulars

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Schedule 3

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 relevant 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 relevant Contract shall thereupon be varied accordingly.
- 4 The Supplier may indicate in a Variation Proposal that the price is an estimated price but, if it does so, it shall supply a firm price to the Company in writing at least seven (7) days before the expiry of the time within which the Company is entitled to instruct the Supplier to proceed with the variation.
- 5 The 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 quantity of Goods to be supplied and extent of 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 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 each Contract, including, but not limited to the Specification and the Order Programme.

- 9 Strict adherence to the procedure described in this Schedule 3 shall be a condition precedent to any addition to the price for the Goods and Services. If the Supplier does not adhere to each paragraph in this Schedule 3 then the Supplier shall not be entitled to any addition to the price notwithstanding that the Supplier may have supplied additional or varied Goods and/or Services.

Appendix 1
Form of Variation Proposal/Variation Order

To:	From:
------------	--------------

Contract Reference Number:
Order Number:
Variation Number:
Variation Title:

PART A (TO BE COMPLETED BY THE ORIGINATOR OF THE VO)

Description of change:

Reason for changes and impact (if any) on Contract:

Variation Proposal Authorised by:	Proposal Date:
--	-----------------------

PART B (TO BE COMPLETED BY THE SUPPLIER)

Price Breakdown	
Note: If a further breakdown is needed please append details as a separate sheet.	

Expected Delivery Date:

Supplier's Representative:

Print Name:	Signature:	Date:
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Completed document to be returned to the Company's Representative

Comment on Parts A and B:

Variation Authorisation

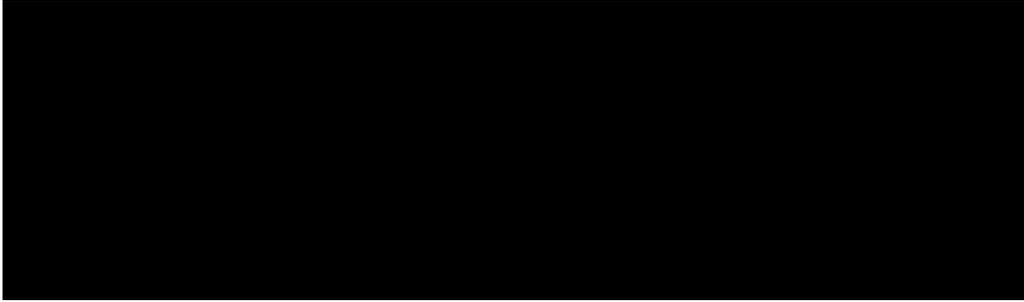
Company's Representative:

Print Name:	Signature:	Date:
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Schedule 4
Quality and Safety Plan



**Schedule 5
Programme**



Schedule 6
Deed of Novation

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.

2. 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.

EXECUTED as a Deed and delivered the day and year first above written.

THE COMMON SEAL of)
LONDON UNDERGROUND LIMITED)
was hereunto affixed in)
the presence of:-)

Authorised Signatory

Signature:

Name:

EXECUTED as a deed)
for and on behalf of)
Voith Turbo Limited)
acting by)

Authorised Signatory

Signature:

Name:

Authorised Signatory

Signature:

Name:

EXECUTED as a deed)
for and on behalf of)
[NEW COMPANY])
acting by)

Authorised Signatory

Signature:

Name:

Authorised Signatory

Signature:

Name:

Schedule 7
Not Used

Schedule 8
Prices

Central Line Order Breakdown

Unit Price Quantity



Total

■

Schedule 9
Form of Parent Company Guarantee

Form of Parent Company Guarantee

THIS GUARANTEE is made the _____ day of _____ 2015

BETWEEN:

- (1) [] a company registered in England and Wales under number [] and having its registered office at [] (the "**Guarantor**");
- (2) [] a company registered in England and Wales under number [] and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**" which expression shall include its successors in title and assigns); and
- (3) [] a company registered in England and Wales under number [] and having its registered office at [] (the "**Supplier**").

WHEREAS:

- (A) This Guarantee is supplemental to a contract (the "**Contract**") for the carrying out of [] at [] made between (1) the Company and (2) the Supplier on [] 2015.
- (B) The Guarantor has agreed to guarantee to the Company the due and punctual performance of the Contract by the Supplier in the manner hereinafter appearing.
- (C) The Supplier is a party to this Guarantee solely in order to confirm its request that the Guarantor provide this Guarantee on the terms set out herein.

NOW IT IS HEREBY AGREED as follows:

1. The Guarantor unconditionally guarantees to the Company the proper and punctual performance and observance by the Supplier of all its obligations, warranties, duties, undertakings and responsibilities under the Contract and shall forthwith make good any default thereunder on the part of the Supplier and the Guarantor shall pay or be responsible for the payment by the Supplier to the Company of all sums of money, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Supplier.
2. This Guarantee shall be a continuing guarantee and indemnity and accordingly shall remain in full force and effect until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed or observed by the Supplier under or arising out of the Contract have been duly and completely performed and observed in full.
3. The Guarantee is in addition to and not in substitution for any other security or warranty which the Company may at any time hold for the performance of any obligations, warranties, duties and undertakings under the Contract and may be enforced by the Company without first taking any proceedings or exhausting any right or remedy against the Supplier or any other person or taking any action to enforce any other security, bond or guarantee.

4. The Guarantor shall be under no greater obligation or greater liability under this Guarantee than it would have been under the Contract if it had been named as the Supplier in the Contract.
5. The obligations and liabilities hereunder shall remain in full force and effect and shall not be affected, lessened, impaired or discharged by:
 - (a) any alteration or variation to the terms of the Contract;
 - (b) any alteration in the extent or nature or sequence or method or timing or scope of the works, services or supplies to be carried out under the Contract;
 - (c) any extension of time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract;
 - (d) any other bond, security or guarantee now or hereafter held for all or any part of the obligations of the Supplier under the Contract;
 - (e) the release, modification, exchange or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Supplier;
 - (g) the making of a winding up order, the appointment of a provisional liquidator, the passing of a resolution for winding up, liquidation, administration, receivership or insolvency of the Supplier;
 - (h) any legal limitation, disability or incapacity relating to the Supplier (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Supplier under the Contract;
 - (j) the termination of the Contract; or
 - (k) anything the Company or the Supplier may do or omit or neglect to do including, but without limitation, the assertion of or failure or delay to assert any right or remedy of the Company or the pursuit of any right or remedy by the Company.
6. Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Supplier's obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:
 - (a) be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
 - (b) claim, rank, prove or vote as a creditor of the Supplier or its estate in competition with the Company unless the Company so directs; or

