

Agreement Reference Number: PSF91311

Date:

**Framework Agreement
for the Provision of Transport Planning and Impact Monitoring**

between

Transport for London

and

[insert company name]

CONTENTS

CLAUSE		PAGE
1	DEFINITIONS AND INTERPRETATION	5
2	FRAMEWORK AGREEMENT	11
3	BEHAVIOUR	12
4	TERM OF FRAMEWORK AGREEMENT AND CALL-OFF CONTRACTS	12
5	THE SERVICES.....	13
6	PARENT COMPANY GUARANTEE, WARRANTIES AND OBLIGATIONS	14
7	CALL-OFF PROCEDURE.....	16
8	CONTRACTUAL MANAGEMENT	20
9	ADJUSTMENT OF MAXIMUM CHARGE OUT RATES	21
10	CONSULTANT'S PERSONNEL	22
11	SUB CONTRACTING	23
12	EQUIPMENT	23
13	CONFLICT OF INTEREST	24
14	COMPLIANCE WITH POLICIES AND LAW	24
15	CORRUPT GIFTS AND PAYMENT OF COMMISSION	26
16	QUALITY AND BEST VALUE	28
17	EMPLOYER DATA.....	29
18	ACCESS TO PREMISES.....	29
19	INTELLECTUAL PROPERTY RIGHTS	30
20	IT REQUIREMENTS	31
21	SET-OFF	32
22	CONFIDENTIALITY AND ANNOUNCEMENTS	32
23	DATA PROTECTION	34
24	FREEDOM OF INFORMATION	35
25	RESPONSIBLE PROCUREMENT	36
26	SUPPLIER PERFORMANCE	36
27	BREACH AND TERMINATION OF FRAMEWORK AGREEMENT	37
28	CONSEQUENCES OF TERMINATION OR EXPIRY	39
29	AUDIT	39
30	SURVIVAL	40
31	RIGHTS OF THIRD PARTIES	40
32	CONTRACT VARIATION	40
33	NOVATION AND ASSIGNMENT	40
34	INDEMNITY AND INSURANCE	41
35	NON-WAIVER OF RIGHTS	41
36	ILLEGALITY AND SEVERABILITY	41
37	ENTIRE AGREEMENT	42
38	RELATIONSHIP OF THE PARTIES	42
39	NOTICES	42
40	FURTHER ASSURANCES	43
41	DISPUTES	43
42	GOVERNING LAW	47

SCHEDULES

- 1 Pricing and Commercial Information (See Appendix A at End of Document)
- 2A Conditions of Contract
- 2B Conditions of Contract – Short Form
- 3 Framework Scope
- 4A Form of Parent Company Guarantee (Framework Agreement)
- 4B Form of Parent Company Guarantee (Call Off Contract)
- 5 Form of Direct Request Form
- 6A Form of Mini-Competition Request Form
- 6B Form of Mini-Competition Request Form – Short Form: Services
- 6C Form of Mini-Competition Request Form – Short Form: Consultant Secondment
- 7A Call Off Contract Form of Agreement
- 7B Call Off Contract Form of Agreement – Short Form
- 7C Call Off Contract Form of Variation
- 8 Form of Performance Bond
- 9 Form of Warranty from *Consultant* to Financier or other beneficiary
- 10 Form of Warranty from *Consultant* to *Employer* upon novation
- 11A Form of Warranty from Subconsultant to *Employer*
- 11B Form of Warranty from Subconsultant to Financier or other beneficiary
- 12 Form of Deed of Novation
- 13 Supplier Performance
- 14 Strategic Labour Needs and Training

Schedules below applicable for use with LUL and LUL Nominee BCV/SSL Schedules of Amendments only

- 15 Form of Warranty from *Consultant* to Infraco/PFI Contractor (LUL/LUL Nominee BCV/SSL Projects Only)
- 16 Form of Warranty from Consultant's Personnel to Infraco/PFI Contractor (LUL/ LUL Nominee BCV/SSL Projects Only)
- 17 Master Projects Database Desk Reference (LUL/ LUL Nominee BCV/SSL Projects Only)
- 18 Access Code (LUL/ LUL Nominee BCV/SSL Projects Only)
- 19 QUENSH (LUL/ LUL Nominee BCV/SSL Projects Only)

THIS FRAMEWORK AGREEMENT is made the day of 2015

BETWEEN:

- (1) **TRANSPORT FOR LONDON** a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (“the Framework Employer”); and
- (2) **[INSERT COMPANY]**, a company registered in England and Wales (Company Registration Number [insert]) whose registered office is at [insert address] (“the Consultant”).

BACKGROUND:

- (A) The Parties wish to enter into a framework agreement which enables any *Employer*, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the *Consultant* for some or all of the Services of the type described in the Framework Scope.
- (B) A Call-Off Contract issued in accordance with this Framework Agreement incorporates those of the Conditions of Contract identified in Schedule 2A or Schedule 2B. The Conditions of Contract are an amended version of the NEC Professional Services Contract (3rd Edition) or as identified in Schedule 2B.
- (C) The terms and conditions of this Framework Agreement shall apply to the Services to be provided by the *Consultant* under any Call-Off Contract.
- (D) The terms and conditions of this Framework Agreement provide that the Framework Employer, any other member of the TfL Group, GLA, any of the Functional Bodies of GLA and any of the London Boroughs may, if the *Consultant* so agrees, contract with the *Consultant* on the terms set out in this Framework Agreement.
- (E) The default conditions of contract in respect of any Call-Off Contract shall be those set out in Schedule 2A of this Framework Agreement. The *Employer* shall at its sole discretion notify the *Consultant* if the conditions of contract shall be those set out in Schedule 2B of this Framework Agreement.

- (F) Whilst this Framework is procured under the Public Services Contracts Regulations 2006 as amended, taking into account Directive 2004/18/EC, there are likely to be requirements that are called-off solely for use by those parts of the TfL Group that are contracting authorities under the Utilities Contracts Regulations 2006. Where this occurs, the call-off may be awarded in accordance with the requirements of the Utilities Contracts Regulations 2006 (as amended).

THE PARTIES AGREE THAT:

In consideration of payment of £5.00 by each Party to the other (receipt and sufficiency of which is acknowledged by the Parties) and the mutual promises and covenants set out in this Framework Agreement, the Parties agree as follows:

Definitions and Interpretation

1.1 In this Framework Agreement unless the context indicates otherwise terms have the meanings given in the Conditions of Contract and the following expressions have the following meanings:

“Adjudicator” an independent person appointed to act as an adjudicator in accordance with Clause 41;

“Business Day” any day other than a Saturday or Sunday or a public bank holiday in England;

“Background Intellectual Property Rights” means Intellectual Property Rights owned by the *Consultant* or a *Consultant’s* Personnel or other third party and which is not assigned to the *Employer*;

“Call-Off Contract” a call-off contract (incorporating the Form of Agreement set out in Schedule 7A or Schedule 7B where Schedule 2A or Schedule 2B Conditions of Contract are utilised) issued by an *Employer* in accordance with Clause 6 and including any attachments and any documents expressly referred to in that Call-Off Contract;

Call-Off Contract Data” the Call-Off Contract Data included in each Schedule 2A Call-Off Contract;

“Commencement Date” is 15 January 2015

“Conditions of Contract” the terms and conditions set out at Schedule 2A or Schedule 2B;

“Confidential Information” all information (whether written or oral) that by its nature may reasonably be regarded as confidential to the *Employer* (whether commercial, financial, technical or otherwise) including information which relates to the business affairs,

	customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the <i>Employer</i> ;
“Consultant Equipment”	the equipment and materials of whatsoever nature used by the <i>Consultant</i> in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the <i>Employer</i> under any Call-Off Contract;
“Consultant Manager”	is [insert name] ;
“Consultant’s Personnel”	all such employees, officers, suppliers, sub-consultants, sub-contractors and agents of the <i>Consultant</i> as are engaged in the performance of any of the Services;
“Consultant Secondment”	consultant secondment is an individual or team of individuals working in the main on TfL premises on a timecharge basis;
“Dispute”	any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
“ <i>Employer</i> ”	the Framework Employer, any TfL Group member, the GLA, any Functional Body or any London Borough utilising this Framework Agreement;
“ <i>Employer’s Agent</i> ”	the <i>Employer’s Agent</i> identified in the Call-Off Contract Data;
“Employer Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of any <i>Employer</i> ;
“Financial Year”	a calendar year ending 31 March;
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“ Affected Party ”) to perform its obligations in accordance with the terms of this Agreement but excluding

	any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
“Framework Agreement”	this Framework Agreement, including the Schedules and all other documents referred to in this Framework Agreement;
“Framework Scope”	the document at Schedule 3;
“Functional Bodies”	the functional bodies of the GLA (other than any member of the TfL Group) which are currently , the Mayor’s Office for Policing and Crime and the London Fire and Emergency Planning Authority;
“Holding Company”	any company which is the holding company of the <i>Consultant</i> where holding company is defined by reference to the definition of ‘subsidiary’ in section 1159 of the Companies Act 2006;
“Index”	the UK Consumer Prices Index (CPI) or such replacement index as the parties may agree;
“Index Figure”	monthly figure given by the Index;
“Intellectual Property Rights”	any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
“Key Person”	the <i>Consultant’s</i> key persons named as such in any relevant Call-Off Contract;

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

“Maximum Charge Out Rates” the maximum daily charge out rates (minimum 8 hrs) set out in Schedule 1 to this Framework Agreement as adjusted pursuant to the terms of this Framework Agreement;

“Mini-Competition” a competitive process which an *Employer* may from time to time utilise to select a consultant to carry out the Services;

“Notice of Adjudication” any notice given by a party to the Dispute to the other party requiring reference of a Dispute to the Adjudicator in accordance with Clause 41 The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
 - details of where and when the Dispute arose; and
- the nature of the redress which is sought;

“Out Of Hours Working Percentage Mark-Up”

- the out of hours working percentage mark-up set out in Schedule 1 to this Framework Agreement;

“Parent Company” is.....
registration number.....
whose registered address is at
.....
.....;

“Parent Company” a guarantee by the Parent Company in the form at Schedule 4A or Schedule 4B of the *Consultant’s* obligations pursuant to

Guarantee”	this Framework Agreement and each Call-Off Contract;
“Parties”	the Framework Employer (including its successors and permitted assigns) and the <i>Consultant</i> and “Party” shall mean either of them as the case may be;
“Procurement Manager”	such person notified to the <i>Consultant</i> by the Framework Employer from time to time;
“Proposal”	the <i>Consultant’s</i> offer to provide Services in response to a Request Form;
“Relevant Date”	in the case of the first review the Framework Agreement Commencement Date and for each subsequent review the date of the previous review;
“Request Form”	a direct Request Form or a mini-competition Request Form;
“Responsible Procurement Policy”	the GLA’s Responsible Procurement Policy as amended from time to time a copy of the current version of which is on the Framework Employer’s website https://www.london.gov.uk/priorities/business-economy/vision-and-strategy/focus-areas/responsible-procurement/responsible-procurement-policy ;
“Scope”	is information which specifies and describes the <i>services</i> and/or <ul style="list-style-type: none"> • states any constraints on how the <i>Consultant</i> Provides the Services and is either, • in the documents which the Call-Off Contract Data states it is in; or • in an instruction given in accordance with a Call-Off Contract or more particularly described within a Call-Off Contract.
“Senior Representative”	a representative of a Party at senior executive level;
“Services”	the services to be provided by the <i>Consultant</i> pursuant to this Framework Agreement and any Call-Off Contract; Sub-consultant means any subconsultant, subcontractor

“Sub-Consultant” person or organisation engaged by the *Consultant* pursuant to this Framework Agreement and any Call-Off Contract;

“Specialist Consultant” is a consultant who is a specialist/expert in his field within his industry. Maximum Charge Out Rates shall not apply to the Specialist Consultants at the *Employer’s* sole discretion;

“Term” is 2 years from the Framework Agreement Commencement Date unless extended in accordance with Clause 4;

“TfL Group” TfL and all its subsidiaries from time to time together with Crossrail Limited and any reference to any member of the TfL Group shall refer 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 the *Employer* committed to publishing its contracts, tender documents and data from invoices received.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument is construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and includes all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Framework Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise is construed as a reference to the document as at the date of execution of this Framework Agreement;
- 1.5 headings are included in the Framework Agreement for ease of reference only and do not affect the interpretation or construction of the Framework Agreement;

- 1.6 except as otherwise expressly provided in any Call-Off Contract, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Framework Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
- 1.6.1 each Call-Off Contract;
 - 1.6.2 these Clauses;
 - 1.6.3 the Schedules;
 - 1.6.4 any other document referred to in or incorporated by reference into this Framework Agreement or any Call-Off Contract;
- 1.7 the Schedules form part of the Framework Agreement and have the same force and effect as if expressly set out in the body of the Framework Agreement;
- 1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.9 the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context.

2. **Framework Agreement**

- 2.1 The purpose of this Framework Agreement is to:
- 2.1.1 provide a mechanism whereby an *Employer* and the *Consultant* may enter into Call-Off Contracts; and
 - 2.1.2 provide the framework to administer each Call-Off Contract.
- 2.2 The Services that may be requested by an *Employer* and provided by the *Consultant* are of the type described in the Framework Scope or as more particularly described in each Call-Off Contract. The *Employers'* requirements may vary and this Framework Agreement does not place any *Employer* under any obligation to procure the Services from the *Consultant* at a particular time or at all. This Framework Agreement is not an exclusive arrangement and nothing in this Framework Agreement operates to prevent

any *Employer* from engaging any other organisation or person to provide services similar to or the same as the Services.

- 2.3 Clause 7 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract is a binding agreement on the Parties and shall incorporate the terms and conditions of this Framework Agreement.
- 2.4 The *Consultant* commences provision of the *services* in accordance with the Call-Off Contract. The *Consultant* shall not commence any Services without an agreed Call-Off Contract.
- 2.5 All rates in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the rates set out in Schedule 1 of this Framework Agreement.

3. **Behaviour**

- 3.1 In order to work together in a co-operative and collaborative manner, the Framework Employer and the *Consultant* encourage integrated team working and give to each other and welcome from the other, feedback on performance.
- 3.2 Each *Employer* and the *Consultant* share information openly and highlight any difficulties at the earliest practicable time.
- 3.3 The Parties support collaborative behaviour and confront behaviour that does not comply with the provisions of this Framework Agreement. The *Consultant* shall not enter into any contractual agreements or arrangements that conflict with the principles of this Framework Agreement.

4. **Term of Framework Agreement and Call-Off Contracts**

- 4.1 This Framework Agreement (but not a Call-Off Contract) commences on the Framework Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement or unless extended at the Framework Employer's discretion up to a maximum of 4 years from Framework Agreement Commencement Date.
- 4.2 Each Call-Off Contract term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Contract term and the Services provided pursuant to a Call-Off Contract may extend beyond the

termination or expiry of this Agreement, in which case the provisions of this Framework Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.

4.3 Expiry or termination of a Call-Off Contract in accordance with its terms does not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Framework Agreement.

5. **The Services**

5.1 The *Consultant*:

5.1.1 shall provide the Services specified in a Call-Off Contract to the *Employer* in accordance with this Framework Agreement and the terms of the relevant Call-Off Contract;

5.1.2 acknowledges that it has sufficient information about the *Employer*; the Services and the scope of services to be provided[and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;

5.1.3 shall comply with all lawful and reasonable directions of the *Employer* relating to its performance of the Services under any Call-Off Contract.

5.2 The *Consultant* shall provide the Services under each Call-Off Contract:

5.2.1 using the skill, care and diligence normally used by professionals providing services similar to the Services, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Services; ;

5. 2.2 in conformance in all respects with the Scope and so that they fulfil the purpose indicated by or to be reasonably inferred from the the Scope; and

5.2.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

5.2.4 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Consultant shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the requirements specified in the relevant Call-Off Contract; and

5.2.5 all documents, drawings, computer software and any other work prepared or developed by the Consultant or supplied to the *Employer* under the relevant Call-Off Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

5.3 Each warranty and obligation in this Clause 5 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement.

5.4 Notwithstanding anything to the contrary in this Agreement, the *Employer's* discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Framework Agreement or relevant Call-Off Contract.

6. **Parent Company Guarantee, Warranties and Obligations**

6.1 If requested at any time during the Term of this Framework Agreement, the *Consultant* shall deliver to the Framework Employer a duly executed Parent Company Guarantee from the Parent Company (or such other person as the Framework Employer approves in writing) and, if requested by the Framework Employer, a legal opinion (in the form set out in Schedule 4A) as to its enforceability within 30 days of the request and; if requested by the *Employer* (in the form set out in Schedule 4B) within 30 days of execution of a Call-Off Contract or, if earlier the commencement of Services.

6.2 Without prejudice to any other warranties expressed elsewhere in this Framework Agreement or implied by law, the *Consultant* warrants, represents and undertakes that:

6.2.1 the *Consultant*:

has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Framework Agreement and any relevant Call-Off Contract; and

is entering into this Framework Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it acts as an independent contractor in carrying out its obligations under this Framework Agreement; and

- 6.2.2 the Framework Agreement is and each Call-Off Contract will be duly executed by the *Consultant*.
- 6.3 Each warranty and obligation in Clause 6.2 is construed as a separate warranty or obligation (as the case may be) and is not limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement.
- 6.4 Where the *Consultant* is a limited company the *Consultant*:
- 6.4.1 does not without notifying the Framework Employer prior to a change in the ownership of the *Consultant* undergo any change in the ownership (save for intra group companies change in ownership) of the *Consultant* where such change relates to 50% or more of the issued share capital of the *Consultant*.
- 6.4.2 if the *Consultant* does not notify the Framework Employer in accordance with 6.4.1, the Framework Employer may terminate this Framework Agreement if it determines (acting reasonably) that there is a material impact upon the Services due to any change in ownership;
- 6.4.3 gives notice to the Framework Employer in the event that there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company, such notice to be given within 10 Business Days of the date on which such change takes effect.
- 6.5 Where the *Consultant* is a partnership (non statutory) the rights, obligations and liabilities of the partners in the partnership under this Framework

Agreement are joint and several. This Framework Agreement and the liabilities of the partners under this Framework Agreement do not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of an additional partner or partners. The partners in the partnership use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Framework Employer confirming his/her acceptance of the rights, obligations and liabilities of the *Consultant* under this Framework Agreement.

6.6 Where the *Consultant* is comprised of two or more parties in joint venture or other alliance the rights, obligations and liabilities of each such party under this Framework Agreement and each Call-Off Contract are joint and several.

7. **Call-Off Procedure**

7.1 At any time during the Term, an *Employer* may identify those of the Services which at its sole discretion it wishes to let under the terms of this Framework Agreement in which event the Parties follow the procurement process set out below which the Framework Employer reserves the right, at its discretion, to amend from time to time to reflect best practice and applicable law.

7.2 Where an *Employer* undertakes a Mini-Competition it issues to those consultants on the Framework a mini-competition Request Form and its schedules, specifying the Services to be provided.

7.3 An *Employer* may (but is not obliged to) issue a request to express an interest, and/or a pre-qualification questionnaire to *Consultants* on the Framework Agreement with a specified deadline for a response before determining appropriate Consultant(s) to be included in the Mini-Competition.

7.4 Where the *Employer* is London Underground Limited the *Employer* may issue the mini-competition Request Form to Tube Lines Limited who may be included in the Mini-Competition.

7.5 Where an *Employer* having considered applicable law including the relevant procurement regulations (as applicable the Public Contracts Regulations 2006 and/or the Utilities Contracts Regulations 2006 (as amended)) elects to instruct the *Consultant* direct without the need for a Mini-Competition, it issues to the *Consultant* a direct Request Form and its schedules specifying

the Services to be provided. In the event that the *Consultant* receives a Request Form:

- 7.5.1 the *Consultant* within 2 Business Days confirms receipt of the Request Form.
- 7.5.2 The contents of the Request Form and its schedules are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.
- 7.5.3 Any contact relating to the Services with any *Employer's* personnel other than the procurement lead identified in the Request Form may invalidate the *Consultant's* Proposal submission.
- 7.5.4 The *starting* and Completion dates should be deemed material to the Call-Off Contract. If the *Consultant* is unable to meet the dates specified in the Request Form, the *Consultant* should propose alternatives within the clarification process.
- 7.5.5 In the Proposal submission the commercial Proposal must be separated from the technical Proposal. Prices must not be included in the technical Proposal. The documents must be clearly titled 'Commercial Proposal' and 'Technical Proposal'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents.
- 7.5.6 During the course of our evaluation of Proposal submissions, the *Consultant* may be asked to answer questions about his submission and other matters related to the Services. The *Consultant* must respond to such questions as quickly as possible but, in any event, within 2 (two) working days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the *Employer* rejecting the Proposal submission. Any amendments to the Proposal submission arising from these discussions with the *Consultant* will be taken into account in the final evaluation.
- 7.5.7 To enable moderation of the Proposal evaluation process, The *Employer* may request a meeting from all, some or one of the

Consultants. Failure to attend may result in the *Employer* rejecting the Proposal submission.

- 7.5.8 Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If you wish the *Employer* to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting your Proposal.
- 7.5.9 Failure to disclose all material information (facts that the *Employer* regards as likely to affect the evaluation process), or disclosure of false information at any stage of the procurement process may result in ineligibility for award. The *Consultant* must provide all information requested and not assume that the *Employer* has prior knowledge of any of the *Consultant's* information.
- 7.5.10 Limitations of liability are detailed within the Request Form schedules, failure to accept the specified limitations of liability may lead to the *Consultant's* Proposal being rejected. Any proposed amendments relating to insurance liabilities must be submitted within the clarification process and shall be agreed at the *Employer's* sole discretion.
- 7.5.11 the *Consultant* completes and issues to the *Employer* a Proposal incorporating the completed Request Form schedules as an offer capable of acceptance or notifies the *Employer* that it does not intend to submit a Proposal. The *Consultant* responds to the *Employer* by the date specified in the *Request Form* or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Procurement Manager. A Proposal remains valid for at least 6 months (or such longer period as may be specified in the Request Form) from the date it is submitted to the *Employer*.
- 7.6 If the *Employer* accepts a Proposal issued in response to a direct Request Form it notifies the *Consultant* that the Call-Off Contract is awarded.
- 7.7 Subject to Clause 7.12, in relation to a Proposal issued in response to a mini-competition Request Form the *Employer* will evaluate tendered Proposals to determine which is the most economically advantageous with reference to

the assessment criteria set out in the mini-competition Request Form as they relate to the Services in question. Each of the consultants to whom the mini-competition Request Form was sent is notified as to whether or not it has been successful.

7.8 After the *Employer* awards a Call-Off Contract pursuant to Clause 7.6 or 7.7, the *Employer* forwards to the *Consultant* two copies of the Call-Off Contract. The *Consultant* executes both copies and returns them to the *Employer* within 10 Business Days of receipt. The Procurement Manager arranges for both copies of the Call-Off Contracts to be executed by the *Employer* and sends a completed executed Call-Off Contract to the *Consultant*.

7.9 Each Call-Off Contract is a binding agreement on the *Employer* and the *Consultant* and incorporates the terms and conditions set out in:

7.9.1 the completed form of agreement (if applicable);

7.9.2 the Conditions of Contract identified as applicable in the Call-Off Contract; and

7.9.3 the Call-Off Contract and each document referred to in it;

and such documentation together forms a separate agreement between the *Employer* and the *Consultant*.

7.10 The *Consultant* submits with each Proposal full details of the basis on which the Prices have been calculated. The Prices are calculated on the following basis:

7.10.1 Subject to Clause 7.10.2., and in respect of Specialist Consultants at the *Employer's* sole discretion, the rates used by the *Consultant* in preparing a Proposal and the *staff rates* included in the Call-Off Contract do not exceed the Maximum Charge Out Rates.

7.10.2 If the Request Form identifies that all or part of the *services* are to be provided on a Saturday, Sunday or Bank Holiday or between the hours of 8pm and 8am the *Consultant's* maximum increase to the rates used by the *Consultant* in preparing a Proposal and the *staff rates* included in the Call-Off Contract for such services shall not exceed the relevant Out Of Hours Working Percentage Mark-Up.

7.10.3 Not Used.

- 7.11 A Request Form and anything prepared or discussed by an *Employer* constitutes an invitation to treat and does not constitute an offer capable of acceptance by the *Consultant*. No *Employer* is obliged to consider or accept any Proposal submitted by the *Consultant*.
- 7.12 This Framework Agreement does not oblige any *Employer* to enter into any Call-Off Contract with the *Consultant*.
- 7.13 Unless otherwise expressly agreed in writing with the Framework Employer the *Consultant* does not charge under this Framework 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 7.
- 7.14 Where reasonably requested to do so by the GLA, a London Borough, or a Functional Body and provided the *Consultant* is willing to so contract, the *Consultant* enters into a Call-Off Contract with the GLA, a London Borough, or any Functional Body pursuant to the terms of this Framework Agreement mutatis mutandis. The GLA, London Boroughs, and the Functional Bodies do not affect or amend this Framework Agreement and each Call-Off Contract is specifically between the *Consultant* and the GLA or appropriate London Borough, or Functional Body and the TfL Group is not liable for the GLA or appropriate London Borough or Functional Bodies' obligations arising out of such Call-Off Contract.
- 7.15 The *Consultant* is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 7 and no *Employer* shall be liable for any costs, charges or expenses borne by or on behalf of the *Consultant* whether or not the *Consultant* is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

8. **Contractual Management**

- 8.1 The Framework Employer authorises the Procurement Manager to act as the Framework Employer's representative for all purposes of this Framework Agreement and the *Consultant* deals with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Framework Agreement, unless notified otherwise. The Framework Employer

may replace the Procurement Manager after he has notified the *Consultant* of the name of the replacement. The relevant *Employer* appoints an *Employer's Agent* in respect of each Call-Off Contract and the *Consultant* deals with the *Employer's Agent* in relation to matters arising under a Call-Off Contract, unless otherwise notified by the *Employer*.

8.2 The Consultant Manager acts as the *Consultant's* representative for all purposes of this Framework Agreement. The Consultant Manager:

8.2.1 diligently supervises the performance of any Services instructed under a Call-Off Contract;

8.2.2 attends all contract meetings with any *Employer* (the location, frequency and time of which are specified by the Procurement Manager or the relevant *Employer's Agent* from time to time); and

8.2.3 is available to each *Employer* on reasonable notice (or as specified in any Call-Off Contract) to resolve any issues arising in connection with this Framework Agreement or any Call-Off Contract.

8.3 The *Consultant* may only make any changes to the Consultant Manager (except in the event of sickness, incapacity or resignation) with the prior written consent of the Framework Employer (which is not to be unreasonably withheld or delayed).

8.4 No act of or omission by or approval from either the *Employer*, the Procurement Manager, or any *Employer's Agent* in performing any of their respective duties under or in connection with this Framework Agreement or relevant Call-Off Contract relieves the *Consultant* of any its duties, responsibilities, obligations or liabilities under this Framework Agreement or any Call-Off Contract.

9. **Adjustment of Maximum Charge Out Rates**

9.1 The Maximum Charge Out Rates are reviewed on the first anniversary of the Framework Agreement Commencement Date and each subsequent anniversary during the Term. On each such review, and at the discretion of the Framework Employer, the Maximum Charge Out Rates are increased or decreased by such amount as is reasonable to reflect the increase or decrease (if any) in the salaries of the *Consultant's* staff provided that on

each such review the Maximum Charge Out Rates do not increase or decrease by more than the percentage increase or decrease between the Index Figure last published before the date of review and the Index Figure last published before the Relevant Date. The review of the Maximum Charge Out Rates does not affect the Prices under any Call-Off Contract entered into prior to the date of review.

9.2 The *Consultant* will submit to the *Employer* on a 6 monthly basis an open book spreadsheet identifying for each member of staff engaged in relation to the Services their grade and employment cost.

10. **Consultant's Personnel**

10.1 Nothing in this Framework Agreement or any Call-Off Contract will render the Consultant's Personnel, an employee, agent or partner of an *Employer* by virtue of the provision of the Services by the *Consultant* under this Framework Agreement or Call-Off Contract and the *Consultant* shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Consultant's Personnel.

10.2 The *Consultant* shall provide the Consultant's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract.

10.3 No *Employer* is under an obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the *Consultant* except as may be specified in any Call-Off Contract.

10.4 Without prejudice to any of an *Employer's* other rights, powers or remedies, an *Employer* may (without liability to the *Consultant*) deny access to such Consultant's Personnel to any Employer Premises, if such Consultant's Personnel in the *Employer's* view have not been properly trained in any way required by a relevant Call-Off Contract and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the *Consultant* of such denial in writing; the *Consultant* shall immediately remove such Consultant's Personnel from performing the Services and provide a suitable replacement (with the Call-Off Co-ordinator's prior consent in the case of Key Persons).

10.5 The *Consultant* shall indemnify, keep indemnified and hold harmless an *Employer* from and against all liabilities, costs, expenses, injuries, , damages,

claims, demands, proceedings and legal costs (on a full indemnity basis) which an *Employer* incurs or suffers whenever arising or brought by the *Consultant's* Personnel or any person who may allege to be the same.

10.6 The *Consultant* shall pay to the *Consultant's* Personnel not less than the amounts to which the *Consultant's* Personnel are contractually entitled.

10.7 If the *Employer* requires Specialist Consultant services, he will notify the *Consultant* within the Request Form.

11. **Sub-Contracting**

11.1 The *Consultant* shall not assign or sub-contract all or any part of the Services without the prior written consent of the *Employer* identifying the relevant sub-contractor which may be refused or granted subject to such conditions as the *Employer* sees fit.

11.2 Where the *Consultant* sub-contracts all or any part of the Services to any person, the *Consultant* shall:

11.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the *Consultant* under the relevant Call-Off Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;

11.2.2 be responsible for payments to that person; and

11.2.3 remain solely responsible and liable to the *Employer* for any breach of the relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the *Consultant*.

12. **Equipment**

12.1 Risk in:

12.1.1 all Consultant Equipment shall be with the *Consultant* at all times; and

12.1.2 all other equipment and materials forming part of the Services (title to which will pass to the *Employer*) (“**Materials**”) shall be with the *Consultant* at all times until completion of the Services in accordance with the relevant Call-Off Contract.

12.1.3 regardless of whether or not the Consultant’s Equipment and Materials are located at Employer Premises:

12.1.3.1 The *Consultant* shall ensure that all Consultant’s Equipment and all Materials meet all minimum safety standards required from time to time by law.

13. **Conflict of Interest**

13.1 The *Consultant* acknowledges and agrees that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Framework Employer.

13.2 The *Consultant* undertakes ongoing and regular conflict of interest checks throughout the duration of this Framework Agreement and in any event not less than once in every six months and notifies the Framework Employer in writing immediately on becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and works with the Framework Employer to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Framework Employer’s satisfaction, provided that where the Framework Employer is not so satisfied (in its absolute discretion) it is entitled to terminate this Framework Agreement, and all Call-Off Contracts in existence, in accordance with Clause 27.1.5.

14. **Compliance with Policies and Law**

14.1 The *Consultant*, at no additional cost to the *Employer*:

14.1.1 undertakes to procure that all the Consultant’s Personnel comply with all of the *Employer’s* policies and standards that are relevant to the performance of the Services, and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the *Employer* for personnel working at Employer Premises or accessing the *Employer’s* computer

systems. The Framework Employer shall provide the Consultant with copies of such policies and standards on request;

- 14.1.2 shall provide the Services in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the *Consultant's* business and/or the *Employer's* business, from time to time in force which are or may become applicable to the Services. The *Consultant* shall promptly notify the *Employer* if the Consultant is required to make any change to the Services for the purposes of complying with its obligations under this Clause 14.1.2;
- 14.1.3 without limiting the generality of Clause 14.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 14.1.4 acknowledges that the *Employer* is under a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the *Consultant* shall assist and co-operate with the *Employer* where possible in satisfying this duty;
- 14.1.5 without prejudice to any other provision of this Clause 14.1 or the Schedules, shall comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of TfL's Traffic Manager as may be made available to the *Consultant* from time to time. For the purposes of this Clause "Traffic Manager" means TfL's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and

14.1.6 shall promptly notify the Consultant's Personnel and the *Employer* of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this Clause 14.1 shall be borne by the *Consultant*.

14.2 Without prejudice to Clause 14.1, the *Consultant* shall comply with TfL Bullying and Harrasment policy as updated from time to time (copies of which are available on request from TfL) and with the TfL Corporate Governance which is available on the TfL website, <https://www.tfl.gov.uk/corporate/about-tfl/how-we-work/corporate-governance/code-of-corporate-governance>

14.3 In providing the Services, the *Consultant* shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Consultant's* activities may impact on the environment) to the need to:

14.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

14.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;

14.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

14.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

15. **Corrupt Gifts and Payment of Commission**

15.1 The *Consultant* does not, and ensures that its, employees, agents, sub-contractors and Consultant's Personnels do not:

- 15.1.1 pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of any *Employer*,
- 15.1.2 favour any employee, servant, officer or agent of any *Employer* with gifts or entertainment of significant cost or value;
- 15.1.3 enter into any business arrangement with employees, servants, officers or agents of any *Employer* other than as a representative of the *Employer*, without the Framework Employer's prior written approval:
- 15.1.4 offer or agree to give to any servant, employee, officer or agent of any *Employer* any grant, gift or consideration of any kind as an inducement or reward,
 - 15.1.4.1 or showing or not showing favour or disfavour to any person in relation to this Framework Agreement and all Call-Off Contracts or any other contract with any *Employer*,
 - 15.1.4.2 commit any offence:
 - (a) under the Bribery Act 2010;
 - (b) under any law or legislation creating offences in respect of fraudulent acts; or
 - (c) at common law in respect of fraudulent acts in relation to this Framework Agreement and all Call-Off Contracts or any other contract with any *Employer*,
- 15.1.5 defraud or attempt to defraud any *Employer*.
- 15.2 Without prejudice to its rights under Clause 29, the Framework Employer may audit and check any and all such records as are necessary in order to monitor compliance with this Clause 15 at any time during performance of this Framework Agreement and during the 12 years thereafter.
- 15.3 If any fraudulent activity comes to the attention of the *Consultant* in relation to this Framework Agreement the *Consultant* notifies the Framework Employer

by the most expeditious means available. The *Consultant* cooperates with the Framework Employer in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under this Framework Agreement as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Consultant's Personnel.

- 15.4 If the *Consultant*, any of its shareholders or any Consultant's Personnel or anyone employed by or acting on behalf of the *Consultant* or any of his agents commits any breach of this Clause 15, this constitutes a material breach of this Framework Agreement and entitles the *Employer* to terminate the Framework Agreement and all Call-Off Contracts, in existence, in accordance with Clause 27.1.4.
- 15.5 If a breach of this Clause 15 is committed by an employee of the *Consultant* or by any Consultant's Personnel (or employee or agent of such Consultant's Personnel) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Consultant* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Consultant* terminates, or procures the termination of, the employee's employment or Consultant's Personnel's appointment (as the case may be) and (if necessary) procures the provision of the affected Services by another person, this constitutes a material breach of this Framework Agreement and entitles the Framework Employer to terminate the Framework Agreement and all Call-Off Contracts in existence, with immediate effect in accordance with Clause 27.1.4.
- 15.6 In the event of any breach of this Clause 15 by the *Consultant* the Framework Employer recovers from the *Consultant* any loss liability or damage incurred or suffered as a result of the breach of this Clause by the *Consultant*.

16. **Quality and Best Value**

- 16.1 The *Consultant* acknowledges that each *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such each *Employer* 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 *Consultant* assists each *Employer* to

discharge each *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the Services reasonably requested by the Framework Employer from time to time.

16.2 The *Consultant* provides a quality policy statement within 30 days of the Framework Agreement Commencement Date.

17. **Employer Data**

17.1 The *Consultant* acknowledges the *Employer's* ownership of Intellectual Property Rights which may subsist in the *Employer's* data. The *Consultant* shall not delete or remove any copyright notices contained within or relating to the *Employer's* data.

17.2 The *Consultant* and the *Employer* shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the *Employer's* data and to prevent any corruption or loss of the *Employer's* data.

18. **Access to Premises**

18.1 Any access to any Employer Premises made available to the *Consultant* in connection with the proper performance of the Call-Off Contract shall be free of charge and shall be used by the *Consultant* solely for the purpose of performing the Services during the Call-Off Contract Term, for the avoidance of doubt, that the *Consultant* shall be responsible for its own costs or travel including any congestion charging. The *Consultant* shall:

18.1.1 have the use of such Employer Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such premises;

18.1.2 vacate such Employer Premises upon the termination or expiry of the relevant Call-Off Contract or at such earlier date as the *Employer* may determine;

18.1.3 not exercise or purport to exercise any rights in respect of any Employer Premises in excess of those granted under this Clause 18.1;

18.1.4 ensure that the *Consultant's* Personnel carry any identity passes issued to them by the *Employer* at all relevant times and comply

with the *Employer's* security procedures as may be notified by the *Employer* from time to time; and

18.1.5 not damage the premises or any assets on the Employer Premises.

18.2 Nothing in this Clause 18 shall create or be deemed to create the relationship of landlord and tenant in respect of any Employer Premises

19. **Intellectual Property Rights**

19.1 Vesting of Intellectual Property Rights

The parties agree that the Intellectual Property Rights in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Consultant* in the performance of this contract (including Intellectual Property Rights in materials or works created by a Consultant's Personnel) vests in the *Employer*. The *Consultant* procures that each Consultant's Personnel assigns such Intellectual Property Rights to the *Employer*.

19.2 Background Intellectual Property Rights

In respect of Background Intellectual Property Rights, the *Consultant* grants (in respect of his own Background Intellectual Property Rights) and procures the grant of (in respect of a Consultant's Personnel's or other third party's Background Intellectual Property Rights) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes of:

- understanding the services;
- operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the services;
- extending, interfacing with, integrating with, connection into and adjusting the services and/or the works of Others; and

- enabling London Underground Limited to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network (where applicable).

19.3 The *Consultant* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Consultant's* Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes listed in Clause 19.2.

19.4 The *Consultant* indemnifies the *Employer* and members of the TfL Group against all Losses arising out of any use by the *Employer* of the Background Intellectual Property Rights, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under Clause 19.2 infringes the Intellectual Property Rights rights or other rights of any third party.

19.5 Corporate Intellectual Property Rights

The *Consultant* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights rights of the *Employer*.

19.6 Moral rights

The *Consultant* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Works.

20. IT Requirements

20.1 Any software, electronic or magnetic media, hardware or computer system used or supplied by the *Consultant* in connection with this Framework Agreement:

20.1.1 is Euro compliant; and

- 20.1.2 is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website; and
- 20.1.3 does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any *Employer* on which it is used or with which it interfaces or comes into contact; and
- 20.1.4 any variation, enhancement or action undertaken by the *Consultant* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Consultant's* compliance with this warranty.

21. **Set-Off**

When under this Framework Agreement or any Call-Off Contract any sum of money is recoverable from or payable by the *Consultant* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Consultant* under any Call-Off Contract or any other contract with the *Employer*. Any sum due from the *Consultant*, whether under this Framework Agreement or any other contract with the *Employer*, shall be payable as a debt to the *Employer*.

22. **Confidentiality, Announcements and Transparency**

22.1 The *Consultant* shall keep confidential:

22.1.1 the terms of this Agreement and all Call-Off Contracts; and

22.1.2 any and all Confidential Information that it may acquire in relation to the Framework *Employer* or any *Employer*.

22.2 The *Consultant* will not use the Framework *Employer* or any *Employer's* Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The *Consultant* will ensure that its officers and employees comply with the provisions of Clause 22.

- 22.3 The obligations on the *Consultant* set out in this Clause 22 will not apply to any Confidential Information which:
- 22.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 22); or
 - 22.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - 22.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and subcontractors.
- 22.4 The *Consultant* shall keep secure all materials containing any information in relation to this Agreement or to any Call-Off Contract and its performance.
- 22.5 The *Consultant* shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Agreement or any Call-Off Contract or that it is providing the Services to the *Employer* or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the *Employer*. The *Employer* shall have the right to approve any announcement before it is made.
- 22.6 The *Consultant* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 22.1 and Clause 24, the *Consultant* hereby gives its consent for the *Employer* to publish the Contract Information to the general public.
- 22.7 The *Employer* 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 *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in Clause 24.1.1.1 below). The *Employer* may in its absolute discretion consult with the *Consultant* regarding any redactions to the Contract Information to be published pursuant to Clause [22.6]. The

Employer shall make the final decision regarding publication and/or redaction of the Contract Information.

22.8 The provisions of this Clause 22 will survive any termination of this Agreement or Call-Off Contract for a period of 6 years from termination.

23. **Data Protection**

23.1 The *Consultant* complies 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 *Employer* (“Employer Personal Data”), the *Consultant* only carries out such processing for the purpose of the Services and in accordance with instructions from the *Employer*.

23.2 When the *Consultant* receives a written request from the *Employer* for information about, or a copy of, Employer Personal Data, the *Consultant* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within 14 days from the date of the request.

23.3 The *Employer* remains solely responsible for determining the purposes and manner in which Employer Personal Data is to be processed. The *Consultant* does not share any Employer Personal Data with any Consultant’s Personnel or third party unless there is a written agreement in place which requires the Consultant’s Personnel or third party to:

23.3.1 only process Employer Personal Data in accordance with the *Employer’s* instructions to the *Consultant*; and

23.3.2 comply with the same data protection requirements that the *Consultant* is required to comply with under this Framework Agreement.