- (c) receive, claim or have the benefit of any payment distribution or security from or on account of the Supplier, or exercise any right of set-off against the Supplier unless the Company so directs.
7. This Guarantee is irrevocable.
 8. The benefit of this Guarantee may be assigned by the Company at any time to any assignee of the benefit of the whole of the Contract provided notice of such assignment shall have been given to the Guarantor. No further or other assignments shall be permitted.
 9. The Guarantor:
 - (a) gives the guarantee contained in this Guarantee as principal obligor and not merely as surety;
 - (b) agrees to indemnify the Company on written demand against any loss or liability suffered by it if any provision set out in the Contract guaranteed by the Guarantor becomes unenforceable, invalid or illegal, and
 - (c) waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.
 10. Until all amounts which may be or become payable in respect of the Supplier's obligations have been irrevocably paid in full by the Guarantor, the Company may:
 - (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
 - (b) hold in a suspense account any moneys received from the Supplier on account of these Supplier's obligations or on account of the Guarantor's liability under this Guarantee.
 11. The Company is entitled to make any number of demands under this Guarantee.
 12. The invalidity, illegality or unenforceability in whole of or in part of any provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
 13. This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
 14. No person other than TfL (as such term is defined in the Contract) and its subsidiaries (as defined in section 1159 of the Companies Act 2006) shall have any right to claim or remedy under or

pursuant to this Guarantee and the provisions of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

15. This Guarantee, executed and delivered as a deed, shall be governed by and interpreted according to the laws of England and the Courts of England shall have exclusive jurisdiction save that the Company shall have the right to bring proceedings in the courts of any other jurisdiction in which any of the Guarantor's assets may be situated.

16. *[For non-UK resident Guarantors only:*

For the purposes of this Guarantee the Guarantor hereby appoints of..... [to be a London address] to accept service of process on its behalf, and service on the said at the said address shall be deemed to be good service on the Guarantor; and the Guarantor hereby irrevocably agrees not to revoke or terminate such appointment).]

Executed as a deed by the parties and delivered on the date of this Guarantee

Executed as a Deed by [GUARANTOR])
acting by)
) Authorised Signatory
and)
) Authorised Signatory

Executed as a deed by affixing the Common Seal of)
[COMPANY])
in the presence of: -)

.....
[Authorised Signatory]

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

and

).....

) Authorised Signatory

GUIDANCE NOTE: This Form of Legal Opinion is required where the party providing the sub-contractor warranty/guarantee/bond is a foreign entity.

The opinion contains square brackets requiring information to be completed and denoting optional clauses. Footnotes have been provided (i) to assist with their completion, (ii) to highlight the options and (iii) for guidance generally. When options are not required do not amend the numbering of clauses, paragraphs or schedules, but use the words "Not used" instead.

Ensure that ALL square brackets, footnotes and formatting (including italics) are removed before the opinion is issued externally and ensure the required information is completed prior to issuing to the Supplier. If you have any questions please speak to TfL Legal.

FORM OF LEGAL OPINION – FOREIGN JURISDICTION

FOR USE WITH A [SUB-CONTRACTOR WARRANTY] [DEED OF GUARANTEE] [DEED OF BOND]¹

TO: London Underground Limited

Windsor House
42-50 Victoria Street
London
SW1H 0TL

Dear Sirs

I am the legal adviser to [] and I am giving this legal opinion in connection with the making by [] of the Document (as defined below) in your favour.

1. *[I have examined the Sub-Contractor Warranty (the "**Document**") dated [] made between [] (the "**Sub-Contractor**"), [] (the "**Contractor**"), and London Underground Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.*

OR

*I have examined the Deed of Guarantee (the "**Document**") dated [] made between the [] (the "**Guarantor**"), [] (the "**Contractor**") and London Underground Limited (the "**Company**"). Terms defined in or for the purpose of the Document have the same meanings in this opinion.*

OR

¹ **OPTIONAL DRAFTING** - Choose the document to which the opinion relates and delete the others.

I have examined the Deed of Bond (the “Document”) dated [] made between the [] (the “Bank”) and London Underground Limited (the “Company”). Terms defined in or for the purpose of the Document have the same meanings in this opinion.]²

2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of [] I am pleased to advise that in my opinion:

- (a) the [Sub-Contractor] [Guarantor] [Bank] was incorporated in [] on [] for an indefinite period as [a limited company] and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the [Sub-Contractor] [Guarantor] [Bank];
- (b) the [Sub-Contractor] [Guarantor] [Bank] has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in [] has been taken to enable the [Sub-Contractor] [Guarantor] [Bank] to:
 - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder;
 - (ii) [guarantee the Company in respect of the obligations to the Guarantor under the Documents; and]³

and implementation by the [Sub-Contractor] [Guarantor] [Bank] of the foregoing will not cause:

- (iii) any limit on the [Sub-Contractor] [Guarantor] [Bank] or its directors (whether imposed by the documents constituting the [Sub-Contractor] [Guarantor] [Bank], statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
- (iv) any law or order to be contravened;
- (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or

² **OPTIONAL DRAFTING** - Choose the document to which the opinion relates and delete the others. This will also apply throughout the document.