23.4 The *Consultant*:

23.4.1 takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;

23.4.2 provides the *Employer* with such information as he may reasonably require to satisfy himself of compliance by the *Consultant* with the requirements of this Clause 23;

23.4.3 cooperates with the *Employer* in complying with requests or enquiries made pursuant to the Data Protection Act.

24. **Freedom of Information**

24.1 For the purposes of this Clause 24:

24.1.1 “**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;

24.1.2 “**Information**” means information recorded in any form held by an *Employer* or by the *Consultant* on behalf of an *Employer*; and

24.1.3 “**Information Request**” means a request for any Information under the FOI Legislation.

24.2 The *Consultant* acknowledges that an *Employer*:

24.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with an *Employer* to enable it to comply with its obligations under the FOI Legislation; and

24.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the *Consultant*.

24.3 Without prejudice to the generality of Clause 24.2, the *Consultant* shall and shall procure that *Consultant’s* Personnel (if any) shall:

24.3.1 transfer to the Procurement Manager (or such other person as may be notified by an *Employer* to the *Consultant* each Information Request relevant to this Agreement or a Call-Off Contract, the Services that it or they (as the case may be) receive

as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and

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

24.4 An *Employer* 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 *Consultant* shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by an *Employer*.

25. **Responsible Procurement**

25.1 The *Consultant* acknowledges the requirements of the Responsible Procurement Policy in the performance of its obligations under this Framework Agreement and each Call-Off Contract.

25.2 The *Consultant* provides such cooperation and assistance as may be reasonably requested by each *Employer* in relation to the Responsible Procurement Policy.

25.3 The *Consultant* complies with the requirements of Schedule 14 regarding strategic labour needs and training. No *Employer* is liable to the *Consultant* for any costs, charges or expenses arising out of or associated with compliance with Schedule 14.

26. **Supplier Performance**

26.1 The Framework Employer shall score the *Consultant's* performance in accordance with Schedule 13.

26.2 If the *Consultant* scores below 3 in respect of any such scoring exercise the *Consultant* at its own cost shall resolve poor performance in accordance with Schedule 13.

27. **Breach and Termination of Framework Agreement**

27.1 Without prejudice to the Framework Employer's right to terminate at common law, the Framework Employer may terminate this Framework Agreement immediately upon giving notice to the *Consultant* if:

27.1.1 except as provided in and without prejudice to Clauses 27.1.3 and 27.1.4, the *Consultant* has committed any material or persistent breach of this Framework Agreement or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Framework Employer) from the date of written notice to the *Consultant* giving details of the breach and requiring it to be remedied; or

27.1.2 the *Consultant* or the Holding Company is subject to Insolvency; or

27.1.3 there is a Safety Breach; or

27.1.4 the *Consultant* is in breach of Clause 6.4 or 15; or

27.1.5 the Framework Employer is not satisfied on the issue of any conflict of interest in accordance with Clause 13; or

27.1.6 the *Consultant* commits any of the money laundering related offences listed in the Public Agreement Regulations 2006.

27.1.7 In accordance with 6.4.2 if the Framework Employer determines (acting reasonably) that there is a material impact upon Services.

27.2 Without prejudice to any of the Framework Employer's other rights, powers or remedies (whether under this Framework Agreement or otherwise) if the *Consultant* is in breach of any of its warranties and/or obligations under Clause 5 and/or any of its other obligations in respect of the Services under this Framework Agreement or any Call-Off Contract, the *Consultant*, if required to do so by the Framework Employer, promptly remedies and/or re-performs the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause

27.2 prevents the Framework Employer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative Consultant and, where the Framework Employer so procures any Services or any remedial action, the Framework Employer is entitled to recover from the *Consultant* all additional cost, loss and expense incurred by the Framework Employer and attributable to any *Employer* procuring such Services or remedial action from such alternative consultant.

27.3 Without prejudice to the Framework Employer's right to terminate this Framework Agreement or to terminate at common law, the Framework Employer may terminate this Framework Agreement at any time without cause subject to giving the *Consultant* 30 days written notice. For the avoidance of doubt, the *Consultant* shall not be entitled to claim any losses from the Framework Employer whatsoever and howsoever arising including direct losses, indirect losses, loss of profit, economic loss, loss of goodwill or consequential loss in the event the Framework Employer terminates this Framework Agreement without cause.

27.4 To the extent that the Framework Employer has a right to terminate this Framework Agreement under this Clause 27 then, as an alternative to termination, the Framework Employer may by giving notice to the *Consultant* require the *Consultant* to provide part only of the Services with effect from the date specified in the Framework Employer's notice whereupon the provision of the remainder of the Services ceases and the definition of "the Services" is construed accordingly.

27.5 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose, then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Unaffected Party**") may terminate the Call-Off Contract immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this Clause 27.5 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Unaffected Party by reason of such termination.

28. **Consequences of Termination or Expiry**

- 28.1 Notwithstanding the provisions of Clause 22, wherever the Framework Employer chooses to put out to tender for a replacement consultant some or all of the Services, the *Consultant* discloses to tenderers such information concerning the Services as the Framework Employer requires for the purposes of such tender. The *Consultant* may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 28.2 The termination or expiry of this Framework Agreement does not prejudice or affect any right, power or remedy which has accrued or accrues to either Party prior to or after such termination or expiry.
- 28.3 Upon expiry or termination of this Framework Agreement or relevant Call-Off Contract (howsoever caused) the *Consultant*, at no further cost to the Framework Employer on receipt of the Framework Employer's written instructions to do so (but not otherwise), arranges to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 28.4 On termination of this Framework Agreement under Clause 27.1 or a cessation of any Services under Clause 27.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Framework Employer to terminate under Clause 27.1), the Framework Employer may enter into any agreement with any third party or parties as the Framework Employer thinks fit to provide any or all of the Services and the *Consultant* is liable for all additional expenditure reasonably incurred by the Framework Employer in having such services carried out and all other costs and damages reasonably incurred by the Framework Employer in consequence of such termination. The Framework Employer may deduct such costs from sums due to the *Consultant* or otherwise recover such costs from the *Consultant* as a debt.

29. **Audit**

The *Consultant* undertakes and procures that its Consultant's Personnel undertake their obligations and exercise any rights which relate to the performance of this Framework Agreement and any Call-Off Contract on an open-book basis. The Framework Employer and its authorised representatives may from time to time audit on an open-book basis and

check any and all information regarding any matter relating to the performance of or compliance with this Framework Agreement and any Call-Off Contract, including inspection of the *Consultant's* technical and organisational security measures for the protection of personal data, any aspect of the *Consultant's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The Framework Employer's rights pursuant to this Clause include the right to audit and check and to take extracts from any document or record of the *Consultant* and/or his Consultant's Personnel.

30. **Survival**

Any provision of this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement or relevant Call-Off Contract does so.

31. **Rights of Third Parties**

31.1 Save that any member of the TfL Group has the right to enforce the terms of this Framework Agreement or any relevant Call-Off Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Framework Agreement or any relevant Call-Off Contract is enforceable by virtue of the Third Party Act by any person not a party to it.

31.2 Notwithstanding Clause 31.1, the Parties are entitled to vary or rescind this Framework Agreement or any relevant Call-Off Contract without the consent of any or all members of the TfL Group (other than the *Employer*).

32. **Contract Variation**

Save where the *Employer* may require an amendment to the Services, this Framework Agreement or any Call-Off Contract may only be varied or amended with the written agreement of both Parties.

33. **Novation and Assignment**

33.1 The *Employer* may novate or otherwise transfer this Framework Agreement (in whole or in part).

33.2 Within 10 Business Days of a written request from the *Employer*, the *Consultant* at its expense executes such agreement as the *Employer* may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Framework Agreement to one or more persons nominated by the *Employer*.

33.3 This Framework Agreement is personal to the *Consultant* who does not assign the benefit or delegate the burden of this Framework Agreement or otherwise transfer any right or obligation under this Framework Agreement without the prior written consent of the *Employer*.

34. **Indemnity and Insurance**

34.1 The *Consultant* shall indemnify and keep indemnified the *Employer* against all Losses in respect of, or in any way arising out of or in connection with any breach of this Framework Agreement or from any negligent act or omission of the *Consultant* (save to the extent that such Losses may have been caused by an *Employer*).

34.2 The *Consultant* provides the insurances stated in the Call-Off Contract.

35. **Non-Waiver of Rights**

No waiver of any of the provisions of this Framework Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing. The single or partial exercise of any right, power or remedy under this Framework Agreement does not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

36. **Illegality and Severability**

If any Clause or part of this Framework Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this Framework Agreement and is ineffective without, as far as is possible, modifying any other Clause or part of this Framework Agreement and this does not affect any other provisions of this Framework Agreement which remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the *Employer*

and the *Consultant* immediately commence good faith negotiations to remedy such invalidity.

37. **Entire Agreement**

37.1 Subject to Clause 37.2:

37.1.1 this Framework Agreement and any relevant Call-Off Contract and all documents referred to in this Framework Agreement and any relevant Call-Off Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Framework Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Framework Agreement by a statement which it does not contain; and

37.1.2 without prejudice to the *Consultant's* obligations under this Framework Agreement, the *Consultant* is responsible for and makes no claim against the *Employer* in respect of any misunderstanding affecting the basis of the *Consultant's* tender in respect of this Framework Agreement or any incorrect or incomplete information howsoever obtained.

37.2 Nothing in this Clause 37 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

38. **Relationship of the Parties**

Nothing in this Framework Agreement or any Call-Off Contract constitutes, or is deemed to constitute, a partnership between the Parties. Except as expressly provided in this Framework Agreement and any Call-Off Contract, neither Party is deemed to be the agent of the other, and neither Party holds itself out as the agent of the other.

39. **Notices**

Any notice, demand or communication in connection with this Framework Agreement is in writing and may be delivered by hand, post addressed to the

recipient at its registered office or any other address notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication is deemed to have been duly served:

- 39.1 if delivered by hand, at the time of delivery;
- 39.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 Business Days after being posted.

40. **Further Assurance**

Each Party does or procures the doing of all acts and things and executes or procures the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Framework Agreement and any relevant Call-Off Contract.

41. **Disputes**

- 41.1 The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this Framework Agreement.
- 41.2 In this Clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- 41.3 A Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representatives and, gives brief written particulars of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- 41.4 Within 14 days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- 41.5 Within a further 14 days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions

between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

- 41.6 If a Dispute is to be referred to the Adjudicator the Parties appoint the Adjudicator.
- 41.7 The Adjudicator acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 41.8 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.
- 41.9 The Nominating Authority chooses an adjudicator within 4 days of the request. The chosen adjudicator becomes the Adjudicator.
- 41.10 A replacement Adjudicator has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.
- 41.11 The Adjudicator, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 41.12 Before a Party refers a Dispute to the Adjudicator, he gives a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Party immediately sends a copy of the Notice of Adjudication to the Adjudicator. Within 3 days of the receipt of the Notice of Adjudication, the Adjudicator notifies the Parties:
 - 41.12.1 that he is able to decide the Dispute in accordance with this Framework Agreement; or
 - 41.12.2 that he is unable to decide the Dispute and has resigned.

If the Adjudicator does not so notify within 3 days of the issue of the Notice of Adjudication, either Party may act as if he has resigned.

41.13 Within 7 days of a Party giving a Notice of Adjudication he:

41.13.1 refers the Dispute to the Adjudicator;

41.13.2 provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents; and

41.13.3 provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Party.

41.14 Within 14 days from the referral, any Party, who is not the Party giving a Notice of Adjudication, provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

These periods may be extended if the Adjudicator and Parties agree.

41.15 The Adjudicator may:

41.15.1 make directions for the conduct of the Dispute;

41.15.2 review and revise any action or inaction of the *Employer* related to the Dispute;

41.15.3 take the initiative in ascertaining the facts and the law related to the Dispute;

41.15.4 instruct a Party to provide further information related to the Dispute within a stated time; and

41.15.5 instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

41.16 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.

- 41.17 The Adjudicator shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 41.18 A communication between a Party and the Adjudicator is communicated to the other Party at the same time.
- 41.19 Save as required by law, the Parties and the Adjudicator keep information relating to the Dispute confidential.
- 41.20 The Adjudicator decides the Dispute and notifies the Parties of his decision and his reasons within 28 days of the Dispute being referred to him. This period may be extended by up to 14 days with the consent of the Parties or by any other period agreed by the Parties.
- 41.21 If the Adjudicator's decision includes assessment of additional cost or delay caused to the *Consultant*, he makes his assessment in the same way as a compensation event is assessed. If the Adjudicator's decision changes an amount notified as due, payment or repayment (as the case may be) of the sum decided by the Adjudicator is due not later than seven days from the date of the adjudicator's decision or final date for payment of the notified amount, whichever is the later.
- 41.22 The Adjudicator may allocate the costs and expenses of the adjudication, including the fees and expenses of the Adjudicator, as between the Parties.
- 41.23 Unless and until the Adjudicator has notified the Parties of his decision the Parties proceed as if the matter disputed was not disputed.
- 41.24 If the Adjudicator does not make his decision and notify it to the Parties within the time provided by this Framework Agreement the Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.
- 41.25 The Adjudicator's decision is binding on the Parties unless and until revised by the courts and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by this Framework Agreement that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts.

- 41.26 The Adjudicator may, within 5 days of giving his decision to the Parties, correct a clerical or typographical error arising by accident or omission.
- 41.27 Unless the Parties agree otherwise or in the case of injunctive relief,, a Party does not refer any Dispute under or in connection with this Framework Agreement to the courts unless it has first been decided by the Adjudicator in accordance with this Framework Agreement.
- 41.28 If, after the Adjudicator notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within 6 weeks of the notification of the Adjudicator's decision.
- 41.29 The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the Adjudicator.
- 41.30 A Party does not call the Adjudicator as a witness in court proceedings.

42. **Governing Law**

The Framework Agreement is governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 41, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Framework Agreement provided that the *Employer* has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the *Consultant* is incorporated or in which any assets of the *Consultant* may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE FRAMEWORK AGREEMENT has been executed as a Deed and delivered by the Parties the day and year written above.

EXECUTED as a **DEED** by the)
Consultant)
acting by a Director and its)
Company Secretary or two)
Directors)

Director

Director/Secretary

The Common Seal/Corporate Seal of
TRANSPORT FOR LONDON was
affixed to this **DEED** in the presence of:

.....
Name and description of authorised signatory

SCHEDULE 1
(Pricing and Commercial Information)

See Appendix A at End of Document

0.2 LUL SCHEDULE OF AMENDMENTS

ADDITIONAL REQUIREMENTS

LUL Requirements

The following schedule of additional amendments to the core clauses, main option clauses and secondary option clauses is applicable to all London Underground contracts let under the Framework Agreement.

Where London Underground Limited, LUL Nominee SSL Limited, LUL Nominee BCV Limited or Tube Lines Limited is the *Employer* then these additional amendments are selected and incorporated into the *conditions of contract*.

- 11.2 Sub-clause 11.2
Insert the following new definitions:
- 11.2(16A) Access Code means the code of that name governing rights of access to the Underground Network in force from time to time and as attached at Schedule [18] of the Framework Agreement.
- 11.2(16B) Assurance Plans means the plans as required by Standard 1-538 (Assurance) which:
- (a) define the *Consultant's* organisational arrangements, roles and responsibilities in respect of provision of assurance regarding the *services*;
 - (b) define the *Consultant's* assurance milestones; and
 - (c) define the *Consultant's* proposals for providing evidence of assurance to the *Employer* at each assurance milestone by way of tests, demonstrations or otherwise.
- 11.2(16C) Assurance Regime means the Assurance Regime agreed between the Parties and as set out in the Scope (and as amended from time to time).
- 11.2(16D) Available means:
- the *works* are safe and in accordance with the requirements of the Scope;
 - there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and
 - the *works* are readily accessible and operable by the *Employer*.
- 11.2(17A) BCV Contract means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms.
- 11.2(20A) Change of Control means a change of ownership of the *Consultant* (or parent company if applicable) where such change relates to fifty percent or more of the issued share capital of the *Consultant* (or parent company as the case may be).
- 11.2(22A) Critical Defect means a Defect which appears on or before the *defects date* and which is:
- critical to the operation and/or safety of the Underground Network;
 - within a category of Defects identified in the Scope as Critical Defects; or
 - deemed by the *Employer* (acting reasonably) to be critical in all the circumstances.
- 11.2(24A) EBS means the estimating breakdown structure maintained by the *Employer* for recording cost benchmarking data as more fully described in sub clause 104A.

11.2(29A) Infraco means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns.

11.2(32A) JNP Contract means the contract between Tube Lines Limited and the *Employer* for the provision of infrastructure maintenance services dated 31 December 2002 as amended from time to time in accordance with its terms.

11.2(33A) LUL means London Underground Limited (No. 1900907) or its successors in title and assigns.

11.2(33B) LUL Nominee BCV means LUL Nominee BCV Limited (No. 06221959) or its successors in title or assigns.

11.2(33C) LUL Nominee SSL means LUL Nominee SSL Limited (No. 06242508) or its successors in title or assigns.

11.2(35A) Master Projects Database means the database which the *Employer* develops, maintains, updates and provides access to for the purpose of facilitating the co-ordination of works, project and programmes between the *Employer*, Infraco(s), PFI Contractors and other third parties carrying out work on the Underground Network.

11.2(35B) PFI Contract means, in each case, the main project contract entered into or to be entered into by the *Employer* and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion Order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of capital assets which is similar in nature.

11.2(35C) PFI Contractors means those contractors who have entered into or will enter into PFI Contracts save that in the Access Code the expression excludes the Northern Line Contractors and as further referred to in the Scope.

11.2(35D) PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract, PPP Contract means any one of them or, as the context requires, a particular one of them; and applicable PPP Contract means that PPP Contract applicable to a particular Infraco by virtue of such Infraco being a party thereto.

11.2(36A) QUENSH means LUL's Quality, Environmental, Safety and Health conditions (updated and amended from time to time) attached at Schedule [19] to the Framework Agreement and the associated QUENSH Conditions Menu included in the Scope.

11.2(36B) Risk Management Plan means the agreed plan setting out the arrangements to be made and/or taken by the *Consultant* to identify, record, monitor, mitigate, control and assess risks for the period of the contract and as further stipulated in the Scope.

11.2(38A) SSL Contract means the contract between Metronet Rail SSL Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee SSL on 27 May 2008 and as amended from time to time in accordance with its terms.

11.2(41A) TLL means Tube Lines Limited (No. 03923425) (or its successors in title or assigns)."

12.9 Delete the second paragraph of sub-clause 12.9 and substitute:

"Laws are also regarded as applicable to the *Consultant* where they impose duties, obligations or restrictions on London Underground Limited or TfL in relation to the Underground Network or its operation (where applicable to the *services*). The *Consultant* performs its obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Consultant*."

- 12.13 Add new sub-clause 12.13
- "In the event of any conflict or discrepancy between the amendments contained in the LUL Requirements and the provisions of the core clauses, main option or secondary options the provisions of the LUL Requirements prevail."
- 13.9 Add new sub-clause 13.9:
"Any communication required under this contract from the *Consultant* to Others is copied simultaneously to the *Employer*."
- Clause 15**
Early
warning
- 15.1 Sub-clause 15.1:
Delete "or" at the end of the fifth bullet.
Insert in the fifth bullet after "the *services*" the words "or the Works" and insert "or" at the end of the bullet.
Add the following new bullets:
- adversely affect the work of Others,
 - constitute a Defect,
 - adversely affect the *Employer* (including without limitation by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
 - result in a breach of this contract or any subcontract,
 - lead to the *Consultant* terminating or suspending any subcontract, or
 - cause a breach of any applicable law or Statutory Requirement.
- In the notification the *Employer* or the *Consultant*, as the case may be, states whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting."
- 15.5 Add new sub-clause 15.5:
"Nothing in this clause 15 relieves the *Consultant* of his obligation under clause 120A to comply with the agreed Risk Management Plan."
- 21.4 Sub-clause 21.4:
Delete and substitute:
"The *Consultant* integrates and coordinates his design with the designs of Others and in particular (where applicable) the Contractor, Infracos and the PFI Contractors in accordance with the Scope and instructions of the *Employer*, and where necessary to Provide the Services. Reasons for not accepting the *Consultant's* design are that
- it does not comply with the Scope,
 - it does not comply with the applicable law, Standards or Statutory Requirements,
 - it is not integrated and coordinated with the designs of Others and in particular the Infracos and the PFI Contractors where the *Consultant* is required by the Scope or instructions of the *Employer* to integrate and/or co-ordinate his design with the designs of Others, or such integration is necessary for the *Consultant* to Provide the Services,
 - it does not comply with this contract,
 - it is such that it will not allow the Main Contract Works to be constructed in accordance with the Main Contract,
 - it is such that if constructed the Main Contract Works will not be Available, or
 - it is not in a format which is accepted for use by the *Employer*.The *Consultant* does not proceed with the relevant work until the *Employer* has accepted his design."
- 21.7 Add new sub-clause 21.7:
"The *Consultant* in Providing the Services warrants, undertakes and represents to the *Employer* as a condition of this contract that the *services*

(including any design and/or specification prepared as part of the *services*) will:

- subject to clause 21.2, be in accordance with the Scope and any performance or output specification or requirements contained or referred to in this contract,
- be safe to construct and use, clean, service, use, dismantle and demolish
- comply with all Statutory Requirements,
- comply with all applicable law,
- comply with all relevant Standards,
- be integrated with the designs of Others and in particular the design of the Infracos and PFI Contractors, and

the *Consultant* further warrants, undertakes and represents to the *Employer* as a condition of this contract that:

- any design and/or specification prepared by the *Consultant* in Providing the Services will not on Completion render the Main Contract Works incapable of being Available;
- he has all the resources including financial, technical and human resources as are required to carry out and complete the *services* in accordance with this contract; and
- It shall use the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the *services*."

25.5 Delete sub-clause 25.5 and substitute:

The *Consultant* complies with the CDM Regulations and (to the extent applicable) the requirements of QUENSH as amended from time to time and notified to the *Consultant*. The *Consultant* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the site and/or in respect of the Works for the effective discharge of those responsibilities.

25.9 Add new sub-clause 25.9:

- "(a) The *Consultant* complies with the Access Code in Providing the Services.
- (b) The *Employer* (or, upon novation of this contract, LUL) books any access to the Underground Network on behalf of the *Consultant* in accordance with the terms of the Access Code.
- (c) Subject to the provisions of the Access Code, the *Employer* (or, upon novation of this contract, LUL) allows access to the Underground Network in accordance with the dates for access shown on the Accepted Programme provided where access to the Underground Network is needed the *Consultant* complies with sub clauses 25.9(a) and 25.9(b).
- (d) The *Consultant* acknowledges that the *Employer* (or, upon novation of this contract, LUL) does not guarantee uninterrupted or exclusive access to the Underground Network and that access is limited in accordance with this contract."

- 31.2 Sub-clause 31.2:
Add after eighth bullet:
 • for each operation, a cost-loaded programme showing the forecast resources required for that operation,
 • his access requirements in accordance with the Access Code,”
- 41.6 Add new sub-clause 41.6:
 "The *Consultant* acknowledges and agrees that the *Employer* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Consultant*, at the cost of the *Consultant*. Without prejudice to any other right or remedy of the *Employer*, the *Consultant* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Employer* notifies the *Consultant* of a Critical Defect as soon as reasonably practicable."
- 50.10 Add new sub-clause 50.10:
 "If any of the warranties required under clause 100 are not delivered to the *Employer* in accordance with the provisions of clause 100, one quarter of the Price for Services provided to Date is retained in assessments of the amount due and is not payable to the *Consultant* until such warranties have been delivered."
- 60.1(2) 60.1(2)
Delete clause 60.1(2) and substitute:
 "Subject to the requirements of the Access Code and to the giving of proper and timely notice and proper coordination by the *Consultant*, the *Employer* does not allow access to and use of a person, place or thing for the *Consultant* as stated in this contract."
- 63.5 Delete sub-clause 63.5 and substitute:
 "If the *Consultant*:
- did not give early warning of a compensation event which an experienced contractor could have given, or
 - did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring early warning,
- The event is assessed as if the *Consultant* had given early warning at the appropriate time."
- 90.5 Add a new clause 90.5:
 "The *Employer* may terminate the *Consultant's* appointment:
- in the event that any cap on the *Consultant's* liability under this contract has been or is reasonably likely to be exceeded,
 - in the event of the *Employer* not obtaining any necessary funding for the project and/or the necessary funding being curtailed,
 - in the event of a Change of Control."

90.6 Add a new clause 90.6 as follows:

“In the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the law of the contract from time to time including any applicable law, directive or requirement of the European Union:

- the *Employer* notifies the *Consultant* in writing as soon as reasonably practicable of the declaration or order;
- the *Employer* issues a termination certificate to the *Consultant* certifying the date the contract became or is to become ineffective or shortened; and
- the contract is deemed for all purposes to have been terminated by the *Employer* on the date named in the termination certificate.

Notwithstanding the declaration or order, the provisions of clauses 90-92 shall continue in full force and effect along with any other provisions of this contract necessary to give effect to them. In addition, any provisions of the contract which by their nature or implication are required to regulate, determine or limit the Parties' rights and liabilities that have accrued at the date the contract became ineffective or shortened shall survive the declaration or order as aforesaid.”

**10 Additional
Conditions of
Contract
Consultant's
warranties**

100

100.1

Delete clause 100.1 and substitute:

The *Consultant*, within 14 days of the *Employer*, or any novated *Employer's*, request (as the case may be), duly executes and delivers to the *Employer*, or any novated *Employer*, (as the case may be) deeds of warranty in the appropriate form set out in Schedules [9, 10 and 15] of the Framework Agreement in favour of:

- the PFI Contractors,
- any member of the TfL Group,
- persons providing finance in connection with the Works,
- purchasers and tenants of the whole or any part of the Works,
- developers having or requiring an interest in the whole or any part of the Works,
- upon execution of a novation agreement pursuant to clause 102, a deed of warranty in favour of the *Employer* in the form set out in Schedule [10] of the Framework Agreement.

**Subconsultant's
warranties**

101

101.1

Delete clause 101.1 and substitute:

The *Consultant*, within 14 days of the *Employer's*, or any novated *Employer's*, request (as the case may be), uses his best endeavours to procure that the Subconsultants named or identified by discipline in the *Employer's*, or any novated *Employer's*, request (as the case may be) duly execute and deliver to the *Employer*, or any novated *Employer* (as the case may be) deeds of warranty in the appropriate form set out in Schedules [11A, 11B and 16] of the Framework Agreement in favour of:

- the Employer and (upon novation) any novated Employer,
- the PFI Contractors,
- any member of the TfL Group,
- persons providing finance in connection with the Works,
- purchasers and tenants of the whole or any part of the Works
- developers having or requiring an interest in the whole or any part of the Works.

If the Consultant is unable to procure and deliver to the Employer, or any novated Employer, (as the case may be) any requisite deed of warranty in the appropriate form within 14 days of the Employer's, or any novated Employer's, request (as the case may be), the Consultant without prejudice to the Employer's, or any novated Employer's, (as the case may be) rights and remedies consults with the Employer, or any novated Employer, (as the case may be) as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the Employer's, or any novated Employer's, interests (as the case may be).

**Estimating
Breakdown
Structure**

104A

Add a new clause 104A

104A.1

The *Consultant* acknowledges that the *Employer* requires cost benchmarking data for use in the *Employer's* EBS cost database.

- 104A.2 The *Consultant* provides all information relating to the Price for Services Provided to Date at the assessment date occurring on Completion of the whole of the *services* in the format of the EBS template provided at section [•] of the Scope.
- Conflicts of Interest**
- 106.1 Delete sub-clause and substitute:
 “The *Consultant* acknowledges and agrees that it does not have and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Provision of the Services or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.”
- 106.2 Delete sub-clause and substitute:
 “The *Consultant* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the Provision of the Services under this contract or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working on, and data relating to, the *services* from the matter in question) to manage such conflict to the *Employer’s* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.”
- Intellectual property rights**
- 107.2 **Background IPR**
Delete clause 107.2 and substitute:
 In respect of Background IPR, the *Consultant* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subconsultant’s or other third party’s Background IPR) a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of:
- understanding the *services*,
 - operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *services*;
 - extending, interfacing with, integrating with, connection into and adjusting the *services* and/or the works of Others;
 - enabling LUL to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network; and
 - enabling LUL to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.
- In this section, "Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006; and "Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

107.2A Add a new sub-clause 107.2A:

“The *Consultant* agrees to provide to the *Employer* or any person nominated by the *Employer* immediate access to all Documentation in whatever form requested by the *Employer* at any time but at the latest on termination or expiry of this contract.

In this clause 107.2A, “Documentation” means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Consultant* in the performance of this contract.”

107.4 Delete clause 107.4 and substitute:

“The *Consultant* indemnifies the *Employer* and members of the TfL Group and the GLA against all Losses arising out of any use by the *Employer* of the Background Intellectual Property Rights, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the Intellectual Property Rights or other rights of any third party.”

Nuisance 143 Add a new clause 143:

143.1 “The *Consultant* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the works and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.

143.2 Without prejudice to the *Consultant's* obligations under clause 143.1 if the performance of the *services* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Consultant* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Consultant* complies (at his own cost) in every respect with the conditions contained in such agreements.”

Standards 144 Add a new sub-clause 144

144.1 The *Consultant* complies with Standards including all European Standards, British Standards and International Standards and associated codes of practice as required to enable the *Consultant* to Provide the Services in accordance with Good Industry Practice and this contract.

Risk Management Plan 145 Add a new clause 145:

145.1 Notwithstanding clause 15, the Risk Register, any revision to the Risk Register or any matter agreed or discussed at a risk reduction meeting, the *Consultant* complies with the Risk Management Plan set out in the Scope unless the *Employer* gives the *Consultant* an instruction stating how the arrangements to be made and/or taken by the *Consultant* in accordance with the Risk Management Plan are to be modified.

Assurance	146	<u>Add</u> a new clause 146
	146.1	The <i>Consultant</i> provides safety and technical assurance to the <i>Employer</i> in accordance with Standard 1-538 (Assurance) in respect of all services under this contract.
	146.2	The <i>Consultant</i> complies with the Assurance Regime.
	146.3	The Assurance Regime may be amended at any time by agreement between the <i>Consultant</i> and the <i>Employer</i> .
	146.4	In relation to the initiation, development, design, construction, delivery, testing, commissioning and handover of new, refurbished or altered systems and assets, the <i>Consultant</i> prepares Assurance Plans.
	146.5	Before the start of specific delivery activities or at defined milestones, as appropriate, the <i>Consultant</i> submits an Assurance Plan to the <i>Employer</i> and any other regulatory body.
	146.6	The Parties consult and confer together in relation to the Assurance Plans after their delivery to the <i>Employer</i> . Within thirty (30) days thereafter, the <i>Employer</i> may give notice to the <i>Consultant</i> requiring the <i>Consultant</i> to make changes to the Assurance Plans or any elements thereof. The <i>Consultant</i> makes the changes within seven (7) days of receiving the notice.
	146.7	The Assurance Plans do not become final until approved by the <i>Employer</i> .
	146.8	The Parties may agree to update the Assurance Plan as appropriate to take account of any changes to or development of the <i>services</i> .
	146.9	The <i>Consultant</i> complies with the approved Assurance Plan as amended from time to time.
Master Projects Database	147	<u>Add</u> a new clause 147:
	147.1	The <i>Consultant</i> maintains and updates a database recording details of the <i>services</i> in a form and at a level of detail consistent with the requirements of the Master Projects Database, as detailed in the Master Projects Database Desk Reference, and provides to the <i>Employer</i> such information in the required format for regular reporting intervals for the purpose of updating the Master Projects Database.
	147.2	The <i>Employer</i> uses reasonable endeavours to keep current the information in the Master Projects Database, but the <i>Employer</i> has no liability to the <i>Consultant</i> in respect of any inaccuracy, error, mis-statement contained in or any omission from the Master Projects Database.
	147.3	In complying with this clause, the <i>Consultant</i> has regard to the Master Projects Database Desk Reference dated September 2007 (as updated and amended from time to time) attached at Schedule [17] to the Framework Agreement.

**Criminal Record
Declarations**

- 148.1 In this section:
“**Relevant Individual**” means any servant, employee, officer, consultant or agent of the *Consultant* or any Subconsultant carrying out, or intended to carry out, any aspects of the *services*.

“**Relevant Conviction**” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.
- 148.2 The *Consultant* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *services*. The *Consultant* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Consultant* shall procure that a Relevant Individual notifies the *Consultant* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Consultant* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- 148.3 The *Consultant* is not permitted to engage or allow to act on behalf of the *Consultant* or any Subconsultant in the performance of any aspect of the *services* any Relevant Individual who has disclosed a Relevant Conviction.
- 148.4 The *Employer* may in accordance with the audit rights set out in this contract audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- 148.5 If the *Consultant* fails to comply with the requirements under Clauses 148.2 and/or 148.3, the *Employer* may, without prejudice to his rights under Clause 90.3, serve notice on the *Consultant* requiring the *Consultant* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *services* unless (in the case of non-compliance with Clause 148.2) within 7 days of receipt of the notice the *Consultant* confirms to the *Employer* he has procured all of the Declarations required under Clause 148.2.
- 148.6 A persistent breach of Clause 148.2 and/or 148.3 by the *Consultant* shall constitute a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 90.3.
- 148.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Consultant* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *services*.

148.8 Nothing in this Clause 148 in any way waives, limits or amends any obligation of the *Consultant* to the *Employer* arising under this contract and the *Consultant's* obligation to Provide the Works remains in full force and effect and the *Consultant* cannot claim any extra costs or time as a result of any actions under this Clause 148.

Schedule 2A – Call-off Contract

CONDITIONS OF CONTRACT

These conditions are based on the NEC family of contract, the copyright of which belongs to the Institute of Civil Engineers.

CONTENTS

Acknowledgements

Schedule of Options

Core clauses	1	General
	2	The Parties main responsibilities
	3	Time
	4	Quality management system
	5	Payment
	6	Compensation events
	7	Rights to material
	8	Indemnity, insurance and liability
	9	Termination
	10	Additional conditions of contract
Main Option clauses	A	Priced contract with activity schedule
	C	Target contract
	E	Time based contract
	Note	Options B, D, G and F are not used
Additional Requirements	LUL	LUL Requirements
	LUL Nominee BCV/SSL Optional Clauses	LUL Nominee BCV/SSL Requirements
Secondary Option clauses	X1	Price adjustment for inflation
	X2	Changes in the law
	X3	Multiple currencies
	X4	Parent company guarantee
	X5	Sectional Completion
	X6	Bonus for early Completion
	X7	Delay damages
	X8	Collateral warranty agreements
	X9	Transfer of rights
	X10	Employer's Agent
	X11	Termination by the Employer
	X12	Partnering
	X13	Performance bond
	X18	Limitation of liability
X20	Key Performance Indicators	
X21	Single point design responsibility	
Note	Options X14 to X17, X19 and Y are not used.	

SCHEDULE OF OPTIONS

The strategy for choosing the form of contract starts with a decision between there main Options, one of which must be chosen.

Option A	Priced contract with activity schedule
Option C	Target contract
Option E	Time based contract
Note	Options B, D, G and F are not used
	The following Schedules of Amendment should then be considered
LUL Requirements	The LUL Requirements are used with all LUL projects
LUL Nominee BCV/SSL Requirements	The LUL Nominee BCV/SSL Requirements are used with all LUL Nominee BCV/SSL projects

The following secondary Options should then be considered. It is not necessary to use any of them.

Any combination other than those stated may be used.

Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X3	Multiple currencies
Option X4	Parent company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X8	Collateral warranty agreements
Option X9	Transfer of rights
Option X10	Employer's Agent
Option X11	Termination by the <i>Employer</i>
Option X12	Partnering
Option X13	Performance bond
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)
Option X21	Single point design responsibility

Note Options X14 to X17, X19 and Y are not used

CORE CLAUSES

1 GENERAL

Actions	10	
	10.1	The <i>Employer</i> and the <i>Consultant</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
Identified and defined terms	11	The <i>Employer</i> and the <i>Consultant</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	11.1	In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
	11.1A	No alteration or amendments for which this contract does not otherwise make provision may be made to this contract except where expressly recorded in writing by a document expressed to be supplemental to this contract and signed by the Parties.
	11.2	<p>(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Employer</i>. The latest programme accepted by the <i>Employer</i> supersedes previous Accepted Programmes. Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Scope.</p> <p>(2) Borough Premises are any premises owned, leased or under the control of any Borough.</p> <p>(3) Completion is when the <i>Consultant</i> has</p> <ul style="list-style-type: none">• done all the work which the Scope states he is to do by the Completion Date; and• corrected Defects which would have prevented the <i>Employer</i> from using the <i>services</i> and Others from doing their work. <p>If the work which the <i>Consultant</i> is to do by the Completion Date is not stated in the Scope, Completion is when the <i>Consultant</i> has done all the work necessary for the <i>Employer</i> to use the <i>services</i> and for Others to do their work.</p> <p>(4) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.</p> <p>(5) The Contract Date is the date of the Call-Off Contract unless stated otherwise in the Contract Data.</p> <p>(6) A Defect is:</p> <ul style="list-style-type: none">• a failure by the <i>Consultant</i> to Provide the Services or any part of the <i>services</i> in accordance with the Scope and the requirements of this contract; or• a part of the <i>services</i> (including without limitation the <i>Consultant's</i> design) which is not in accordance with:• the applicable law; or• all applicable licences and approvals; or• the design accepted by the <i>Employer</i>. <p>(7) Functional Body Premises are any premises owned, leased or under the control of any Functional Body.</p> <p>(8) GLA Premises are any premises owned, leased or under the control of the GLA.</p> <p>(9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data</p>

and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with this contract.

- (10) Others are people or organisations who are not the *Employer*, the *Consultant*, the Adjudicator or any employee, Subconsultant or supplier of the *Consultant*.
- (11) The Parties are the *Employer* (which expression includes his successors in title and assigns) and the *Consultant*.
- (12) To Provide the Services means to do the work necessary to complete the services in accordance with this contract and all incidental work, services and actions which this contract requires.
- (13) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Employer* or the *Consultant* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.
- (14) The Scope is information which
 - specifies and describes the *services*; and/or
 - states any constraints on how the *Consultant* Provides the Services, and is either:
 - in the documents which the Contract Data states it is in; or
 - in an instruction given in accordance with this contract.
- (15) Subconsultant means any subconsultant, subcontractor person or organisation engaged by the *Consultant* in connection with this contract.
- (16) The Time Charge is the sum of the products of each of the staff rates multiplied by the total staff time appropriate to that rate properly spent on work in this contract less Disallowed Time Charge.
- (17) Background Intellectual Property Rights means Intellectual Property Rights owned by the *Consultant* or a Subconsultant or other third party and which is not assigned to the *Employer*.
- (18) British Standards means those standards produced by the British Standards Institution (or any successor body) of 389 Chiswick High Road, London, United Kingdom.
- (19) Call Off Contract means the Call Off Contract issued pursuant to the Framework Agreement under which the *Consultant* has agreed to Provide the Services.
- (20) CDM Regulations are the Construction (Design and Management) Regulations 2007 and the related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.
- (21) Connected Persons means all and any of the *Consultant's* employees, directors, contractors, agents, Subconsultant's suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.
- (22) Contractor means the person(s), firm(s) or company(s) employed by the *Employer* to carry out and complete certain works and/or services or part(s) thereof in relation to the Works.
- (23) Disallowed Time Charge means any item which:

- the *Consultant* is unable to demonstrate has been reasonably and properly incurred by the *Consultant* for the purposes of this contract,
- is attributable to a compensation event under a subcontract which is not also a compensation event under this contract,
- is a result of strikes, riots and civil commotion confined to the *Consultant's* staff,
- and any item which is based upon staff time which is not justified by the *Consultant's* accounts and records,
- is incurred under a subcontract entered into in breach of sub clause 24.2,
- was incurred only because the *Consultant* did not follow an acceptance or procurement procedure stated in the Scope; or
- give an early warning which this contract required him to give; and
- is incurred in preparation for and/or conduct of an adjudication, arbitration or legal proceedings in connection with a Dispute.

(24) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.

(25) European Standards means those standards ratified by the European Committee for Standardization (CEN) of Rue de Stassart, 36, B 1050 Brussels, Belgium, the European Committee for Electrotechnical Standardization (CENELEC) of F - 06921, Sophia Anipolis Cedix, France or the European Telecommunications Standards Institute (ETSI) of Rue de Stassart, 36 1050 Brussels, Belgium.

(26) Framework Agreement means the contract reference **TfL-91306** between Transport for London and the *Consultant* relating to project management and engineering services.

(27) GLA means the Greater London Authority.

(28) Good Industry Practice means, in respect of any aspect of the work being undertaken by the *Consultant* and subject always to its statutory safety obligations, whilst always ensuring that risks are reduced to a level which is as low as is reasonably practicable (ALARP), the exercise of the degree of skill, competence, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and experienced person engaged in

- carrying out the same type of obligations as the *Consultant* under this contract with respect to such aspect of his work; or
 - carrying out obligations, whether individually or as a package of obligations, which could reasonably be regarded as being comparable to the responsibilities of the *Consultant* under this contract with respect to such aspect of his work,
- in each case, performing his obligations under the same, reasonably comparable or similar circumstances and utilising all the information available at the relevant time.

(29) Indirect Subconsultant means any Subconsultant of whatever tier appointed in relation to the services.

(30) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without

insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an arrangement with his creditor.