³ **DRAFTING NOTE:** only applicable to Deed of Guarantee. Delete sub-clause (ii) for both Sub-Contractor Warranty and Bond, and replace with “Not Used”

any judgment or other requirement known to us to which the *[Sub-Contractor]* *[Guarantor]* *[Bank]* is a party or by which it or any of its assets is bound;

- (c) the Document has been properly signed and delivered on behalf of the *[Sub-Contractor]* *[Guarantor]* *[Bank]* and the obligations on the part of the *[Sub-Contractor]* *[Guarantor]* *[Bank]* contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the *[Sub-Contractor]* *[Guarantor]* *[Bank]* under the laws of [] and in the courts of [];
- (e) it is not necessary or advisable under the laws of [] in order to ensure the validity, enforceability and priority of the obligations of the *[Sub-Contractor]* *[Guarantor]* *[Bank]* or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
- (f) the obligations of the *[Sub-Contractor]* *[Guarantor]* *[Bank]* under the Document rank at least equally and rateably (*pari passu*) in point of priority and security with all other unsecured obligations of the *[Sub-Contractor]* *[Guarantor]* *[Bank]*;
- (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the *[Sub-Contractor]* *[Guarantor]* *[Bank]* pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in [];
- (h) there are no registration, stamp or other taxes or duties of any kind payable in [] in connection with the signature, performance or enforcement by legal proceedings of the Document;
- (i) the Company will not violate any law or regulation in [] nor become liable to tax in [] by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in [] in order to enforce any provisions of the Document;
- (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the [] Courts;
- (k) the consent to the jurisdiction by the *[Sub-Contractor]* *[Guarantor]* *[Bank]* contained in the Document is valid and binding on the *[Sub-Contractor]* *[Guarantor]* *[Bank]* and not subject to revocation;

(l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the [Sub-Contractor] [Guarantor] [Bank] would be recognised and accepted by the [] Courts without re-trial or examination of the merits of the case.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of [] and accordingly express no legal opinion herein based upon any law other than the laws of [].

Signed []

.....

Name and position

Schedule 10
Form of Collateral Warranty

THIS AGREEMENT is made the _____ **day of** _____ **20[]**

BETWEEN: -

- (1) **London Underground Limited** registered in England and Wales under number: 01900907 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (the "**Company**");
- (2) [_____] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Sub-Contractor**"); and
- (3) [_____] a company registered in England and Wales under number: [.....] and having its registered office at [.....] (the "**Supplier**").

WHEREAS:-

- (A) The Company has entered into a contract with the Supplier (the "**Main Contract**") pursuant to which the Supplier is to undertake and complete the following supply: [_____] (the "**Supply**").
- (B) The Sub-Contractor has submitted a tender to the Supplier for the carrying out and completion of certain parts (the "**Sub-Contract Supply**") of the Supply referred to above as more particularly described in the tender.

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

1. The Sub-Contractor warrants to the Company that:
 - (a) the Sub-Contract Supply have been and will be carried out with the skill and care to be expected of appropriately qualified and experienced professional contractors with experience in carrying out works or services of a similar type, nature and complexity to the Sub-Contract Supply;

- (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 Supply (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 Supply (the "**Sub-Contract**");
 - (iv) the execution and completion of the Sub-Contract Supply;
 - (v) the Sub-Contract Supply 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 Supply 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 Supply shall include any part of the Sub-Contract Supply. 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 Supply:

- (a) Execute and complete the Sub-Contract Supply 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 Supply 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 Supply;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and re-tendering the Supply;
 - (c) extending, interfacing with, integrating with, connecting into and adjusting the Supply;
 - (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 Supply; 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 Supply.

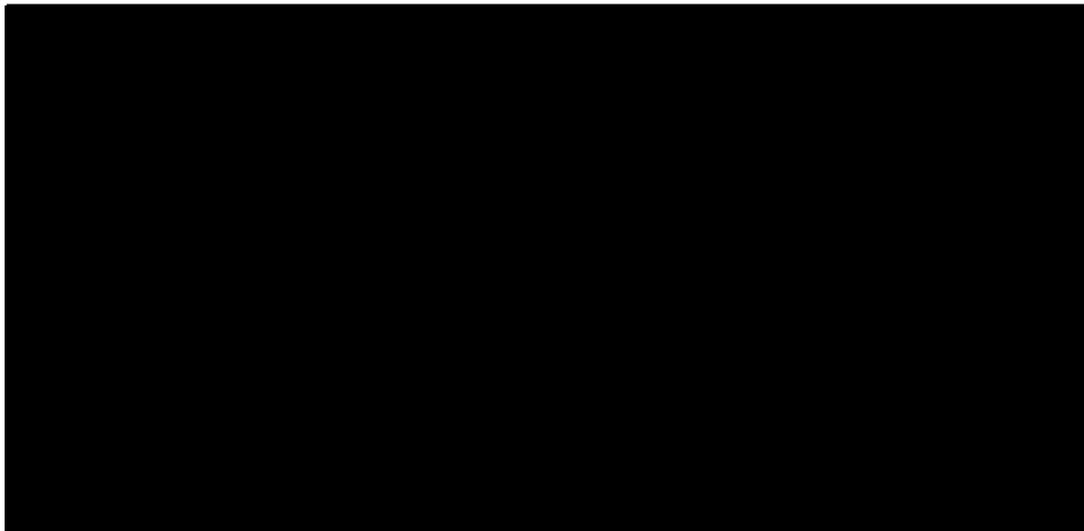
6. The parties hereby agree that:

(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.



8. If any dispute of any kind whatsoever arises between the parties in connection with this Agreement or the Sub-Contract Supply 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

⁴ Insert appropriate PI insurance figure as agreed with the Insurance and Risk team.

⁵ If the Sub-Contractor is not undertaking any design as part of the Sub-Contract Supply Clause 7 can be stated as "Not Used".

"**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 Supply 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 Supply.

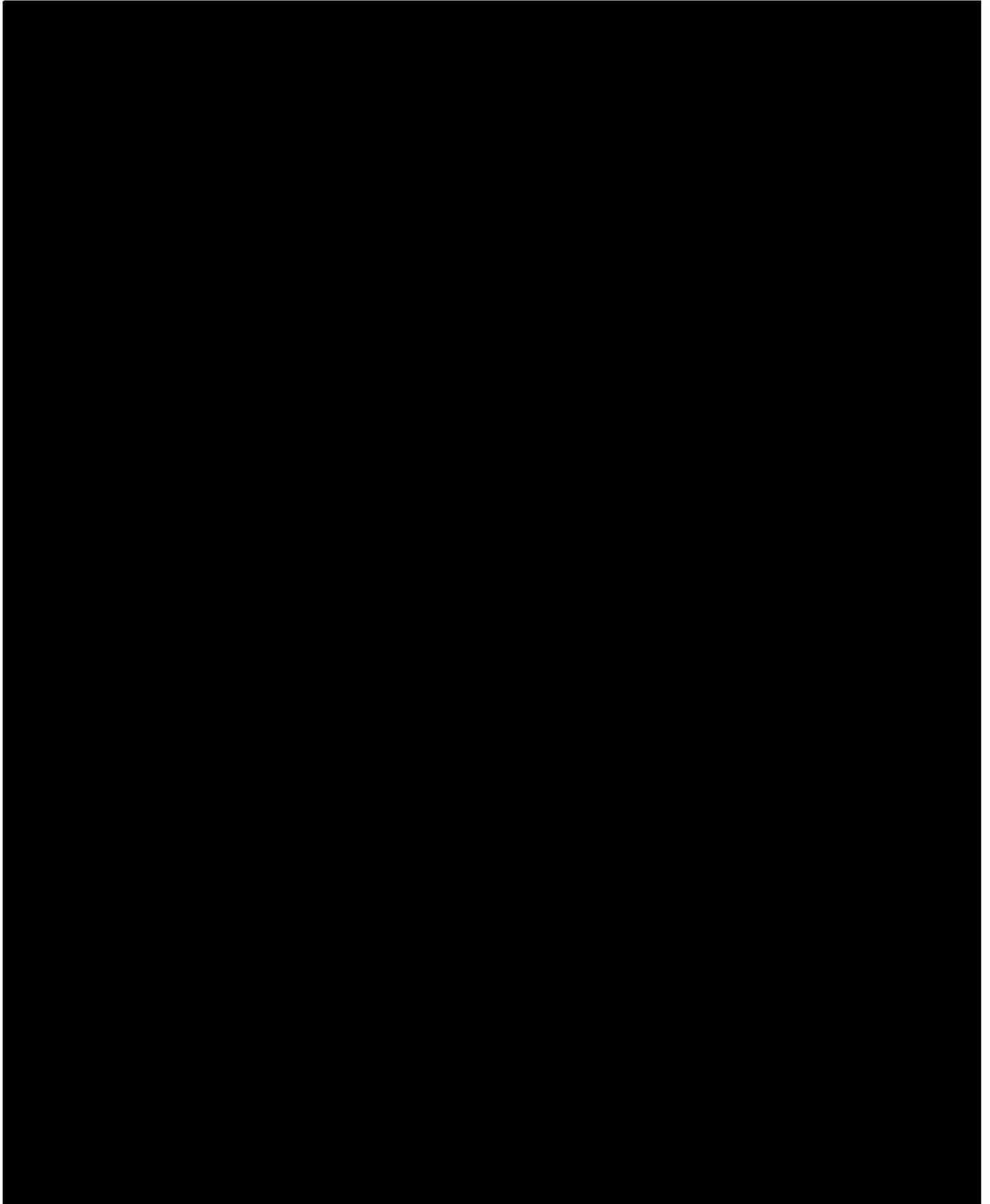
14. No amendment to this Agreement shall be valid unless it is in writing and signed by all parties.
15. Any person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
16. This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