- (31) International Standards means those standards produced by the International Standards Organisation or the International Electrotechnical Commission of 3 Rue de Varembe, CH1211, Geneva 20, Switzerland.
- (32) Intellectual Property Rights means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- (33) Losses means all costs (including legal costs and costs of enforcement) whatsoever or howsoever arising, expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, compensation, proceedings and judgments.
- (34) Main Contract means the contract (if any) agreed or to be agreed between the *Employer* and the Contractor (including all Appendices Schedules and Annexures and amendments thereto and any documents or data referred to therein) for the provision of certain works in relation to the Works.
- (35) Main Contract Works means all and any works carried out or to be carried out under the Main Contract.
- (36) Prevention Event has the meaning ascribed to that term in clause 18.1.
- (37) Safety Breach means a material breach of the contract caused by the gross incompetence or wilful default of the *Consultant* or any Subconsultant (or anyone employed or acting on behalf of the *Consultant* or any Subconsultant) or any of his agents which has materially affected the safe operation of TfL Premises, GLA Premises, or Functional Body Premises, Borough Premises or the safety of the *Employer's* customers, staff or any other person.
- (38) Site Waste Management Plan means the site waste management plan in respect of the Works required to be produced and implemented under the Site Waste Management Plan Regulations 2008.
- (39) Standards means the individual requirements contained within standards documents issued to the *Consultant* by the *Employer*

and/or specified in the Scope.

- (40) A Statutory Requirement is
- any Act of Parliament,
 - any instrument, rule or order made under any Act of Parliament,
 - any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the services or with whose systems the same are or will be connected including any statutory provisions; and
 - any decisions of a relevant authority under the statutory provisions which control the right to develop the site of the Works in connection with which the services are to be provided (including, without limitation, any planning permission).
- (41) Statutory Undertaker means any governmental or local authority or statutory undertaker:
- which has any jurisdiction with regard to the services and/or the Works including without limitation any jurisdiction to control development of the site or any part of it,
 - with whose requirements the *Employer* is accustomed to comply; or
 - with whose systems and/or utilities the Works and/or the services will be associated.
- (42) TfL Group means Transport for London (“TfL”), a statutory body set up by the Greater London Authority Act 1999 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.
- (43) TfL Premises are any premises owned, leased or under the control of any member of the TfL Group.
- (44) The Workplace Policy is the *Employer’s* “Workplace Harassment Policy”, as updated from time to time, copies of which are available on request from the *Employer*.
- (45) The Works are the works to which the services relate, as more particularly shown, described or referred to in the Scope, including any changes made to those works.

Interpretation and the law

12

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.1A References to "this contract" mean the Call Off Contract.
- 12.2 This contract is governed by and construed in accordance with the law of England and Wales. Without prejudice to the right to Adjudicate the courts of England have exclusive jurisdiction to settle any Dispute which may arise out of or in connection with this contract provided that the *Employer* has the right in its absolute discretion to enforce a

judgment and/or to take proceedings in any other jurisdiction in which the *Consultant* is incorporated or in which any assets of the *Consultant* may be situated. The Parties agree irrevocably to submit to that jurisdiction.

- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Consultant* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Consultant* in relation to such matters. The *Employer* and *Consultant* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- 12.5 Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled.
- 12.6 The headings to the sections, clauses and sub-clauses of these *conditions of contract* are for convenience only and do not affect their construction or interpretation.
- 12.7 Subject to the following provisions of this clause, the Parties do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this contract.
Any member of the TfL Group or the GLA has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999.
Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all members of the TfL Group or GLA (other than the *Employer*).
- 12.8 A reference in these *conditions of contract* to any applicable law or Statutory Requirement includes
- that law or Statutory Requirement as from time to time amended, re-enacted or substituted; and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement.
- 12.9 In performing its obligations under this contract, the *Consultant* complies with the *law of the contract*, the applicable law and Statutory Requirements to the extent that they impose duties, obligations or restrictions on the *Consultant*.
Laws are also regarded as applicable to the *Consultant* where they impose duties, obligations or restrictions upon TfL in relation to the services (where applicable). The *Consultant* performs its obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Consultant*.
In the event that the *Consultant* does not fulfil its obligations under this contract due to the infringement of any applicable law or Statutory Requirement and the *Employer* thereby incurs costs to which it would not otherwise be liable, the amount of such costs shall be reimbursed by the *Consultant* to the *Employer* as a debt due on demand.
- 12.10 The *Consultant* acknowledges that where he is a partnership his rights, obligations and liabilities under this contract are joint and several and

that the term "*Consultant*" is deemed to include any additional partner or partners who may be admitted into the partnership of the *Consultant* during the life of this contract. This contract does not automatically terminate upon the death, retirement or resignation of any one or more members of such a partnership.

- 12.11 Notwithstanding the Contract Date, the *Consultant's* appointment takes effect from the date when he first commenced performance of the *services* and these *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or *services* performed by the *Consultant* both before and after the Contract Date.
- 12.12 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Consultant* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.

Communications 13

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded or is available for access on a nominated hosted web server (save in the case of the notification of a Dispute or termination which shall be notified in hard copy only). Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic mail transmission ('for information' copies of notifications may however be issued electronically). For the avoidance of doubt any notification of Dispute or termination under this contract is only effective if delivered in hard copy and electronic mail transmission of any kind is not effective for this purpose.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data. Any communication sent by hand is deemed to be received upon delivery at such address. Alternatively, an electronic communication has effect when it is posted on a nominated hosted web service.
- 13.3 If this contract requires the *Employer* or the *Consultant* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*. Where the *period for reply* includes Christmas Day, Good Friday or a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded for the purpose of calculating the period.
- 13.4 The *Employer* replies to a communication submitted or resubmitted to him by the *Consultant* for acceptance. If his reply is not acceptance, the *Employer* states his reasons and the *Consultant* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Consultant's* submission fully.
- 13.5 The *Employer* may extend the *period for reply* to a communication if the *Employer* and the *Consultant* agree to the extension before the reply is due. The *Employer* notifies the *Consultant* of the extension which has been agreed.
- 13.6 The *Consultant* retains copies of drawings, specifications, computer

data files, reports and other documents which record the *services* for the *period for retention*. The copies are retained in the form stated in the Scope. The *Consultant* provides the *Employer* with explanations of the documents as reasonably required.

13.7 A notification which this contract requires is communicated separately from other communications.

13.8 The *Employer* may withhold acceptance of a submission by the *Consultant*. Withholding acceptance for a reason stated in this contract is not a compensation event.

Acceptance

14

14.1 No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer* and/or the *Employer's Agent* (if applicable) nor any enquiry or inspection which the *Employer* and/or the *Employer's Agent* (if applicable) makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Consultant's* duties and obligations under this contract unless it is in writing from the *Employer*, refers to this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.

Early Warning

15

15.1 The *Employer* and the *Consultant* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- change the Accepted Programme,
- delay meeting a Key Date,
- impair the usefulness of the *services* to the *Employer*; or
- affect the work of the *Employer*, an *Employer's Contractor*; or another consultant.

The *Consultant* may give an early warning by notifying the *Employer* of any other matter which could increase his total cost. The *Employer* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

15.2 Either the *Employer* or the *Consultant* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other Party agrees.

15.3 At a risk reduction meeting, those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with this contract, will take them; and
- deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

15.4 The *Employer* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Consultant*. If a decision needs a change to the Scope, the *Employer* instructs the change at the same time as he issues the revised Risk Register. For the avoidance of doubt, the *Consultant's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in

accordance with clauses 60 to 65.

Ambiguities and inconsistencies

16

- 16.1 The *Employer* or the *Consultant* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Employer* gives an instruction resolving the ambiguity or inconsistency.
- 16.2 There is no addition to the Prices, any change to any Key Date or the Completion Date arising from any such ambiguity or inconsistency where the *Employer* decides that the ambiguity or inconsistency in question is one arising from a document which the *Consultant* prepared or is responsible for. The *Employer* notifies the *Consultant* of this decision.

Illegal and impossible requirements

17

- 17.1 The *Consultant* notifies the *Employer* as soon as he considers that the Scope requires him to do anything which is illegal or impossible. If the *Employer* agrees, he gives an instruction to change the Scope appropriately.

Prevention

18

- 18.1 If an event occurs which stops the *Consultant* Providing the Services or stops the *Consultant* Providing the Services by the date shown on the Accepted Programme which is not
- a shortage of staff whether caused by local market fluctuations or otherwise,
 - an event of Insolvency of the *Consultant* or any Subconsultant or supplier; or
 - an event attributable to any negligence, omission or default of the *Consultant* or any of his employees or agents or any Subconsultant or supplier or any of their employees or agents and which:
 - neither Party could prevent; and
 - a prudent and experienced consultant familiar with works similar to the *services* and exercising the foresight appropriate to such a *Consultant* would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it; and
 - the *Consultant* can demonstrate that he did not allow for it in his tender,
- then this is a "Prevention Event" and the *Employer* gives an instruction to the *Consultant* stating how he is to deal with the event.

2 The Parties' main responsibilities

The Employer's obligations

20

- 20.1 The *Employer* provides information and things which this contract requires him to provide in accordance with the Accepted Programme.
- 20.2 The *Employer* may give an instruction to the *Consultant* which changes the Scope or a Key Date, or requires him to accelerate or re-sequence the *services* or part of them. After Completion, an instruction is given

only if it is necessary to Provide the Services or to enable the *Employer* to use the Works.

- 20.3 The *Employer* does not give an instruction to the *Consultant* which would require him to act in a way that was outside his professional code of conduct.

The Consultant's obligations

21

- 21.1 The *Consultant* Provides the Services in a regular and diligent manner and in accordance with and so that the Works will be in accordance with the Scope, the Accepted Programme, Good Industry Practice, the Standards (if the Standards are applicable to the *services*), all applicable law, Statutory Requirements and the instructions of the *Employer*. Any work relating to or reasonably to be inferred from the Scope which is not specified in the Scope as the responsibility of the *Consultant* or Others is deemed to be the responsibility of the *Consultant*. The *Consultant* uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the *services*.

- 21.2 The *Consultant's* obligation is to use the skill, care and diligence normally used by professionals providing *services* similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the *services*.

- 21.3 Subject to the Scope and any changes to it the *Consultant* warrants to the *Employer* that to the extent the *Consultant* either is obliged to specify or approve products or materials for use in the Works or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with

- the report entitled "Good Practice in the Selection of Construction Materials" 2011 (published by the British Council for Offices),
- relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice; or
- any publications of the Building Research Establishment related to the specification of products or materials.

If in the performance of his duties under this contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the *Employer* in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by this contract.

- 21.4 The *Consultant* integrates and coordinates his design with the designs of Others and in particular the Contractor in accordance with the Scope and instructions of the *Employer*, and where necessary to Provide the Services. Reasons for not accepting the *Consultant's* design are that

- it does not comply with the Scope,
- it does not comply with the applicable law or Statutory Requirements,
- it is not integrated and coordinated with the designs of Others

where the *Consultant* is required by the Scope or instructions of the *Employer* to integrate and/or co-ordinate his design with the designs of Others, or such integration is necessary for the *Consultant* to Provide the Services,

- it does not comply with this contract,
- it is such that it will not allow the Main Contract Works to be constructed in accordance with the Main Contract,
- it is not in a format which is accepted for use by the *Employer*.

The *Consultant* does not proceed with the relevant work until the *Employer* has accepted his design.

21.5 The *Consultant* keeps the *Employer* informed of all material aspects of the *services* and provides the *Employer* with such information and comments as he may from time to time require with regard to the Works promptly and in good time so as not to delay or disrupt the progress of the Works or cause the *Employer* to be in breach of any obligation to a third party, any applicable law or Statutory Requirement.

21.6 The *Consultant* obtains from and/or gives to Others all licences, consents, notices and approvals necessary or appropriate to enable him to Provide the Services other than those which the Scope states will be obtained or given by the *Employer* or Others. The *Consultant* ensures that, prior to Completion and wherever *necessary* during the course of Providing the Services, the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the *Consultant* or the *Employer*, are complied with and that the same are renewed whenever necessary or appropriate.

People

22

22.1 The *Consultant* shall provide the *key persons* and shall procure that they:

- diligently supervise the performance of the Services,
- attend all contract meetings with the *Employer*, (the location, frequency and time of which shall be specified by the *Employer* from time to time).

22.2 The *Consultant* either employs each *key person* named to do the job for him stated in the Contract Data or employs a replacement person who has been accepted by the *Employer*. The *Consultant* submits the name, relevant qualifications, training and experience of a proposed replacement person to the *Employer* for acceptance no later than four (4) weeks in advance of the date on which it intends to replace a *key person*. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

22.3 If a replacement person is accepted by the *Employer*, the *Consultant* arranges at no cost to the *Employer* for there to be a minimum handover period of four (4) weeks during which both the original *key person* and his replacement perform the job stated in the Contract Data.

22.4 The *Consultant* may only make any changes to the *key persons* (except in the event of sickness, incapacity or resignation) with the prior consent of the *Employer* (which shall not be unreasonably withheld).

22.5 Save where a *key person* is removed pursuant to clause 21.6 [or for reasons which the *Employer* considers are outside the *Consultant's* reasonable control], if a *key person* (or his replacement) ceases to be employed to do the job stated in the Contract Data without prior

approval of the *Employer*, the *Consultant* pays to the *Employer* key person compensation of five (5) days Price for Services, being the Price for Services of the removed *key person*.

- 22.6 The *Employer* may, having stated his reasons, instruct the *Consultant* to remove any person under the control of the *Consultant*. The *Consultant* then arranges that, after one day, such person has no further connection with the work included in this contract.
- 22.7 The *Consultant* undertakes that all the *Consultant's* personnel possess the appropriate skills, qualifications, work permits and experience to perform the tasks assigned to them, and that they shall be available at such times as are necessary to perform the Services in accordance with the Contract.
- 22.8 The *Consultant* shall (at its expense) provide or procure the provision of training for the *Consultant's* personnel in respect of all aspects of its performance of the Contract and, as the *Employer* may require, for any employees, agents and contractors of the *Employer* in relation to the operation or use of any equipment supplied under the Contract.
- 22.9 Without prejudice to the *Consultant's* other obligations under the Contract, where training of any or all of the *Consultant's* personnel is required for the purposes of performance of the Contract, the *Consultant* shall not assign any *Consultant's* personnel to the performance of the Contract unless and until such *Consultant's* personnel have satisfactorily completed such training.

Working with the Employer and others

23

- 23.1 The *Consultant* co-ordinates his activities with those of Others as required by the Scope and in accordance with the instructions of the *Employer*. The *Consultant* cooperates with the *Employer* and Others in obtaining and providing information which they need in connection with their works and the services.
- 23.2 Where necessary to Provide the Services, the *Consultant* holds or attends meetings with Others. The *Consultant* informs the *Employer* of these meetings beforehand and the *Employer* may attend them.
- 23.3 If the *Employer* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either
- in carrying out work; or
 - by paying an additional amount to Others in carrying out work on the Works, the additional cost the *Employer* has paid or will incur is paid by the *Consultant*. The *Employer* assesses the additional cost as soon as reasonably practicable and in any event within six (6) weeks of the date when the Condition stated for that Key Date is met. The *Employer's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Consultant's* failure to meet a Key Date.
- 23.4 The *Consultant* Provides the Services and corrects Defects in such a way as not to cause delay or disruption to the *Employer* and/or Others. In the event that Providing the Services or correcting Defects causes delay or disruption to the *Employer* and/or Others, the *Consultant* takes all reasonable steps to mitigate and minimise such delay or disruption.

Subcontracting

24

- 24.1 If the *Consultant* subcontracts work, he is responsible for providing the Services as if he had not subcontracted. This contract applies as if a Subconsultant's employees were the *Consultant's*. The *Consultant* does not remove any *key person* from the contract for more than twenty one (21) consecutive days without the prior written consent of the *Employer*, save where such *key person* is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the *Consultant's* employment in which case the *Consultant* provides a suitable replacement, who is to be approved by the *Employer*.
- 24.2 The *Consultant* submits to the *Employer* for acceptance, the name of each proposed Subconsultant together with a copy of the proposed sub-contract documentation and such other information as the *Employer* may require. The *Consultant* does not appoint the Subconsultant until the *Employer* accepts him.
- 24.3 Reasons for not accepting a proposed Subconsultant and/or a proposed subcontract include, but are not limited to
- the *Consultant* has not complied with the requirements of clause 24.2 and obtained the *Employer's* approval,
 - the terms of the proposed subcontract are not on NEC terms or do not otherwise, in the *Employer's* opinion, adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
 - the appointment of the proposed Subconsultant and/or the proposed sub-contract will not allow the *Consultant* to Provide the Services,
 - the proposed subcontract conditions and/or the proposed subcontract works do not represent best value,
 - the proposed Subconsultant is unable to meet, in the *Employer's* opinion, the criteria set out in the Scope,
 - the proposed subcontract work represents, in the *Employer's* opinion, too large a proportion of the total Scope,
 - the proposed subcontract conditions do not include a provision,
 - requiring the proposed Subconsultant's to meet the Conditions stated for a Key Date on or before such Key Date and to achieve Completion on or before the Completion Date and to minimise the level of the Prices,
 - requiring the proposed Subconsultant to maintain accounts and records and to grant audit rights to the *Employer* and its authorised representatives of an equivalent extent and nature to those required by this contract,
 - requiring the proposed Subconsultant to assign to the *Employer* the Intellectual Property Rights in all documents, drawings, materials, computer software and any other material or works prepared or developed by or on behalf of the proposed Subconsultant in the performance of the subcontract,
 - requiring the proposed Subconsultant to grant a non-exclusive, perpetual, irrevocable, royalty-free licence to the *Employer* to

use Background Intellectual Property Rights (including the right to grant sub-licences) of an equivalent extent and nature to those required by this contract,

- imposing equivalent obligations of confidentiality on the proposed Subconsultant to those required by this contract,
- imposing equivalent obligations regarding clause 110 and health and safety (including Safety Breaches) as required by this contract,
- in equivalent terms to clause 121.8 of this contract together with an obligation to procure that equivalent provisions are included in sub-contracts of any tier,
- the proposed subcontract does not oblige the Subconsultant to provide a collateral warranty in favour of the *Employer* or the beneficiaries identified in clause 101.1 within fourteen (14) days of the *Consultant's* request on the terms set out in Schedule 11A, 11B or 16 (as the case may be) of the Framework Agreement; or
- the proposed sub-contract does not include a statement that the parties to the subcontract must act in a spirit of mutual trust and co-operation.

24.4 The *Consultant* obtains the prior written approval of the *Employer* to the appointment of a replacement Subconsultant in the event of any first Subconsultant's appointment being determined.

24.5 Neither the objection to nor any failure to raise an objection to a proposed Subconsultant by the *Employer* relieves the *Consultant* of any liability or obligation under this contract.

24.6 It is the *Employer's* policy to utilise, where it considers it appropriate and on a non-exclusive basis, CompeteFor (further details of which are contained in the Scope) as a fair and economical method of sourcing suppliers to provide goods, works and services. Where the *Consultant* intends to subcontract work with a value above £50,000 the *Consultant* uses, on a non-exclusive basis. CompeteFor (<https://www.competefor.com>) for the purpose of advertising sub-contracts and short listing suppliers.

Other responsibilities

25

25.1 The *Consultant* obtains approval from Others where necessary to Provide the Services.

25.2 The *Employer* provides access to a person, place or thing to the *Consultant* as stated in the Contract Data on or before the later of its *access date* and the access date for it shown on the Accepted Programme.

25.3 The *Consultant* obeys an instruction which is in accordance with this contract and is given to him by the *Employer*.

25.4 The *Consultant* acts in accordance with the health and safety requirements stated in the Scope.

25.5 The *Consultant* complies with the CDM Regulations and at all times co-operates, so far as is reasonably practicable, with all parties having

health and safety responsibilities on or adjacent to the site and/or in respect of the Works for the effective discharge of those responsibilities.

- 25.6 The *Consultant* warrants to the *Employer* that it is fully aware of the provisions of Regulation 11 ("Duties of designers") of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 11.
- 25.7 The *Consultant* is fully conversant with the Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations and acknowledges that in relation to the *services* he is a "designer" as defined in the CDM Regulations. The *Consultant* uses all reasonable skill, care and diligence to comply with his obligations and duties as a designer as defined and specified in the CDM Regulations and in accordance with the Approved Code of Practice.
- 25.8 The *Consultant* provides the Contractor with all reasonable and necessary assistance to implement and update the Site Waste Management Plan in accordance with the requirements of the Site Waste Management Plan Regulations 2008. These obligations are without prejudice to the *Consultant's* obligations under this contract in respect of Statutory Requirements.

**3
Starting,
Completion and
Key Dates**

Time

30

- 30.1 The *Consultant* does not start work until the *starting date* and does the work so that Completion is on or before the Completion Date.
- 30.2 The *Consultant* notifies the *Employer* when in his opinion the *services* have achieved Completion. The *Consultant* provides all information and evidence listed or identified in the Scope as being required and all other information and evidence which the *Employer* may reasonably request to satisfy the *Employer* that the *services* have been so completed. If the *Employer* is so satisfied, the *Employer* decides the date of Completion and certifies it within four (4) weeks of the date.
- 30.3 The *Consultant* does the work so that the Condition stated for each Key Date is met by the Key Date.

The Programme

31

- 31.1 If a programme is not identified in the Contract Data, the *Consultant* submits a first programme to the *Employer* for acceptance within the period stated in the Contract Data.
- 31.2 The *Consultant* shows on each programme which he submits for acceptance
- the *starting date*, *access dates*, Key Dates and Completion Date,
 - planned Completion,
 - the order and timing of the operations which the *Consultant* plans to do in order to Provide the Services,
 - the order and timing of the work of the *Employer* and Others

as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope,

- the dates when the *Consultant* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
- provisions for float,
- time risk allowances,
- environmental and health and safety requirements; and
- the procedures set out in this contract,
- the dates when, in order to Provide the Services in accordance with his programme, the *Consultant* will need,
- access to a person, place or thing if later than its *access date*,
- information and things to be provided by the *Employer* and information and approval from Others,
- for each operation, a statement of how the *Consultant* plans to do the work identifying the resources which he plans to use; and
- other information which the Scope requires the *Consultant* to show on a programme submitted for acceptance.

31.3 Within two (2) weeks of the *Consultant* submitting a programme to him for acceptance, the *Employer* either accepts the programme or notifies the *Consultant* of his reasons for not accepting it. A reason for not accepting a programme is that

- the *Consultant's* plans which it shows are not practicable,
- it does not show the information which this contract requires,
- it does not represent the *Consultant's* plans realistically,
- it does not comply with the Scope,
- it does not allow the *Employer* and/or any novated *Employer* and/or Others to start or carry out and complete their work as planned and subsequently to maintain any assets or facilities delivered as a result of such work,
- it is not in a format which is accepted for use by the *Employer*.

Revising the programme

32

32.1 The *Consultant* shows on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,

- the effects of decisions reached and approved by the *Employer* at risk reduction meetings,
- how the *Consultant* plans to deal with any delays and to correct notified Defects; and

any other changes which the *Consultant* proposes to make to the Accepted Programme.

32.2 The *Consultant* submits a revised programme to the *Employer* for acceptance

- within the *period for reply* after the *Employer* has instructed him to,
- when the *Consultant* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *services*; and
- following the implementation of a compensation event which has an impact on Completion or a Key Date.

Instructions to stop or not to start work 33

33.1 The *Employer* may instruct the *Consultant* to stop or not to start any work and may later instruct him that he may re-start or start it.

Acceleration 34

34.1 The *Employer* may instruct the *Consultant* to submit a quotation for acceleration to achieve Completion before the Completion Date. The *Employer* states changes to the Key Dates to be included in the quotation. A quotation for acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Consultant* submits details of his assessment with each quotation.

34.2 The *Consultant* submits a quotation or gives his reasons for not doing so within the *period for reply*.

34.3 If the *Employer*

- accepts a quotation for an acceleration; or
- does not accept a quotation for acceleration; or
- does not accept the *Consultant's* reasons for not submitting a quotation,

then the *Employer* may issue an instruction to the *Consultant* to accelerate and the *Consultant* proceeds to accelerate in accordance with that instruction. The *Employer* decides and notifies any earlier Key Dates or Completion Date and the *Consultant* submits a revised programme to the *Employer* for acceptance which reflects the changes. The *Employer* assesses the instruction as a compensation event.

system

- 40.1 The *Consultant* operates a quality management system for Providing the Services as stated in the Scope. The quality management system complies with the requirements stated in the Scope.
- 40.2 The *Consultant* provides the *Employer*, within the period stated in the Contract Data, with a quality policy statement and a quality plan for acceptance. The quality policy statement and quality plan comply with the requirements stated in the Scope.
- 40.3 The *Employer* may at any time monitor and audit the *Consultant's* quality management system as set out in the quality plan. The *Consultant* complies with an instruction from the *Employer* to the *Consultant* to correct a failure to comply with the quality plan.

Correcting defects 41

- 41.1 Until the *defects date*, the *Employer* notifies the *Consultant* of each Defect as soon as he finds it and the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. At Completion the *Consultant* notifies the *Employer* of the Defects which have not been corrected. After Completion and until the *defects date*, the *Consultant* notifies the *Employer* of each Defect as soon as he finds it. The *Employer's* rights in respect of a Defect which the *Employer* has not found or notified by the *defects date* are not affected.
- 41.2 The *Consultant* corrects a Defect whether or not the *Employer* notifies him of it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. If the *Consultant* does not correct a Defect within the time required by this contract, the *Employer* assesses the cost to him of having the Defect corrected by other people and the *Consultant* pays this amount.
- 41.3 For the avoidance of doubt, the *Consultant* continues to be liable for Defects (including latent or inherent Defects) after
- the operation of this section; and
 - the termination of this contract for any reason (including breach by the *Employer*),
- in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.
- 41.4 The Parties may each propose to the other that the Scope is changed so that a Defect does not have to be corrected. If the Parties are prepared to consider the change the *Consultant* submits a quotation for reduced Prices and, where applicable, an earlier Completion Date to the *Employer* for acceptance. If the *Employer* accepts the quotation he gives an instruction to change the Scope, the Prices and, where applicable, the Completion Date.
- 41.5 The *Consultant* carries out such re-design and re-testing at his own cost as may be necessary as a result of a Defect being identified to correct the Defect and prevent a recurrence.

5 Payment Assessing the amount due 50

- 50.1 The *Consultant* assesses the amount due and submits his assessment to the *Employer* in a form approved by the *Employer* not less than fourteen (14) days prior to each assessment date. The

assessment states the sum that the *Consultant* considers is due to him and the payment due date and the basis on which that sum is calculated. The *Consultant* maintains and submits with his assessment all timesheets, invoices, and all other relevant supporting documents and information as may be reasonably required by the *Employer*. The first assessment date is decided by the *Consultant* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur

- at the end of each *assessment interval* until eight (8) weeks after the *defects date*; and
- at Completion of the whole of the *services*.

50.2 Invoices submitted by the *Consultant* include all supporting documents, records and receipts reasonably necessary for checking each invoice and any additional information stated in the Scope. The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.

50.3 The amount due is

- the Price for Services provided to Date,
- the amount of the reasonable *expenses* properly spent by the *Consultant* in Providing the Services; and
- other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.

Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due. If the amount to be paid to the *Consultant* is less than the amount to be paid by or retained from the *Consultant*, the *Employer* may recover the difference from the *Consultant* as a debt due on demand.

50.4 All sums payable by or to the *Employer* or the *Consultant* are exclusive of Value Added Tax ("VAT"). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.

50.5 The *Consultant* acknowledges that the nature of the *services* are such as may require an element of abortive work, reworking, renegotiation and repetition the extent of which cannot be accurately forecast at the Contract Date. The *Consultant* agrees that no such abortive work, reworking, renegotiation or repetition which is caused by an error, omission, negligence, default, breach of contract or breach of statutory duty of the *Consultant* entitles him to any additional payment unless the *Employer* expressly agrees in writing that an additional payment is justified.

50.6 If any performance bond or parent company guarantee required by this contract is not procured by the *Consultant* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Services provided to Date is retained in assessments of the amount due and is not payable to the *Consultant* until such document has been delivered.

50.7 If a novation agreement is requested under clause 102 but not executed and delivered to the *Employer* in accordance with clause 102, then one quarter of the Price for Services provided to Date is retained in assessments of the amount due and is not payable to the

Consultant until such documents have been delivered.

- 50.8 Without prejudice to the obligations of the *Consultant* to the *Employer* and to the rights of the *Employer*, the *Employer* is not obliged to make any payment to the *Consultant* if (and for so long as) the *Consultant* fails within the time limit specified to deliver collateral warranties duly executed in accordance with clause 100 provided always that the *Employer* notifies the *Consultant* of the identity of the relevant beneficiaries.
- 50.9 If any of the Subconsultants' collateral warranties are not procured by the *Consultant* and then delivered to the *Employer* in accordance with clause 101, the Price for Services provided to Date relating to work being undertaken by those Subconsultant's is retained in assessments of the amount due and is not payable to the *Consultant* until such collateral warranties have been delivered.

Payment

51

- 51.1 The date payment becomes due is the later of
- the assessment date; and
 - fourteen (14) days after the date of receipt by the *Employer* of the *Consultant*'s assessment referred to in clause 50.1.
- 51.2 The final date for payment is twenty eight (28) days after the date on which payment becomes due.
- 51.3 Payments are in the *currency of this contract* unless otherwise stated in this contract.
- 51.4 The *Employer* certifies a payment not later than five (5) days after each payment due date and issues a copy of the payment certificate to the *Consultant*.
- 51.5 Not later than five (5) days after receipt of the payment certificate the *Consultant* delivers to the *Employer* a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Consultant* issues a corrected VAT invoice, where required, within five days of receipt of any Pay Less Notice.
- 51.6 Subject to clause 121.4 if a payment of an amount due is not paid by the final date for payment interest is paid. Interest is assessed from the final date for payment until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- 51.7 Interest is calculated on a daily basis at the *interest rate* and is simple interest.
- 51.8 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever under this contract or any other contract between the *Employer* and the *Consultant* any sum of money is recoverable from or payable by the *Consultant* or any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer*, or where any member of the TfL Group is the *Employer* only, any member of the TfL Group, arising out of or attributable to this contract or any other contract between the *Employer* and the *Consultant* then the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the *Consultant* under this contract.

6 Compensation events

Compensation events

60

- 60.1 The following are compensation events (but only to the extent that they are not due to any breach, unlawful act or omission, negligence, default and/or failure to comply with this contract on the part of the *Consultant* and provided that the *Consultant* has taken all reasonable steps to mitigate the actual or potential effect of the event).
- (1) The *Employer* gives an instruction changing the Scope except:
- an agreed change made in order to accept a Defect; or
 - an instruction which is stated in this contract not to give rise to a compensation event.
- (2) The *Employer* does not provide access to a person, place or thing for the *Consultant* as stated in this contract.
- (3) The *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.
- (4) The *Employer* gives an instruction to stop or not to start any work or to change a Key Date.
- (5) The *Employer* or Others (not being Statutory Undertakers unless the *Consultant* has taken all reasonable steps to liaise and interface with such Statutory Undertaker) do not work within the times shown on the Accepted Programme or within the conditions stated in the Scope.
- (6) The *Employer* does not reply to a communication from the *Consultant* within the period required by this contract unless
- in the opinion of the *Employer* the communication does not contain sufficient information to enable a response to be made and the *Employer* has notified the *Consultant* accordingly; or
 - the *Employer* withholds acceptance of the communication for a reason stated in this contract and the *Employer* has notified the *Consultant* accordingly.
- (7) The *Employer* changes a decision which he has previously communicated to the *Consultant*.
- (8) The *Employer* withholds an acceptance (other than acceptance of a quotation for acceleration) for a reason not stated in this contract.
- (9) The *Employer* notifies a correction to an assumption which he has stated about a compensation event.
- (10) A breach of contract or act of prevention on the part of the *Employer* (except to the extent caused or contributed to by the *Consultant* or any Subconsultant or other person for whom the *Consultant* or his Subconsultant's are responsible) which is not one of the other compensation events in this contract.
- (11) An event which is a Prevention Event and is not a breach of contract by the *Consultant* and is not one of the other compensation events stated in this contract provided that the *Consultant* is not entitled under this sub-clause 60.1(11) to any change to the Prices.
- (12) The *Consultant* corrects a Defect for which he is not liable under this contract.
- 60.2 Notwithstanding clause 60.1, compliance with the Framework Agreement by the *Consultant* shall not amount to a compensation

event.

**Notifying
compensation
events**

61

61.1 For compensation events which arise from the *Employer* giving an instruction or changing an earlier decision, the *Employer* notifies the *Consultant* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Consultant* to submit quotations, unless the event arises from a fault of the *Consultant* or quotations have already been submitted. The *Consultant* puts the instruction or changed decision into effect.

61.2 The *Employer* may instruct the *Consultant* to submit quotations for a proposed instruction or a proposed changed decision. The *Consultant* does not put a proposed instruction or a proposed changed decision into effect.

61.3 The *Consultant* notifies the *Employer* of an event which has happened or which he expects to happen as a compensation event if

- the *Consultant* believes that the event is a compensation event; and

- the *Employer* has not notified the event to the *Consultant*.

If the *Consultant* does not notify a compensation event within eight (8) weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in Prices, the Completion Date or a Key Date unless the *Employer* should have notified the event to the *Consultant* but did not. The *Employer* may, in his absolute discretion, assess a change to the Completion Date or a Key Date (but not a change to the Prices) in the absence of a timely notice from the *Consultant* in accordance with this sub-clause.

61.4 If the *Employer* decides that an event notified by the *Consultant*

- arises from including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Consultant* or any of his employees or agents or of any Subconsultant or supplier or any of their employees or agents,
- has not happened and is not expected to happen,
- has no effect upon the *Consultant's* costs, Completion or meeting a Key Date; or
- is not one of the compensation events stated in this contract,

he notifies the *Consultant* of his decision that the Prices, the Completion Date and the Key Date are not to be changed.

If the *Employer* decides otherwise, he notifies the *Consultant* accordingly and instructs him to submit quotations including any supporting information reasonably required by the *Employer* or the *Employer's Agent*.

If the *Employer* does not notify his decision to the *Consultant* within either

- two (2) weeks of the *Consultant's* notification; or
- a longer period to which the *Consultant* has agreed,

the *Consultant* may notify the *Employer* to this effect. A failure by the *Employer* to reply within four (4) weeks of this notification is treated as acceptance by the *Employer* that the event is a compensation event and an instruction to submit quotations.

- 61.5 If the *Employer* decides that the *Consultant* did not give an early warning of the event which an experienced consultant could have given, he notifies this decision to the *Consultant* when he instructs him to submit quotations.
- 61.6 If the *Employer* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Consultant* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Employer* notifies a correction.
- 61.7 A compensation event is not notified after Completion other than in relation to an instruction given by the *Employer* changing the Scope before the *defects date*. No payment is made by the *Employer* to the *Consultant* in respect of any matter notified after the *defects date*.

Quotations for compensation events

62

- 62.1 After discussing with the *Consultant* different ways of dealing with the compensation event which are practicable, the *Employer* may instruct the *Consultant* to submit alternative quotations. The *Consultant* submits the required quotations to the *Employer* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Consultant*. The *Consultant* submits details of his assessment including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subconsultant and with regard to the *services* and planned works by Others with each quotation. If the programme for remaining work is altered by the compensation event, the *Consultant* includes the alterations to the Accepted Programme in his quotation. If the quotations comprise or include delays, the details of the *Consultant's* assessment include sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.
- 62.3 The *Consultant* submits quotations within four (4) weeks of being instructed to do so by the *Employer*. The *Employer* replies within four (4) weeks of the submission. His reply is
- an instruction to submit a revised quotation,
 - an acceptance of a quotation,
 - a notification that a proposed instruction will not be given or a proposed changed decision will not be made; or

- a notification that he will be making his own assessment.

62.4 The *Employer* instructs the *Consultant* to submit a revised quotation only after explaining his reasons for doing so to the *Consultant*. The *Consultant* submits the revised quotation within three (3) weeks of being instructed to do so.

62.5 The *Employer* extends the time allowed for

- the *Consultant* to submit quotations for a compensation event; and
- the *Employer* to reply to a quotation,

if the *Employer* and the *Consultant* agree to the extension before the submission or reply is due. The *Employer* notifies the extension that has been agreed to the *Consultant*.

62.6 If the *Employer* does not reply to a quotation within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* does not reply to the notification within four (4) weeks and, unless the quotation is for a proposed instruction or a proposed changed decision, the *Consultant's* notification is treated as acceptance of the quotation by the *Employer*.

Assessing compensation events

63

63.1 The changes to the Prices are assessed as the effect of the compensation event upon

- the actual Time Charge for the work already done; and
- the forecast Time Charge for the work not yet done.

The date when the *Employer* instructed or should have instructed the *Consultant* to submit quotations divides the work already done from the work not yet done.

63.2 If the effect of a compensation event is to reduce the total Time Charge, the Prices are not reduced excepted as stated in this contract.

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that any delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent

- that the compensation event is the sole or principal cause of the delay; and
- there is sufficient evidence to demonstrate that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

For the avoidance of any doubt, the *Employer* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation

event is to reduce the time required for Completion or meeting a Key Date.

- 63.4 The rights of the *Employer* and the *Consultant* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Consultant* other than amounts claimable and recoverable under this contract.
- 63.5 If the *Employer* has notified the *Consultant* of his decision that the *Consultant* did not give an early warning of a compensation event which an experienced consultant could have given, the event is assessed as if the *Consultant* had given early warning.
- 63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time matters which
- are not compensation events in themselves’,
 - have a material and significant chance of occurring; and
 - are at the *Consultant's* risk under this contract.
- 63.7 Assessments for work not yet done are based upon the assumptions that the *Consultant* will react competently and promptly to the compensation event and that the Accepted Programme can be changed. Assessments for work already done include only cost and time which were reasonably incurred. Where the *Employer* decides that the *Consultant* has failed to act in accordance with such assumptions this can be taken into account when making the assessment.
- 63.8 An instruction to change the Scope in order to resolve an ambiguity or inconsistency which (in accordance with sub-clauses 16.1 and 16.2 is a compensation event is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.
- 63.9 If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Employer* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.
- 63.10 If the work included in a quotation for a compensation event includes work by staff for which there is no *staff rate*, a proposed rate is included in the quotation.
- 63.11 The following are deducted from the assessment of compensation events:
- the cost of events for which this contract requires the *Consultant* to insure; and
 - other costs paid to the *Consultant* by insurers.
- 63.12 If a change to the Scope increases the requirement for an extended resource commission such that the length of the extended resource commission extends into a higher utilisation discount band then the Prices are adjusted by applying the higher utilisation discount to the full length of the extended resource commission.

64.1 The *Employer* assesses a compensation event

- if the *Consultant* has not submitted a required quotation and details of his assessment including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subconsultant and with regard to the *services* and planned works by Others within the time allowed,
- if the *Employer* decides that the *Consultant* has not assessed the compensation event correctly in a quotation and he does not instruct the *Consultant* to submit a revised quotation,
- if, when the *Consultant* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit, or
- if, when the *Consultant* submits quotations for a compensation event, the *Employer* has not accepted the *Consultant's* latest programme for one of the reasons stated in this contract.

64.2 The *Employer* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme; or
- the *Consultant* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Employer* notifies the *Consultant* of his assessment of a compensation event and gives him details of it within the period allowed for the *Consultant's* submission of his quotation for the same event. This period starts when the need for the *Employer's* assessment becomes apparent.

64.4 If the *Employer* does not assess a compensation event within the time allowed, the *Consultant* may notify the *Employer* to this effect. If the *Consultant* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Employer* does not reply within four (4) weeks of this notification the notification is treated as acceptance of the *Consultant's* quotation by the *Employer*.

64.5 The *Employer* may at his discretion extend the time allowed for the following actions

- notification of a decision and/or instruction (clause 61.4),
- reply to a quotation (clause 62.3); or
- assessment of a compensation event (clause 64.3 and clause 64.4) provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including without limitation the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding

compensation events. The *Employer* notifies the extension to the *Consultant* before the date that such notification, reply or assessment would become due under the contract.

**Implementing
compensation
events**

65

65.1 A compensation event is implemented when

- the *Employer* notifies his acceptance of the *Consultant's* quotation,
- the *Employer* notifies the *Consultant* of his own assessment; or
- a *Consultant's* quotation is treated as having been accepted by the *Employer*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

**7 Rights to material
The Parties' use of
material**

70

70.1 The *Employer* has the right to use the material provided by the *Consultant* for any purpose whatsoever including, without limitation, the execution, completion, maintenance, letting, advertisement, modification, enhancement, alteration, extension, reinstatement and repair of the *services* or the Works. The *Consultant* obtains from a Subconsultant equivalent rights for the *Employer* to use material prepared by the Subconsultant.

70.2 The *Consultant* has the right to use material provided by the *Employer* only to Provide the Services. The *Consultant* may make this right available to a Subconsultant. On Completion of the whole of the *services*, the *Consultant* returns the material provided by the *Employer* to him.

70.3 The *Consultant* may not use the material provided by him under this contract for other work unless stated otherwise in the Scope.

Publicity

71

71.1 Except as provided under deeds of warranty required by the *Employer* under sub-clause 100] and subject to clause 109, the *Consultant* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract, the *services* or the Works.

**8 Indemnity, insurance and liability
Indemnity**

80

80.1 The *Consultant* is responsible for and indemnifies the *Employer*, its employees and agents against any and all Losses arising out of

- any failure by the *Consultant* to use the degree of skill, care

and diligence normally used by competent professionals experienced in providing *services* similar to the *services* in connection with works of a similar size, scope and complexity to the Works,

- death or bodily injury to any person whomsoever arising out of or caused by the carrying out of the *services* by the *Consultant*,
- loss of or damage to property real or personal (and any novated *Employer*) arising out of or caused by the carrying out of the *services* by the *Consultant*; and
- any infringement by the *Consultant* of the rights of Others, except an infringement which arose out of the use by the *Consultant* of things provided by the *Employer*,

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission or default by the *Consultant*, his employees, Subconsultants or agents.

The liability of the *Consultant* to indemnify the *Employer* is reduced to the extent that such Losses are caused by the negligence of the *Employer*.

80.2 The *Consultant's* indemnity under clause 80.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to the indemnity.

Insurance cover 81

81.1 The *Consultant* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in the Contract Data. The insurances provide cover from the *starting date* or the Contract Date (whichever is the earlier) until the end of the periods stated in the Contract Data.

INSURANCE TABLE

Insurance against	Minimum amount of cover
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the degree of reasonable skill, care and diligence normally used by competent professionals experienced in providing services similar to the <i>services</i> in connection with works of a similar size, scope and complexity to the Works (professional indemnity insurance)	Not less than £1,000,000.00 (one million pounds) for each and every claim and in the aggregate per annum, or as otherwise stated in the Contract Data.
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	Not less than £5,000,000.00 (five million pounds) in respect of each claim or as otherwise stated in the Contract Data.
Liability for death of or bodily injury to employees of the <i>Consultant</i>	Not less than £5,000,000.00 (five million pounds) in respect

arising out of and in the course of their employment in connection with this contract.

of each claim or as otherwise stated in the Contract Data.

81.2 When requested by a Party the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.3 The *Consultant's* professional indemnity insurance

- is under the usual and customary terms and conditions prevailing in the insurance market,
- does not include any term to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers,
- does not include any other term which might adversely affect the right of any person (other than the Parties) to recover from the insurers under any applicable law relating to the rights of third parties,
- is with a reputable insurer authorised to underwrite such risks in the United Kingdom and approved by the *Employer*,

provided that such insurance is available upon commercially reasonable terms and premiums. If at any time such insurance becomes unavailable on commercially reasonable terms and premiums (excluding and increase in premiums attributable to the actions, omissions errors or default of the *Consultant*) the *Consultant* immediately informs the *Employer* in writing and the Parties meet and agree an alternative method of managing such risk.

Limitation of liability

82

82.1 The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*. If no such amount is stated, the *Consultant's* liability is not limited.

The excluded matters are amounts payable by the *Consultant* as stated in this contract for

- delay damages if Option X7 applies,
- *Consultant's* share if Option C applies,
- an infringement by the *Consultant* of the rights of Others,
- loss of or damage to third party property,
- death of or bodily injury to a person other than an employee of the *Consultant*,
- Losses caused by fraudulent acts or acts of a criminal nature,
- any other Losses against which the *Consultant* is entitled to an indemnity under any policy of insurance up to (but not exceeding) the amount which the *Consultant* is obliged to

maintain under this contract; and

- all Losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the intellectual property rights or other rights of any third party.

Provisions relating to insurances 83

- 83.1 The insurances provided pursuant to this contract do not relieve the *Consultant* from any of his obligations and liabilities under the contract.
- 83.2 The *Consultant* cooperates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims. The *Consultant* does not compromise, settle or waive any claim, or by an act or omission lose or prejudice the *Consultant's* right to make or proceed with such a claim against insurers, which the *Consultant* may have under the *Employer's* insurances or any claim which the *Consultant* may have against insurers and which relates to a claim by the *Employer* against the *Consultant*, without the prior written consent of the *Employer*.
- 83.3 Unless the *Employer* otherwise instructs, the *Employer* submits all claims under his insurances and the *Consultant* provides such information in connection with such claims as the *Employer* and its insurers require.
- 83.4 The *Consultant* does not by any act, omission or default prejudice, lose or forego the Parties' right or the right of either of them to make or proceed with a claim against any insurers.
- 83.5 To the extent that the *Employer* arranges any insurance policies on behalf of the *Consultant*, the *Consultant* pays all excesses and bears all deductibles on claims arising under the insurance policies maintained by the *Employer* to the extent that the *Consultant* is responsible for the loss or damage in question. If the premiums payable for such insurances increase as a result of claims made by the *Consultant* arising from events which a prudent and experienced consultant familiar with works of a similar size, nature and complexity to the *services* might reasonably have avoided (including claims attributable to his Subconsultants), then the *Consultant* pays to the *Employer* the increase in premium which is deemed to be a debt due on demand.
- 83.6 The *Consultant* procures that his Subconsultants of any tier maintain professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- 83.7 The *Consultant* submits documentary evidence for the insurances which he is to provide to the *Employer* for acceptance before the *starting date*. The *Consultant* continues to submit documentary evidence to the *Employer* as required or necessary to prove that such insurances are being maintained in accordance with this contract. Such documentary evidence shall state that the insurance required by this contract is in force and be signed by the *Consultant's* insurer or insurance broker. A reason for not accepting the documentary evidence for the insurances is that the insurances or the documentary

evidence do not comply with this contract.

9 Termination

Termination

90

- 90.1 Either Party may terminate the *Consultant's* obligation to Provide the Services by notifying the other Party if the other Party has done one of the following or its equivalent
- If the other Party is an individual and has,
 - presented his petition for bankruptcy,
 - had a bankruptcy order made against him,
 - had a receiver appointed over his assets; or
 - made an arrangement with his creditors.
- If the other Party is a company or partnership and has
- had a winding-up order made against it,
 - had a winding-up order made against it,
 - had a provisional liquidator appointed to it,
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency),
 - had an administration order made against it,
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets; or
 - made an arrangement with its creditors.
- 90.2 Save when the *Employer* has complied with clause 121, the *Consultant* may terminate his obligation to Provide the Services by notifying the *Employer* if the *Employer* has not paid an amount due to the *Consultant* within eight (8) weeks of the issue of a notice by the *Consultant* to the *Employer* that payment is overdue provided always that the *Consultant* has given written notification to the *Employer* of such intention to terminate at least five (5) weeks prior to any such termination and the *Employer* has not paid the amount due within that period.
- 90.3 The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if
- the *Consultant* is in breach of clause 106 (Conflict of Interest) and/or clause 110 (Corrupt Gifts, Fraud, Payment of Commission and Safety Breaches) and/or clause 133 (Supplier Diversity),
 - the *Employer* no longer requires the *services* or otherwise wishes to *terminate* the *Consultant's* obligation to Provide the Services for any reason. For the avoidance of doubt, the *Consultant* shall not be entitled to compensation on termination at will by the *Employer* including but not limited to loss of profit or loss of opportunity; or
 - the *Consultant* has substantially failed to comply with his obligations and has not put the default right within four (4) weeks of a notification by the *Employer*.
- 90.4 The *Employer* may also terminate if the *Consultant* has defaulted in one of the ways referred to in the third bullet point of this clause on two occasions within a period of eight (8) weeks whether or not the *Consultant* has remedied the default within four (4) weeks of the

second notification by the *Employer*.

The *Employer* may terminate the *Consultant's* obligation to Provide the Services by notifying the *Consultant* if an event occurs which

- stops the *Consultant* completing the *service*; or
- stops the *Consultant* completing the *services* by the date shown on the Accepted Programme and is forecast to delay Completion by more than thirteen (13) weeks.

and which

- neither Party could prevent; and

an experienced and prudent consultant familiar with works similar to the *services* and exercising the foresight appropriate to such a consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

Procedures on termination

91

91.1 On termination

- the *Consultant* does no further work necessary to Provide the Services,
- the *Employer* may complete the *services* and may use any material to which he has title,
- the *Employer* may require the *Consultant* to assign the benefit of and/or enter into a novation of any subconsultancy or other contract related to performance of this contract to the *Employer*; and
- the *Consultant* makes available to the *Employer* within seven (7) days all information prepared in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format,
- the Parties continue to comply with the constraints and obligations in this contract on,
- the use of material prepared or obtained by the *Consultant* and publicising the *services*.

The *Consultant* gives to the *Employer* work carried out to date, information resulting from work carried out to date, and information the *Consultant* has obtained which he has a responsibility to provide under this contract.

Payment on termination

92

92.1 The amount due on termination includes:

- an amount due assessed as for normal payments; and
- other costs reasonably incurred by the *Consultant* in expectation of completing the whole of the *services* and to which the *Consultant* is committed.

92.2 If the *Employer* terminates because of the occurrence of one or more of the events described in sub-clause 90.1, or the material failure of the *Consultant* to comply with his obligations (including, for the avoidance of doubt and without limitation, a failure to comply with his obligations pursuant to clauses 109 or 110), or because the *Consultant* has not provided a bond which this contract requires, then, without prejudice to the *Employer's* other rights and remedies, the final payment due to the *Consultant* or the *Employer*, as the case may be, includes a credit to the *Employer* of the forecast of the additional cost to the *Employer* resulting from the termination.

10 Additional conditions of contract
Consultant's **100**
warranties

- 100.1 The *Consultant*, within fourteen (14) days of the *Employer*, or any novated *Employer's*, request (as the case may be), duly executes and delivers to the *Employer*, or any novated *Employer*, (as the case may be) deeds of warranty in the appropriate form set out in Schedules 9 and 10 of the Framework Agreement in favour of:
- any member of the TfL Group;
 - persons providing finance in connection with the Works;
 - purchasers and tenants of the whole or any part of the Works;
 - developers having or acquiring an interest in the whole or any part of the Works; and
- upon execution of a novation agreement pursuant to clause 102, a deed of warranty in favour of the *Employer* in the form set out in Schedule 10 of the Framework Agreement.
- 100.2 The *Employer* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Employer*, then as between the *Consultant* and the *Employer*, upon such recipient of the collateral warranty serving the requisite notice, the *Consultant* treats the said recipient as standing in substitution for the *Employer* and the *Employer* raises no objection to such substitution.

Subconsultant's **101**
warranties

- 101.1 The *Consultant*, within fourteen (14) days of the *Employer's*, or any novated *Employer's*, request (as the case may be), procures that the Subconsultants named or identified by discipline in the *Employer's*, or any novated *Employer's*, request (as the case may be) duly execute and deliver to the *Employer*, or any novated *Employer* (as the case may be) deeds of warranty in the appropriate form set out in Schedules 11A and 11B of the Framework Agreement in favour of
- the *Employer* and (upon novation) any novated *Employer*;
 - any member of the TfL Group,
 - persons providing finance in connection with the Works,
 - purchasers and tenants of the whole or any part of the Works; and
 - developers having or requiring an interest in the whole or any part of the Works.
- 101.2 If the *Consultant* is unable to procure and deliver to the *Employer*, or any novated *Employer*, (as the case may be) any requisite deed of warranty in the appropriate form within fourteen (14) days of the *Employer's*, or any novated *Employer's*, request (as the case may be), the *Consultant* without prejudice to the *Employer's*, or any novated *Employer's*, (as the case may be) rights and remedies consults with the *Employer*, or any novated *Employer*, (as the case may be) as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the *Employer's*,

or any novated *Employer's*, interests (as the case may be).

Novation 102

102.1 If requested by the *Employer*, the *Consultant* duly executes and delivers a novation agreement in the form of the novation agreement set out in Schedule 12 of the Framework Agreement (subject to any amendments which the *Employer* (acting reasonably) may require) in order to novate the benefit and burden of this contract to another member of the TfL Group or GLA or to the Contractor, or where applicable to an Infracore within fourteen (14) days of the *Employer's* request to do so.

Statutory Undertakers 103

103.1 The *Consultant* complies with the special requirements of relevant suppliers of utilities acting as Statutory Undertakers which shall include the following

- electricity,
- gas,
- water,
- telecommunications; and
- Others.

103.2 The *Consultant* is responsible for determining the requirements of Statutory Undertakers and for complying with the same.

Data and information 104

104.1 Any data or information received at any time by the *Consultant* from the *Employer* or Others does not relieve the *Consultant* from his responsibility for the *services* he undertakes under this contract.

Accounts and records 105

105.1 In this section

Minimum Records means:

- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subconsultants,
- management accounts, information from management information systems and any other management records,
- accounting records (in hard copy as well as computer readable data),
- sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
- original estimates,
- estimating worksheets,
- correspondence,
- compensation event files (including documentation covering negotiated settlements),

- schedules including capital works costs, timetable and progress towards Completion,
- general ledger entries detailing cash and trade discounts and rebates,
- commitments (agreements and leases) greater than £5,000 (five thousand pounds),
- detailed inspection records,
- such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*,
- accounts and records of the Price for Services provided to Date and all other amounts to be paid to the *Consultant* under this contract.

105.2 The *Consultant* maintains and procures in each subcontract that each of his Subconsultants, maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Consultant* and his Subconsultants are responsible under this contract. The *Consultant* procures that each subcontract contains open-book audit rights in favour of the *Employer* and any novated *Employer* and their authorised representatives.

105.3 The *Consultant* undertakes and procures that his Subconsultants undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and/or any novated *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Consultant's* technical and organisational security measures for the protection of personal data, any aspect of the *Consultant's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* and any novated *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Consultant* and/or his Subconsultants including, without limitation, Minimum Records.

105.4 The *Consultant* promptly provides (and procures that his Subconsultants promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by

- granting or procuring the grant of access to any premises used in the *Employer's* performance of this contract, whether the *Consultant's* own premises or otherwise,
- granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Consultant's* own equipment or otherwise,
- making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection;
- providing a reasonable number of copies of any

subcontracts and other documents or records reasonably required by the *Employer's* and/or any novated *Employer's* auditor and/or granting copying facilities to the *Employer's* and/or any novated *Employer's* auditor for the purposes of making such copies; and

- complying with the *Employer's* and/or any novated *Employer's* reasonable requests for access to senior personnel engaged by the *Consultants* in the performance of this contract or the Works.

Conflicts of interest 106

106.1 The *Consultant* acknowledges and agrees that it does not have and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services (or any member of the TfL Group), save to the extent fully disclosed to and approved in writing by the *Employer*.

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

Intellectual property rights 107

107.1 Vesting of Intellectual Property Rights

The parties agree that the Intellectual Property Rights in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Consultant* in the performance of this contract (including Intellectual Property Rights in materials or works created by a Subconsultant) vests in the *Employer*. The *Consultant* procures that each Subconsultant assigns such Intellectual Property Rights to the *Employer*.

107.2 Background Intellectual Property Rights

In respect of Background Intellectual Property Rights, the *Consultant* grants (in respect of his own Background Intellectual Property Rights) and procures the grant of (in respect of a Subconsultant's or other third party's Background Intellectual Property Rights) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes of

- understanding the *services*,
- operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the

services,

- extending, interfacing with, integrating with, connection into and adjusting the *services* and/or the works of Others; and
- enabling London Underground Limited to carry out the operation maintenance, repair, renewal and enhancement of the Underground Network (where applicable).

107.3 The *Consultant* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Consultant's* Background Intellectual Property Rights for all purposes, including (without limitation) for the purposes listed in clause 107.2.

107.4 The *Consultant* indemnifies the *Employer* (and members of the TfL Group) against all Losses arising out of any use by the *Employer* of the Background Intellectual Property Rights, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 107.2 infringes the Intellectual Property Rights rights or other rights of any third party.

107.5 **Corporate Intellectual Property Rights**

The *Consultant* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights rights of the *Employer*.

107.6 **Moral rights**

The *Consultant* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright, Design & Patents Act 1988 in respect thereof and of the Works.

Assignment

108

108.1 The *Consultant* does not assign, transfer, charge or otherwise deal with this contract (or any of his rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Employer*.

108.2 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person without the consent of the *Consultant* being required.

**Confidentiality,
Announcements and
Transparency**

109

109.1 Subject to clause 109.6 and clause 122.3, The *Consultant* shall keep confidential:

- the terms of this contract, and
- any and all Confidential Information (all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the *Employer* whether commercial, financial, technical or otherwise, and including information which relates to the business affairs,

customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the *Employer* that it may acquire in relation to the *Employer*).

- 109.2 The *Consultant* will not use the *Employer's* Confidential Information for any purpose other than to perform its obligations under this Contract. The *Consultant* will ensure that its officers and employees comply with the provisions of clause 109.1.
- 109.3 The obligations on the *Consultant* set out in clause 109.1 will not apply to any Confidential Information:
- which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this clause 109),
 - which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
 - to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 109.4 The *Consultant* shall keep secure all materials containing any information in relation to the Contract and its performance.
- 109.5 The *Consultant* shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or that it is providing the Services to the *Employer* or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the *Employer*. The *Employer* shall have the right to approve any announcement before it is made.
- 109.6 The *Consultant* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clause 109.1 and clause 122.3, the *Consultant* hereby gives its consent for the *Employer* to publish the Contract Information to the general public.
- 109.7 The *Employer* 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 *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Legislation). The *Employer* may in its absolute discretion consult with the *Consultant* regarding any redactions to the Contract Information to be published pursuant to clause 109.6. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.
- 109.6 The provisions of this clause 109 will survive any termination of this Contract for a period of six (6) years from termination.

**Corrupt Gifts, Fraud,
Payment of
Commission, and
Safety Breaches** **110**

110.1 In relation to Safety Breaches, the *Consultant* does not and uses its reasonable endeavours to procure that his Subconsultants do not commit any Safety Breach.

110.2 The *Consultant* does not, and ensures that its employees, agents and Subconsultants do not:

- pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of the *Employer* or any member of the TfL Group or GLA,
- favour any employee, servant, officer or agent of the *Employer* or any member of the TfL Group or GLA with gifts or entertainment of significant cost or value,
- enter into any business arrangement with employees, servants, officers or agents of the *Employer* or any member of the TfL Group or GLA other than as a representative of the *Employer*, without the *Employer's* prior written approval,

offer or agree to give to any servant, employee, officer or agent of the *Employer* any grant, gift or consideration of any kind as an inducement or reward:

- for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
- for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;

commit any offence:

- under the Bribery Act 2010,
- under any law or legislation creating offences in respect of fraudulent acts;
- at common law in respect of fraudulent acts in relation to this contract or any other contract with the *Employer*; or
- defraud or attempt to defraud the *Employer*.

110.3 Without prejudice to its rights under clause 105 the *Employer* and/or any novated *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the twelve (12) years thereafter.

110.4 If any fraudulent activity comes to the attention of the *Consultant* in relation to this contract the *Consultant* notifies the *Employer* by the most expeditious means available. The *Consultant* cooperates with the *Employer* in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under the contract as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The *Consultant* ensures that no fraudulent activity is committed by the *Consultant*, its agents, employees or Subconsultants.

- 110.5 If the *Consultant*, any of its shareholders or any Subconsultant or anyone employed by or acting on behalf of the *Consultant* or any of his agents commits any Safety Breach and/or breach of clause 110.2 and/or 110.4 this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 90.3.
- 110.6 If a Safety Breach, breach of clause 110.2 or 110.4 is committed by an employee of the *Consultant* or by any Subconsultant (or employee or agent of such Subconsultant) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Consultant* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Consultant* terminates, or procures the termination of, the employee's employment or Subconsultant's appointment (as the case may be) and (if necessary) procures the provision of the affected *services* by another person, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with sub-clause 90.3.
- 110.7 In the event of any breach of this clause 110 by the *Consultant* the *Employer* recovers from the *Consultant* any loss liability or damage incurred or suffered as a result of the breach of this clause by the *Consultant*.

Quality assurance and best value 111

- 111.1 The *Consultant* maintains an effective and economical quality control programme in accordance with the requirements set out in clause 40 and the Scope. The *Consultant* acknowledges that *the Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such *the Employer* 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 *Consultant* assists *the Employer* to discharge *the Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the *services* reasonably requested by *the Employer* from time to time.

IT requirements 112

- 112.1 The *Consultant* warrants to the *Employer* that
- neither the functionality nor the performance of,
 - his work,
 - any software, electronic or magnetic media, hardware, computer system, application or system forming part of his work,
 - any part of the railways on which his work is undertaken; or
 - any software, electronic or magnetic media, hardware or computer system used or supplied by the *Consultant* in connection with this contract,
 - is Euro compliant and is compliant with the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, <https://www.cabinetoffice.gov.uk>; and
 - does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer

system used by, for or on behalf of *the Employer* and/or any other member of the TfL Group on which it is used or with which it interfaces or comes into contact; and

- any variations, enhancements or actions undertaken by the *Consultant* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Consultant's* compliance with this warranty.

Responsible Procurement

113

113.1 The *Consultant* acknowledges the requirements of the Responsible Procurement Policy in the performance of its obligations under this contract which is available at the following link:

<https://legacy.london.gov.uk/gla/tenders/docs/responsibleprocurementpolicy.pdf>

113.2 The *Consultant* provides such cooperation and assistance as may be reasonably requested by the *Employer* in relation to the Responsible Procurement Policy.

Severability

114

114.1 If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this contract and is ineffective without, as far as is possible, modifying any other clause or part of this contract and this does not affect any other provisions of this contract which remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the *Employer* and the *Consultant* immediately commence good faith negotiations to remedy such invalidity.

Crime and Disorder

115

115.1 The *Consultant* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to:

- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
- where appropriate, identify actions to reduce levels of crime and disorder; and
- without prejudice to any other obligation imposed on the *Employer*, 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 contract, the *Consultant* assists and co-operates, and uses reasonable endeavours to procure that its Subconsultants and Indirect Subconsultants assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty

Employer's business

116

116.1 The *Consultant* acknowledges that it

- has sufficient information about the *Employer* and the services; and
- is aware of the *Employer's* processes and business; and

- has made all appropriate and necessary enquiries to enable it to Provide the Services in accordance with this contract; and
- is aware of the purposes for which the *services* are required and acknowledges that the *Employer* is reliant upon the *Consultant's* expertise and knowledge in Providing the Services; and

shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *services*.

Access to premises 117

117.1 Any TfL, GLA, Functional Body or Borough Premises made available to the *Consultant* in connection with this contract shall be free of charge and shall be used by the *Consultant* solely for the purpose of Providing the Services provided, for the avoidance of doubt, that the *Consultant* is responsible for its own costs or travel including any congestion charging. The *Consultant* shall

- have the use of such TfL, GLA Functional Body, or Borough Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL, GLA, Functional Body or Borough Premises,
- vacate such TfL, GLA, Functional Body or Borough Premises upon the termination or expiry of the contract or at such earlier date as the *Employer* may determine; not exercise or purport to exercise any rights in respect of any TfL GLA, Functional Body or Borough Premises in excess of those granted under this clause 117,
- ensure that the *Consultant's* personnel carry any identity passes issued to them by the *Employer* at all relevant times and comply with the *Employer's* security procedures as may be notified by the *Employer* from time to time; and
- not damage the Premises or any assets on the TfL GLA, Functional Body or Borough Premises.

117.2 Nothing in this clause 117 shall create or be deemed to create the relationship of landlord and tenant between the *Consultant* and any member of the TfL Group, or GLA , Functional Body or Borough.

117.3 The *Employer* shall be under no obligation to provide office or other accommodation facilities or *services* (including telephony and IT *services*) to the *Consultant* except as may be specified in the Scope.

117.4 The *Employer* is responsible for maintaining the security of TfL, GLA, Functional Body or Borough Premises in accordance with its standard security requirements. The *Consultant* shall comply with all of the *Employer's* security requirements while on TfL, GLA, Functional Body or Borough Premises, and shall ensure that all of its personnel comply with such requirements. Upon request, the *Employer* shall provide the *Consultant* with details of the *Employer's* security procedures.

117.5 The *Employer* reserves the right under this contract to refuse to admit to any TfL, GLA, Functional Body or Borough Premises any of the *Consultant's* personnel who fail to comply with any of the

Employer's policies and standards referred to in this contract.

117.6 The *Employer* reserves the right under this contract to instruct any of the *Consultant's* personnel to leave any TfL, GLA, Functional Body or Borough Premises at any time for any reason and such personnel shall comply with such instructions immediately.

117.7 Where the *Consultant* is required to access (with appropriate permission and approval of the *Employer*) any areas under the control of any of the *Employer's* Contractors, the *Consultant* must comply with any applicable rules, regulations and standards as appropriate.

Compliance with policies

118

118.1 The *Consultant* notifies its personnel and the *Employer* of any health and safety hazards that exist or that may arise in connection with providing the Services of which the *Consultant* is aware or ought reasonably to be aware.

118.2 The *Consultant* undertakes that all its personnel and those of its Subconsultants comply with all of the *Employer's* policies and standards that are relevant to providing the Services, including those relating to occupational health and safety, security, business ethics, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Employer* for personnel working at TfL GLA, Functional Body or Borough Premises or accessing the *Employer's* computer systems. The *Employer* provides the *Consultant* with copies of such policies on request.

118.3 In providing the Services, the *Consultant* shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Consultant's* activities may impact on the environment) to the need to

- preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
- enhance the environment and have regard to the desirability of achieving sustainable development,
- conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Recovery of sums due from the consultant

119

119.1 Subject to clause 121 when under this contract any sum of money is recoverable from or payable by the *Consultant* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Consultant* under this contract or any other contract with the *Employer*. Any sum due from the *Consultant*, whether under this contract or any other contract with the *Employer*, shall be payable as a debt to the *Employer*.

119.2 Where required by the Scope or by the *Employer's* Agent, all

design prepared by the *Consultant* and submitted to the *Employer* is supported by a design check certificate in the form attached to the Scope signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Consultant*, he is a Subconsultant.

Dispute resolution

120

120.1 The Parties shall follow the procedure set out in the Framework Agreement for the avoidance and resolution of any Dispute arising under or in connection with this contract.

The Housing Grants, Construction and Regeneration Act 1996

121

121.1 The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

121.2 Pay Less Notice means the notice referred to in clause 121.4.

121.3 The *Employer's* certificate issued under clause 51.4 is the *Employer's* notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated.

121.4 If either Party intends to pay less than the notified sum he notifies the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. In the case of the *Employer*, the notice may be given on his behalf by the *Employer's Agent*.

121.5 A Party does not withhold payment of an amount due under this contract unless he has notified his intention pay less than the notified sum as required by this contract.

121.6 If a certificate is not issued by the *Employer* in accordance with clause 51.4, the sum to be paid by the *Employer* is, subject to clause 121.4 the sum stated as due in the *Consultant's* assessment in accordance with clause 50.1.

121.7 If the *Consultant* is entitled to suspend performance and exercises his right under the Act to suspend performance, it is a compensation event whether or not the event has been notified by the *Consultant* within the period specified in clause 61.3.

121.8 If the *Consultant's* employment is terminated under clause 90.1 because the *Consultant* has become insolvent within the meaning of Section 113 of the Act, the *Employer* need not pay any sum due to the Contractor other than any amount due to him under clause 92.1 either

- where the *Consultant* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Employer's Agent* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum; or
- in any prescribed event, if the *Consultant* becomes insolvent after the prescribed period before the final date for payment.

Data Protection, and

122

Freedom of information

122.1 Without prejudice to clause 105 the *Consultant* complies 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 Employer* ("Employer Personal Data"), the *Consultant* only carries out such processing for the purpose of Providing the Services and in accordance with instructions from *the Employer*.

When the *Consultant* receives a written request from *the Employer* for information about, or a copy of, Employer Personal Data, the *Consultant* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within fourteen (14) days from the date of the request.

The *Employer* remains solely responsible for determining the purposes and manner in which Employer Personal Data is to be processed. The *Consultant* does not share any Employer Personal Data with any Subconsultant or third party unless there is a written agreement in place which requires the Subconsultant or third party to:

- only process Employer Personal Data in accordance with the *Employer's* instructions to the *Consultant*; and
- comply with the same data protection requirements that the *Consultant* is required to comply with under this contract.

122.2 The *Consultant*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data;
- provides the *Employer* with such information as he may reasonably require to satisfy himself of compliance by the *Consultant* with the requirements of this clause 122;
- cooperates with the *Employer* in complying with requests or enquiries made pursuant to the Data Protection Act.

122.3 The *Consultant* acknowledges that *the Employer* and any novated *Employer* is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) 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 and agrees to assist and co-operate and procure that its Subconsultants assist and co-operate with *the Employer* and any novated *Employer* to enable *the Employer* and any novated *Employer* to comply with its obligations under such legislation including providing to *the Employer* and any novated *Employer* such information as *the Employer* and any

novated *Employer* may reasonably request concerning this contract within five (5) days of a request from the *Employer* or any novated *Employer*. The *Consultant* further acknowledges that *the Employer* and any novated *Employer* may be obliged under such legislation to disclose information without consulting or obtaining consent from the *Consultant*. Without prejudice to the generality of the foregoing the *Consultant* transfers to the *Employer* and any novated *Employer* any request for information under the Act that it receives as soon as reasonably practicable. The *Consultant* does not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the *Employer* and any novated *Employer*. This clause survives the expiry or termination of this contract.

Euro-Continuity of Contract

123

123.1 The Parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under the Contract or any transaction, or give either Party the right unilaterally to alter or terminate the Contract or any transaction.

123.2 The words “an event associated with economic and monetary union in the European Union” will include each and any combination of the following

- the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise),
- the fixing of conversion rates between a member state’s currency and the new currency or between the currencies of member states,
- the introduction of that new currency as lawful currency in a member state,
- the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states,
- the disappearance or replacement of a relevant rate option or other price source for the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen or
- the withdrawal of any member state from a single or unified European currency.

Crime and Disorder Act 1998

124

124.1 The *Consultant* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998

- to have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer’s* duties,
- where appropriate, to identify actions to reduce levels of crime and disorder; and
- without prejudice to any other obligation imposed the *Employer*, to 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 Contract, the *Consultant* will assist and co-operate with the *Employer*, and will use reasonable endeavours to procure that its sub-contractors observe these duties and assists and co-operates with the *Employer* where possible to enable the *Employer* to satisfy its duty.

125 Not used

Step-in

126

126.1 If the *Employer* reasonably believes that it needs to take action in connection with the Services

- because a serious risk exists to the health or safety of persons or property or to the environment; and/or

to discharge a statutory duty, then the following provisions shall apply.

126.2 The *Employer* shall provide notice to the *Consultant* in writing of the following

- the action it wishes to take,
- the reason for such action,
- the date it wishes to commence such action,
- the time period which it believes will be necessary for such action; and
- to the extent practicable, the effect on the *Consultant* and its obligations to provide the Services during the period such action is being taken.

126.3 Following service of the notice required in clause 126.2 the *Employer* or a third party appointed by the *Employer* for the purpose shall take such action as is notified under these provisions and any consequential additional action as the *Employer* reasonably believes is necessary (the "Required Action") and the *Consultant* shall give all reasonable assistance to the *Employer* or such third party while it is taking such Required Action (such assistance to be at the expense of the *Employer*).

Timber Standards

127

127.1 For the purposes of this clause the following definitions shall apply:

(1) Independent Report means an independent report by an individual or body:

- (a) whose organisation, systems and procedures conform to:
 - (i) ISO Guide 65: 1996 (EN 45011:1998); and
 - (ii) general requirements for bodies operating product certification systems; and

- (b) who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies.

(2) Legal Timber means Timber in respect of which the organisation that felled the trees and/or provided the Timber

from which the wood supplied under the Contract derived

- (a) had legal rights to use the forest,
- (b) holds a register of all local and national laws and codes of practice relevant to forest operations; and
- (c) complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes,

(3) Recycled Timber and Reclaimed Timber means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms 'recycled' and 'reclaimed' are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. Recycled or Reclaimed Timber must be capable of being evidenced as such to the *Employer's* satisfaction in order to satisfy this definition.

(4) Sustainable Timber means Timber, which in order to meet the *Employer's* criteria for sustainable timber, must be:

- (a) Recycled Timber; or
- (b) Sustainably Sourced Timber; or
- (c) a combination of (a) and (b).

(5) Sustainably Sourced Timber means Timber, which in order to meet the *Employer's* criteria for sustainable timber, must be:

- (a) Recycled Timber; or
- (b) Sustainably Sourced Timber; or
- (c) a combination of (a) and (b).

(6) Timber means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber.

(7) Virgin Timber means timber supplied or used in performance of the Contract that is not Recycled Timber.

127.2 The *Consultant* shall ensure that all Timber supplied or used in the performance of the Contract shall be Sustainable Timber. If it is not practicable for the *Consultant* to meet this condition the *Consultant* must inform the *Employer* in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The *Employer* reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Where the *Employer* exercises its right to reject any Timber, the provisions of clause 127.3 shall apply.

127.3 Without prejudice to clauses 127.2 and 129.1, all Virgin Timber procured by the *Consultant* for supply or use in performance of the Contract shall be Legal Timber.

The *Consultant* shall ensure that Virgin Timber it procures for supply or use in performance of the Contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of

Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.

The *Employer* reserves the right to reject at any time any Timber that does not comply with the conditions of this Contract or the Specification. Where the *Employer* exercises its right to reject any Timber, the *Consultant* shall supply contractually compliant alternative Timber, at no additional cost to the *Employer* and without causing delay to the performance of the Contract.

The *Consultant* shall maintain records of all Timber supplied and used in the performance of the Contract. Such information shall be made available to the *Employer* promptly if requested at any time.

Employer's reporting requirements 128

128.1 Unless the *Employer* has given its written approval in accordance with clause 127.2 that Timber that is not Sustainable Timber may be used, then, if requested, the *Consultant* shall promptly provide evidence to the *Employer's* satisfaction that the Timber is Sustainable Timber.

128.2 Upon a request by the *Employer* referred to in clause 128.1 in the event that the *Consultant*

- does not promptly provide such evidence; or
- the evidence provided does not satisfy the *Employer's* requirements, then (and without prejudice to clause 129.1),

the *Employer* reserves the right to retain 25% of any monies payable to the *Consultant* under the Contract until such date as the *Employer* is in receipt of such evidence and the *Employer* is satisfied that the evidence establishes that the Timber is Sustainable Timber.

128.3 The *Consultant* shall report quarterly on its use of Sustainable Timber in the performance of the Contract, in accordance with the Timber Standards Appendix of this Contract.

128.4 The *Consultant* shall report on the amount of Timber that has been supplied to the *Employer* in accordance with clause 127.2 which is not Sustainable Timber.

Verification 129

129.1 Evidence of Sustainable Timber

The *Employer* reserves the right to determine whether the evidence supplied by the *Consultant* is sufficient to satisfy it that the Specification and the conditions of contract have been fully complied with. In the event that the *Employer* is not so satisfied, the *Consultant* shall, on written request by the *Employer*, commission and meet the costs of an Independent Report to:

- (a) verify the source of the Timber; and

assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

129.2 Evidence of Legal Timber

The *Consultant* shall, before delivering any Virgin Timber under this Contract, obtain documentary evidence to the *Employers* satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the *Employer*, the *Consultant* shall submit such documentary evidence to the *Employer* either prior to delivery or at such other times as the *Employer* may require. For the avoidance of doubt, the *Consultant* shall

identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

- 129.3 The *Employer* reserves the right at any time during the execution of the Contract and for a period of six (6) years from final delivery of any Timber under the Contract to require the *Consultant* to produce the evidence required for the *Employer's* inspection within fourteen (14) days of the *Employer's* written request.

Waste Electrical and Electronic Equipment Regulations 2006

131

- 131.1 For the purposes of this clause, unless the context indicates otherwise, the following expressions shall have the following meanings:
- (1) WEE Equipment means any Equipment which falls within the scope of the WEEE Regulations; and

- (2) WEEE Regulations means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2009).

- 131.2 Services whether by direct purchase by the *Consultant*, purchase on behalf of the *Employer*, lease or otherwise the *Consultant* will ensure that in accordance with the WEEE Regulations that the producer of the WEE Equipment (whether that be the *Consultant* or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of:

(a) all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and

(b) all Waste Electrical and Electronic Equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.

- 131.3 The *Consultant* shall indemnify and keep indemnified the *Employer* as a result of any Losses which it incurs as a result of any failure on the part of the *Employer* or the relevant producer to comply with the terms of this clause 131.

Ethical sourcing

132

- 132.1 The *Employer* is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Contract, the *Consultant* shall comply with and shall procure that its sub-contractors (as applicable) comply with those principles of the Ethical Trading Initiative (ETI) Base Code as are detailed in the Ethical Sourcing Appendix of this Contract, or an equivalent code of conduct (the "Ethical Sourcing Principles") in relation to the provision of the Services.

- 132.2 As soon as practicable following the Contract Commencement Date the *Consultant* shall be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The *Consultant* agrees that for the duration of this Contract, it

shall permit and enable the *Employer* to have access to the information relating to the *Consultant* that subsists in such ethical supplier database.

132.3 During the course of this Contract, the *Employer* has the right to request the *Consultant* to carry out one or more audits using a reputable auditor to verify whether the *Consultant* is complying with the Ethical Sourcing Principles. The identity of the auditor is to be approved by the *Employer*, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by the *Employer*.

132.4 During the course of this Contract, if the *Employer* has reasonable cause to believe that the *Consultant* is not complying with any of the Ethical Sourcing Principles, then the *Employer* shall notify the *Consultant* and the Parties shall agree an action plan with appropriate timeframes for compliance by the *Consultant* (the "Action Plan"), such Action Plan to be agreed by the Parties by no later than five (5) days from the date of the *Employer* notifying the *Consultant* that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the *Consultant*.

132.5 Following the agreement of the Action Plan, the *Employer* reserves the right to conduct one or more audits, (either itself or via a third-party auditor approved by the *Employer*) in relation to compliance by the *Consultant* with the Action Plan.

132.6 For the avoidance of doubt, the rights of audit contained in this clause 132 shall include without limitation the right of the *Employer* (or an *Employer*-approved auditor) acting reasonably to undertake physical inspections of relevant sites/factories, to conduct interviews with relevant personnel and to inspect relevant documents. The *Consultant* shall co-operate and shall procure that its sub-contractors (as applicable) co-operate with the *Employer* in relation to all aspects of any audit.

Supplier diversity

133

133.1 Without limiting the generality of any other provision of this Contract, the Contractor:

- (a) shall not unlawfully discriminate,
- (b) shall procure that its personnel do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its direct and indirect Subconsultants do not unlawfully discriminate in relation to the Works,

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

133.2 The Contractor acknowledges that the *Employer* as a public authority is subject to statutory duties to promote race, disability and gender equality. In the performance of the Contract, the Contractor shall and shall use reasonable endeavours to procure that its direct and indirect Subconsultants assist and cooperate with TfL where possible in satisfying the following duties under the:

Equality Act 2010 to:

- (a) promote equality of opportunity for all persons irrespective of their race, gender, disability, age, sexual orientation; or religion
- (b) eliminate unlawful discrimination; and
- (c) promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in the performance of the Contract, the Contractor shall and shall use reasonable endeavours to procure that it and its direct and indirect Subconsultants assist and co-operate with *Employer* where possible to enable the *Employer* to satisfy its duty.

133.3 TfL's Harassment, Bullying and Discrimination Policy ("Policy") as up-dated from time to time (copies of which are available on request from TfL) requires TfL's own staff and those of its direct and indirect Subconsultants to comply fully with the Policy to eradicate harassment in the workplace. The Contractor shall:

- (a) ensure that its staff, and those of its direct and indirect Subconsultants who are engaged in the performance of the Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and
- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

**Fleet Operator
Recognition
Scheme
Membership**

134

134.1 For the purposes of this clause the following definitions shall apply:

134.1.1 Euro Compliant means that the software, electronic or magnetic media, hardware or computer system (whichever is applicable) is capable of, and will not require any replacement or changes in order to be capable of, supporting the introduction of, changeover to and operation of the Euro as a currency and in dual currency (Sterling and Euro) and will not manifest any material error nor suffer a diminution in performance or loss of functionality as a result of such introduction, changeover or operation and it shall (if applicable) be capable of processing transactions calculated in Euros

- separately from or in conjunction with other currencies and is capable of complying with any legislative changes relating to the Euro;
- 134.1.2 Approved Driver Training means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training the details of which can be found at: <https://www.fors-online.org.uk>.
- 134.1.3 Bronze Membership means the minimum level of FORS membership, the requirements of which are more particularly described at: <https://www.fors-online.org.uk>.
- 134.1.4 Car-derived Vans are vehicles based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment.
- 134.1.5 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.
- 134.1.6 Close Proximity Sensor means a device consisting of either a camera and/or 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.
- 134.1.7 Close Proximity Sensor means a device consisting of either a camera and/or 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.
- 134.1.8 Collision Report means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities.
- 134.1.9 Driver means any employee of the *Consultant* (including an agency driver), who operates Freight Vehicles on behalf of the *Consultant* while delivering the Services.
- 134.1.10 DVLA means the Driver and Vehicle Licensing Agency.
- 134.1.11 FORS means the Fleet Operator Recognition Scheme, which is an accredited membership 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,
- 134.1.12 FORS Membership Terms mean the terms of the membership agreement of the Fleet Operator Recognition Scheme, a copy of which can be found at: <https://www.fors-online.org.uk>,

134.1.13 Freight Vehicle means a Lorry, a Van or a Car-derived Van,

134.1.14 Lorry means a vehicle with an MAM exceeding 3,500 kilograms,

134.1.15 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,

134.1.16 Side Guards mean 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,

134.1.17 Van mean a vehicle with a MAM not exceeding 3,500 kilograms,

134.1.18 Independent Report means an independent report by an individual or body:

(a) whose organisation, systems and procedures conform to:

- (i) ISO Guide 65:1996 (EN 45011:1998); and
- (ii) General requirements for bodies operating product certification systems; and

(b) who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for Assessment and Accreditation of Certification Bodies;

135.1 Where the *Consultant* operates Freight Vehicles, it shall within ninety (90) days of executing the Contract:

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

(b) have attained the standard of Bronze Membership of FORS (or higher) or the equivalent within the Alternative Scheme.