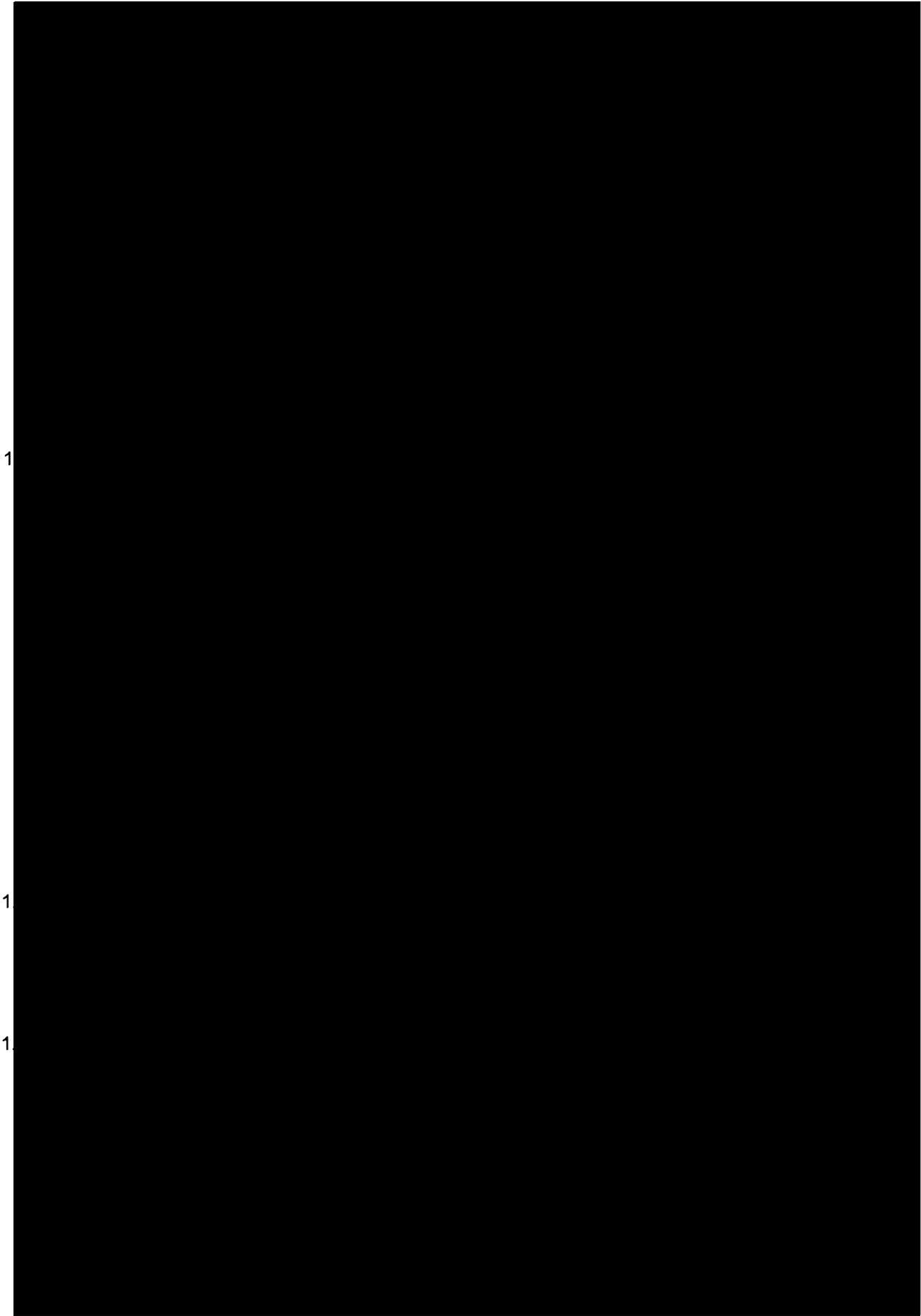
Schedule 11
Not Used

Schedule 12
Supplier Performance

1. SUPPLIER PERFORMANCE

1.1 KEY PERFORMANCE INDICATORS