135.2 The *Consultant* shall maintain the standard of Bronze Membership (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Membership Terms or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the *Consultant* has attained Silver or Gold Membership of FORS, the maintenance requirements shall be undertaken in accordance with the periods set out in their FORS Silver or Gold membership agreement.

135.3 The *Consultant* shall use its best endeavours to ensure that those of its sub-contractors who operate Freight Vehicles shall comply with clauses 135.1 and 135.2 as if they applied directly to the sub-contractor.

Safety Equipment on Vehicles	136	
	136.1	<p>The <i>Consultant</i> shall ensure that every Lorry, which it uses to provide the Services, shall:</p> <ul style="list-style-type: none"> (a) have Side Guards, unless the <i>Consultant</i> can demonstrate to the reasonable satisfaction of the <i>Employer</i> that the vehicle will not perform the function for which it was built if Side Guards are fitted, (b) have a Close Proximity Sensor, (c) have a Class VI Mirror; and (d) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
Driver Licence Checks	137	
	137.1	<p>The <i>Consultant</i> shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the <i>Consultant's</i> risk scale, provided that the <i>Consultant's</i> risk scale has been approved in writing by the <i>Employer</i> within the last 12 months:</p> <ul style="list-style-type: none"> (a) 0 – 3 points on the driving licence – annual check, (b) 4 – 8 points on the driving licence – six monthly checks, (c) 9 – 11 points on the driving licence – quarterly checks; or (d) 12 or more points on the driving licence – monthly checks.
Driver Training	138	
	138.1	<p>The <i>Consultant</i> shall ensure that each of its Drivers who has not undertaken:</p> <ul style="list-style-type: none"> (a) Approved Driver Training in the last three (3) years, undertakes Approved Driver Training within sixty (60) days of the commencement of this Contract, (b) a FORS e-learning safety module in the last twelve (12) months, undertakes a FORS e-learning safety module (or an equivalent safety module provided by the Alternative Scheme).
Collision Reporting	139	
	139.1	<p>Within fifteen (15) days of the commencement of this Contract, the <i>Consultant</i> shall provide to the <i>Employer</i> a Collision Report. The <i>Consultant</i> shall provide to the <i>Employer</i> an updated Collision Report on a quarterly basis and within five (5) working days of a written request from the <i>Employer</i>.</p>
FORS Reports	140	
	140.1	<p>Within thirty (30) days of its becoming a member of FORS or of the Alternative Scheme, the <i>Consultant</i> shall make a written report to the <i>Employer</i> at fors@tfl.gov.uk detailing its compliance with clauses 136, 137 and 138 of this Contract (the "Safety, Licensing and Training Report"). The <i>Consultant</i> shall provide</p>

updates of the Safety, Licensing and Training Report to the *Employer* at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.

Obligations of the Consultant Regarding Subconsultants 141

141.1 The *Consultant* shall procure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Contract as if those subcontractors were a party to this Contract:

- 141.1.1 For Lorries – clauses 136, 137, 138 and 139; and
- 141.1.2 For Vans- clauses 136.1(d), 137, 138 and 139.

Failure to Comply with Freight-related Obligations 142

142.1 Without limiting the effect of clause 90, if the *Consultant* fails to comply with clauses 135,136,137,138,139,140 and 141:

- (a) the *Consultant* has committed a material breach of this Contract; and
- (b) the *Employer* may refuse the *Consultant*, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the *Employer*.
- (c) officers or agents of the *Employer* or where TfL is the *Employer* any member of the TfL Group other than as a representative of the *Employer*, without the *Employer's* prior written approval.

1.1 EMPLOYMENT IS FREELY CHOSEN

- 1.1.1 There is no forced, bonded or involuntary prison labour.
- 1.1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

1.2 Not used

1.3 WORKING CONDITIONS ARE SAFE AND HYGIENIC

- 1.3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 1.3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- 1.3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- 1.3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- 1.3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

1.4 CHILD LABOUR SHALL NOT BE USED

- 1.4.1 There shall be no recruitment of child labour.
- 1.4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.
- 1.4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.
- 1.4.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

1.5 LIVING WAGES ARE PAID

- 1.5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.
- 1.5.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.
- 1.5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

1.6 WORKING HOURS ARE NOT EXCESSIVE

- 1.6.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.
- 1.6.2 Not used.

1.7 NO DISCRIMINATION IS PRACTISED

- 1.7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

1.8 REGULAR EMPLOYMENT IS PROVIDED

- 1.8.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.
 - 1.8.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub- contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.
- 1.9 NO HARSH OR INHUMANE TREATMENT IS ALLOWED**
- 1.9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

SECONDARY OPTION CLAUSES - For Information

Option X1: Price adjustment for inflation

If *staff rates* are fixed at the Contract Date and are not variable with changes in salary paid to individuals.

Price adjustment factor

X1

X1.1 On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before the Contract Date.

If an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The price adjustment factor calculated at the Completion Date for the whole of the *services* is used for calculating price adjustment after this date.

Price adjustment

X1.2

Each amount due after the first anniversary includes an amount for price adjustment which is the sum of

- the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and
- the amount for price adjustment included in the previous amount due.

Price adjustment Option C

X1.3

Each time the amount due is assessed after the first anniversary, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.

Expenses adjustment

X1.6

If payment rates for any of the *expenses* are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the first anniversary includes an amount for *expenses* adjustment which is the sum of

- the change in fixed *expenses* since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and
- the amount for *expenses* adjustment included in the previous amount due.

If *staff rates* are variable with changes in salary paid to individuals.

Price adjustment factor

X1

X1.1

On each anniversary of the Contract Date, the *Consultant* calculates a price adjustment factor equal to $(L - B)/B$, where L is the last published value of the *index* and B is the last value of the *index* published before the Contract Date.

If an *index* is changed after it has been used in calculating a price adjustment factor, the calculation is

		repeated and a correction included in the next assessment of the amount due.
		The price adjustment factor calculated at the Completion Date for the whole of the <i>services</i> is used for calculating price adjustment after this date.
Price adjustment Option A	X1.2	Each amount due after the first anniversary includes an amount for price adjustment which is the sum of the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and the amount for price adjustment included in the previous amount due.
Price adjustment Option C	X1.3	Each time the amount due is assessed after the first anniversary, an amount for price adjustment is added to the total of the Prices which is the change in the Price for Services Provided to Date since the last assessment of the amount due multiplied by $(PAF/(1+PAF))$ where PAF is the price adjustment factor calculated at the last anniversary.
Price adjustment Option G	X1.4	Each amount due after the first anniversary includes an amount for price adjustment which is the sum of <ul style="list-style-type: none"> • for the lump sum items on the Task Schedule, the change in the lump sums included in the Price for Services Provided to Date since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary before the assessment and • the amount for price adjustment included in the previous amount due.
Compensation events Options A, C and G (lump sum items on the Task Schedule) only	X1.5	The Time Charge for compensation events is assessed using the <i>staff rates</i> current at the time of assessing the compensation event adjusted to the Contract Date by dividing by $(1+PAF)$, where PAF is the price adjustment factor calculated at the last anniversary.
Expenses adjustment	X1.6	If payment rates for any of the <i>expenses</i> are fixed at the Contract Date and are not otherwise adjustable for inflation, each amount due after the first anniversary includes an amount for <i>expenses</i> adjustment which is the sum of <ul style="list-style-type: none"> • the change in fixed <i>expenses</i> since the last assessment of the amount due multiplied by the price adjustment factor calculated at the last anniversary and • the amount for <i>expenses</i> adjustment included in the previous amount due.

Option X2: Changes in the law

Changes in the law

X2

X2.1 A change in the *law of the project* (and which is not a change in law which a competent and experienced consultant familiar with works

similar to the *services* and exercising the foresight appropriate to such a consultant ought, or ought reasonably to have, anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. Either Party may notify the other of a compensation event for such a change in law. If the effect of a compensation event which is such a change in law is to reduce the total Time Charge, the Prices are reduced.

Option X3: Multiple currencies (used only with Options A and G)

Multiple currencies X3

- X3.1 The *Consultant* is paid in currencies other than the *currency of this contract* for the items or activities listed in the Contract Data. The *exchange rates* are used to convert from the *currency of this contract* to other currencies.
- X3.2 Payments to the *Consultant* in currencies other than the *currency of this contract* do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the *currency of this contract*.

Option X4: Parent company guarantee

Parent company guarantee X4

- X4.1 If a parent company owns the *Consultant*, the *Consultant* gives to the *Employer* a guarantee by the *Consultant's* parent company of the *Consultant's* performance and, if requested by the *Employer*, a legal opinion as to the enforceability of the guarantee in the form attached at Schedule 4B of the Framework Agreement. If the guarantee (and the legal opinion, if applicable) was not given by the Contract Date, it is given to the *Employer* within one week of the Contract Date.

Option X5: Sectional Completion (not used with Option G)

Sectional Completion X5

- X5.1 In these *conditions of contract*, unless stated as the whole of the *services*, each reference and clause relevant to
- the *services*,
 - Completion and
 - Completion Date
- applies, as the case may be, to either the whole of the *services* or any *section* of the *services*.

Option X6: Bonus for early Completion (not used with Option G)

Bonus for early Completion X6

X6.1 The *Consultant* is paid a bonus calculated at the rate stated in the Contract Data for each day from Completion until the Completion Date.

Option X7: Delay damages

Delay damages X7

Options A, C and E

X7.1 The *Consultant* pays delay damages at the rate stated in the Contract Data for each day from the Completion Date until Completion.

X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

Option X8: Collateral warranty agreements

Collateral warranty agreements X8

X8.1 The *Consultant* enters into the *collateral warranty agreements*.

Option X9: Transfer of rights

Transfer of rights X9

X9.1 The *Employer* owns the *Consultant's* rights over material prepared for this contract by the *Consultant* except as stated otherwise in the Scope. The *Consultant* obtains other rights for the *Employer* as stated in the Scope and obtains from a Subconsultant equivalent rights for the *Employer* over the material prepared by the Subconsultant. The *Consultant* provides to the *Employer* the documents which transfer these rights to the *Employer*.

Option X10: *Employer's Agent*

***Employer's Agent* X10**

X10.1 The *Employer's Agent* acts on behalf of the *Employer* with the authority set out in this Option X10 or as otherwise stated in the Contract Data.

X10.2 Except to the extent that the *Employer* may otherwise specify by written notice to the *Consultant* or as otherwise stated in the Contract Data, the *Employer's Agent* has full authority to receive and issue applications, certificates, consents, instructions, notices, requests or statements and otherwise to act for the *Employer* under

any of the *conditions of contract*. All instructions from the *Employer's Agent* are in writing and signed by the *Employer's Agent*. For the avoidance of doubt the *Employer's Agent* does not have the authority to vary the *conditions of contract*.

X10.3 The *Employer* may replace the *Employer's Agent* after he has notified the *Consultant* of the name of the replacement.

Option X11: Termination by the *Employer*

Termination by the *Employer*

X11

X11.1 The *Employer* may terminate the *Consultant's* obligation to Provide the Services for a reason not stated in this contract by notifying the *Consultant*.

X11.2 If the *Employer* terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between

- the forecast of the final total of the Prices in the absence of termination and
- the total of the other amounts and costs included in the amount due on termination.

Option X12: Partnering

Identified and defined

X12

terms

X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.

(2) An Own Contract is a contract between two Partners which includes this Option.

(3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.

(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.

(5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

Actions

X12.2 (1) Each Partner works with other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.

(2) Each Partner nominates a representative to act for him in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

Working together

X12.3 (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

(2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Consultant* changes his programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work.

Incentives

X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

Option X13: Performance bond

Performance bond

X13

X13.1 The *Consultant* gives the *Employer* a performance bond, provided by a bank or insurer which the *Employer* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 8 of the Framework Agreement. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within one week of the Contract Date.

Option X18: Limitation of liability

Limitation of liability

X18

X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7) where that option is included in this contract, the *Consultant's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data provided that this limitation does not apply to any liability for:

- Losses caused by fraudulent acts or acts of a criminal nature;
- any other Losses against which the *Consultant* is entitled to an indemnity under any policy of insurance up to (but not exceeding) the amount which the *Consultant* is obliged to maintain under this Contract;
- all Losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Consultant* under clause 109.2 infringes the intellectual property rights or other rights of any third party,
- delay damages if Option X7 applies,
- *Consultant's* share if Option C applies,
- an infringement by the *Consultant* of the rights of Others,
- loss of or damage to third party property, and
- death of or bodily injury to a person other than an employee of the *Consultant*.

X18.2 The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is not limited and is an addition to any damages stated in this Contract for delay.

Option X20: Key Performance Indicators (not used with Option X12)

Incentives

X20

X20.1 A Key Performance Indicator is an aspect of performance by the *Consultant* for which a target is stated in the Incentive Schedule. The Incentive Schedule is the *incentive schedule* unless later

changed in accordance with this contract.

X20.2 From the *starting date* until the *defects date*, the *Consultant* reports to the *Employer* his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.

X20.3 If the *Consultant's* forecast final measurement against a Key Performance Indicator will not, or may not achieve the target stated in the Incentive Schedule, he submits his proposals for improving performance.

X20.4 The *Consultant* is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the *Employer* notifies the *Consultant* that the target has been improved upon or achieved.

X20.5 The *Employer* may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

Option X21: Single Point Design Responsibility

Single point design responsibility

X21

X21.1 In this Option, "*Employer's Design Information*" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Scope.

X21.2 The *Consultant* is fully responsible in all respects for the design of the *services* including, without limitation, any *Employer's Design Information* (which, for all purposes of this contract is deemed to be part of the *Consultant's* design).

X21.3 Where there is a mistake, inaccuracy or discrepancy in the *Employer's Design Information*, the *Consultant* informs the *Employer* in writing of his proposed amendment to remove the mistake, inaccuracy or discrepancy. Within two weeks, the *Employer* may consent to the *Consultant's* proposed amendment or comment in writing on such an amendment provided that the *Employer* does not unreasonably withhold his consent to a proposed amendment. The *Consultant* takes account of such comments and resubmits his proposed amendment to the *Employer*. Such process is repeated until the *Employer* accepts the *Consultant's* proposed amendment.

X21.4 The *Consultant* is not entitled to any changes to the Prices, the Completion Dates or Key Dates by reason of anything in this Option

X21. Further, the *Consultant* hereby agrees that any comment or failure to comment by the *Employer* under this Option X21 is not treated as an act of prevention or breach of contract by the *Employer*.

Timber Standards Appendix

Aim of KPI :

Implement the Mayor's Green Procurement Code

Implement the GLA Sustainable Timber Policy

Implement TfL environmental objective: Reduce resource consumption and improve green procurement

<u>Reporting period</u>	-
<u>Date</u>	-
<u>Completed by</u>	-
<u>Title</u>	-

<u>Desired Outcome</u>	<u>Service Performance Indicator</u>	<u>Quantity (KG)</u>	<u>Value (£)</u>	<u>% of good represented</u>	<u>Reporting Frequency</u>	<u>objective</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<u>Reduce resource consumption and improve green procurement (TfL Env' KPI)</u>	<u>Timber complies with Sustainable Timber definition and obligations as per Contract.</u>	=	=	=	<u>Quarterly with Annual report.</u>	Increase/maintain % of sustainable timber supplied					
Reduce resource consumption and improve green procurement (TfL Env' KPI)	Timber does NOT comply with Sustainable Timber definition and obligations as per Contract	=	=	=	<u>Quarterly with Annual report.</u>	<u>Reduce amount of Non Sustainable Timber procured.</u>					

Table 3, Employer’s Requirement:

[Insert Table 3 (the Employer’s requirement) from Mini-competition / Direct Request]

Table 4, Contractors Proposal:

[Insert Table 4 (the Consultant’s proposal) from Mini-competition / Direct Request]

Table 5, Contract Particulars:

Contract Number / P O number:
The Contract Commencement Date is: The Service Commencement Date is: The Term is:
In accordance with Clause 7.1 of the Short Form Conditions of Contract, the Employer’s Contract Manager is: [insert name, address and contact details]
In accordance with Clause 7.1 of the Short Form Conditions of Contract, the Employer’s Procurement Manager is: [insert name, address and contact details]
In accordance with Clause 8.5 of the short form Conditions of Contract, the Consultant’s Key Persons are: [insert name(s), area of responsibility, address and contact details]
Notice period in accordance with Clause 25.4 of the Short Form Conditions of Contract (termination without cause): [x] days
Special Conditions of Contract: Schedule 2 of the Conditions of Contract shall apply [delete if TfL, GLA] [insert other special conditions]
Payment Period: (see Clauses 5.1 and 5.4 of Short Form Conditions of Contract) Clause 5.1 [insert alternative period] Where no alternative is listed, the payment period shall be 4-weekly Clause 5.4 [insert alternative (shorter*) period] Where no alternative is listed, payment must be made within 30 days of receipt of invoices. * the period cannot exceed 30 days
Address where invoices shall be sent:
Other:

Short Form Conditions of Contract

1. Definitions and Interpretation

In the Contract (including the Recitals):

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

“Employer Assets”	any assets (whether tangible or intangible), materials, resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Employer;
“Employer Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of the Employer;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“Cessation Plan”	a plan agreed between the Parties or determined by the Employer pursuant to Clause 28 to give effect to a Declaration of Ineffectiveness;
“Charges”	charges payable by the Employer, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Table 4, as the same may be varied from time to time in accordance with Clause 26.6 and/or Clause 31;
“Confidential Information”	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Employer (and where the Employer is TfL, any member of the TfL Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Employer (and where the Employer is TfL, any member of the TfL Group);
“Contract”	this contract, including the Schedules and all other documents referred to in this contract;
“Contract Information”	(i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of the Consultant’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Contract Manager”	the person named as such in the Contract Particulars or such other person as notified to the Consultant by the Employer;

“Contract Commencement Date”	the date for commencement of the Contract specified in Table 5;
“Declaration of Ineffectiveness”	a declaration of ineffectiveness in relation to this Contract made by a court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006;
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“ Affected Party ”) to perform its obligations in accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
“Holding Company”	any company which from time to time directly or indirectly controls the Consultant where “control” is as defined by section 1159 of the Companies Act 2006;
“Insolvency Event”	any of the following: <ul style="list-style-type: none"> (a) the Consultant and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order; (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Consultant and/or the Holding Company; (c) being a company, the Consultant and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency); (d) the Consultant and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986; (e) being an individual or firm, the Consultant becoming bankrupt or dying; (f) any similar event to those in (a) to (e) above occurring in relation to the Consultant and/or the Holding Company under the law of any applicable jurisdiction for those purposes;
“Intellectual Property Rights”	any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical

information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Persons”	the Consultant’s key persons named in Table 5;
“Losses”	all direct costs (including legal costs and costs of enforcement and not including any and all indirect, consequential, economic, loss of profit, loss of goodwill, loss of opportunity), expenses, liabilities (including any tax liability), injuries, , damages, claims, demands, proceedings and judgments;
“Milestone”	an event which is the completion of one or more of the specified activities set out in Table 3;
“Parties”	the Employer and the Consultant (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Procurement Manager”	the person named as such in Table 5, and referred to in Clause 7 or such other person as notified to the Consultant by the Employer;
“Project Plan”	the plan (if any) for implementation and/or project delivery set out in Table 3, developed and agreed by the Parties in relation to the performance and timing of the Services under the Contract which may include Milestones;
“Service Commencement Date”	the date for commencement of the Services set out in Table 5;
“Consultant Equipment”	the equipment and materials of whatsoever nature used by the Consultant in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Employer under the Contract;
“Consultant’s Personnel”	all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Consultant, as are engaged in the performance of any of the Services and including the Key Persons;
“Services”	(a) subject to Clause 26.6 all or any part of the services to be provided to, or activities to be undertaken and completed for, the Employer by the Consultant under the Contract as detailed in the Specification including any variations to such services and/or activities pursuant to Clause 31; and (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may

be reasonably inferred from the Contract;

“Specification”	the specification and other requirements set out in Table 3;
“Term”	the period during which the Contract continues in force as provided in Clause 2 and Table 5;
“TfL”	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
“TfL Group”	TfL and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to “any member of the TfL Group” shall refer to TfL or any such subsidiary;
“Traffic Manager”	TfL’s traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004;
“Transparency Commitment”	means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Employer is committed to publishing its contracts, tender documents and data from invoices received;
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;
- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to Clauses, Tables and Schedules are, unless otherwise provided, references to clauses of, and schedules to the Contract and any reference to a paragraph in any Schedule or Table shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule or Table;
- 1.7 the Schedules, Contract Particulars and Tables form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;

1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and

1.9 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **Commencement and Duration**

The Contract commences on the Contract Commencement Date and continues in force for the duration stated in the Contract Particulars unless terminated earlier in accordance with Clause 25.

3. **The Services**

3.1 **The Consultant:**

3.1.1 shall provide the Services to the Employer from the Service Commencement Date in accordance with the Contract;

3.1.2 acknowledges that it has sufficient information about the Employer and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;

3.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by the Consultant of any fact relating to the Specification or otherwise to the Contract; and

3.1.4 shall comply with all lawful and reasonable directions of the Employer relating to its performance of the Services.

3.2 Notwithstanding anything to the contrary in the Contract, the Employer’s discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract.

3.3 The Consultant shall provide the Services:

3.3.1 with the reasonable skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced consultant providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;

3.3.2 in conformance in all respects with the Specification and so that they fulfil the requirements indicated by or to be reasonably inferred from the Specification;

3.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person’s health and well-being and in an economic and efficient manner; and

- 3.3.4 so that they are properly managed and monitored and shall immediately inform the Employer if any aspect of the Contract is not being or is unable to be performed.
- 3.4 Where reasonably requested to do so by the Greater London Authority or any of its other functional bodies (currently, Transport for London, the Mayor's Office for Policing and Crime, the London Fire and Emergency Planning Authority and London Legacy Development Corporation) and /or any of their subsidiaries and provided the Consultant is willing to so contract, the Consultant shall contract with the GLA or such other functional body of the GLA or subsidiary thereof on the terms of this Contract with only the necessary changes of Parties' details being made.
- 3.5 Throughout the term of the Contract the Consultant shall when required give to the Employer such written or oral advice or information regarding any of the Services as the Employer may reasonably require.
- 3.6 Where a format for electronic receipt of orders by the Consultant is set out in Table 5, the Consultant shall, unless the Employer requires otherwise, receive orders in such format and shall maintain its systems to ensure that it is able to do so throughout the Term.
- 4. Charges**
- 4.1 The Consultant is not entitled to reimbursement for expenses unless such expenses are specified in Table 5, or have been incurred with the prior written consent of the Employer, in which case the Consultant shall supply appropriate evidence of expenditure in a form acceptable to the Employer.
- 4.2 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.
- 5. Payment Procedures and Approvals**
- 5.1 The Consultant shall invoice the Employer in respect of the Charges:
- 5.1.1 where no Milestones are specified in the Table 3, at such dates or at the end of such periods as may be specified in Table 5; or
- 5.1.2 if specified in the Table 3, on completion of each Milestone provided that any preceding Milestones have been completed in accordance with the Contract; and shall not make any separate charge for submitting any invoice.
- 5.2 The Consultant shall submit invoices to the postal address set out in Table 5, or, where an electronic format for submission of invoices is set out in Table 5, such electronic format shall, unless the Employer requires otherwise, be used. Each such invoice shall contain all information required by the Employer including the Contract Reference Number, purchase order number, Consultant's name and address, a separate calculation of VAT and a brief description of the Services provided.
- 5.3 In the event of a variation to the Services in accordance with the Contract that involves the payment of additional Charges to the Consultant, the Consultant shall identify these separately on the relevant invoices.
- 5.4 If the Employer considers that the Charges claimed by the Consultant in any invoice have:

- 5.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Table 5; or
- 5.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Employer shall notify the Consultant and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Consultant shall submit a revised invoice to the Employer.
- 5.5 No payment made by the Employer (including any final payment) or act or omission or approval by the Employer or Contract Manager or Procurement Manager (whether related to payment or otherwise) shall:
- 5.5.1 indicate or be taken to indicate the Employer's acceptance or approval of the Services or any part of them or any act or omission of the Consultant, or otherwise prejudice any rights, powers or remedies which the Employer may have against the Consultant, or absolve the Consultant from any obligation or liability imposed on the Consultant under or by virtue of the Contract; or
- 5.5.2 prevent the Employer from recovering any amount overpaid or wrongfully paid including payments made to the Consultant by mistake of law or fact. Without prejudice to Clause 17, the Employer shall be entitled to withhold such amount from any sums due or which may become due to the Consultant or the Employer may recover such amount as a debt.
- 5.6 Except where otherwise provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Consultant in discharging its obligations under the Contract.
- 5.7 Interest shall accrue at the interest rate of two percent (2%) above the base rate of HSBC Bank plc from time to time on all sums due and payable under this Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
6. **Warranties and Obligations**
- 6.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Consultant warrants, represents and undertakes to the Employer that:
- 6.1.1 **the Consultant:**
- 6.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company to enter into and to perform the Contract;
- 6.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Employer is reliant upon the Consultant's expertise and knowledge in the provision of the Services; and
- 6.1.1.3 is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its

obligations under this Contract.

- 6.1.2 the Contract is executed by a duly authorised representative of the Consultant;
 - 6.1.3 all materials, equipment and goods used or supplied by the Consultant in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification; and
 - 6.1.4 all documents, drawings, computer software and any other work prepared or developed by the Consultant or supplied to the Employer under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 6.2 Each warranty and obligation in this Clause 6 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of the Contract.

7. **Operational Management**

- 7.1 The Employer authorises the Contract Manager to act as the Employer's representative for the Contract and the Consultant shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract, unless otherwise notified by the Employer save in respect of issues relating to variations to the Contract, any matter concerning the terms of the Contract and any financial matter (including the issues in Table 4)) which shall be referred to the Procurement Manager.

- 7.2 The Consultant shall, at the Employer's request, provide promptly to the Employer at no additional cost such reports on the provision of the Services as the Employer may reasonably request.

8. **Consultant's Personnel**

- 8.1 The Parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) do not apply on the Contract Commencement Date or the expiry or termination of this Contract.

- 8.2 Nothing in this Contract will render the Consultant's Personnel an employee, agent or partner of the Employer or, where TfL is the Employer any member of the TfL Group, by virtue of the provision of the Services by the Consultant under the Contract, and the Consultant shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Consultant's Personnel.

- 8.3 The Consultant shall provide the Consultant's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Employer.

- 8.4 Without prejudice to any of the Employer's other rights, powers or remedies, the Employer may (without liability to the Consultant) deny access to such Consultant's Personnel to any Employer Premises if such Consultant's Personnel in the Employer's view have not been properly trained in any way required by this Contract and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Consultant of such denial in writing; the Consultant shall immediately remove such

Consultant's Personnel from performing the Services and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Persons).

- 8.5 The Consultant shall give the Employer, if so requested, full particulars of all persons who are or may be at any time employed on the Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Contract as Key Persons. The Consultant shall give the Employer reasonable notice of any proposals to change Key Persons and Clause 8.3 shall apply to the proposed replacement personnel.
- 8.6 Notwithstanding Clause 8.1, the Consultant shall indemnify, keep indemnified and hold harmless the Employer from and against all Losses which the Employer (and where TfL is the Employer, any member of the TfL Group) incurs or suffers, whenever such Losses may arise or be brought by the Consultant's Personnel.
- 8.7 The Consultant shall pay to the Consultant's Personnel not less than the amounts declared to the Employer (if any) as part of the tender process for the Contract and not less than the amounts to which the Consultant's Personnel are contractually entitled.
- 8.8 The Consultant shall provide training to the Employer's personnel (including its employees, officers, suppliers, sub-contractors and agents) as specified in Table 5.

9. **Sub-Contracting and Change of Ownership**

- 9.1 The Consultant shall not assign or sub-contract all or any part of the Services without the prior written consent of the Employer which may be refused or granted subject to such conditions as the Employer sees fit.
- 9.2 Where the Consultant sub-contracts all or any part of the Services to any person, the Consultant shall:
 - 9.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Consultant under the Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - 9.2.2 be responsible for payments to that person;
 - 9.2.3 remain solely responsible and liable to the Employer for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Consultant;
 - 9.2.4 without prejudice to the provisions of Clause 12, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor; and
 - 9.2.5 where the GLA is the Employer include a term in each sub-contract requiring payment to be made by the Consultant to the sub-contractor within a specified period not

exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

9.3 The Consultant shall give notice to the Employer within 10 Business Days where:

9.3.1 there is any change in the ownership of the Consultant where such change relates to 50% or more of the issued share capital of the Consultant (save where such change relates to an intra Company change in ownership);

9.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company (save where such change relates to an intra Company change in ownership); and

9.3.3 (in the case of an unincorporated Consultant) give notice to the Employer if there is any change in the management personnel of the Consultant, which alone or taken with any other change in management personnel not previously notified to the Employer, equates to a change in the identity of 50% or more of the management personnel of the Consultant.

9.4 Upon the occurrence of any of the events referred to at Clauses 9.3.1 to 9.3.3 above (inclusive), the Employer shall have the right to terminate the Contract should it consider (acting reasonably) that an event referred to in 9.3.1 to 9.3.3 (inclusive) will have an impact on the Services.

10. **Conflict of Interest**

10.1 The Consultant warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or where TfL is the Employer any member of the TfL Group, save to the extent fully disclosed to and approved by the Employer.

10.2 The Consultant shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Employer in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or where TfL is the Employer any member of the TfL Group and shall work with the Employer to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Employer's satisfaction, provided that, where the Employer is not so satisfied, it may terminate the Contract in accordance with Clause 25.1.4.

11. **Access to Premises and Assets**

11.1 Subject to Clause 8.4 any access to any Employer Premises and/or Employer Assets made available to the Consultant in connection with the proper performance of the Contract shall be free of charge and shall be used by the Consultant solely for the purpose of performing the Services during the Term in accordance with the Contract provided, for the avoidance of doubt, that the Consultant shall be responsible for its own costs or travel including any congestion charging and/or low emission zone charging. The Consultant shall:

11.1.1 have the use of such Employer Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Employer Premises;

- 11.1.2 vacate such Employer Premises upon the termination or expiry of the Contract or at such earlier date as the Employer may determine;
 - 11.1.3 not exercise or purport to exercise any rights in respect of any Employer Premises in excess of those granted under this Clause 11.1;
 - 11.1.4 ensure that the Consultant's Personnel carry any identity passes issued to them by the Employer at all relevant times and comply with the Employer's security procedures as may be notified by the Employer from time to time;
 - 11.1.5 not damage the Employer Premises or any assets on Employer Premises; and
 - 11.1.6 immediately return to the Employer in good working order and satisfactory condition (in the reasonable opinion of the Employer) all Employer Assets used by the Consultant or the Consultant's Personnel in the performance of the Services.
- 11.2 Nothing in this Clause 11 shall create or be deemed to create the relationship of landlord and tenant in respect of any Employer Premises between the Consultant and the Employer.
- 11.3 The Employer shall be under no obligation to provide office or other accommodation or facilities or services (including telephone and IT services) to the Consultant except as may be specified in Table 5.

12. Compliance with Policies and Law

- 12.1 The Consultant, at no additional cost to the Employer:
- 12.1.1 undertakes to procure that the Consultant and all the Consultant's Personnel comply with all of the Employer's policies and standards that are relevant to the performance of the Services, (including, where the GLA is the Employer the GLA's Dignity at Work policy, as updated from time to time and the GLA's Code of Ethics as updated from time to time, and where TfL is the Employer, TfL's Workplace Harassment policy as updated from time to time (copies of which are available on request from TfL) and TfL's Code of Conduct (which is available on TfL's website, www.tfl.gov.uk)) including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Employer for personnel working at Employer Premises or accessing the Employer's computer systems. The Employer shall provide the Consultant with copies of such policies and standards on request;
 - 12.1.2 shall provide the Services in compliance with and the Consultant's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Consultant's business and/or the Employer's business, from time to time in force which are or may become applicable to the Services. The Consultant shall promptly notify the Employer if the Consultant is required to make any change to the Services for the purposes of complying with its obligations under this Clause 12.1.2;
 - 12.1.3 without limiting the generality of Clause 12.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

- 12.1.4 acknowledges that the Employer is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Consultant shall assist and cooperate with the Employer where possible in satisfying this duty;
- 12.1.5 acknowledges that where the Employer is the GLA, the GLA is under a duty under section 404(2) of the Greater London Authority Act 1999 and where the Employer is TfL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
- 12.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 12.1.5.2 eliminate unlawful discrimination; and
 - 12.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,
- and in providing the Services, the Consultant shall assist and co-operate with the Employer where possible to enable the Employer to satisfy its duty.
- 12.1.6 Where the GLA is the Employer the Consultant shall:
- 12.1.6.1 comply with policies developed by the Employer with regard to compliance with the Employer's duties referred to in Clauses 12.1.4 and 12.1.5 as are relevant to the Contract and the Consultant's activities.
 - 12.1.6.2 obey directions from the Employer with regard to the conduct of the Contract in accordance with the duties referred to in Clauses 12.1.4. and 12.1.5:
 - 12.1.6.3 assist, consult and liaise with the Employer with regard to any assessment of the impact on and relevance to the Contract of the duties referred to in Clauses 12.1.4 and 12.1.5;
 - 12.1.6.4 on entering into any contract with a sub-contractor in relation to this Contract, impose obligations upon the sub-contractor to comply with this Condition 12.1.6 as if the sub-contractor were in the position of the Consultant;
 - 12.1.6.5 provide to the Employer, upon request, such evidence as the Employer may require for the purposes of determining whether the Consultant has complied with this Clause 12.1.7. In particular, the Consultant shall provide any evidence requested within such timescale as the Employer may require and co-operate fully with the Employer during the course of the Employer's investigation of the Consultant's compliance with its duties under this Clause 12.1.7; and
 - 12.1.6.6 inform the Employer forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Equality Act 2010.
- 12.1.7 Without prejudice to any other provision of this Clause 12.1 or the Schedules, the Consultant shall, where TfL is the Employer, comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of TfL's Traffic Manager as may be made available to the Consultant from time to time;

12.1.7 shall promptly notify the Consultant's Personnel and the Employer of any health and safety hazards that exist or may arise in connection with the performance of the Services;

12.1.8 without limiting the generality of Clause 12.1.2, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

In all cases, the costs of compliance with this Clause 12.1 shall be borne by the Consultant.

12.2 In providing the Services, the Consultant shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Consultant's activities may impact on the environment) to the need to:

12.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

12.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;

12.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

12.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

13. **Corrupt Gifts and Payment of Commission**

The Consultant shall not, and shall ensure that the Consultant's Personnel do not pay any commission, fees or grant any rebates to any employee, officer or agent of the Employer or where TfL is the Employer any member of the TfL Group, nor favour any employee, officer or agent of the Employer or where TfL is the Employer any member of the TfL Group with gifts or entertainment of significant cost or value, nor enter into any business arrangement with employees, officers or agents of the Employer or where TfL is the Employer any member of the TfL Group other than as a representative of the Employer, without the Employer's prior written approval.

14. **Equipment**

14.1 **Risk in:**

14.1.1 all Consultant Equipment shall be with the Consultant at all times; and

all other equipment and materials forming part of the Services (title to which will pass to the Employer) ("**Materials**") shall be with the Consultant at all times until completion of the Services in accordance with the Contract, regardless of whether or not the Consultant Equipment and Materials are located at Employer Premises.

14.2 The Consultant shall ensure that all Consultant Equipment and all Materials meet all minimum safety standards required from time to time by law.

15. Quality and Best Value

- 15.1 The Consultant acknowledges that the Employer is a best value authority for the purposes of the Local Government Act 1999 and as such the Employer is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Consultant shall, where reasonably requested by the Employer, participate in any relevant best value review.

16. Records, Audit and Inspection

- 16.1 The Consultant shall, and shall procure that all Consultant's Personnel shall:

16.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Consultant's obligations under the Contract and all transactions entered into by the Consultant for the purposes of the Contract (including time-sheets for the Consultant's Personnel where such records are material to the calculation of the Charges) ("Records"); and

16.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of the Contract ("Retention Period").

- 16.2 The Employer and any person nominated by the Employer has the right to audit any and all Records at any time during the Retention Period on giving to the Consultant what the Employer considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Consultant's performance of the Services (including compliance with Clause 12.1) and the Consultant shall give all reasonable assistance to the Employer or its nominee in conducting such inspection, including making available documents and staff for interview.

17. Set-Off

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Employer arising out of or attributable to this Contract or any other contract between the Employer and the Consultant may be deducted by the Employer from monies due or which may become due to the Consultant under this Contract or where TfL is the Employer under any other contract with any member of the TfL Group or the Employer may recover such amount as a debt.

18. Indemnity

- 18.1 Subject to Clause 18.2 and subject to those losses that may not be excluded at Law, the Consultant is responsible for and shall indemnify, keep indemnified and hold harmless the Employer and where TfL is the Employer the other members of the TfL Group (including their respective employees, sub-contractors and agents) ("the Indemnified Party") against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or negligent performance of the Contract by the Consultant (or any of the Consultant's Personnel) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Consultant (or any of the Consultant's Personnel) up to a maximum liability of £1,000,000 (one million pounds) in the aggregate.

- 18.2 The Consultant is not responsible for and shall not indemnify the Employer for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under the Contract by the Employer and/or where TfL is the Employer any other member of the TfL Group including by any of their respective employees, agents or sub-contractors.

19. **Insurance**

19.1 The Consultant will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in the sum of not less than £5,000,000 (five million pounds) per claim (in terms approved by the Employer) in respect of the following to cover the Services and will ensure that the Employer's interest is noted on each and every policy or that any public liability, product liability or employer's liability insurance includes an indemnity to principals clause:

19.1.1 public liability to cover injury and loss to third parties;

19.1.2 insurance to cover the loss or damage to any item related to the Services; and

19.1.3 product liability.

19.2 The Consultant will at its sole cost maintain professional indemnity insurance cover in the sum of not less than £1,000,000 (one million pounds) per claim and in the aggregate (in terms approved by the Employer) or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 19.1.1 or, if applicable, the product liability insurance referred to in Clause 19.1.3. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such other period as the Employer may stipulate) following the expiry or termination of the Contract.

19.3 The insurance cover will be maintained with a reputable insurer.

19.4 The Consultant will produce evidence to the Employer on reasonable request of the insurance policies set out in Clauses 19.1 and 19.2 and payment of all premiums due on each policy.

19.5 The Consultant warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clauses 19.1 or 19.2 being or becoming void, voidable or unenforceable.

19.6 In the event that any of the insurance policies set out in Clauses 19.1 and 19.2 are cancelled or not renewed, the Consultant shall immediately notify the Employer and shall at its own cost arrange alternative insurances policies with an insurer or insurers acceptable to the Employer.

20. **Intellectual Property Rights**

20.1 The Consultant acknowledges the Employer's ownership of Intellectual Property Rights which may subsist in the Employer's data. The Consultant shall not delete or remove any copyright notices contained within or relating to the Employer's data.

20.2 The Consultant and the Employer shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Employer's data and to prevent any corruption or loss of the Employer's data.

20.3 The Consultant hereby assigns with full title guarantee to the Employer all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by or on behalf of the Consultant in the provision of the Services ("the Products")

provided that such assignment shall not include items not prepared or developed for the purposes of this Contract.

- 20.4 The Consultant shall provide the Employer with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 20.5 The Consultant shall have no right (save where expressly permitted under the Contract or with the Employer's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Employer.
- 20.6 The Consultant shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within the Charges.
- 20.7 The Consultant shall not (without the prior written approval of the London 2017 Limited in each case) represent that any Products or Services provided under the Contract have been endorsed or approved by the Employer, the International Association of Athletics Federations ("IAAF"), International Paralympic Committee ("IPC"), UK Athletics, UK Sport or London 2017 Limited or any other official IAAF or IPC World Championships 2017 body, or that the Consultant (including any of its products or services) are in any way associated with those organisations, the IAAF or IPC World Championships 2017, including by publishing or issuing any statement (factual or otherwise) about the Consultant's provision of the Products or Services to the Employer.

21. Protection of Personal Data

- 21.1 The Consultant 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 Employer, shall only carry out such Processing for the purposes of providing the Services in accordance with the Contract and shall act in accordance with instructions from the Employer.

22. Confidentiality, Announcements and Transparency

- 22.1 Subject to Clauses 22.3, 22.6 and 23, the Parties shall keep confidential:

- 22.1.1 the terms of this Contract; and

- 22.1.2 any and all Confidential Information that they may acquire in relation to the other.

- 22.2 The Consultant will not use the Employer's Confidential Information for any purpose other than to perform its obligations under this Contract. The Consultant will ensure that the Consultant's Personnel comply with the provisions of Clause 22.1.

- 22.3 The obligations set out in Clause 22.1 will not apply to any Confidential Information:

- 22.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 23);

- 22.3.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
- 22.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.
- 22.4 The Consultant shall keep secure all materials containing any information in relation to the Contract and its performance.
- 22.5 The Consultant shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or that it is providing the Services to the Employer or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the Employer. The Employer shall have the right to approve any announcement before it is made.
- 22.6 The Consultant acknowledges that the Employer is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 22.1 and Clause 23, the Consultant hereby gives its consent for the Employer to publish the Contract Information to the general public.
- 22.7 The Employer 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 Employer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in Clause 23.1 below). The Employer may in its absolute discretion consult with the Consultant regarding any redactions to the Contract Information to be published pursuant to Clause 22.6. The Employer shall make the final decision regarding publication and/or redaction of the Contract Information.
- 22.8 The provisions of this Clause 22 will survive any termination of this Contract for a period of 6 years from termination.
- 23. Freedom of Information**
- 23.1 For the purposes of this Clause 23:
- 23.1.1 "FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 23.1.2 "Information" means information recorded in any form held by the Employer or by the Consultant on behalf of the Employer; and
- 23.1.3 "Information Request" means a request for any Information under the FOI Legislation.
- 23.2 The Consultant acknowledges that the Employer:

- 23.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Employer to enable the Employer to comply with its obligations under the FOI Legislation; and
- 23.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Consultant.
- 23.3 Without prejudice to the generality of Clause 23.2, the Consultant shall and shall procure that its sub-contractors (if any) shall:
- 23.3.1 transfer to the Contract Manager (or such other person as may be notified by the Employer to the Consultant) each Information Request relevant to the Contract, the Services or where TfL is the Employer any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and
- 23.3.2 in relation to Information held by the Consultant on behalf of the Employer, provide the Employer with details about and/or copies of all such Information that the Employer requests and such details and/or copies shall be provided within 5 Business Days of a request from the Employer (or such other period as the Employer may reasonably specify), and in such forms as the Employer may reasonably specify.
- 23.4 The Employer 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 Consultant shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Employer.
- 24. Dispute Resolution**
- 24.1 The Employer and the Consultant shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract ("Dispute") before resorting to litigation.
- 24.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Consultant within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("Senior Personnel") of each of the Parties for resolution.
- 24.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Party may give notice to the other Party ("Notice") to commence such process and the notice shall identify one or more proposed mediators.
- 24.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.

- 24.5 Where a dispute is referred to mediation under Clause 24.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 24.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 24.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 40.
- 24.8 For the avoidance of doubt, the Consultant shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 24.
- 24.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 24 and Clause 24 shall not apply in respect of any circumstances where such remedies are sought.

25. Breach and Termination of Contract

- 25.1 Without prejudice to the Employer's right to terminate at common law, the Employer may terminate the Contract immediately upon giving notice to the Consultant if:
- 25.1.1 except as provided in and without prejudice to Clause 25.1.3, the Consultant has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Employer) from the date of written notice to the Consultant giving details of the breach and requiring it to be remedied;
- 25.1.2 the Consultant is subject to an Insolvency Event;
- 25.1.3 in the event that there is a change of ownership referred to in clause 9.3 or the Consultant is in breach of Clause 9.3;
- 25.1.4 the Employer is not satisfied on the issue of any conflict of interest in accordance with Clause 10;
- 25.1.5 the Consultant or any of the Consultant's Personnel commits any act of bribery described in the Bribery Act 2010; or
- 25.1.6 the Consultant commits any of the money laundering related offences listed in the Public Contract Regulations 2006.
- 25.2 Without prejudice to any of the Employer's other rights, powers or remedies (whether under the Contract or otherwise) if the Consultant is in breach of any of its warranties and/or obligations under Clause 6 and/or any of its other obligations in respect of the Services under the Contract,

the Consultant shall, if required to do so by the Employer, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 25.2 shall prevent the Employer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Employer so procures any Services or any remedial action, the Employer shall be entitled to recover from the Consultant all additional cost, loss and expense incurred by the Employer and attributable to the Employer procuring such Services or remedial action from such alternative contractor.

- 25.3 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("the Affected Party"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("Innocent Party") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this Clause 25.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 25.4 Without prejudice to the Employer's right to terminate the Contract under Clause 25.1 or to terminate at common law, the Employer may terminate the Contract at any time without cause subject to giving the Consultant written notice of the period specified in Table 5, provided that this Clause 25.4 may be disapplied by notice to that effect in Table 5. Without prejudice to the Employer's right to terminate the Contract under Clauses 25.1, 25.4 or at common law, the Employer may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 27. For the avoidance of doubt, the *Consultant* shall not be entitled to compensation on termination at will by the *Employer* including but not limited to loss of profit or loss of opportunity.
- 25.5 To the extent that the Employer has a right to terminate the Contract under this Clause 25 then, as an alternative to termination, the Employer may by giving notice to the Consultant require the Consultant to provide part only of the Services with effect from the date specified in the Employer's notice ("Change Date") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Employer's opinion a proportionate adjustment would not be reasonable in such manner as the Employer may determine.
26. **Consequences of Termination or Expiry**
- 26.1 Notwithstanding the provisions of Clause 22, wherever the Employer chooses to put out to tender for a replacement Consultant for some or all of the Services, the Consultant shall disclose to tenderers such information concerning the Services as the Employer may require for the purposes of such tender. The Consultant may impose upon any recipient of such information such obligations of confidentiality as it may require.
- 26.2 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 26.3 Upon expiry or termination of the Contract (howsoever caused):

- 26.3.1 the Consultant shall, at no further cost to the Employer:
- 26.3.1.1 take all such steps as shall be necessary to agree with the Employer a plan for the orderly handover of Services to the Employer (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Employer and to effect such handover; and
 - 26.3.1.2 on receipt of the Employer's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 26.3.2 the Employer shall (subject to Clauses 17, 26.1 and 26.4) pay the Consultant any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Table 4, or otherwise reasonably determined by the Employer.
- 26.4 On termination of the Contract, the Employer may enter into any agreement with any third party or parties as the Employer thinks fit to provide any or all of the Services and (save as for where terminated under Clause 25.4) the Consultant shall be liable for all additional expenditure reasonably incurred by the Employer in having such services carried out and all other costs and damages reasonably incurred by the Employer in consequence of such termination. The Employer may deduct such costs from the Charges or otherwise recover such costs from the Consultant as a debt.
- 27. Declaration of Ineffectiveness**
- 27.1 In the event that a court makes a Declaration of Ineffectiveness, the Employer shall promptly notify the Consultant. The Parties agree that the provisions of Clause 26 and this Clause 27 shall apply as from the date of receipt by the Consultant of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 26 and this Clause 27 or the Cessation Plan, the provisions of this Clause 27 and the Cessation Plan shall prevail.
- 27.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.
- 27.3 As from the date of receipt by the Consultant 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 Employer shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 27.3.1 an orderly and efficient cessation of the Services or (at the Employer's request) a transition of the Services to the Employer or such other entity as the Employer may specify; and
 - 27.3.2 minimal disruption or inconvenience to the Employer or to public passenger transport services or facilities,
- in accordance with the provisions of this Clause 27 and to give effect to the terms of the Declaration of Ineffectiveness.

27.4 Upon agreement, or determination by the Employer, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

27.5 The costs in assisting the Employer in preparing, agreeing and complying with the Cessation Plans shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by the Employer. Provided that the Employer shall not be liable to the Consultant for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to this Clause 27.

28. **Survival**

The provisions of Clauses 1, 3.1.3, 4, 5, 6.1.4, 8.1, 9.2.2, 9.2.3, 11.1.1, 11.1.2, 11.1.5, 11.2, 14, 16-20 (inclusive), 21, 22-25 (inclusive), 26, 28-30 (inclusive), 32-40 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

29. **Rights of Third Parties**

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

29.2 Notwithstanding Clause 29.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including the GLA or any member of the TfL Group.

30. **Contract Variation**

Save where the Employer may require an amendment to the Services, the Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Employer may dictate and which may be substantially in the form set out in Schedule 1 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

31. **Novation**

31.1 The Employer may novate or otherwise transfer the Contract (in whole or in part). Within 10 Business Days of a written request from the Employer, the Consultant shall at its expense execute such agreement as the Employer may reasonably require to give effect to any such transfer all or part of its rights and obligations under the Contract to one or more persons nominated by the Employer.

31.2 Subject to Clause 9, the Contract is personal to the Consultant who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of the Employer.

32. **Offers of Employment (Non-Solicitation)**

31.3 For the duration of the Contract and for a period of 6 months, after expiry or termination of the Contract, the Consultant shall not employ or offer employment to any Employer employees or where TfL is the Employer any TfL Group employees who have been associated with the provision of the Services by the Consultant without the Employer's prior written consent. Any breach of this Clause shall render the Consultant liable to pay to the Employer a sum equal to the basic salary payable to the employee by the Consultant during the first 6 months, of new employment.

33. Non-Waiver of Rights

No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 35. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

34. Illegality and Severability

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

35. Notices

Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand or prepaid recorded delivery first class post addressed to the recipient at its registered office, the address stated in Table 5, or any other address notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent.

36. Entire Agreement

36.1 Subject to Clause 36.2:

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

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

36.2 Nothing in this Clause 36 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

37. Counterparts

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

38. Relationship of the Parties

Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

39. **Further Assurance**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

40. **Governing Law**

The Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 24, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Employer has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Consultant is incorporated or in which any assets of the Consultant may be situated. The Parties agree irrevocably to submit to that jurisdiction.

CLAUSE TO BE INSERTED IF SERVICES PROVIDED TO LONDON UNDERGROUND LIMITED

28A Specific London Underground limited Standards

In this Clause, unless the context indicates otherwise, the following expressions shall have the following meanings:

“Contract QUENSH Conditions”	the Quality Environmental Safety and Health Contract Conditions in force and as supplied to the Consultant by LUL from time to time;
“London Underground”	the stations and depots, assets, systems, track and other buildings which are used in the maintenance and provision of underground services known as “London Underground”;
“LUL”	London Underground Limited;
“LUL Standards”	the mandatory requirements in force on the London Underground from time to time that the Consultant must comply with in the provision of the Services, comprising mandatory category 1 standards, applicable LUL rules, procedures, codes, standards and safety agreements in relation to, without limitation, health and safety, environment, security, operational, engineering and ambience standards and other customer service delivery standards (including, without limitation, the Contract QUENSH Conditions).

Without prejudice to any other provisions of the Contract:

28A.1 The Consultant acknowledges its awareness of the Employer’s statutory duty to provide or secure safe, economic and efficient public passenger transport services by railway for Greater London and shall at all times during this Contract have regard to the Employer’s statutory duties. The Consultant shall not, in the performance of the Services, in any manner endanger the safety of or interfere with the operation of the London Underground or endanger the public and shall minimise any disruption to both the London Underground and the public.

28A.2 The Consultant acknowledges, and undertakes to inform all Consultant’s Personnel who will be using the Employer’s communication facilities that the Employer reserves the right from time to time to:

28.2.1 intercept, for the purposes of monitoring and / or recording, any communication made through any system capable of transmitting communications including but not limited to telephone, electronic mail, facsimile, voicemail or internet facility provided by the Employer; and

28A.2.2 use any information obtained as a result of any intercepted communication referred to in Clause 28A.2.1 for the purposes permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

28A.3 In providing the Services, the Consultant shall comply with LUL Standards.

28A.4 One of the LUL Standards which may be of relevance to this Contract is QUENSH which governs safety for places of work on or around the operational railway. If applicable, the Consultant shall comply with the Contract QUENSH Conditions as indicated and respond to the menu provided by the Contract Manager.

28A.5 It is the responsibility of the Consultant to ensure that it receives the LUL Standards from LUL for the required Services and must ensure that it has been appraised by LUL as capable of

providing the Services in terms of the LUL Standards. If the Consultant has not been appraised or has not been provided with the Contract QUENSH Conditions, it is the Consultant's obligation to raise this with the Contract Manager and if necessary cease work until the appraisal is completed.

28A.6 Where there is a requirement indicated in the Contract QUENSH Conditions to comply with one or more conditions, it is the responsibility of the Consultant to satisfy itself of the requirements of the indicated conditions as contained in Contract QUENSH Conditions. Access to LUL Standards can be gained through the intranet, of which access can be obtained on request to the Contract Manager.

Schedule 3 - Framework Scope

TfL Professional Services Framework Agreement: Transport Planning & Impact Monitoring

TRANSPORT PLANNING AND IMPACT MONITORING

Introduction

Transport Planning and Impact Monitoring involves the development, evaluation and assessment of evidence-based, multi-modal, integrated transport projects and policies with the aim of improving transport services for the general public. The forecasting and monitoring of project and policy impacts is essential to aid decision making. TfL places a significant emphasis on planning activity for integration between different modes of transport and land use as well as maximising sustainability and protection for the environment.

Bidder Requirement

The supplier will need to demonstrate knowledge and understanding of transport planning and analysis processes and procedures that allow TfL's legal accountabilities and its required interfaces with regulatory and other agencies to be fulfilled, including as throughout, recognition of TfL's responsibilities under section 17 of the Crime and Disorder Act 1998. The supplier will also need to understand and formulate proposals which accord with planning and environmental policy.

The supplier will be expected to supply a wide range of advice, studies, surveys, reports, design, modeling, analysis and professional services and personnel which will in turn rely and depend on skill, competence and capabilities including but not limited to the capabilities details below.

Sub-categories

Framework Agreement: Transport Planning & Impact Monitoring	
(a)	Accessibility, Severance, Public Health & Insight Consultancy
(b)	Using Road Casualty Data
(c)	Database Design & Development
(d)	Freight Planning & Commercial Vehicle Planning & Modelling

(e)	GIS (Geographical Information Systems) Development & Analysis
(f)	Non Motorised User Audits (NMUA) & Assessments
(g)	Road Safety
(h)	Traffic & Travel Research
(i)	Statistical Modelling & Bespoke Analysis
(j)	Strategic Transport Modelling
(k)	Strategic Transport Scheme Planning & Design
(l)	Strategic Transport Planning & Policy
(m)	Transport Assessment, Studies & or Statement
(n)	Transport Economic Advice, Appraisal & Business Impacts
(o)	Transport Surveys
(p)	Travel Behaviour Research
(q)	Strategic Assessment of Travel Demand Using Location-Based Technology
(r)	Business Consulting
(s)	Connectivity Measures & Modelling

Capability Statements

(a) ACCESSIBILITY, SEVERANCE, PUBLIC HEALTH & INSIGHT CONSULTANCY

1) Accessibility, Severance, Public Health and Insight Consultancy

Accessibility, Severance and Public Health issues need to be addressed in all aspects of transport planning. London's transport network has become more accessible in recent years with improvements such as the introduction of a low-floor bus fleet, accessibility improvements at bus stops, and completion of step-free access schemes at a number of rail and Tube stations. There are however many improvements still to be made. This category is for consultancy and insight services around accessibility and will support TfL in improving services for disabled people.

The supplier shall demonstrate:

- Their ability to ensure that all equality, public health and accessibility issues are fully investigated, and an equality impact assessment is completed if necessary, particularly when as a result of a project and/or proposal, severance issues are likely

to arise. These should then be incorporated into all modelling and design work undertaken for all users of the transport network, in accordance with the latest national and TfL guidelines expertise in understanding the needs of disabled people and experience of working with disabled people. Preferably this experience would be with a wide range of disabled people although specialists with particular groups of disabled people will be considered.

- Experience of advising about accessibility to a range of clients, preferably within transport.
- Skilled to carry out analysis of existing data sets and pulling together a range of research information into a coherent story.
- Ability to conduct a range of different research (including quantitative and qualitative methods) with disabled people and stakeholders.

(b) USING ROAD CASUALTY DATA

1) Using Road Casualty Data

TfL receives the *Stats 19* collision data from the Metropolitan Police Service (MPS) and the City of London Police. The Police collate and process data about reported personal injury collisions that occur in Greater London. Following receipt of the data from the police, TfL validates the data and assigns collisions to the highway network. Collision and casualty data is stored and queried using TfL's ACCSTATS Oracle database, which is designed for use by both internal and external users.

The supplier shall demonstrate:

- The necessary skills to obtain and make use of casualty and collision data stored in TfL's ACCSTATS system, or alternative sources.
- To analyse data and develop mitigating measures to ensure that outcomes are incorporated into wider modelling and road safety related activities.
- An understanding of innovative approaches, such as rate based risk measurement, to further enhance the collation, analysis and reporting of casualty and collision data. This should include an appreciation of open data strategies.

(c) DATABASE DESIGN & DEVELOPMENT

1) Database Design and Development

The undertaking of work related to the design and development of databases and database systems and processes to allow TfL to meet its current and future requirements for the creation, management and dissemination of data.

The supplier shall demonstrate:

- The possession and usage of specialist database technology and techniques required to assist in the development of solutions.

- Their expertise in development and design of databases that integrate data from various sources with links to other applications including transport modelling software and GIS.
- Their ability to assist their client in the implementation of agreed designs and ensures that the data are fully accessible, manageable and portable and supported with appropriate level of metadata and documentation.
- Their ability to assist their client in hosting databases remotely or developing hosting solutions internally, all compatible with TfL available infrastructure.

(d) FREIGHT PLANNING & COMMERCIAL VEHICLE PLANNING & MODELLING

1) Freight Planning and Commercial vehicle planning and modelling

TfL undertakes studies into commercial vehicle operations. “Commercial vehicles” refers to all types of road vehicle used for the provision of goods and/or services. These will include goods vehicles (HGV and LGV), coaches and other specialist vehicles (e.g. construction, waste, security).

The supplier shall demonstrate:

- The provision of advice on freight activity and the operation of commercial vehicles, including the costs associated with operation, the efficient use of logistics (vehicle specification, routing, scheduling, delivery and loading times), safety and environmental impacts such as conflict with other road users, noise and emissions.
- Usage of specialist tools and techniques to provide advice on transport legislation and transport operating principles in order to provide advice on the modelling of operators’ likely responses to potential policy interventions, to include distinguishing the important determinants of modelling and advising how they can be quantified and related to other variables. The capability to project current and future transport trends, by industry sector and geographical region, is fundamental to this work,
- Their ability to construct, develop and operate spreadsheets or other software for modelling the impact of policy interventions on commercial vehicle operations. The consultant may also be called upon to review and develop TfL’s existing spreadsheet models of commercial vehicle operations. It may be necessary to research and develop inputs to the calculation, to include locating, extracting, collating, checking and analysing survey data or statistical data. It may also be necessary to check the outputs from the calculation and analysis to ensure as far as reasonably possible that it is giving sensible results, or that its weaknesses are understood and allowed for in application.

(e) GIS (Geographical Information Systems) DEVELOPMENT & ANALYSIS

1) GIS Development & Analysis

GIS plays a significant role in supporting evidence-based policy making, in the development and delivery of policies, and the communication of the impact of those policies to a wide variety of audiences. Examples of key areas of interest include integrating GIS technologies with transport network models e.g. freight, cycling, bus lanes and pedestrians and all other appropriate modes, improving network representation, gravity modelling, routing tools and accessibility analysis and cartographic production.

The supplier shall demonstrate:

- The possession and usage of the specialist tools and techniques required to assist in the design and development of spatial solutions and to provide GIS expertise to support the development of TfL's spatial data analysis capabilities.
- Their knowledge and ability to communicate with and influence their client on the trends in GIS technology and be able to offer innovative and future-proof solutions.
- Their experience in applying GIS and spatial analysis to transport modelling and spatial data management.
- Their ability to undertake spatial analysis including the identification and sourcing of relevant datasets and interpreting results.
- Their ability to assist in data quality assurance.
- Their experience in metadata and spatial data standards, licensing agreements and the importance of GIS data interoperability,
- Their experience in the development, and management of geo-databases.

(f) NON MOTORISED USER AUDITS (NMUA) & ASSESSMENTS

1) Non Motorised User Audits (NMUA) and Assessments

A NMUA is a generic systematic process applied to highway, street and other modal schemes, by which potential impacts on and objectives for NMU's are identified and mitigated with the objective being safe, convenient and attractive routes and spaces.

Assessments are modal specific processes and tools designed to capture information from which highway, street and route design decisions can be made.

The supplier shall demonstrate:

- Experience of undertaking generic non-motorised user audits.

- Experience in undertaking Street audit (originally PERS), pedestrian audits and associated data and report outputs.
- Experience of undertaking Community Street Audits and report outputs.
- The ability to design and amend audit tools as necessary to meet project objectives.
- Experience of undertaking pedestrian levels of service analysis, specifically using the Pedestrian Comfort Guidance tool.
- Collaboration with their client to take all reasonable opportunities to improve the service offered to NMU's.
- Their ability to communicate with and influence their client stakeholders to prevent conditions for NMU's being worsened by the introduction of new schemes and modifications to existing schemes.
- The provision of knowledge and skills on document design decisions that affect NMU's.

(g) ROAD SAFETY

1) Road Safety

In order to develop Road Safety interventions that are appropriately targeted and deliver maximum casualty reduction benefits, it is necessary to carry out a range of road safety research. The research will be consistent with the goals and ambitions of the Safe Streets for London road safety action plan and will cover the different categories of investigation as highlighted below.

The supplier shall demonstrate:

- Ability and experience of undertaking road safety policy and literature reviews, to assist in developing new road safety policy.
- A good understanding of and research experience in road safety audit, road safety engineering and speed management measures.
- Their knowledge of vehicle technology research and the latest developments in road safety related vehicle design.
- Competency and experience in developing and researching behavioural interventions targeted at specific road users, ages or demographics and recommending solutions.
- Ability in comparing health data (Hospital Episode Statistics, Trauma Audit & Research Network data etc) with *Stats 19* casualty data to identify trends.

- Competency in undertaking road safety research specific to vulnerable road users, with experience in pedestrian, cyclist and powered two wheeler research, as well as the skills to engage with this audience.
- Knowledge of and experience applying common statistical tests and models appropriate to road safety evaluations (including for example: Empirical Bayes, Poisson, Negative binomial, Tanner, Hauer, regression analysis and knowledge of Regression Toward the Mean effects).
- Experience in behaviour change interventions for young people (age 3 to 25) including youth engagement and peer to peer interventions and at the transition stages of education (primary to secondary).
- Knowledge in the evaluation of educational, behaviour change and marketing campaigns.
- Ability to demonstrate a comprehensive and up to date knowledge of social marketing models (including the 'stages of change') and possible motivators of behaviour change on a case by case basis and to develop education and training interventions to sustain long term behavioural change.

(h) TRAFFIC & TRAVEL RESEARCH

1) Traffic & Travel Research

This capability includes collating, normalising and analysing data on transport and travel, including factors that may affect travel, and then preparing calculations to draw inferences and to provide inputs to other calculations such as transport models. Statistical methods may be required to summarise data, to identify trends and variations, and to estimate the significance of observed relationships or confidence limits of statistics estimated from them.

The supplier shall demonstrate:

- Usage of specialist tools and techniques to prepare, run and appropriately present calculations in accordance with good practice.
- Their ability to put in place procedures to allow for confidential data to be managed, in particular personal data.
- Their ability to analyse various datasets in relation to traffic and travel in London including statistical and trend analysis in order to assist TfL to improve understanding and plan future transport policies.
- Their knowledge and ability to undertake specific research in relation to trend analysis to include the identification and sourcing of relevant datasets, the statistical analysis, interpretation and reporting of results.
- The provision of expert advice on statistical methods.
- Their ability to undertake a range of tasks related to transport statistics, including carrying out literature reviews, reviewing and assessing statistical content and

quality, advising on statistical methods and availability, secondary analysis of data sources, and collating statistics and data from published and unpublished sources.

- Their knowledge and ability to produce robust and insightful statistical reports for publication.
- Knowledge of contemporary transport trends and policy issues in London and ability to undertake innovative and robust statistical analysis.

(i) STATISTICAL MODELLING & BESPOKE ANALYSIS

1) Statistical Modelling and Bespoke Analysis

This capability includes the ability to analyse data to reach an understanding of travel behaviour, behavioural response to policies or schemes, and travel patterns. It also includes the ability to develop forecasting spreadsheets and mathematical modelling techniques tailored to arising needs.

The supplier shall demonstrate:

- Their ability to develop specialist tools and techniques for bespoke analysis of travel behaviour, in accordance with good practice.
- Their ability to undertake research in relation to trend analysis, including the identification of relevant datasets, statistical analysis, interpretation and reporting of results.
- The provision of expert advice on forecasting methodologies, use of different techniques for forecasting future trends, and tailoring models for the specific needs of different studies.
- Their ability to develop spreadsheets and other software for modelling based on the best practice,
- Their knowledge of various approaches of using data to gain quantitative insight on consumer behaviour, including regression analysis and other approaches.

(j) STRATEGIC TRANSPORT MODELLING

(1) Strategic demand and multi-modal modelling

This category of work includes the development and application of strategic multi-mode models. It includes the process of constructing, calibrating and validating such models.

The supplier shall demonstrate:

- Usage of specialist tools and techniques and knowledge in building, adapting, calibrating, refining, extending and running multi-mode models e.g. LTS and LoRDM.
- Experience, knowledge and skills in the application of bespoke LTS software and the Cube software products.

- Experience and skills in matrix building and development, including demand modelling techniques, network development skills and model validation; Trip end modelling and methods for projection to future years; Suppliers should have full working knowledge of Department for Transport Modelling guidance and other best practice.
- Experience in the collection and processing of model data (highway and public transport systems and travel demand e.g. LATS, LTDS, RSI, BODS and RODS; and, in the use of industry databases e.g. TEMPRO, BUSNET, MCO and ITN.
- Experience in using UNIX systems,
- Knowledge and ability to interpret and present the outputs from model runs, to include appraisal of traffic, economic and, if required, air quality and CO2 impacts of options being studied.

(2) Strategic public transport modelling

This category of work includes the development and application of strategic public transport models. It includes the process of constructing, calibrating and validating such models.

The supplier shall demonstrate:

- Usage of specialist tools and techniques and knowledge in building, adapting, calibrating, refining, extending and running models e.g. RAILPLAN.
- Experience and skills in matrix building and development, including familiarity with demand modelling techniques, network development skills, to include model validation, PT modelling using EMME and Cube software; Trip end modelling and methods for projection to future years; Suppliers should have full working knowledge of Department for Transport Modelling guidance and other best practice.
- Experience in the collection and processing of model data (highway and public transport systems and travel demand e.g. LATS, LTDS, RSI, BODS and RODS and in the use of industry databases e.g. TEMPRO, BUSNET, MCO and ITN.
- Experience in using LINUX systems,
- Knowledge and ability to model public transport aspects of proposed policies.
- Knowledge and ability to interpret and present the outputs from model runs, to include appraisal of traffic, economic and, if required, air quality and CO2 impacts of options being studied.

(3) Regeneration & Land Use Planning, Assessment & Modelling

A Land Use and Transport Interactive Model for the London area has now been developed: 'LonLUTi'. Work in this category includes enhancing and testing the model in

a wide range of transport and land-use scenarios, reporting and sense-checking results.

The supplier shall demonstrate:

- Usage of specialist tools and techniques and expertise in the field of Land Use Interactive Demand Modelling,
- Their ability to run LonLUTi (this includes LTS PC version) in their offices and a thorough working knowledge and experience in using other land-use models.

(4) Strategic highway modelling

This category of work includes the development and application of models, or the setting up and application of highway assignment models. Model Development and Application is the process of constructing, calibrating and validating Strategic / Sub-Regional Highway Assignment Models in accordance with DfT's WebTAG and TfL HAM guidance.

The supplier shall demonstrate:

- Usage of specialist tools and techniques and experience and skills in building, adapting, calibrating, validating, refining, extending, joining, auditing and running models, e.g. SATURN-based Highway Assignment Models.
- Experience and skills in highway modelling using SATURN software, including network development skills, model calibration and validation, building and developing highway demand matrix and familiarity with gravity modelling techniques. Suppliers should have full working knowledge of Department for Transport Modelling guidance (WebTAG) and other best practice.
- Experience and skills in building highway models for specific studies, conducting sensitivity and realism tests and analysis of results, including auditing the models to ensure that the model achieves a high standard of validation and fitness for purpose of the study.
- Experience in the collection and processing of model data for highway and travel demand, e.g. LATS, LTDS, RSI, traffic counts (MCC/ATC), journey time data (Moving Car Observer, floating vehicle, GPS), and in the use of industry databases, e.g. TEMPRO, BUSNET and ITN.
- Experience and skills in the use of spreadsheets, databases (e.g. MS Access) and GIS software (e.g. MapInfo or ArcGIS) to process, analyse and present the model data and model output,
- Knowledge and ability to interpret and present the outputs from model runs, to include appraisal of traffic, economic and, if required, air quality and CO2 impacts of options being studied.

(5) Micro-simulation and detailed junction modelling

This category of work includes the development and application of models, or the setting up and application of micro simulation models. Micro-simulation and detailed junction modelling is the process of constructing, calibrating, validating and optimising micro-simulation models in accordance with TfLs Directorate of Traffic Operation (DTO) Model Audit Procedures (MAP) and Traffic Modelling Guidelines.

The supplier shall demonstrate:

- Usage of specialist tools and techniques and experience and skills in building, adapting, calibrating, validating, refining, extending, joining, auditing and running models, e.g. VISSIM, LINSIG, and TRANSYT.
- Knowledge to develop existing models using MAP guidelines to test various scenarios for improvements to the highway layout ranging from junction improvements, to area improvements and regional analysis. Suppliers will also be required to carry out audits of others models and produce a Traffic Signals Supplementary Report (TSSR) as required.

(6) Spatial-based Analysis and Modelling

This category of work includes traditional transport models struggle to cover the finer-scale changes to pedestrian and cycle patterns associated with changes to spatial layout and development. This category includes the development and application of spatial-based modelling tools to analyse the interactions of spatial and network systems, (including master plans) on pedestrian and cyclist (active) movement patterns.

The supplier shall demonstrate:

- Skills and experience in the development and application of specialist/bespoke models that utilise a spatial-based approach (or similar) to the modelling of active movement patterns. This includes calibration to observed data and forecasting the impacts of development, including changes to spatial layout, on active movements. Where applicable, best practice should be followed.
- Skills and experience in developing scientific methods for planning and design of development in urban areas and the analysis of the spatial environment and its relationship to active movements.
- Skills and experience in the identification and application of factors within land use and public realm that influence active movement patterns and in particular those factors that encourage walking and cycling.

(k) STRATEGIC TRANSPORT SCHEME PLANNING & DESIGN

1) Strategic Transport Scheme Planning & Design

The undertaking of feasibility and design studies to assess options for improvements to the transport network and additions (stand-alone or as a package) to accommodate new or significantly intensified land use development in areas of regeneration. Options to be tested could include rail and bus station enhancements, interchange improvements, changes to rail or bus service patterns, new or extended public transport networks, improvements to existing roads including traffic, bus priority, cycling or pedestrian improvements, or construction of new roads. Studies can include some or all of the following – surveys, multi-modal demand forecasting, public transport assignment modelling, local or strategic highway modelling, pedestrian flow modelling using software such as Pedroute or Legion, technical design and engineering. Consultants will be required to undertake optioneering work to scope out a range of potential options and to identify the best performing options against TfL's objectives.

The supplier shall demonstrate:

- Experience of working or developing technically feasible scheme designs or options to develop the scheme objectives, and appraise against the objectives.
- Their ability to evaluate environmental, economic and social factors, direct transport impact and the effects of transport schemes or options with the ability to undertake multi-criteria analysis in accordance therewith.
- The necessary skills to undertake detailed business cases to inform the economic and social and environmental case for the scheme, for assessment against alternative options or projects to allow the business to prioritise investment effectively.

(l) STRATEGIC TRANSPORT PLANNING & POLICY

1) Strategic transport planning and policy

TfL seeks to give the most robust, evidence-based strategic transport planning and transport policy advice to the Mayor, London Assembly, local authorities and HM Government and makes the best possible business decisions for itself, This is to ensure London's diverse transport needs are met with appropriate provision of transport services in the short, medium and long-term, over a timescale of twenty years or more as demonstrated within the Mayor's Transport Strategy (MTS).

Analysis and optioneering to develop strategic transport options for Opportunity Areas and other locations likely to see rapid economic development or population changes.

Recognising the needs of its business units, TfL must ensure its own operations and new transport investments address the Mayor's desired outcomes as specified in the MTS and London Plan, ensuring best possible value for money. As well as seeking to influence transport planning decisions, strategic planning activity considers other related

activities such as business planning, corporate policy and programme management activity, and management of its assets,

Taking account of the client's legal obligations and the desire for best practice, in accordance with the MTS,

The supplier shall demonstrate:

- Experience of providing well-researched, impartial advice to local, regional, national and/or supranational (European level) government for the purposes of strategic policy-making in the fields of transport and, preferably, land use and environmental planning.
- Experience of leading research studies to better understand transport policy issues.
- Ability to develop a range of robust strategic transport schemes, area-based plans and/or policy options according to enable comparison and decision-making by TfL and/or its partners, taking into account a wide range of factors internal and external to the client(s).
- Strong communications skills and experience of undertaking or managing stakeholder liaison and public consultation exercises at a regional or local level, understanding the politically-sensitive and fast-moving nature of transport policy and scheme development
- A strong understanding of Town and Environmental Planning consents procedures.
- Strong programme and project management skills.
- Experience of developing and using benchmarking techniques.
- A full appreciation of the interaction between strategic transport planning, accessibility public health considerations – with regard to the greater uptake of public transport and active travel options.
- Full understanding of the transport and land use planning responsibilities of the Mayor of London and London Assembly, as defined in the GLA Act (1999) and how devolution distinguishes the provision of transport in London from the rest of England

(m) TRANSPORT ASSESSMENT, STUDIES & / OR STATEMENTS

1) Transport Assessment, Studies and/or Statements

Transport Assessments are produced to support Planning Applications or new transport schemes as part of an Environmental Impact Assessment requirement. Transport assessments fall into two categories:

- (i) commissioned by TfL and prepared by consultants on behalf of TfL to assess the impact of TfL promoted transport schemes, and

- (ii) prepared by the private sector or public sector bodies and submitted to TfL to review as the statutory highway and public transport authority.

The supplier shall demonstrate:

- Their ability in the usage of a range of modelling and analytical techniques.
- Usage of specialist tools and techniques to undertake transport assessments and independent analysis.
- Compliance with TfL Best Practice Guidance and/or relevant TfL guidance as appropriate as well as relevant international standards.
- An understanding of travel demand management and travel plans.
- An understanding of transport and planning policy, for example London Plan and LDF.
- Ability to critically interrogate traffic and other transport models submitted to TfL in support of development proposals and provide both technical review comments for non-specialist and specialists in the field up to including the expert witness.
- Ability to examine and review the potential risks and benefits of highway and infrastructure proposals proposed by developers and their consultants and provide comments that could be understood by both specialists and non-specialists.

(n) TRANSPORT ECONOMIC ADVICE, APPRAISAL & BUSINESS IMPACTS

1) Transport Economic Advice, Appraisal and Business Impacts

The supplier shall demonstrate:

- Expertise in the use of nationally recognised investment appraisal methodologies such as DfT Webtag (<http://www.dft.gov.uk/webtag/>) and the capability to use TfL appraisal methodology. In some cases suppliers should also demonstrate the ability to develop robust appraisal methodologies in areas of transport policy for which methodologies do not exist or are not fully able to reflect the impacts of a project or policy.
- A strong understanding and ideally experience of using and/or developing multi-criteria appraisal techniques, taking account of local / regional objectives whilst ensuring compliance with statutory transport policy (in London's case, expressed through the Mayor's Transport Strategy).
- Expertise in undertaking research to help understand the wider economic benefits, including agglomeration, of investing in transport infrastructure, with the aim of supporting decisions relating to how best to prioritise between different transport investment options and policies for London.

- Understanding of the macroeconomic context of London and its role as a world city, and how transport supports London's economy.
- Understanding of the spatial distribution of economic activity across London and the different types and scales of economic activity taking place in London.
- Usage of specialist tools and techniques required to gather and analyse a variety of data including published statistics and bespoke surveys in order to monitor economic and business consequences of transport policies and interventions.
- Expertise in how interventions can influence the productivity of businesses, and the implications of this both for competition within London and for London's competitiveness on an international scale.

(o) TRANSPORT SURVEYS

1) Transport Surveys

Transport for London undertakes studies into all modes of transport. The production of these studies would involve the use of a wide range of transport data. This category includes the collection and processing of data, geocoding and analysis.

The supplier shall demonstrate:

- Their experience of carrying out work relating to the collection, processing and analysis of data relevant to any aspect of travel and transport, and covering a wide range of possible survey designs and methods including data collection from transport operations.
- Their expertise to undertake all stages of the survey process from initial feasibility, the design and specification of surveys, fieldwork, data coding, data checking and editing (including geocoding), data expansion and bias correction, data imputation and database construction, through to data analysis and reporting.
- Their experience in the most commonly used types of survey for transport research and administration which includes intercept surveys of travellers, such as roadside interview surveys and public transport passenger surveys; and observational surveys, such as counts of people, passengers or vehicles using both manual and automatic methods.
- Their ability to carry out analysis following methods which may include both qualitative and numerical techniques, simple tabulation of responses, application of statistical analysis and data modelling techniques, classification and estimation, and the interpretation and presentation of results.
- Their knowledge and ability to undertake sample design including random probability sampling and structured sampling using quotas or segmentation; of testing the representativeness of their sample against the survey population; and of developing and applying appropriate weighting criteria to survey results.

- Experience of producing high quality reports and presentations for technical and 'lay' audiences, summarising complex survey data and analysis.
- Their ability to examine and analyse in detail existing data sets already held by TfL and where appropriate overlay with other internal or external data sources to bring the data to life from a geographic and profiling perspective.

(p) TRAVEL BEHAVIOUR RESEARCH

1) Travel Behaviour Research

Travel behaviour research is conducted by TfL in order to understand the patterns of travel at an individual and household level and to explore the potential for change or the impacts of schemes and policy interventions. This may range from simple origin/destination postcard surveys to complex Stated Preference exercises and longitudinal panel surveys. Suppliers will be expected to offer expertise in quantitative social research methods, from survey design/testing and sampling, through to survey administration (face-to-face, by telephone and online), data processing/cleaning/weighting, analysis and reporting. In particular, suppliers will be expected to offer expertise in stated intention and stated preference techniques and associated analytical methods. Suppliers will be expected to have experience of qualitative research methods for the purposes of survey design and as a follow-up to quantitative surveys, but it is unlikely that purely qualitative studies will be let through this category.

The supplier shall demonstrate:

- Their experience in transport research and survey administration covering personal interview surveys, both face-to-face and by telephone; self completion surveys, with paper or web-based questionnaires by providing two case studies to illustrate their experience and ability in this field.
- Their capability to administer quantitative surveys using a range of methods, to include CATI and CAPI, web and paper-based questionnaires.
- Their capability to administer qualitative surveys, including individual interviews and focus groups.
- Usage of specialist tools and techniques to undertake sample design including random probability sampling; structured sampling using quotas or segmentation; purposive sampling for qualitative research; and other methods such as on-street and 'snowball' sampling.
- Usage of specialist tools and techniques to undertake surveying hard-to-reach groups and of testing the representativeness of their achieved sample, and will be experienced at developing and applying appropriate weighting variables to survey results.
- Their ability to carry out mixed method research and experience of both longitudinal and cross-sectional studies.

- Their ability to carry out analyses and produce written reports of appropriate statistical methods which will be suitable for both technical and “lay” audiences.
- Their ability to carry out analysis following methods which may include both qualitative and numerical techniques, simple tabulation of responses, application of statistical analysis and data modelling techniques and the interpretation and presentation of results.
- Their experience of working with behaviour change models that take account of personal, social and environmental factors in stimulating behaviour change.

(q) STRATEGIC ASSESSMENT OF TRAVEL DEMAND USING LOCATION-BASED TECHNOLOGY

1) Strategic Assessment of Travel Demand using Location-based Technology

This category is for services within an area which is becoming increasingly important as a potential source of insight on travel demand and travel behaviour. Services provided within this area are based on location data transmitted by mobile phones, GPS devices and other devices using technologies such as Bluetooth or Wi-Fi, that store information on the location of the users. The work that is likely to be commissioned in this area will use this data to build demand matrices, estimate travel times and speeds for different routes when calibrating transport models and gain other insights on travel behaviour – all using the aforementioned types of technology.

The supplier shall demonstrate:

- Their knowledge of the structures used by typical datasets storing information from mobile, GPS, Bluetooth, Wi-Fi or similar devices (there is no requirement to cover all technology types).
- Their understanding of, and experience of dealing with, the challenges of converting such data into structures suitable for strategic analysis of multi-modal travel demand.
- Their experience of bridging the gaps between the data handling conventions of the mobile/GPS/Bluetooth/Wi-Fi industries and those of the transport modelling and analysis sector (there is no requirement to cover all technology types).
- Their experience of collecting and/or processing the relevant types of data (or some of them) in a way that led to building demand matrices, calibrating travel demand models and merging very large data files from conventional and non-conventional sources into relevant combined structures.
- Their access (or potential access) to providers of relevant data (such as mobile phone companies) and experience of working with such providers.

- Their understanding of the legal issues arising from this type of analysis.
- Their vision of how the analysis of such data can be used to reduce, over time, the reliance on traditional forms of travel data collection.
- Their ability to effectively link the location-based information to other sources of data and particularly to individual features of the travellers, such as journey purpose and socio-demographic characteristics.

(r) BUSINESS CONSULTING

1) Business Consulting

This category of work involves suppliers supporting TfL in providing both guidance and interventions for employers on implementing behavioural change initiatives to promote business resilience, flexible working, occupational road risk and other active travel interventions.