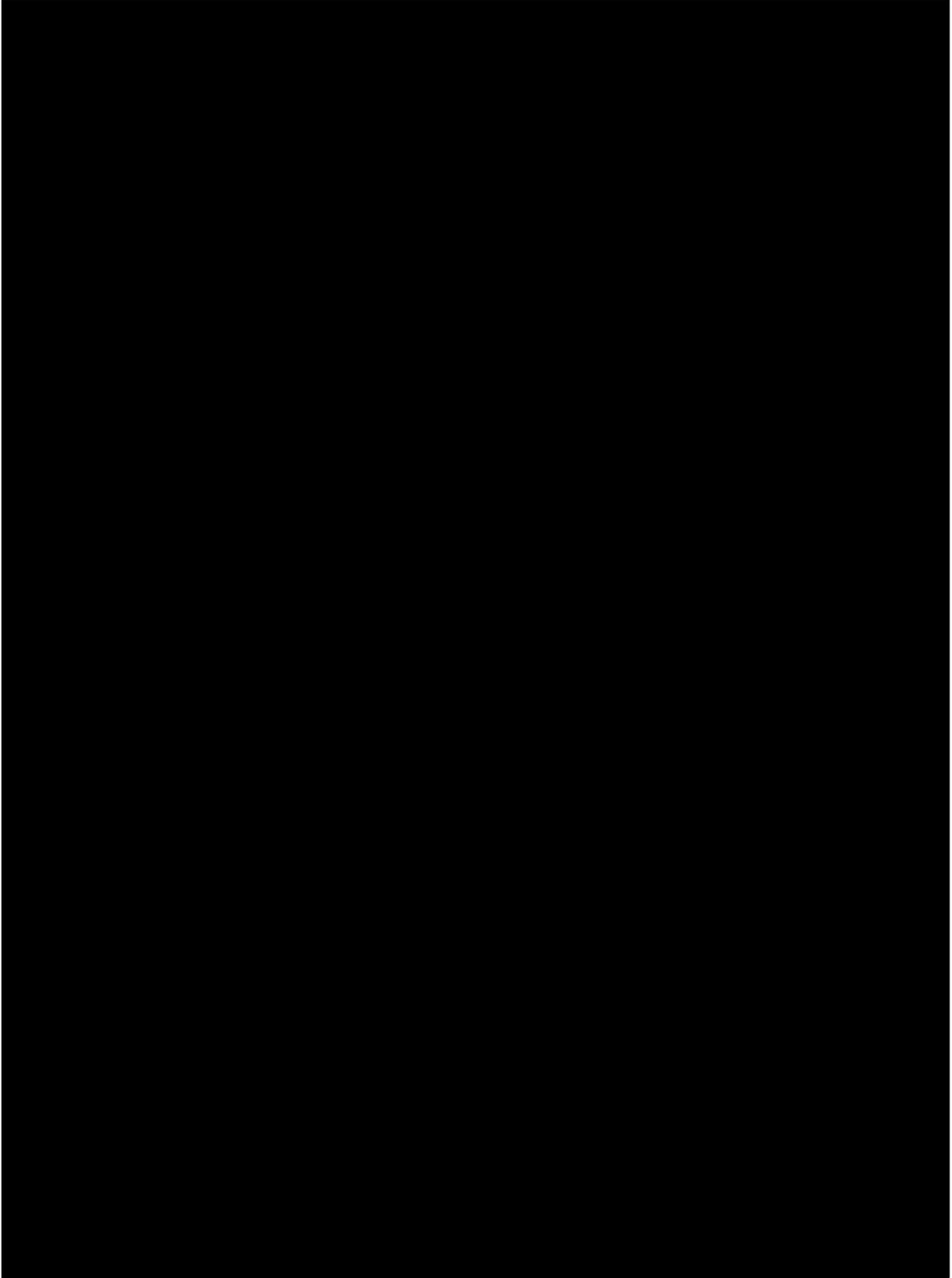


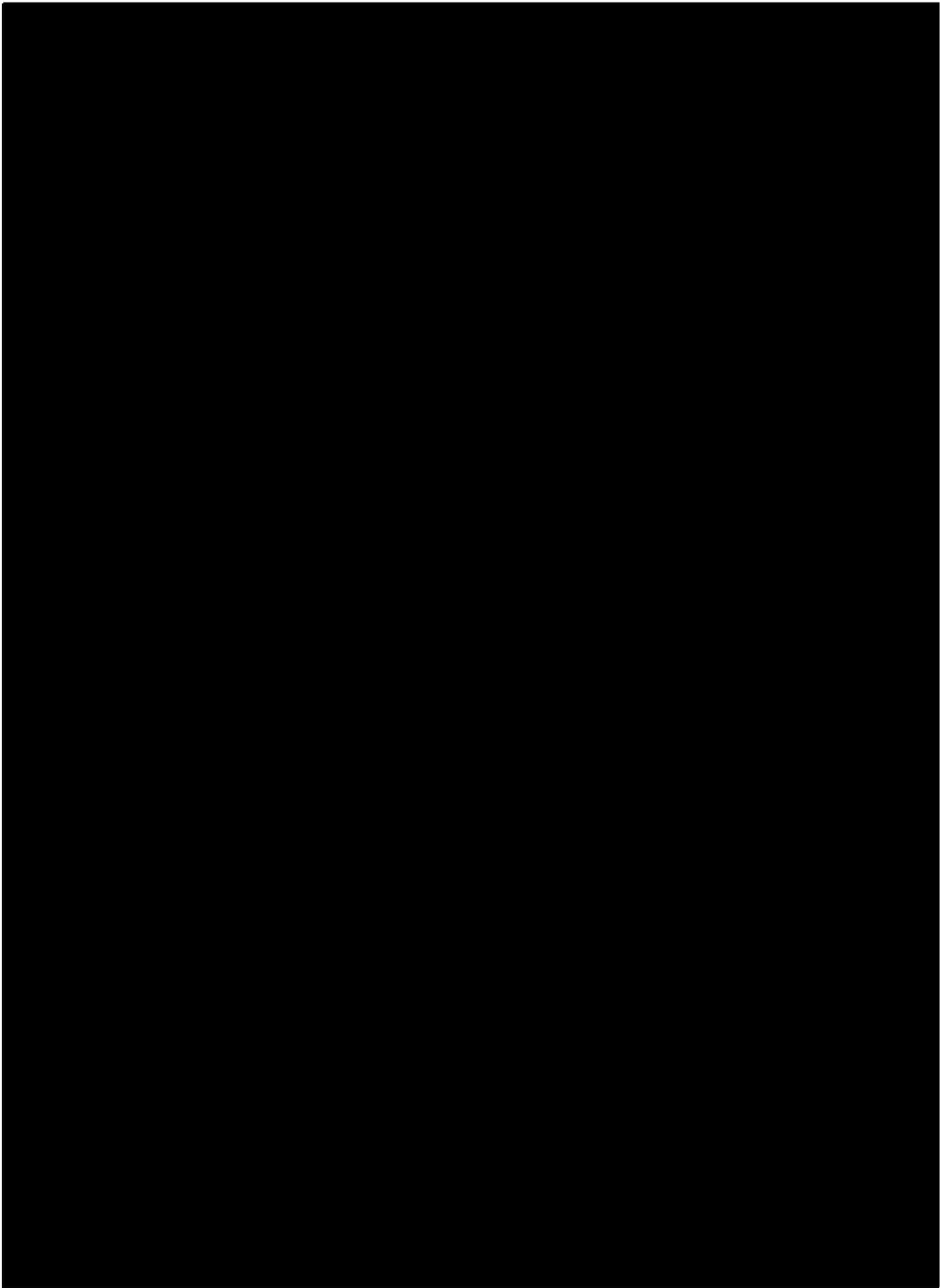
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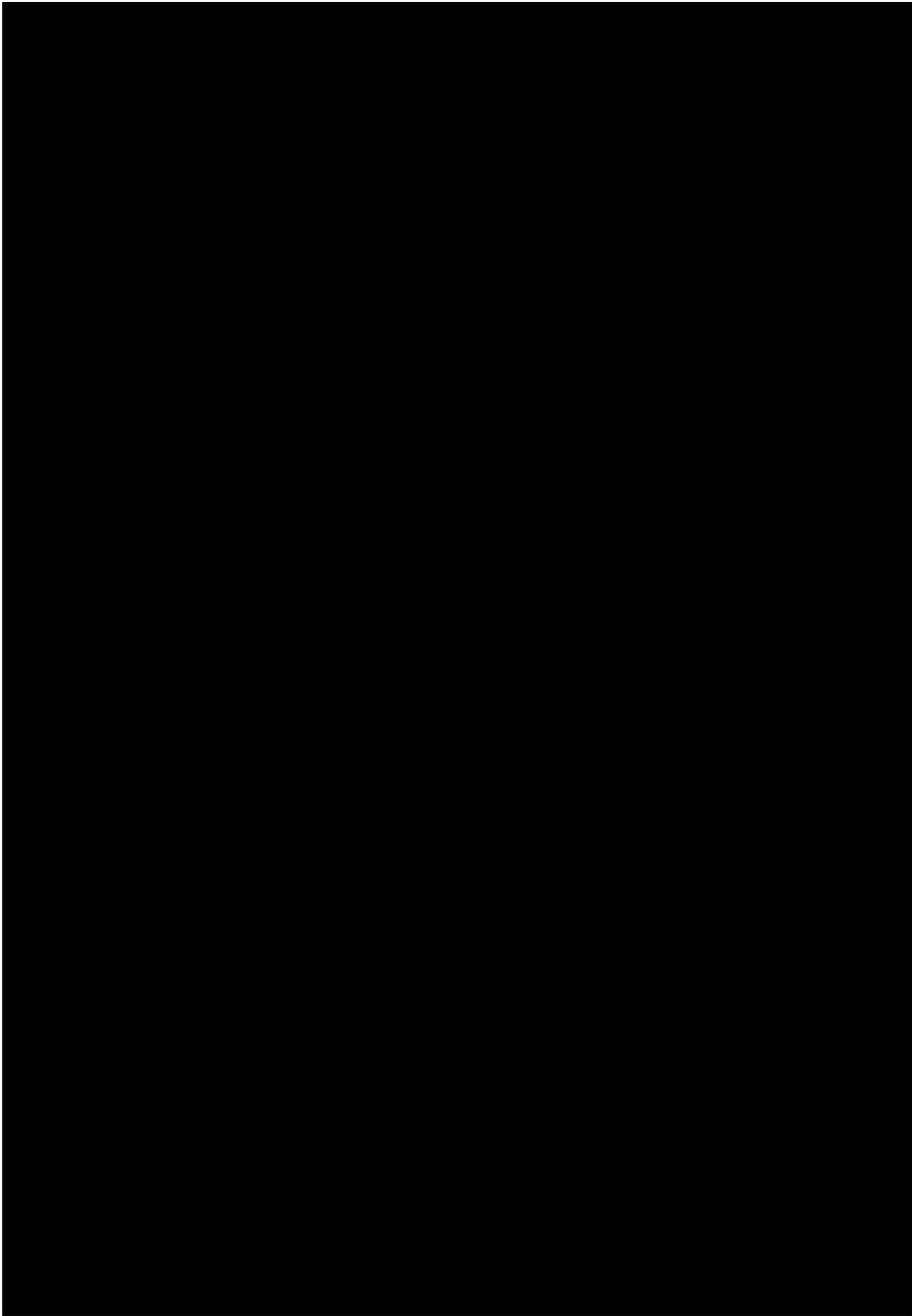
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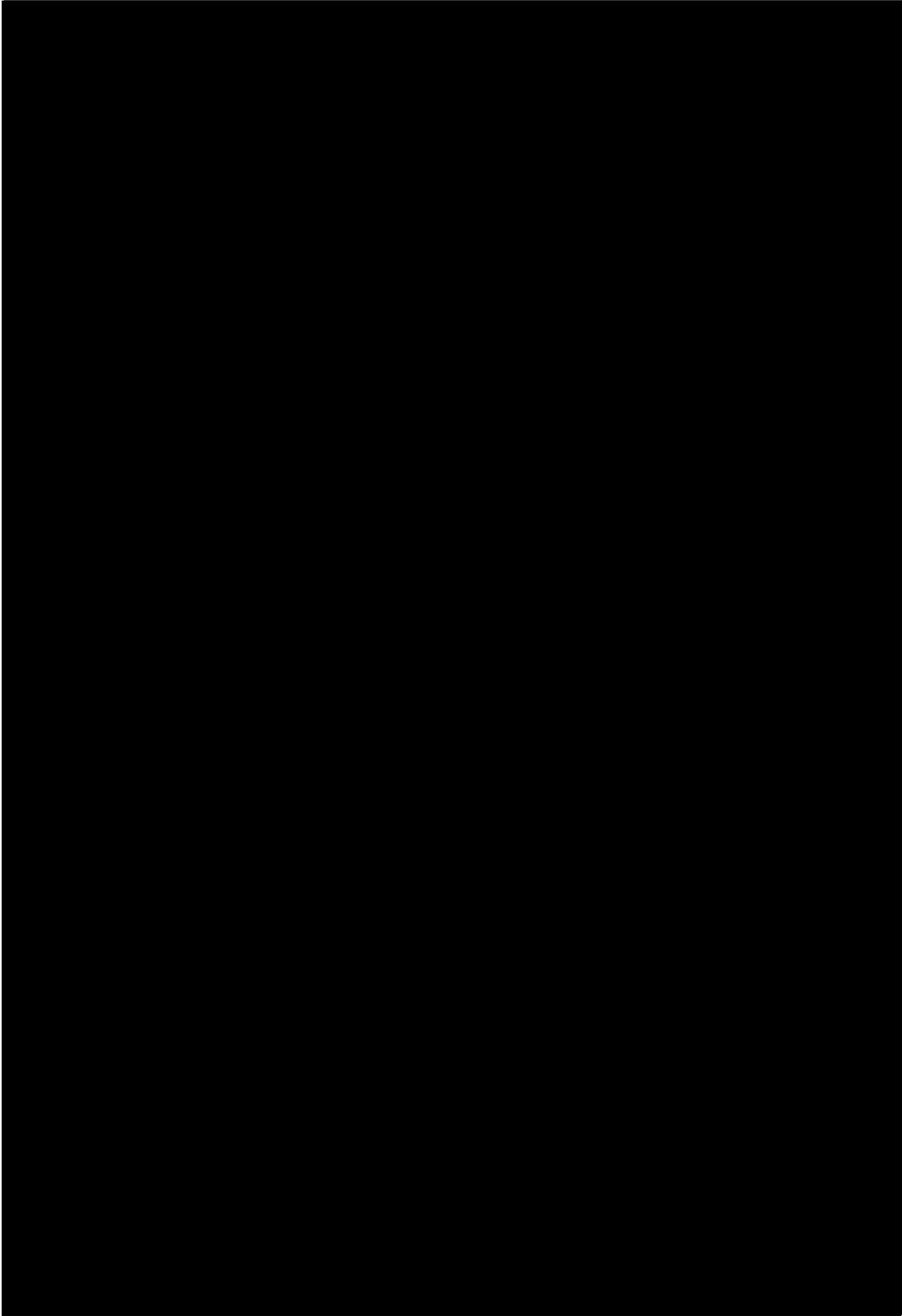
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2. ESCALATION PROCESS