The supplier shall demonstrate:

- Experience of reviewing business policy and establishing key corporate drivers that facilitate sustainable business travel both operationally and for the commute.
- Their ability to evaluate environmental, economic and social factors, and business motivators that will influence the modal choice of the individual and the employer.
- The necessary skills to develop detailed business cases relating to transport and travel, developing both the fiscal and environmental benefits (among others) to allow business to prioritise investment effectively.
- Expert technical knowledge of Business Management relating to transport and travel, corporate policy and other commercial issues that act as barriers to adoption of policy and process change.

(s) CONNECTIVITY MEASURES & MODELLING

1) Connectivity Measures and Modelling

TfL has developed a number of tools and methodologies to measure the quality and ease of transport connectivity between different parts of London, for use in a wide range of projects and work areas. These include PTALs (Public Transport Accessibility Levels) to measure proximity of different places to the public transport network, CAPITAL to measure travel time through the network, and others.

Work in this category includes enhancing and testing these methodologies and models in a wide range of transport and service led scenarios, reporting and sense-checking results. There is also a need to enhance and develop new methodologies to better assess connectivity in London by all modes (walk, cycle, public transport, private vehicle) and accommodate for increased computer functionality and capacity.

We are also keen to update our models to reflect access experienced by the mobility impaired and other user groups (the elderly, parents with children etc).

The supplier shall demonstrate:

- Usage of specialist tools and techniques and expertise in the field of connectivity measurement, mapping and planning.

- Experience and skills in the use of spreadsheets, databases (e.g. MS Access) and GIS software (e.g. MapInfo or ArcGIS) to process, analyse and present the outputs in innovative ways.

- Their ability to undertake ad hoc studies

to assess the connectivity impacts related to changes in service provision across London and for specific locations using TfL's and other third party tools and techniques.

Examples may relate to public health services, town centres or opportunity areas.

Note: that this category was previously referred to as "accessibility measures & modelling". It has been renamed to create a distinction with the use of the term "accessibility" to refer to providing facilities for the use of disabled customers. Connectivity here refers more generally to the effective and fast linkage between different places, not only for a specific group of customers.

Consultant Grade Definitions

Partner/Director

<p>General</p>	<p>For a partnership, a Partner in the practice; for a limited company, any employee who carries the title “Director” (or “Associate Director” or other similar title) and who is normally chargeable to projects. Member of a company generally in overall charge of the management, policy and conduct of the firm’s business including maintaining effective communication channels and is able to commit the company to undertake all major contracts.</p> <p>Responsible for all grades of personnel.</p>
<p>Typical Education /Qualifications and Experience</p>	<ul style="list-style-type: none"> • Hold appropriate professional qualifications applicable to the discipline commissioned to perform and/or corporate membership of a major institution. • Must have relevant work experience spanning several major programmes. • The ability to demonstrate key involvement in delivering projects of high value and complexity. • Overall responsibility for project(s) and for supervision, control and development of subordinate personnel. • Significant management responsibility and direction within the consultancy including client liaison, specialist skills or experience.
<p>Responsibilities</p>	<ul style="list-style-type: none"> • Develop client relationships. • Review enquiries for consultancy services, prepare fee proposals and negotiate commissions. • Manage and control all the personnel efficiently, and in compliance with all relevant statutory instruments procedures, rules, regulations, standing orders and instructions and the adopted procurement method. • Develop and maintain effective communication channels, between the consultancy and TfL and external consultants and other bodies as necessary. • Ensure that sufficient personnel are assigned for the commission and that they are suitably qualified and motivated to perform the duties allocated to them. • Oversee all commission activities and ensure full adherence. • Comply with all the projects safety and quality assurance procedures and requirements, including audits, and ensure that all consultancy personnel do likewise. • Facilitate and ensure that training needs, both personal and that of the consultancy personnel, are identified and addressed.

Principal Consultant

<p>General</p>	<p>Reporting to Partner / Director. Member of a company who is able to deputise for the Director. The person will have the ability to manage and control teams and ensure that there are sufficient teams of personnel assigned to commissions.</p> <p>Responsible for all grades of consultants and support staff.</p>
<p>Typical Education /Qualifications and Experience</p>	<ul style="list-style-type: none"> • Hold appropriate professional qualifications applicable to the discipline commissioned to perform and/or corporate membership of a major institution. • Must have relevant work experience spanning several programmes. • The ability to demonstrate key involvement in delivering projects of high value and complexity. • Must have substantial transport experience and technical skills appropriate to the discipline. • Responsibility for project(s) and for supervision, control and development of junior personnel. • Significant management responsibility and direction within the Consultancy including client liaison, specialist skills or experience.
<p>Responsibilities</p>	<ul style="list-style-type: none"> • Deputise for the Partner/Director on all aspects of the project. • Manage and control a team(s) of consultants effectively and in compliance with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method. • Communicate effectively with other members of the project team and with other TfL departments and external consultants and bodies where necessary. • Ensure that sufficient personnel are assigned for the commission and that they are suitably qualified and motivated to perform the duties allocated to them. • Supervise, control and develop personnel assigned • Ensure that the team's activities meet the objectives of the commission. • Comply with all the project's safety and quality assurance procedures and requirements and ensure that all team members do likewise. • Ensure that all appropriate training, both personal and that the team personnel, is undertaken.

Senior Consultant

<p>General</p>	<p>Reporting to Partner / Director or Principal Consultant. Person holding corporate membership of a professional body recognised by TfL and has the ability to demonstrate key involvement in delivering projects of high value and complexity.</p> <p>Responsible for all grades of consultants and support staff on behalf of the Director/Partner.</p>
<p>Typical Education</p> <p>/Qualifications and Experience</p>	<ul style="list-style-type: none"> • Hold appropriate professional qualifications applicable to the discipline commissioned to perform and/or corporate membership of a major institution. • Must have relevant work experience spanning several programmes / projects • The ability to demonstrate key involvement in delivering projects of high value and complexity. • Must have substantial transport experience and technical skills appropriate to the discipline. • Responsibility for project(s) and for supervision, control and development of junior personnel. • Significant management responsibility and direction within the organisation including client liaison, specialist skills or experience. •
<p>Responsibilities</p>	<ul style="list-style-type: none"> • Deputise for the Partner/Director or Principal Consultant on all aspects of the Project. • Manage and control a team(s) of consultants effectively and in compliance with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method. • Communicate effectively with other members of the Project Team and with other TfL departments and external consultants and bodies where necessary. • Ensure that sufficient personnel are assigned for the commission and that they are suitably qualified and motivated to perform the duties allocated to them. • Supervise, control and develop personnel assigned • Ensure that the team's activities meet the objectives of the commission. • Comply with all the project's safety and quality assurance procedures and requirements and ensure that all team members do likewise. • Ensure that all appropriate training, both personal and that the team personnel, is undertaken.

Consultant

<p>General</p>	<p>Reporting to Principal Consultant / Senior Consultant. A person with the ability to assist in the management and control of a project team to ensure delivery of the required projects.</p> <p>Responsible for Junior Consultant / administration staff</p>
<p>Typical Education /Qualifications and Experience</p>	<ul style="list-style-type: none"> • Hold appropriate professional qualifications applicable to the discipline commissioned to perform and/or corporate membership of a major institution. • Must have relevant work experience spanning several projects • Must have some transport experience and technical skills appropriate to the discipline. • Responsibility for project(s) and for supervision, control and development of junior personnel.
<p>Responsibilities</p>	<ul style="list-style-type: none"> • Deputise for the Principal Consultant/ Senior Consultant on all aspects of the project. • Assist in the management and control of a project team of consultants to ensure efficiency and compliance with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method. • Communicate effectively with other members of the Project Team and with other TfL departments and external consultants and bodies as necessary. • Supervise, control and develop personnel assigned. • Ensure that own and assigned personnel activities meet the objectives of the commission. • Comply with all safety and quality assurance requirements and ensure that all team personnel to likewise • Ensure that all appropriate training, both personal and that of assigned personnel, is undertaken.

Junior consultant

General	Reporting to Senior Consultant/Consultant. A person with the relevant experience capable of working on some aspects of the delivery of the required project. Responsible for support staff.
Typical Education /Qualifications and Experience	<ul style="list-style-type: none">• Must have relevant work experience in at least one completed project.
Responsibilities	<ul style="list-style-type: none">• Assist the Consultant where appropriate.• Supervise the support staff assigned (if appropriate).• Work in compliance and ensure that all assigned personnel comply with all relevant procedures, rules, regulations, standing orders and instructions and the adopted procurement method.• Ensure that own and assigned personnel's activities meet the objectives of the commission.• Comply with all safety and quality assurance requirements and ensure that all assigned personnel do likewise.• Ensure that all appropriate personal training is undertaken.

Schedule 4A
(Form of Parent Company Guarantee - Framework Agreement)

Form of Parent Company Guarantee - Framework Agreement

(Letterhead of Parent Company)

To: [insert name and address of the Framework Employer]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that you have agreed to enter into a Framework Agreement reference number [] ("**the Framework Agreement**") with [insert name of Consultant] ("**the Consultant**") under which the Consultant has agreed to provide services in accordance with the terms and conditions of the Framework Agreement and call off contracts ("**Call Off Contracts**") issued pursuant to the Framework Agreement on the condition that the obligations of the Consultant under the Framework Agreement and all Call Off Contracts be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Consultant], and we warrant to you that this description of our relationship with/to the Consultant is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

(a) We unconditionally guarantee to you and to each employer under the relevant Call Off Contract on demand:

- (i) the proper, complete and punctual performance by the Consultant of any and all its obligations, undertakings and responsibilities under the Framework Agreement and any and all Call Off Contracts and we shall forthwith make good any default thereunder on the part of the Consultant;
- (ii) the due and punctual payment by the Consultant of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Framework Agreement and any and all Call Off Contracts in accordance with their terms or otherwise by reason or in consequence of any such default on the part of the Consultant

1.1.1 when and as the same shall become due for performance or payment (as the case may be).

- (b) As a separate and primary obligation we unconditionally guarantee to you and to each employer under the relevant Call Off Contract that in the case of default by the Consultant in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Consultant were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Consultant under or arising out of the Framework Agreement and any and all Call Off Contracts have been duly and completely performed and observed and the Consultant shall have ceased to be under any actual or contingent liability thereunder.
- (d) Any demand or other notice made under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) This Guarantee may be enforced without first notifying the Consultant of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Consultant or any other person or taking any action to enforce any other security, bond or guarantee or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Consultant or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

- (g) All Call Off Contracts issued pursuant to the Framework Agreement are within the scope of this Guarantee.

PROVIDED THAT:

1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Framework Agreement or relevant Call Off Contract if we had been named as the Consultant in the Framework Agreement or relevant Call Off Contract.
2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Framework Agreement or any Call Off Contract made by agreement between you (or the relevant employer under a Call Off Contract) and the Consultant (including, without limitation, any increase in the Consultant's obligations under the Framework Agreement or any Call Off Contract or any alteration in the extent or nature or sequence or method or timing of the services to be carried out under the Framework Agreement or any Call Off Contract) or any novation of any Call Off Contract (in whole or in part); or
 - (b) any time being given to the Consultant or any other indulgence, waiver, concession, forbearance or forgiveness to the Consultant (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Framework Agreement or any Call Off Contract; or
 - (c) any other bond, security or guarantee now or hereafter given for all or any part of the obligations of the Consultant under the Framework Agreement or any Call Off Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Consultant; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Consultant; or
 - (g) any legal limitation, disability or incapacity relating to the Consultant or discharge by operation of law or any change in the constitution, name or style of the Consultant or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Consultant under the Framework Agreement or any Call Off Contract; or
 - (i) the termination or partial termination of the Framework Agreement or any Call Off Contract or the cessation of any services for any reason or the making of any variation to the services in accordance with the Framework Agreement or any Call Off Contract; or
 - (j) any claim or enforcement of payment from the Consultant or any other person;
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Consultant in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Consultant in competition for any sums or liabilities owing or incurred to us by the Consultant in respect of any such payment by or recovery from us or take or hold any security from the Consultant in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you or the relevant employer under the Call Off Contract (as the case may be).
4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provisions of this Guarantee.

5. This Guarantee is irrevocable.
6. Save that any member of the TfL Group (as defined in the Framework Agreement) has the right to enforce the terms of this Guarantee in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the parties do not intend that any of the terms of this Guarantee are enforceable by virtue of the Third Party Act by any person not a party to it.
7. Notwithstanding clause 6, the parties are entitled to vary or rescind this Guarantee without the consent of any or all members of the TfL Group (other than you).
8. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

9. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
10. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
11. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by _____)
 [Parent Company]) Director
 acting by a Director and the)
 Secretary or by two Directors) _____
 Director/Secretary

OR
 The common seal of _____)
 [Parent Company]) Director
 was affixed in the presence of:)
 _____)
 Director/Secretary

Form of Legal Opinion for use with Guarantee (Framework Agreement)

To: [insert name and address of the Framework Employer]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "Guarantee") dated made between (the "Guarantor") and Transport for London ("the Employer"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined 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 Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, 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 Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;
 - (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
 - (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
 - (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;

- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) The Employer will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;
- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
- (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
- (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

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

Schedule 4B
(Form of Parent Company Guarantee - Call Off Contract)

Form of Parent Company Guarantee - Call Off Contract

(Letterhead of Parent Company)

To: [insert name and address of the Employer]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that you have agreed to enter into a Call Off Contract No [insert reference] ("**the Call Off Contract**") with [insert name of Consultant] ("**the Consultant**") in respect of [briefly describe nature of the Services/Project] on the condition that the obligations of the Consultant under the Call Off Contract be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Consultant], and we warrant to you that this description of our relationship with/to the Consultant is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee on demand:
 - (i) the proper, complete and punctual performance by the Consultant of any and all its obligations, undertakings and responsibilities under the Call Off Contract and we shall forthwith make good any default there under on the part of the Consultant;
 - (ii) the due and punctual payment by the Consultant of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Call Off Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Consultant
 - 1.1.1 when and as the same shall become due for performance or payment (as the case may be).
- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Consultant in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Consultant were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Consultant under or arising out of the Call Off Contract have been duly and completely performed and observed and the Consultant shall have ceased to be under any actual or contingent liability to you thereunder.
- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Consultant of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Consultant or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Consultant or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Call Off Contract if we had been named as the Consultant in the Call Off Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:

- (a) any alteration or variation to the terms of the Call Off Contract made by agreement between you and the Consultant (including, without limitation, any increase in the Consultant's obligations under the Call Off Contract or any alteration in the extent or nature or sequence or method or timing of the services to be carried out under the Call Off Contract) or any novation of the Call Off Contract (in whole or in part); or
- (b) any time being given to the Consultant or any other indulgence, waiver, concession, forbearance or forgiveness to the Consultant (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Call Off Contract; or
- (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Consultant under the Call Off Contract; or
- (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
- (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Consultant; or
- (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Consultant; or
- (g) any legal limitation, disability or incapacity relating to the Consultant or discharge by operation of law or any change in the constitution, name or style of the Consultant or any other person (whether or not known to you); or
- (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Consultant under the Call Off Contract; or
- (i) the termination or partial termination of the Call Off Contract or the cessation of any services for any reason or the making of any variation to the services in accordance with the Call Off Contract; or
- (j) any claim or enforcement of payment from the Consultant or any other person;
- (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.

3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Consultant in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Consultant in competition with you for any sums or liabilities owing or incurred to us by the Consultant in respect of any such payment by or recovery from us or take or hold any security from the Consultant in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
5. This Guarantee is irrevocable.
6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the

said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]

8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
<i>[Parent Company]</i>	) Director
acting by a Director and the) _____
Secretary or by two Directors) _____
	Director/Secretary
OR	
The common seal of) _____
<i>[Parent Company]</i>	) Director
was affixed in the presence of:)) _____
	Director/Secretary

Form of Legal Opinion for use with Guarantee (Call Off Contract)

To: [insert name and address of the Employer]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "Guarantee") dated made between (the "Guarantor") and [insert name of Employer] ("the Employer"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined 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 Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, 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 Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;
 - (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
 - (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
 - (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the

transactions contemplated thereby have been obtained or effected and are in full force and effect;

- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) The Employer will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;
- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
- (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
- (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

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

SCHEDULE 5
(Form of Direct Request Form)

DIRECT Request Form

Framework Number:
Request Form Number:

To:
Address:

From:
Date:

This is a Direct Request Form for the provision of *services* in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by [the *Employer*]; however such acceptance will not occur unless and until [the *Employer*] posts notice of acceptance to you.

Attachment 1 of this Direct Request Form sets out the Call-Off Contract Data Part One and other relevant information, including the Scope.

In your Proposal, you must respond by completing the Call-Off Contract Data Part Two.

If you intend to propose a cap on liability you must complete and submit with your Proposal justification for the proposed cap, in the form of a completed risk assessment in a form reasonably required or approved by the *Employer*. The *Employer* is not under any obligation to agree to any such proposed cap.

The *Employer* is under no obligation to award any Call-Off Contract as a result of this Direct Request Form. The *Employer* shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

You must complete and return your Proposal by [**insert Date**]. Please e-mail or use the e-portal as appropriate to send your Proposal, and send a paper copy to: [**insert Name**]

Name:
e- mail address:

Postal address:

Telephone:
Fax:

Any queries regarding this Direct Request should be directed to the above via e-mail or through the e-portal. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Signed: _____

for and on behalf of [insert: NAME OF EMPLOYER]

Attachments: Attachment 1: Call-Off Contract Data Part One and other relevant information, including the Scope

SCHEDULE 6A

(Mini-Competition Request Form)

Schedule 6A

Mini-Competition Request Form – Call Off Contract

Framework Agreement Name and Reference Number: **insert**

Sub Category: **insert name**

Mini-competition Reference: **insert**

From: **insert name**

Date: **insert**

This is a Mini-Competition Request Form for the provision of Services in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the *Employer*; however such acceptance will not occur unless and until the *Employer* posts notice of acceptance to you.

Attachment 1 of this Mini-Competition Request Form sets out the Contract Data;

Attachment 2 of this Mini-Competition Request Form sets out the *Services*.

In your Proposal, you must respond by providing the information required as detailed in this Schedule 6A and by completing the Contract Data Part Two contained in Attachment 1.

Your Proposal will be assessed against those submitted by other Consultants as part of a Mini-Competition process. Subject to the *Employer* not having any obligation to award a Call Off Contract the *Employer* will evaluate the Proposals to determine which is the most economically advantageous with reference to the assessment criteria set out in this Schedule 6A.

Any clarifications regarding this Mini-Competition should be directed per the instructions in this Schedule 6A. Any queries regarding the Framework Agreement should be directed to the Procurement Manager named in the Framework Agreement.

Instructions to Tenderers

Mini-Competition [insert reference]

Confidentiality

The contents of this Mini-Competition are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.

Contact

The *Employer's* procurement lead allocated to this Mini-Competition is [insert name].

Any contact with other *Employer's* personnel relating to this Mini-Competition may invalidate the *Consultant's* proposal submission. All contact must be via the e-tendering portal. Only technical issues relating to the e-tendering portal allow for direct contact of the procurement lead. In the first instance, the *Consultant* should contact the e-tendering portal help desk. If unresolved, contact the procurement lead:

[insert email address]

[insert telephone number]

The Services

The Services to be provided under this appointment are any or all of the Services detailed in Attachment 2.

If stipulated in Attachment 1 or Attachment 2, the Starting and Completion dates should be deemed material to the Call Off Contract. If the *Consultant* is unable to meet these dates, the *Consultant* should propose alternatives within the formal clarification process which may be accepted at the sole discretion of TfL.

Price

[delete as applicable:

Option A Priced contract with activity schedule

Option C Target contract

Option E Time based contract]

Mini-Competition clarification

Clarifications must be submitted via the e-tendering portal, by [insert time and date]. The clarification(s) and their response(s) will be circulated on an anonymous basis to all *Consultants* via the e-tendering portal.

Proposal submissions

In the Proposal submission the technical proposal, commercial proposal and Contract Data must be separated. Prices **must not** be included in the technical proposal. The documents must be clearly titled 'Technical Proposal', 'Commercial Proposal' and 'Contract Data'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents.

Return of proposal

All documents must be correctly uploaded to our e-tendering portal, by **[insert time and date]**.

Validity

Proposals must remain open for acceptance for 6 (six) months from the return of proposal date.

Proposal submission clarifications

During the course of the evaluation of submissions, the *Consultant* may be asked to answer questions about his submission and other matters related to the Services. The *Consultant* must respond to such questions as quickly as possible but, in any event, within 2 (two) working days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the *Employer* rejecting the Proposal submission. Any amendments to the Proposal submission arising from these discussions with the *Consultant* will be taken into account in the final evaluation.

Proposal clarification meeting

To enable moderation of the Proposal evaluation process, The *Employer* may request a meeting from all, some or one of the *Consultants*. Failure to attend may result in the *Employer* rejecting the Proposal submission.

Proposal submission evaluation

Evaluation of submissions will be on the basis of most economically advantageous proposal as per the assessment criteria set out in the tables contained in this Schedule 6A.

Compliance

All Proposals returned should comply in every respect with the requirements of this Mini-Competition. However, the *Employer* reserves the right to consider non-compliant submissions where permitted.

Failure to disclose all material information (facts that the *Employer* regards as likely to affect the evaluation process), or disclosure of false information at any stage of this procurement process may result in ineligibility for award. The *Consultant* must provide all information requested and not assume that the *Employer* has prior knowledge of any of the *Consultant's* information.

Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If you wish the *Employer* to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting your Proposal. .

The *Employer* shall not be liable for any costs, charges or expenses borne by the *Consultant* whether or not he is awarded a Call Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

Acknowledgement of receipt of this Mini-Competition

The *Consultant* should acknowledge in the e-tendering portal receipt of this Mini-Competition and confirm whether they intend to submit a Proposal. Failure to do so may lead to the *Consultant* not receiving any amendments, addendums and clarifications to Mini-Competition documentation.

[Other – **Optional, delete if not required**]

Submissions & Evaluation Criteria

Technical Proposal	
Evaluation: [insert technical weighting] and discretionary pass/fail	
[Optional] The <i>Employer</i> will not appoint a <i>Consultant</i> that scores less than [insert minimum score to pass] out of the available marks	
[Optional] The technical submission must not exceed [insert number] of words contained in a maximum of [insert number of sides (approx 450 words to a side of A4)] sides of A4	
Evaluation Criteria	Weighting
[insert criterion 1]	[insert sub-weighting]
[insert criterion 2]	[insert sub-weighting]
[insert criterion 3]	[insert sub-weighting]
[expand as necessary]	
Conflicts of Interest: Provide details of actual or potential conflicts of Interests that would arise were you to be appointed, and details of how these conflicts would be mitigated.	Discretionary Pass/Fail

Commercial Proposal	
Evaluation: [insert commercial weighting] and discretionary pass/fail	
Evaluation Criteria	Weighting
[insert criterion 1]	[insert weighting/ sub-weighting]
[expand as necessary]	
Full contact details of the <i>Consultant's</i> bid manager	For info

Contract Data	
Information Required	Evaluation
Un-amended Contract Data Part One (in Microsoft Word)	For info
Completed Contract Data Part Two (in Microsoft Word)	For info

SCHEDULE 6B

**(Mini-competition Request Form –
Short Form: Services)**

Schedule 6B
Mini-competition Request Form –
Short Form Conditions of Contract: Services

Framework Agreement Name and Reference Number: insert
Sub Category: insert
Mini-competition Reference: insert
From: insert name
Date: insert

This is a Mini-competition Request Form for the provision of Services as detailed in Table 3, **Attachment []** in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the *Employer*; however such acceptance will not occur unless and until the *Employer* posts notice of acceptance to you.

The contents of this Mini-competition are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.

The *Employer's* procurement lead allocated to this Mini-competition is [insert name]. Any contact with other *Employer's* personnel relating to this Mini-Competition may invalidate the *Consultant's* proposal submission. All contact must be via the e-Tendering portal unless there are technical issues with the e-Tendering portal.

In your Proposal, you must respond by providing the information required as detailed in Table 4. Failure to disclose all material information (facts that the *Employer* regards as likely to affect the evaluation process), or disclosure of false information at any stage of this procurement process may result in ineligibility for award. The *Consultant* must provide all information requested and not assume that the *Employer* has prior knowledge of any of the *Consultant's* information.

Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If you wish the *Employer* to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting your Proposal.

Evaluation of submissions will be on the basis of most economically advantageous proposal as per the assessment criteria set out in Table 2.

To enable moderation of the Proposal evaluation process, The *Employer* may request a meeting from all, some or one of the *Consultants*. Failure to attend may result in the *Employer* rejecting the Proposal submission.

The *Employer* shall not be liable for any costs, charges or expenses borne by the *Consultant* whether or not he is awarded a Call Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

Table 1, Procurement Timetable:

Issue mini-competition	Insert date
Deadline to submit clarification requests	Insert date
Deadline to submit proposal	Insert date
Contract award	Insert date

Table 2, Evaluation Criteria:

Technical		
Evaluation: [insert technical weighting] and discretionary pass/fail		
[Optional] The technical submission must not exceed [insert number] sides of A4		
Evaluation Criteria		Weighting
1	[insert criterion]	[insert sub-weighting]
2	[insert criterion]	[insert sub-weighting]
	[expand / delete as necessary]	[insert sub-weighting]
Conflicts of Interest: Provide details of actual or potential conflicts of Interests that would arise were you to be appointed, and details of how these conflicts would be mitigated.		Discretionary Pass/Fail
Commercial		
Evaluation: [insert commercial weighting]		
[Optional] The commercial submission must not exceed [insert number] sides of A4		
Evaluation Criteria		Weighting
3	[insert criterion]	[insert sub-weighting]
4	[insert criterion]	[insert sub-weighting]
	[expand / delete as necessary]	[insert sub-weighting]

Table 3, The *Employer's* Requirement:

The Services: See Appendix []	Service Commencement Date: insert Term: insert
Price: [delete as applicable: Priced contract with activity schedule Target contract Time based contract]	
Special Conditions: [N/A or See Appendix “ ”]	

Table 4, The *Consultant's* proposal

The <i>Consultant</i> (supplier name) is:	
Proposal Ref:	Proposal Date:
Bid Manager's contact details:	
Conflicts of Interest: Provide details of actual or potential conflicts of Interests that would arise were you to be appointed, and details of how these conflicts would be mitigated.	
1	insert your response here:
[expand / delete]	

SCHEDULE 6C
(Mini-competition Request Form –
Short Form: Consultant Secondment)

**Schedule 6C
Mini-competition Request Form –
Short Form Conditions of Contract: Consultant Secondment**

Framework Agreement Name and Reference Number: insert
Sub category: insert
Mini-competition Reference: insert
From: insert name
Date: insert

This is a Mini-competition Request Form for the provision of Services as detailed in Table 3 **Appendix []** in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the *Employer*; however such acceptance will not occur unless and until the *Employer* posts notice of acceptance to you.

The contents of this Mini-competition are confidential and must be used only for the purpose of submitting a Proposal. The *Consultant* must not make any such communication or enter into any collusive arrangement with any third party save for the purpose of sub-consulting.

The *Employer's* procurement lead allocated to this Mini-competition is [insert name]. Any contact with other *Employer's* personnel relating to this Mini-Competition may invalidate the *Consultant's* proposal submission. All contact must be via the e-Tendering portal unless there are technical issues with the e-Tendering portal.

In your Proposal, you must respond by providing the information required as detailed in Table 4. Failure to disclose all material information (facts that the *Employer* regards as likely to affect the evaluation process), or disclosure of false information at any stage of this procurement process may result in ineligibility for award. The *Consultant* must provide all information requested and not assume that the *Employer* has prior knowledge of any of the *Consultant's* information.

Proposals that contain Specialist Consultants at above Framework Maximum Charge Out Rates will be deemed non-compliant. If you wish the *Employer* to consider the approval of Specialist Consultants (at above Framework Maximum Charge Out Rates), this must be requested within the Mini-Competition clarification process prior to submitting your Proposal.

Evaluation of submissions will be on the basis of most economically advantageous proposal as per the assessment criteria set out in Table 2.

To enable moderation of the Proposal evaluation process, The *Employer* may request a meeting from all, some or one of the *Consultants*. Failure to attend may result in the *Employer* rejecting the Proposal submission.

The *Employer* shall not be liable for any costs, charges or expenses borne by the *Consultant* whether or not he is awarded a Call Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

Table 1, Procurement Timetable:

Issue mini-competition	Insert date
Deadline to submit clarification requests	Insert date
Deadline to submit proposal	Insert date
Contract award	Insert date

Table 2, Evaluation Criteria:

Technical (CV and Availability)	[]%
Commercial (Day Rate)	[]%
Conflicts of Interest	Discretionary pass/fail

Table 3, The Employer's Requirement:

1	Role: insert title	Framework Grade:	The Services: See Appendix []	The Services Commencement Date: insert Term: insert
2	Role: insert title	Framework Grade:	The Services: See Appendix []	The Services Commencement Date: insert Term: insert
	[expand / delete as necessary]			
Pricing: Day Rate				
Special Conditions [N/A or See Appendix " "]				

Table 4, The Consultant's proposal:

The <i>Consultant</i> (supplier name) is				
Proposal Ref:			Proposal Date:	
Bid Manager's contact details:				
Conflicts of Interest: Provide details of actual or potential conflicts of Interests that would arise were you to be appointed, and details of how these conflicts would be mitigated.				
1	Consultant Name: <i>(attach CV)</i>	Framework Grade:	Day Rate:	Start: Completion:
2	Consultant Name: <i>(attach CV)</i>	Framework Grade:	Day Rate:	Start: Completion:
	[expand / delete as Table 3]			

SCHEDULE 7A
(Call-Off Contract Form of Agreement)

THIS AGREEMENT is made the ● day of ● 201●

BETWEEN:

- (1) [] whose registered office is at []
("the *Employer*" which expression shall include its successors in title and assigns); and
(2) ● whose registered office is at ● ("the *Consultant*").

WHEREAS:

- (A) This Agreement is made pursuant to a framework agreement between the Parties relating to the provision of professional services dated ● ("the Framework Agreement").
(B) The *Employer* wishes to have provided ● ("the services") at ●.
(C) The *Employer* has accepted a tender by the *Consultant* for the design of the services and correction of Defects therein in accordance with the *conditions of contract*.

NOW IT IS AGREED THAT:

2. Terms and expressions defined in (or definitions referred to in) the *conditions of contract* have the same meanings herein.
3. The *Consultant* Provides the Services in accordance with the *conditions of contract*.
4. The *Employer* pays the *Consultant* the amount due in accordance with the *conditions of contract*.
5. The documents forming the contract are:
- 5.1 this Form of Agreement duly executed by the Parties as a deed;
- 5.2 the *conditions of contract*;
- 5.3 the attached Call-Off Contract Data Part 1;
- 5.4 the attached Call-Off Contract Data Part 2; and
- 5.5 the following documents:
- the Scope;
 - Schedules [] to [] inclusive of the Framework Agreement;
 - [any other contract documents.]
6. Where there is any discrepancy or conflict within or between the documents forming the contract the order of priority shall be as follows:
- 6.1.1 First : This Form of Agreement;
- 6.1.2 Second : The conditions of contract;
- 6.1.3 Third : The Scope and any other documents included in this contract.
7. Notwithstanding the manner of execution of this Agreement it is agreed that:
- 7.1 the limitation period within which any claim may be brought by the *Employer* for breach of this Agreement by the *Consultant* is 12 years from the date of breach; and
- 7.2 the *Consultant* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.

IN WITNESS whereof this Agreement has been signed for and on behalf of the *Employer* and the *Consultant* the day and year written above.

Signed by)
for and on behalf of)
The *Employer*)

Signature

Print name and position

Date:

Signed by)
for and on behalf of)
The *Consultant*)

Signature

Print name and position

Date:

Proforma Call-Off Contract Data

CALL OFF CONTRACT DATA

Part One - Data provided by the *Employer*

Statements given in all contracts
1 General

Completion of the data in full, according to the chosen options, is essential to create a complete contract.

- The *conditions of contract* are the core clauses as may be amended or supplemented by the clauses for Main Option [A] [C] [E] and Secondary Options [X1] [X2] [X3] [X4] [X5] [X6] [X7] [X8] [X9] [X10] [X11] [X12] [X13] [X18] [X20] [X21] each as may be amended or supplemented by [the LUL Requirements] [the LUL Nominee BCV/SSL Requirements] all as attached to the Transport for London Professional Services Framework Agreement).
- The *Employer* is
Name
.....
Address
.....
.....
- The *Employer's Agent* is
Name
.....
Address
.....
.....
.....
- The authority of the *Employer's Agent* is
[as set out in Option X10]
- The *services* are
.....
.....
.....
- The *Scope* is in
.....
.....
.....
- The *language of this contract* is **English**
- The *law of the contract* is **the law of England and Wales**
- The *period for reply* is [] **weeks**.
- The *period for retention* is **12 years following Completion or earlier termination**.
- The *tribunal* is **the courts of England and Wales**
- The following matters will be included in the Risk Register

2 The Parties' main responsibilities

-

 • The *Employer* provides access to the following persons, places and things
 access to *access date*

3 Time

- The *starting date* is

4 Quality

- The *Consultant* submits revised programmes at intervals no longer than [] **weeks**.
- The quality policy statement and quality plan are provided within [] **weeks** of the Contract Date, or as stated here
- The *defects date* is [] **weeks** after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is [] **weeks**
- The *currency of this contract* is **pounds Sterling (£)**
- The *interest rate* is [] % **per annum above the base rate of the Bank of England.**

8 Indemnity, insurance and liability

- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

Event	cover	Period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the degree of reasonable skill, care and diligence normally used by competent professionals experienced in providing services similar to the <i>services</i> in connection with works of a similar size, scope and complexity to the Works (professional indemnity insurance)	£[] or as stated below for each and every claim and in the aggregate per annum	..........
Liability for death of or bodily injury to a person (not an	£[] or as stated below	.....

employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	..... .... in respect of each claim, without limit to the number of claims [with financial loss extension cover]	...
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract.	£[] or as stated below in respect of each claim, without limit to the number of claims	..... ...

- The *Employer* provides the following insurances

- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is [unlimited]

Optional statements

If the *Employer* has decided the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is

If no programme is identified in part two of the Contract Data

- The *Consultant* is to submit a first programme for acceptance within [] weeks of the Contract Date.

If the *Employer* has identified work which is to meet a stated *condition* by a *key date*

- The *key dates* and *conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
1
.
2
.
3
.

- If the Contract Date is not the date of the Call-Off Contract it is:

[DATE]

If the *Employer* states any *expenses*

- The *expenses* stated by the *Employer* are

Item	amount
.
.
.
.
.

If the *Consultant* is to provide additional insurances

- The *Consultant* provides these additional insurances
- 1. Insurance against

Cover is
Period of cover
Deductibles are

2. Insurance against
Cover is
Period of cover
Deductibles are

If Option A is used

- The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than [] weeks.

If Option C or E is used

- The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than [] weeks.
- The *exchange rates* are those published in on(date)

If Option C is used

- The *Consultant's share percentages* and the *share ranges* are

share range	Consultant's share percentage
	[]%
less than []%	[]%
from []% to []%	[]%
from []% to []%	[]%
from []% to []%	[]%
greater than []%	[]%

Unless otherwise stated below

<i>share range</i>	<i>Consultant's share percentage</i>
less than .....	.....
..... %	.. %
from% to .....	.....
..... %	.. %
from% to .....	.....
..... %	.. %
from% to .....	.....
..... %	.. %
greater than .....	.....
..... %	.. %

If Option X1 is used

- The *index* is

If Option X2 is used

- The *law* of *the* *project* is

If Option X3 is used

- The *Employer* will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total payment in the currency	maximum in the currency
1
.....
2
.....
3
.....

- The *exchange rates* are those published in
..... on
.....(date)

If Option X5 is used

- The *completion date* for each *section* of the *services* is

<i>section</i>	<i>description</i>	<i>completion date</i>
1
2
3
4
5
.....
.....
.....
.....

If Option X5 and X6 are used together

- The bonuses for each *section* of the *services* are

<i>section</i>	<i>description</i>	<i>amount per day</i>
1
2

.....
.....
.....
.....
.....

If Option X13 is used

- The amount of the performance bond is

If Option X20 is used (but not if Option X12 is also used)

- The *incentive schedule* for Key Performance Indicators is in
- A report for performance against each Key Performance Indicator is provided at intervals of months

CALL OFF CONTRACT DATA PART TWO

Data provided by the *Consultant*

Statements given in all contracts

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

- The *Consultant* is
 - Name
 - ...
 - Address
 -
 -
 -
 -

- The *key persons* are
 - (1) Name
 - ...
 - Job
 -
 - Responsibilities
 -
 - Qualifications
 -
 - Experience
 -

- (2) Name
 - ...
 - Job
 -
 - Responsibilities
 -
 - Qualifications
 -
 - Experience
 -

- The *staff rates* are

Name / designation	rate
.....
.....

- The following matters will be included in the Risk Register
 -
 -
 -
 -
 -

Optional statements

If the *Consultant* is to decide the *completion date* for the whole of the *services*

- The *completion date* for the whole of the *services* is
-

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is

...

If the *Consultant* states any expenses

- The *expenses* stated by the *Consultant* are

item	amount
.....
.....
.....

.....

If the *Consultant* requires additional access

- The *Employer* provides access to the following persons, places and things

access to	access date
.....
.....
.....

If Option A or C is used

- The *activity schedule* is
 - The tendered total of the Prices is
-

SCHEDULE 7B

(Form of Agreement – Short Form)

This Agreement has been signed for and on behalf of the Employer and the Consultant the day and year written above.

Signed by

for and on behalf of

The Employer

Signature

Print name and position

Date:

Signed by

for and on behalf of

The Consultant

Signature

Print name and position

Date:

Table 3, Employer’s Requirement:

[Insert Table 3 (the Employer’s requirement) from Mini-competition]

Table 4, Contractors Proposal:

[Insert Table 4 (the Consultant’s proposal) from Mini-competition]

Table 5, Contract Particulars:

Contract Number / PO number: insert
The Contract Commencement Date is: insert The Service Commencement Date is: insert The Term is: insert
In accordance with Clause 7.1 of the Short Form Conditions of Contract, the Employer’s Contract Manager is: [insert name, address and contact details]
In accordance with Clause 7.1 of the Short Form Conditions of Contract, the Employer’s Procurement Manager is: [insert name, address and contact details]
In accordance with Clause 8.5 of the short form Conditions of Contract, the Consultant’s Key Persons are: [insert name(s), area of responsibility, address and contact details]
Notice period in accordance with Clause 25.4 of the Short Form Conditions of Contract (termination without cause): [] days

Special Conditions of Contract:

[insert special conditions]

Payment Period: (see Clauses 5.1 and 5.4 of Short Form Conditions of Contract)

Clause 5.1

[insert alternative period as required]

Where no alternative is listed, the payment period shall be 4-weekly

Clause 5.4

[insert alternative (shorter*) period]

Where no alternative is listed, payment must be made within 30 days of receipt of invoices.

* the period cannot exceed 30 days

Address where invoices shall be sent: **insert**

Other:

SCHEDULE 7C
(Call Off Contract Form of Variation)

SCHEDULE 7C – CALL OFF CONTRACT FORM OF VARIATION

Contract Parties: [to be inserted]
 Contract Number: [to be inserted]
 Variation Number: [to be inserted]
 The Employer Contact Telephone [to be inserted]
 Fax [to be inserted]
 Date: [to be inserted]

THE EMPLOYER FOR VARIATION TO CONTRACT (AVC)

Pursuant to Clause 30 of the Contract, authority is given for the variation to the Services and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Consultant and returned to the Procurement Manager as an acceptance by the Consultant of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
ALLOWANCE TO THE THE EMPLOYER	•
EXTRA COST TO THE THE EMPLOYER	•
TOTAL	•

..... (print name)
 For the The Employer (signed)

ACCEPTANCE BY THE CONSULTANT	
Date	Signed

SCHEDULE 8
(Form of Performance Bond)

(Letterhead of Bank)

To: [insert name and address of the Employer]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into a Call Off Contract ("**the Call Off Contract**") with [insert name of Consultant] ("**the Consultant**") in respect of [insert brief description of scope of the call off contract] we [insert name of Bank] ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter ("**this Bond**").

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.
2. Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3. Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Consultant by first class recorded delivery post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.

* Delete as appropriate

* **(Option 1 - No reduction in amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[] [e.g. the total price for the services under the Call Off Contract or a percentage thereof] and we shall have no liability under this Bond in respect of any demand dated after the defects date of the Call Off Contract.

* **(Option 2 - Reducing amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited as follows:-
 - (a) in respect of a demand or demands dated before the date of [e.g. INSERT DATE/REFERENCE POINT] under the Call Off Contract, our liability shall not exceed in aggregate the sum of _____ [e.g. 20% of the total price for the services];
 - (b) in respect of a demand or demands dated after the date of [e.g. INSERT DATE/REFERENCE POINT] under the Call Off Contract but before the defects date of the Call Off Contract, our liability shall not exceed an amount equal to the aggregate sum of _____ [e.g. 10% of the total price for the services] less the aggregate of sums already paid by us in respect of demands made pursuant to paragraph 4(a) above; and
 - (c) we shall have no liability under this Bond in respect of any demand dated after the defects date of the Call Off Contract.
5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Call Off Contract made by agreement between you and the Consultant including, without limitation, any alteration in the extent or nature or sequence or method or timing of the services to be carried out under the Call Off Contract or any novation of the Call Off Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding, set off or other deduction available to the Consultant under the Call Off Contract or otherwise; or
 - (c) any time being given to the Consultant or any other indulgence, waiver, concession, forbearance or forgiveness to the Consultant whether express or by conduct or any other thing done, omitted or neglected to be done under the Call Off Contract; or
 - (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Consultant under the Call Off Contract; or

- (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 5(d) above; or
 - (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Consultant;
 - (g) the termination of the Call Off Contract for any reason; or
 - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Consultant; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Consultant or any other person relating to the Consultant (whether or not known to you); or
 - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Consultant.
6. Any payment under this Bond shall be made by us in pounds sterling [or in any currency which may from time to time replace pounds sterling].
 7. This Bond is irrevocable.
 8. Terms defined in the Call Off Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.
 9. This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
 10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
 11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.
 12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
 [Bank]) Director
 acting by a Director and the)
 Secretary or by two Directors) _____
 Director/Secretary

The common seal of [Bank]) _____
 was affixed to this Deed in) Director
 the presence of) _____
 Director/Secretary

SCHEDULE 9
(Form of Warranty from Consultant to Financier or Purchaser/Tenant/Developer)

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**"); and
- (2) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) By a call off contract dated ● (the "**Contract**") [EMPLOYER] whose registered office is at [ADDRESS] ("the *Employer*", which expression shall include its successors in title and assigns) appointed the *Consultant* to design, carry out and complete certain [DESCRIPTION OF SERVICES] at ● (the "**services**") at ● (the "**Works**").
- (B) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*. [The Beneficiary [intends to enter into] / [has entered into] an agreement with the *Employer* under which it will agree that on or following Completion of the *services* it will [purchase] / [take a lease of] the whole or part of the Main Contract Works or the Works]. [The Beneficiary has an interest in the whole or part of the *services* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●].]

NOW IT IS AGREED:

- 1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
- 2. The *Consultant* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
- 3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
 - 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract

4. The *Consultant* further warrants and undertakes to the Beneficiary that:
 - (a) subject to clause 2(a), the *services* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) subject to clause 2(a), the *services* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) his designs are integrated with the designs of Others [and in particular the Infraco(s) and PFI Contractor(s)]; **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - (d) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards; and
 - (e) the *services* will be carried out and completed timeously in accordance with the Accepted Programme.

5. The *Consultant* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the Works. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Consultant's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Consultant* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. To the extent that the intellectual property rights in any and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Consultant* grants to the Beneficiary 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.
8. The *Consultant* agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the *Consultant's* expense to provide the Beneficiary with a set of all such material on Completion of the *services*.

9. If called upon to do so by the Beneficiary, the *Consultant* shall provide the Beneficiary with such information relating to the *services* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit

- or discharge the obligations of the *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Consultant* being required and the *Consultant* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Consultant*. For the purposes of this clause, "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary. [The *Employer* is a member of the TfL Group].
 11. The *Consultant* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
 12. The liability of the *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
 13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Consultant* including without limitation any remedies in negligence.
 - 14.1 The *Consultant* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Consultant* from the *Employer*.
 - 14.2 The *Consultant* shall be entitled in any actions or proceedings brought by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
 15. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
 - 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
 - 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
 - 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
 17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
 18. **IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

**[EXECUTED AND DELIVERED AS
A DEED by
[THE BENEFICIARY] acting by:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT] acting by:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 10
(Form of warranty from *Consultant* to *Employer* upon novation)

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Consultant**"); and
- (3) ● whose registered office is situate at ● [(the "**Contractor**")].

WHEREAS:

- (A) By a call off contract dated ● (the "**Contract**") the *Employer* appointed the *Consultant* to design, carry out and complete certain [SERVICES] (the "**services**") at ● ("the **Works**").
- (B) [Pursuant to a contract dated ● (the "**Main Works Contract**") the *Employer* has appointed the Contractor to design, carry out and complete certain works in respect of the Works ("the **Main Contract Works**").]
- (C) [The *Employer* has novated the Contract to the [Contractor] by a Deed of Novation dated ●.]
- (D) The *Consultant* has agreed to execute this Deed in favour of the *Employer*.

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed. The following expression has the meaning set out herein:
 - (a) "Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made);
2. The *Consultant* warrants and undertakes to the *Employer* that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.

- 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract
4. The *Consultant* further warrants and undertakes to the *Employer* that:
- (a) subject to clause 2(a), the *services* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) subject to clause 2(a), the *services* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) his designs are integrated with the designs of Others [and in particular the Infraco(s) and PFI Contractor(s)]; **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - (d) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
 - (e) the *services* will be carried out and completed timeously in accordance with the Accepted Programme;
 - (f) he shall not commit a Safety Breach; and
 - (g) [the *services* will not on Completion render the Works incapable of being Available.] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
5. The *Consultant* warrants and undertakes to the *Employer* that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the *services*. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Consultant's* insurance claims record.
6. As and when reasonably requested by the *Employer*, the *Consultant* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer*, the *Consultant* grants to the *Employer* 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.
8. The *Consultant* agrees:
- (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the *Consultant's* expense to provide the *Employer* with a set of all such material on Completion of the *services*.

9. If called upon to do so by the *Employer*, the *Consultant* shall provide the *Employer* with such information relating to the *services* as the *Employer* may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. The *Consultant* warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *services* with respect to all matters for which the *Consultant* is responsible under the Contract. The *Consultant* further warrants and undertakes to the *Employer* that the Contract contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Contract on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the *Consultant* including, without limitation the Minimum Records. The *Consultant* further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the *Consultant* acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the *Consultant's* obligations under the Contract with respect to Safety Breaches at any time during performance of the Contract and during the 12 years thereafter.
- 11.1 Without limitation to Clause 2 above, the *Consultant* hereby warrants to the *Employer* that:
- (a) except as provided under deeds of warranty required under clause 100.1 of the Conditions of Contract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Contract, this Deed or the Works;
 - (b) it shall treat all information obtained under, arising from or in connection with the Contract, this Deed and the Works as confidential, and that other than for the purpose of providing the *services*, it shall not disclose any information or documents concerning the Contract to any other person; and
 - (c) it shall not, without the prior written consent of the *Employer*, disclose any information obtained by it concerning the *Employer* or the TfL Group to any other person.
- 11.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 11.3 Clause 11.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the *Consultant* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or Statutory Requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 11.4 The *Consultant* shall procure that the Connected Persons comply with the provisions of this Clause 11 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 11.5 The *Consultant* shall notify the *Employer* promptly if the *Consultant* becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may

- bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 11.6 The *Consultant* acknowledges that damages would not be an adequate remedy for any breach of this Clause 11 by the *Consultant* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 11.
- 11.7 At the *Employer's* request and in any event upon the termination or expiry of the Contract, the *Consultant* shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Consultant* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
12. In the event that the Main Works Contract or the employment of the Contractor thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Contractor (voluntary or otherwise), the *Consultant* shall without allowing any break or intermission to occur in the performance of his duties:
- (a) continue to observe and carry out his obligations under the Contract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Contract to the exclusion of the Contractor whereupon all rights and obligations of the Contractor under the Contract shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Contract reasonably required by the *Employer*.
- 13.1 The *Consultant* warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the Contractor under the Contract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Contract or to treat the same as having been repudiated by the Contractor or to suspend performance of his obligations under the Contract.
- 13.2 The *Consultant's* right to terminate the Contract or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the *Consultant* requiring the *Consultant* to accept the instructions of the *Employer* or its appointee to the exclusion of the Contractor in respect of the carrying out and Completion of the *services* upon the terms of the Contract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the *Consultant*. Upon the issue of any such notice by the *Employer*, the Contract shall continue in full force and effect as if no right of termination on the part of the *Consultant* had arisen and the *Consultant* shall be liable to the *Employer* or its appointee under the Contract in lieu of its liability to the Contractor. If any notice given by the *Employer* under Clauses 12 or 13 requires the *Consultant* to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the *Consultant* as guarantor for the payment of all sums from time to time due to the *Consultant* from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the *Consultant* shall not be in breach of the Contract by complying with the obligations imposed on the *Consultant* by Clauses 12 or 13.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Consultant* being required and the *Consultant* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Consultant*.

17. The *Consultant* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
19. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the *Consultant* including without limitation any remedies in negligence.
20. The *Consultant* hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *services* [and/or the Infraco(s) and/or the PFI Contractor(s)]. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*. **[Note: Include wording in brackets if the warranty relates to project for LUL otherwise delete]**
- 21.1 Notwithstanding any other provision of this Deed, the *Consultant* shall owe no greater obligations to the *Employer* than he owes to the Contractor under the Contract as if, in lieu of this Deed, the *Employer* was named in the Contract as joint employer with the Contractor, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the *Consultant* from the Contractor.
- 21.2 The *Consultant* shall be entitled in any actions or proceedings brought by the *Employer* to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the Contractor thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the *Employer* was named in the Contract as joint employer with the Contractor.
22. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. **IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

**THE COMMON/CORPORATE SEAL of
[EMPLOYER]**
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 11A
(Form of Warranty from Subconsultant to Employer)

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is situate at ● ("the **Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) The *Consultant* has entered into a call off contract dated ● (the "**Contract**") with the *Employer* for the carrying out of certain [**Services**] at ● (the "**services**").
- (B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *services* and [has entered] [will shortly enter] into a deed of appointment with the *Consultant* (the "**Appointment**") for the *design works*.

NOW IT IS AGREED:

1. The following definitions shall apply in this Deed:

- (d) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
- (e) "Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);
- (f) ["Infraco(s)" means any and all of those contractors who have or will enter into contracts with [the *Employer*/London Underground Limited] under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;] [**Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete**]
- (g) "Minimum Records" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request;
- (h) ["PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with [the *Employer*/London Underground Limited] under the private finance initiative;] [**Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete**]
- (i) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Consultant* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Consultant* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Consultant*;
 - (ii) entering into the Appointment or any other contract with the *Employer* or the *Consultant* in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Consultant*;

- (iii) committing any offence under the Prevention of Corruption Acts 1889-1916, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the *Employer* or the *Consultant*; or
- (iv) defrauding or attempting to defraud the *Employer* or the *Consultant*;

- (j) ["Safety Breach" means a material breach of the Appointment caused by the gross incompetence or wilful default of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) or any of his agents which has materially affected the safe operation of the Underground Network or the *Employer's* employees, or the public or any other persons;] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
- (k) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;
- (l) ["Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**

2. The Subconsultant warrants and undertakes to the *Employer* that;

- (m) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Consultant* under the Appointment; and
- (n) he has complied with and will continue to comply with the terms of the Appointment.

3.

3.1 The Subconsultant warrants and undertakes to the *Employer* that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
- (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the *Employer* in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.

4. The Subconsultant further warrants and undertakes to the *Employer* that:
 - (a) subject to clause 2(a), the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Consultant* and others [(and in particular the Infraco(s) and PFI Contractor(s))]; **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - (d) the *design works* will on Completion comply with the Statutory Requirements, all applicable law [and all relevant Standards]; **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - (e) he shall not commit a Prohibited Act [and/or Safety Breach]; and **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Consultant*, the Subconsultant grants to the *Employer* 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 Subconsultant incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of the Works provided always that the Subconsultant 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 freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the *Employer* with a set of all such material on Completion of the *design works*.

9. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *services* provided that neither the provision of such

information nor any inspection of the *services* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.

10. The Subconsultant warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *services* with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the *Employer* that the Appointment contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts [and Safety Breaches] at any time during performance of the Appointment and during the 12 years thereafter. **[Note: Include wording in square brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
11. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
12. In the event that the Contract or the employment of the *Consultant* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Consultant* (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Appointment and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Consultant* whereupon all rights and obligations of the *Consultant* under the Appointment shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.
- 13.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Consultant* under the Appointment and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Consultant* or to suspend performance of his obligations under the Appointment.
- 13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Consultant* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Consultant*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be

- liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The *Consultant* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.
 16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
 17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
 18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *services*.
 - 19.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the *Employer* had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.
 - 19.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the *Employer* had been a party to the Appointment as joint employer.
 20. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
 21. The *Consultant* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subconsultant to the *Consultant* under the Appointment.
 22. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
 23. The Subconsultant hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *design works* [and/or the Infraco(s) and/or the PFI Contractor(s)]. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*. **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
 - 24.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:
 - (a) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the Works (as defined in the Contract);
 - (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the Works as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and

- (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 24.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 24.3 Clause 24.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 24.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 24 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 24.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 24.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 24 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 24.
- 24.7 At the *Employer's* request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
27. **IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

THE COMMON/CORPORATE SEAL of
[EMPLOYER]
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE SUBCONSULTANT]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT]** acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

Schedule 11B
(Form of Warranty from Subconsultant to Financier/P&T/Developer)

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is ● (the "**Beneficiary**");
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) The *Consultant* has entered into a call off contract dated ● (the "**Contract**") with [EMPLOYER] whose registered office is at [ADDRESS] ("the *Employer*", which expression shall include its successors in title and assigns) for the carrying out of certain [**Services**] (the "**services**") at ● ("**the Works**").
- (B) The Subconsultant has entered into a deed of appointment dated ● (the "**Appointment**") with the *Consultant* for the design of certain parts of the *services* (the "**design works**") and into a collateral warranty dated ● (the "**Employer's Warranty**") with the *Employer*.
- (C) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*]. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *services* it will [purchase] / [take a lease of] the whole or part of the *services*]. [The Beneficiary has an interest in the whole or part of the *services* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* for [●]].

NOW IT IS AGREED:

Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

"Documents" means designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);

["Infraco(s)" means any and all of those contractors who have or will enter into contracts with [the *Employer*/London Underground Limited] under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**

["PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with [the *Employer*/London Underground Limited] under the private finance initiative;] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**

"TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;

["Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".] **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**

The Subconsultant warrants and undertakes to the Beneficiary that;

he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Consultant* under the Appointment; and he has complied with and will continue to comply with the terms of the Appointment.

The Subconsultant warrants and undertakes to the Beneficiary that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or any publications of the Building Research Establishment related to the specification of products or materials.

If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.

The Subconsultant further warrants and undertakes to the Beneficiary that:

Subject to clause 2(a), the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment; he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant; the *design works* are integrated with the designs of the *Consultant* and others [(and in particular the Infraco(s) and PFI Contractor(s)); **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]** the *design works* will on Completion comply with the Statutory Requirements, all applicable law [and all relevant Standards]; and **[Note: Include wording in brackets if the warranty relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]** the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and the *Employer's Warranty* and that he has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be available at commercially reasonable rates. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

As and when reasonably requested by the Beneficiary the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly

maintained and that payment has been made of the last premiums due in respect of such insurances.

To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Consultant*, the Subconsultant grants to the Beneficiary 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 Subconsultant incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of the Works provided always that the *Subconsultant* 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 freely transferable to third parties without the prior consent of the Subconsultant.

The Subconsultant agrees:

on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.

If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or the *Employer's Warranty* or relieve the Subconsultant from any liability which he has in relation to the *design works*.

This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *services*.

The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.

The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.

The *Consultant* agrees that he will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.

Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted. Any

dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.

The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.

Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

**[EXECUTED AND DELIVERED AS
A DEED by**

[THE BENEFICIARY] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by**

[THE SUBCONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by**

[THE CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 12
(Form of Deed of Novation)

THIS AGREEMENT is made ● day of ● 201●

BETWEEN:

- (1) ● of [ADDRESS] (the "**Employer**" which expression includes its successors in title and assigns);
- (2) **[Member of TfL Group][GLA] [Infracore] [Contractor]** whose registered office is situated at **[INSERT REGISTERED ADDRESS OF REPLACEMENT EMPLOYER]** (the "**Replacement Employer**"); and
- (3) **[CONSULTANT]** whose registered office is at **[INSERT REGISTERED ADDRESS OF CONSULTANT]** (the "**Consultant**").

WHEREAS:

- (A) Pursuant to the terms of a framework agreement reference [] the Employer has appointed the Consultant to **[INSERT DESCRIPTION OF THE SERVICES]** (the "**Services**") by a call off contract dated ● (the "**Call Off Contract**").
- (B) [The Employer has appointed the Replacement Employer as a contractor pursuant to a building contract ("**the Contract**") to design and construct certain works as therein described ("**the Works**") [The Employer has entered into an agreement with the Replacement Employer pursuant to a contract ("**the Contract**") to design and construct certain works as therein described ("**the Works**") [The Employer has appointed the Replacement Employer as a design consultant pursuant to a contract ("**the Contract**") to carry out design in connection with certain works as therein described ("**the Works**")] **[Select or recite as appropriate].**
- (C) The Replacement Employer wishes to become the Employer pursuant to the Call Off Contract and the Employer wishes to be discharged from all its obligations under the Call Off Contract.

NOW IT IS HEREBY AGREED as follows:

1. NOVATION

- 1.1 The Employer as beneficial owner hereby assigns to the Replacement Employer its entire rights, benefits, liabilities and obligations under and pursuant to the Call Off Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.
- 1.2 The Consultant releases and discharges the Employer from any and all obligations and liabilities owed to the Consultant under the Call Off Contract and accepts the liability of the Replacement Employer under the Call Off Contract in lieu of the liability of the Employer.
- 1.3 The Consultant undertakes to perform the Call Off Contract and to be bound by its terms in every way as if the Replacement Employer were, and had been from the inception, a party to the Call Off Contract in lieu of the Employer. The Replacement Employer agrees that it will not hereafter terminate the Consultant's engagement under the Call Off Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.
- 1.4 The Replacement Employer undertakes to perform the Call Off Contract and to be bound by its terms in every way as if the Replacement Employer were, and had been from the inception, a party to the Call Off Contract in lieu of the Employer.
- 1.5 The Consultant shall be liable for any loss, damage, cost or expense (including the cost of settling any action) incurred by the Replacement Employer arising from any act, omission or default of the Consultant (whether based in negligence or any other form of legal liability) in the performance of the Call Off Contract prior to the execution of this Agreement whether or not such act, omission or default would have caused the Employer to suffer any loss, damage, cost or expense, provided that the Consultant has no liability under this clause 1.5 which is greater or of longer duration than it would have pursuant to the Call Off Contract if the Replacement Employer had been a party to the Call Off Contract as joint employer.
- 1.6 The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Call Off Contract up to the date of this Agreement have been paid by the Employer.

2. **WARRANTY TO THE EMPLOYER**

The Consultant hereby:

- (a) warrants to the Employer that it has performed and will continue to perform each and all of its obligations, duties and undertakings under and pursuant to the Call Off Contract as and when required by and in all respects in accordance with the Call Off Contract;
- (b) warrants to the Employer, without limitation to Clause 2(a) above, that it currently has and will maintain professional indemnity insurance as required by and in accordance with the Call Off Contract;
- (c) grants to the Employer, to the extent that the intellectual property rights in any and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials and any other materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Consultant in the performance of the Call Off Contract (whether in existence or to be made) ("Documents") are not vested in the Employer or the Replacement Employer, an irrevocable, royalty-free, non-exclusive 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 Consultant incorporated or referred to in them for all purposes relating to the Works including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Services and/or Works provided always that the Consultant 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 Consultant;
- (d) warrants to the Employer, without limitation to Clause 2(a) above, that it has, and at all times will, comply with the duties and obligations set out in Annex 1 of this Agreement; and
- (e) acknowledges that the liability of the Consultant shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Employer nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Employer.

3. **THIRD PARTIES**

- 3.1 The Employer may give a written notice (a "Notice") to the Consultant at any time that it requires the Consultant to execute and deliver collateral warranty agreements in favour of all or any of the beneficiaries identified in Clause 100.1 of the Call Off Contract ("Warranties") in accordance with that Clause 100.1,

provided that:

- (a) no Notice shall be served on the Consultant more than 12 years from the date of practical completion of the Works; and
- (b) no Notice shall require the Consultant to execute a Warranty in favour of any beneficiary where the Consultant has already entered into a Warranty in favour of such beneficiary.

- 3.2 The Consultant shall execute and deliver to the Employer appropriate Warranties within 7 days of any Notice issued by the Employer pursuant to Clause 3.1.

- 3.3 The Consultant shall, upon execution of this Agreement, execute and deliver a deed or deeds of collateral warranty in the form required by the Call Off Contract in favour of the Employer.

3.4 The Consultant shall, within 21 days of each request made from time to time by the Employer, procure that any Subcontractor or Subconsultant appointed by the Consultant executes and delivers a deed of collateral warranty in the form required by the Call Off Contract in favour of the Employer and/or any of the beneficiaries identified therein.

4. **STEP-IN RIGHTS**

4.1 The Consultant agrees that in the event of the termination of the Contract by the Employer, the Consultant will, if so required by notice in writing given by the Employer accept the instructions of the Employer or its appointee to the exclusion of the Replacement Employer in respect of the Services and/or Works upon the terms and conditions of the Call Off Contract. The Replacement Employer acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Employer under this Clause 4.1 as conclusive evidence for the purposes of this Agreement of this termination of the Contract by the Employer.

4.2 The Consultant further agrees that it will not without first giving the Employer not less than 21 days notice in writing exercise any right it may have to terminate the Call Off Contract or to treat the same as having been repudiated by the Replacement Employer or to discontinue the performance of any duties to be performed by the Consultant pursuant thereto. The Consultant's right to terminate the Call Off Contract with the Replacement Employer or treat the same as having been repudiated or discontinue performance shall cease if, within such period of notice, the Employer shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Employer or its appointee to the exclusion of the Replacement Employer in respect of the Services and/or Works upon the terms and conditions of the Call Off Contract.

4.3 It shall be a condition of any notice given by the Employer under Clauses 4.1 or 4.2 that the Employer or its appointee accepts liability for payment of the sums payable to the Consultant under the Call Off Contract, including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Employer under Clauses 4.1 or 4.2, the Call Off Contract shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Employer or its appointee under the Call Off Contract in lieu of its liability to the Replacement Employer. If any notice given by the Employer under Clauses 4.1 or 4.2 requires the Consultant to accept the instructions of the Employer's appointee, the Employer shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Employer's appointee.

4.4 The Replacement Employer acknowledges that the Consultant shall not be in breach of the Call Off Contract by complying with the obligations imposed on it by Clauses 4.1 and 4.2.

5. **SERVICES FOR THE EMPLOYER**

5.1 The Consultant agrees that, notwithstanding the novation of the Call Off Contract pursuant to this Agreement, it will perform the services ("Further Services") set out in Annex 2 to this Agreement for the Employer for the remuneration referred to in Annex 3 hereof.

5.2 The Consultant warrants to the Employer that:

- (a) it will perform the Further Services using the reasonable skill, care and diligence to be expected of an appropriately qualified **[insert profession]**¹ holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms set out in the Call Off Contract as if they were set out in this Agreement; and
- (b) it will have in place professional indemnity insurance on the terms set out in the Call Off Contract in respect of such Further Services.

¹ [To be completed prior to signing deed of novation]

6. **PROPER LAW AND JURISDICTION**

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

7. **CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999)**

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any third person (save the Employer's successors in title or permitted assignees) any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

**THE COMMON/CORPORATE SEAL of
[EMPLOYER]**

was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[REPLACEMENT EMPLOYER]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**[EXECUTED AND DELIVERED AS
A DEED by
[CONSULTANT]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX 1

(ADDITIONAL OBLIGATIONS OWED TO THE EMPLOYER)

8. The following expressions have the meanings set out herein:
- 8.1 "Connected Persons" means any and all of the Consultant's, directors, consultants, agents, Sub-contractors, contractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.
- 8.2 "Minimum Records" means all records relating to the Consultant's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.
- 8.3 "Prohibited Act" means:
- (a) offering or agreeing to give to any servant, employee, officer or agent of the Employer or the Replacement Employer any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Call Off Contract or any other contract with the Employer or the Replacement Employer or for showing or not showing favour or disfavour to any person in relation to the Call Off Contract or any other contract with the Employer or the Replacement Employer;
 - (b) entering into the Call Off Contract or any other contract with the Employer or the Replacement Employer in connection with which commission has been paid or has been agreed to be paid by the Consultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the Employer or the Replacement Employer;
 - (c) committing any offence under the Prevention of Corruption Acts 1889-1916, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Call Off Contract or any other contract with the Employer or the Replacement Employer; or
 - (d) defrauding or attempting to defraud the Employer or the Replacement Employer.
- 8.4 ["Safety Breach" means a material breach of the Call Off Contract caused by the gross incompetence or wilful default of the Consultant (or anyone employed or acting on behalf of the Consultant) or any of his agents which has materially affected the safe operation of the Underground Network or the Employer's employees, or the public or any other persons.] **[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**
- 8.5 "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.
- 8.6 ["Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".] **[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]**

9. CONFIDENTIALITY AND PUBLICITY

9.1 Without limitation to Clause 2 of this Agreement, the Consultant hereby warrants and undertakes to the Employer that:

- (a) except as provided under deeds of warranty required under clause 100.1 of the Call Off Contract, it shall not, without the prior written approval of the Employer, at any time for any reason disclose to any person or publish or make any statement concerning the Call Off Contract, this Agreement or the Works (as defined in the Call Off Contract);
- (b) it shall treat all information obtained under, arising from or in connection with the Call Off Contract, this Agreement and the Works as confidential, and that other than for the purpose of providing the Services, it shall not disclose any information or documents concerning the Call Off Contract to any other person; and
- (c) it shall not, without the prior written consent of the Employer, disclose any information obtained by it concerning the Employer or the TfL Group to any other person.

9.2 The Employer may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Employer.

9.3 Paragraph 2.1 above does not apply to the disclosure of:

- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
- (b) any information disclosed by the Consultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
- (c) any information which is required to be disclosed by any applicable law or Statutory Requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

9.4 The Consultant shall procure that the Connected Persons comply with the provisions of this paragraph 2 and is responsible to the Employer for any act or omission of any Connected Person in breach of such obligations.

9.5 The Consultant shall notify the Employer promptly if the Consultant becomes aware of any breach of confidence by a Connected Person and shall give the Employer all assistance the Employer may reasonably require in connection with any proceedings the Employer may bring or other steps the Employer may take against that Connected Person or any other person for such breach of confidence.

9.6 The Consultant acknowledges that damages would not be an adequate remedy for any breach of this paragraph 2 by the Consultant and that (without prejudice to all other remedies to which the Employer may be entitled to as a matter of law) the Employer shall be entitled to any form of equitable relief to enforce the provisions of this paragraph 2.

9.7 At the Employer's request and in any event upon the termination or expiry of the Call Off Contract, the Consultant shall promptly deliver to the Employer or destroy as the Employer may direct all documents and other materials in the possession, custody or control of the Consultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Employer in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.

10. PROHIBITED ACTS AND SAFETY BREACHES

10.1 Without limitation to paragraph 2 of this Agreement, the Consultant hereby warrants and undertakes to the Employer that he shall not commit a Prohibited Act [and/or Safety Breach].

[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]

11. **MINIMUM RECORDS AND AUDITS**

- 11.1 Without limitation to paragraph 2 of this Agreement, the Consultant hereby warrants and undertakes to the Employer that that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from completion of the Works with respect to all matters for which the Consultant is responsible under the Call Off Contract. The Consultant further warrants and undertakes to the Employer that the Call Off Contract contains open-book audit rights in favour of the Employer and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Call Off Contract on an open-book basis. The Employer and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Consultant including, without limitation the Minimum Records. The Consultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Consultant acknowledges and agrees that the Employer may audit and check any and all records as are necessary in order to monitor compliance with the Consultant's obligations under the Call Off Contract with respect to Prohibited Acts [and Safety Breaches] at any time during performance of the Call Off Contract and during the 12 years thereafter. ***[Note: Include wording in brackets if the novation relates to project for LUL/LUL Nominee BCV/SSL otherwise delete]***

**ANNEX 2
(FURTHER SERVICES)**

**ANNEX 3
(FURTHER SERVICES REMUNERATION)**

SCHEDULE 13
(Supplier Performance)

Supplier Performance

Measuring the performance of its consultants is important to TfL. All call offs from the framework which are in excess of £100k in value will include a set of key performance indicators (KPI) which will be measured every quarter as a minimum.

TfL will also measure the performance of call off contracts which are less than £100k in value using a scoring of 1 (poor) to 5 (excellent).

The consultant's performance results are reported at Director level across TfL.

TfL expects good performance on all contracts. Where poor performance is identified a process for mitigation will be implemented. Likewise where there is evidence of good performance the supplier's work will be promoted across TfL. For the avoidance of doubt TfL reserves the right at its sole discretion not to utilise an Incentive Schedule as per Secondary option X20 when calling off from the Framework.

Call off contracts greater than £100k in value

A set of Key Performance Indicators (KPI) will be prepared by TfL and included within each call off contract. The KPI's will be produced against each of the 7 measures as indicated in appendix A of this schedule and as referenced within TfL's balanced scorecard. The KPI results will be collected every quarter as a minimum.

Call off contracts less than £100k in value

Each quarter TfL will collect data on the consultant's performance. Each call off will be scored from 1 to 5 using the scoring definition as indicated within table 1 below;

Table 1

Score	Scoring Definition
N/A	This activity is not applicable for this supplier
1	The supplier does not display any examples of good practice
2	The supplier displays some good practice but is generally poor in this area
3	The supplier is average/acceptable in this area
4	The supplier demonstrates good practice
5	The supplier excels in this element

If a specific call off contract is below £100k but deemed to be of high importance and risk to TfL, the project team in consultation with commercial have the option to include a set of KPI's within the "call off" contract.

Call off contracts for individuals filling a role in TfL on a temporary basis

TfL also has demand for individuals to fill roles within the organisation on a temporary basis. This could be typically for a period of between 3-6 months.

A very small number of these individuals will be on £750 a day or more. TfL has extremely high expectations from this small number of individuals working in the organisations, as a result their performance will also be measured as part of the quarterly survey using the 1 – 5 scoring matrix described within table 1 above.

The remaining individuals filling roles temporarily within TfL will not have their performance measured through the quarterly survey. If the individual is not performing he will be asked by the employing manager to leave the organisation.

To help these relationship and to align expectations, the employing manager will use the behavioural matrix as indicated within Appendix B to manage the day to day relationship.

Addressing poor performance and recognising good performance

As a minimum, TfL expects good performance from its consultants. The information on supplier performance will be communicated quarterly to directors across TfL.

The result of the survey will be published and made available to suppliers across TfL indicating the position of each supplier in the form of a league table.

If a Consultant obtains a score of less than 3 then this will form the basis for the production of a Supplier Action Plan, which will need to be discussed and approved by the TfL Framework manager.

The Consultant will then submit a “Supplier Action Plan” every four weeks which shall be monitored jointly by TfL and the Consultant.

Escalation route for poor performance

If the consultant has a poor score (1 or 2) on any contract, it is important that a speedy resolution is in place to remedy and address the poor performance.

The consultant’s proposal to resolve levels of poor performance through the Supplier Action Plan should be developed in consultation with TfL and provided to the TfL framework manager within 5 days of the poor performance being identified.

If the next quarterly survey identifies the project is still under performing this will be escalated to the Sponsors/ Directors for the relationship to agree next steps.

If the mitigation plan is unsuccessful, TfL’s Managing Director and the supplier’s CEO or business owner will intervene and meet with the Framework Manager to discuss and agree how to resolve the poor performance.

As a last resort, the consultant may be asked not to bid for future work under the framework until their performance issue is resolved, (The supplier would need to agree to this course of action in writing) or in extreme cases they may be removed from the framework.

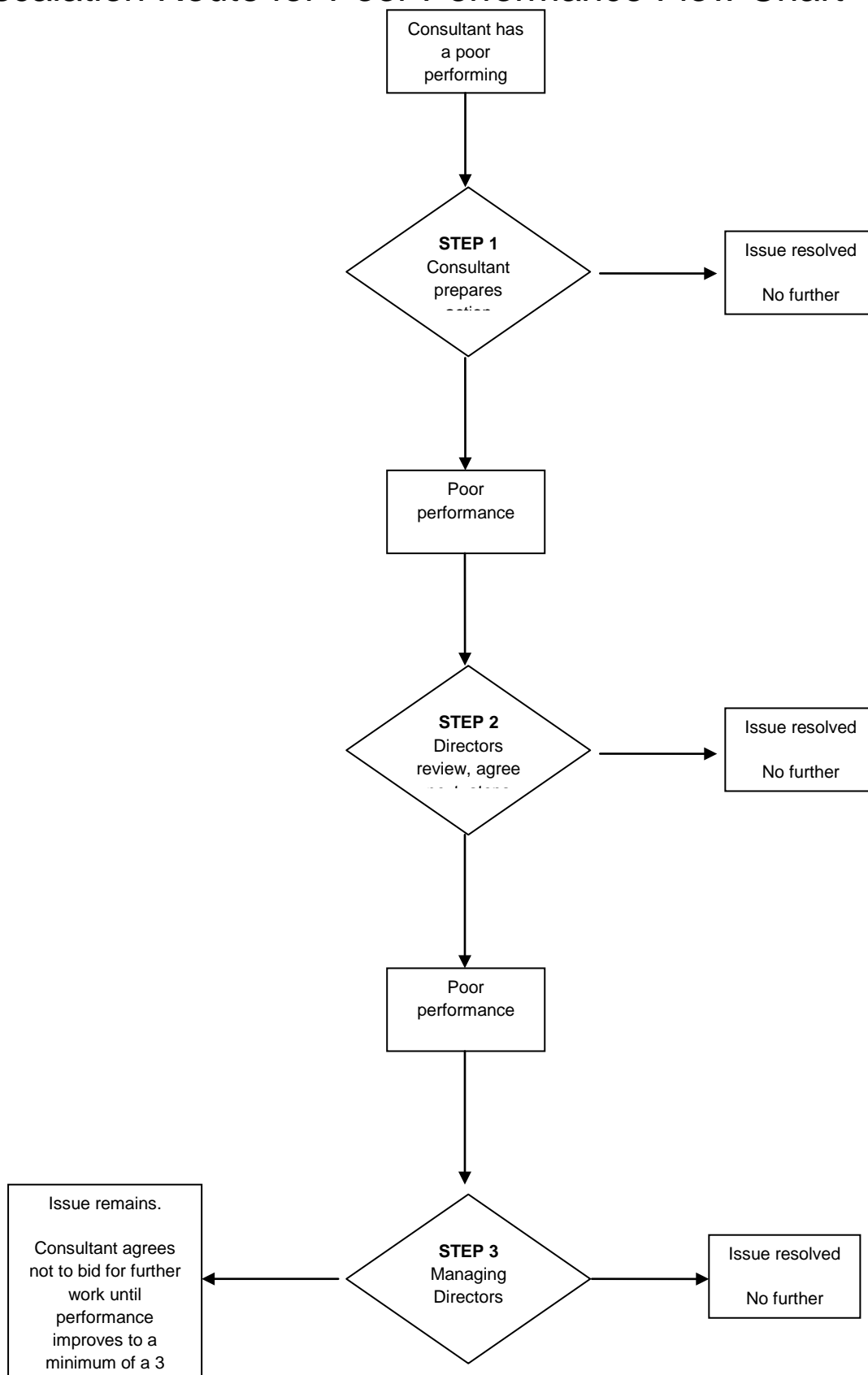
Promoting good performance in TfL

TfL expects good performance and encourages its consultants to excel.

The consultant, who is found to be the best performing in a quarter, will be rewarded with the opportunity to hold a workshop/presentation within TfL on Innovation.

The event will be facilitated and supported by TfL’s supplier relationship manager and attended by 8-10 senior managers from across TfL.

Escalation Route for Poor Performance Flow Chart



APPENDIX A

KEY ELEMENT:	GUIDANCE FOR PREPARING KPI's	APPENDIX A:
SAFETY & ENVIRONMENTAL	<ul style="list-style-type: none"> - Supplier undertakes regular training / awareness sessions for their employees on Health & Safety, Quality and Environment - Supplier has a 'Zero Harm' campaign internally to create a safety 'culture' (i.e. posters, desk drops, CBT, videos, spot-checks)? - Supplier employees demonstrate Safety and Environmental knowledge and practice it as appropriate in their work - Are there regular safety audits / risk assessment carried out by the supplier/ an authorised body on their sites? - Supplier preventative measures - after any kind of incident, is there a recognised and documented process the supplier has in place to ensure it does not re-occur? - Does the supplier have targets for recycling and wastage in place that they achieve on a regular basis? 	
RELIABILITY / RESILIENCE / QUALITY	<ul style="list-style-type: none"> - Supplier's ability to deliver at a good level over a sustained period - Supplier accreditations i.e. BS 9001 (or industry equivalent) - Supplier's attitude is 'can-do' and they flex to our evolving requirements, given the nature of our work is not always predictable - Supplier's delivery meets with customer / end user satisfaction - Any pre-delivery and post-delivery service / management of expectations by the supplier - Frequency of non-conformance / re-work due to errors or not meeting TfL's specification 	
CLOSURES / DISRUPTIONS / NETWORK CONGESTION	<ul style="list-style-type: none"> - Has the supplier caused any unplanned closures to a line / track / station / lift / escalator / platform etc in the quarter due to their error / lack of delivery / lack of planning / lack of understanding of the impacts their works would have on other utilities? - How good is the supplier at managing expectations of the works they undertake and the impact of these works on TfL and our customers? - If the supplier does cause any unplanned closures, how good are they at managing and mitigating the impact of it on TfL and our customers? 	
INNOVATION	<ul style="list-style-type: none"> - Does the supplier hold regular innovation workshops or meetings? - Does the supplier proactively come up with innovative new ideas or better ways of working for TfL? - Has the supplier implemented any innovative ideas / new ways of working with TfL? - Supplier receptivity to TfL innovative ideas - Supplier support on implementing ideas - Supplier proactive / willing to make necessary changes to existing processes/ procedures where it is clear they add no value anywhere or if they do not work for TfL - Process improvements achieved by value analysis with supplier - Savings generated from value analysis exercise undertaken with supplier - Supplier demonstrates a deep understanding of our business and industry and enhances our services to our customers 	
£ EFFICIENCY / VALUE FOR MONEY	<ul style="list-style-type: none"> - Ability to deliver within budget / contract price - Savings delivery against targets - Proactively delivering over and above the contract to generate value for TfL - doesn't have to be massive things, but can be small value-adding things (for example a supplier may proactively decide 'piggy-back' with a competitor on their common deliveries to save costs and carbon emissions and pass some of the savings on to TfL) 	
DELIVERY	<ul style="list-style-type: none"> - Delivery on or within schedule / milestones met - Ability to meet or exceed contractual obligations - Ability to plan and forecast resources and logistics to meet TfL specification - Supplier's competency and capability in their delivery - Supplier's management of their supply chain to deliver to TfL 	
RESPONSIBLE PROCUREMENT	<ul style="list-style-type: none"> - Supplier's willingness to drive RP initiatives - Supplier has dedicated resources in their organisation to establish RP firmly on their agenda - Supplier has set themselves RP targets and objectives - Supplier works with their peers and their supply chain to establish joint RP initiatives /share RP best practice - Supplier is working with TfL on establishing RP initiatives 	

APPENDIX B

	BEHAVIOURS				
TIL - MUTUAL BEHAVIOURS FOR SUPPLIER RELATIONSHIPS	Collaborative - 5	Aligned - 4	Effective - 3	Distant - 2	Negative - 1
SAFETY & ENVIRONMENTAL	Supplier senior management demonstrate a 'zero harm' culture by promoting HSE discussions at meetings, sharing HSE standards and best practices, and collaborating to continually improve by facilitating joint HSE training sessions and knowledge - Supplier staff proactively take ownership of ensuring their colleagues are informed and compliant with HSE standards and best practices and how these translate into activities relevant to their roles within the relationship - Supplier staff exhibit a positive and responsible attitude to safety and environmental practices and are compliant with them at all times	Supplier senior management actively encourages their staff to exhibit safety and environmental practices by providing regular training sessions, running desk drop campaigns and having policies in place on HSE with annual targets etc. - Supplier staff usually demonstrate compliance with safety and environmental good practices - Supplier colleagues regularly collaborate with others to ensure they have a mutual understanding of the HSE activities each is doing	Supplier is working towards embedding a strong HSE compliant culture and this is led by senior management (i.e. Intranet, training sessions, desk drop, posters, internal comms etc.) Supplier staff usually demonstrate compliance to their own HSE standards and practices and share these as required with each other, communicating any updates or changes as necessary Supplier teams display willingness to engage on further safety and environmental training and awareness to improve.	Supplier senior management do not actively promote safety and environmental practices within the organisation, but a general awareness of HSE is communicated - TIL / supplier staff's understanding and recognition of good safety and environmental practice is limited and / or they sometimes display non-compliant behaviour - Sharing and communication of changes to HSE requirements are infrequent and may be unclear	Supplier senior management do not appear to promote safety and environmental within their organisation - The understanding and demonstration of good safety and environmental practices and behaviours by staff is frequently poor and non-compliant - Little or no effort to communicate their organisation's HSE standards or changes is made to other colleagues or parties
RELIABILITY / QUALITY	Supplier's behaviour is consistent with its organisational values and their teams demonstrate honesty and promote trust by doing what they will when they say they will Supplier demonstrates flexibility in their work to their colleagues and are able to collaborate on and prioritise what is important in an ever-changing environment Supplier teams display reciprocal behaviour to their colleagues and other parties and maintain positive composites under pressure - Trustworthiness is evident in proactive sharing of necessary and relevant information without being asked and by taking ownership of issues / errors without apportioning blame, but emphasising the lessons to be learned - Constructive feedback is proactively solicited and acted upon	Supplier behaviours are consistent with their organisational values Supplier demonstrates flexibility in their work to their colleagues and are able to collaborate on and prioritise what is important - Trust is evident in ownership being taken of important issues and their quick resolution - Constructive feedback is sought, offered and is acted upon - Supplier staff demonstrate ability to deliver under pressure	Supplier behaviours are usually consistent with their organisational values Supplier team shares required information with other parties and usually