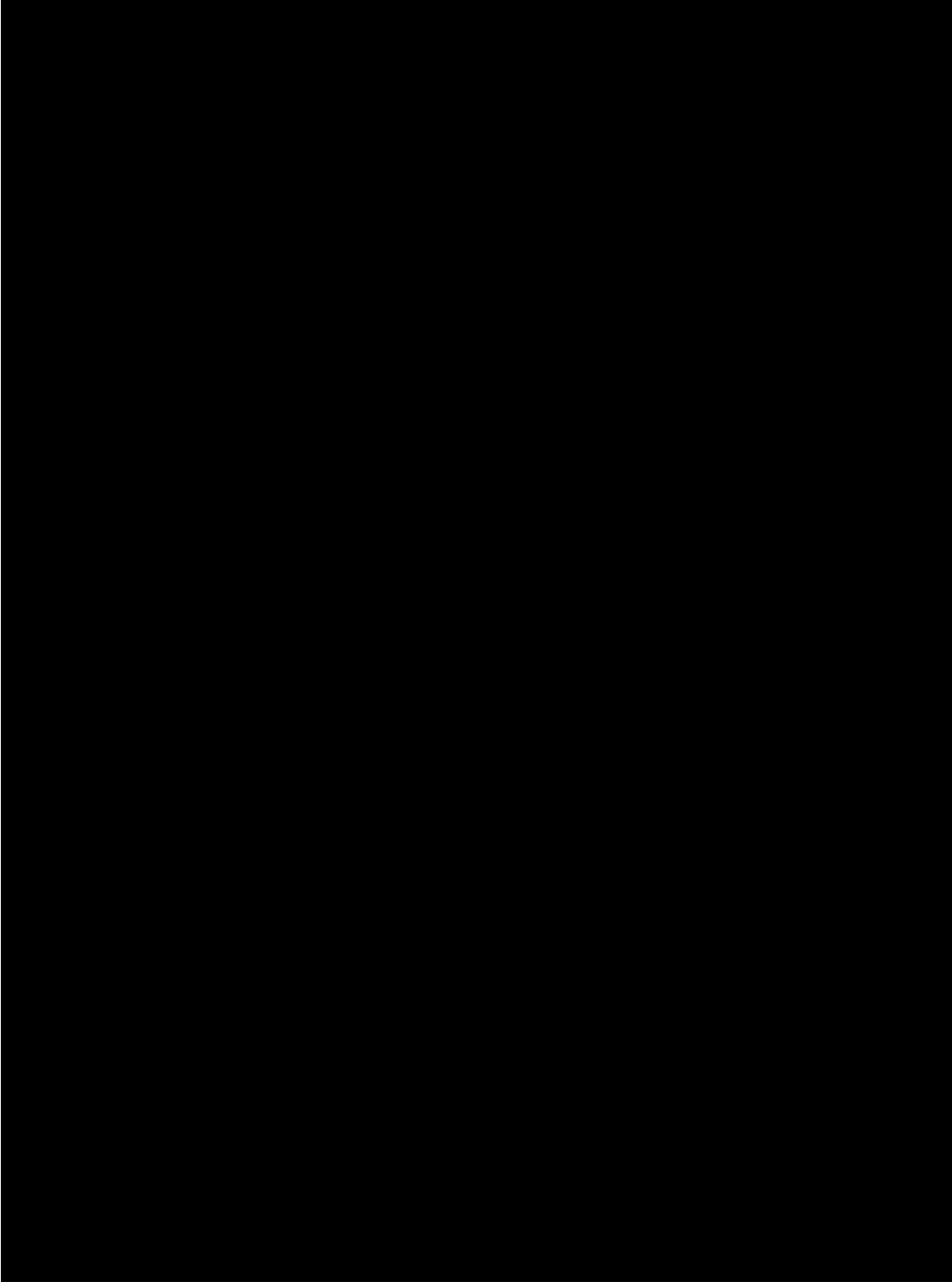


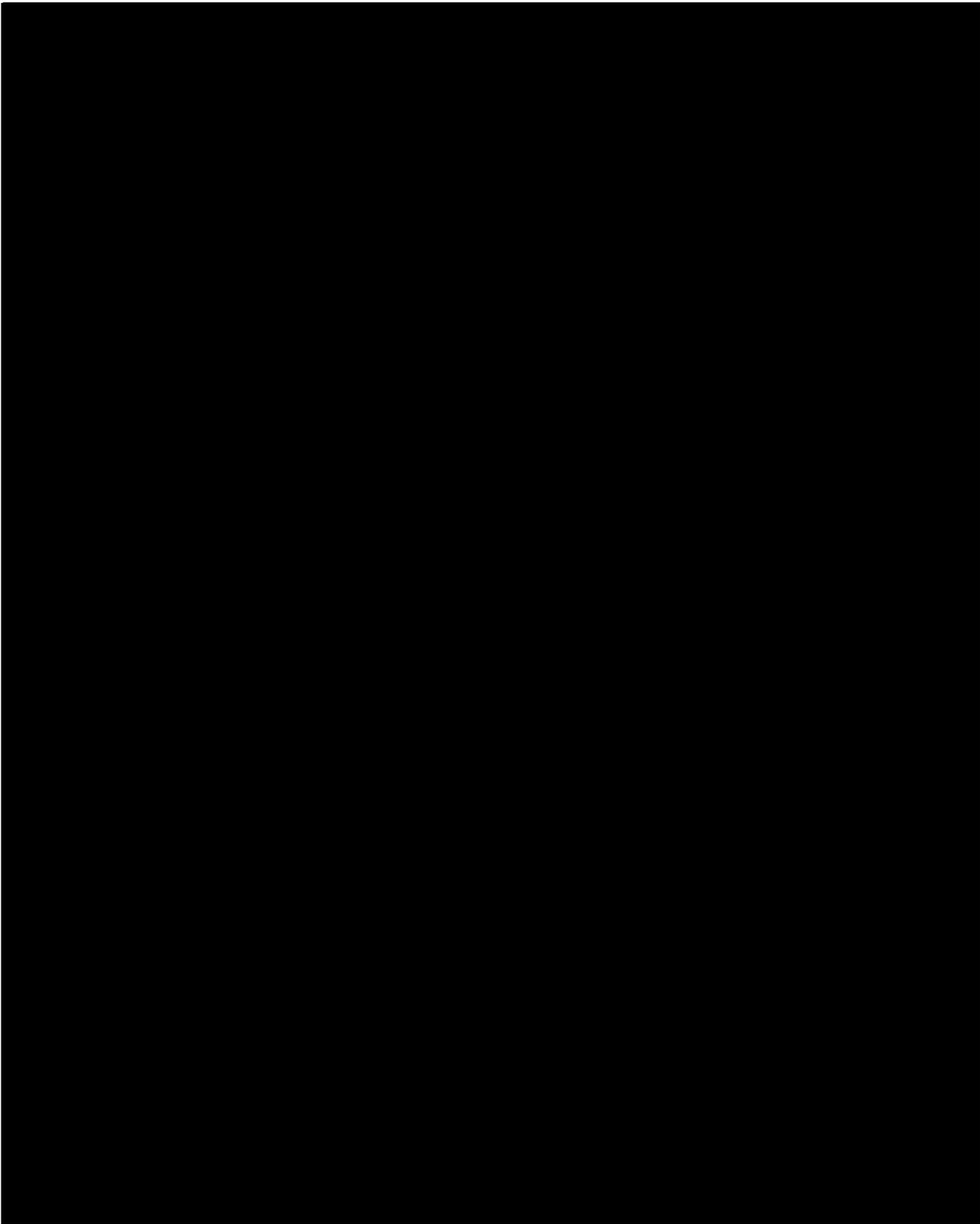


REPORTING AND SERVICE LEVELS



1. SUMMARY OVERVIEW REPORT





EXECUTION PAGE:

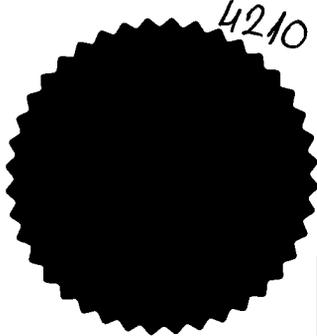
IN WITNESS of which this document has been executed and, on the date set out above, delivered as a **DEED**.

The Common seal of)

LONDON UNDERGROUND LIMITED)

was affixed to this deed)

in the presence of:)



Authorised Signatory

Signature:

Name:



Executed as Deed)

for and on behalf of)

Voith Turbo Limited)

acting by)

Authorised

Signature:

Name:



and)

Authorised Signatory

Signature:

Name:



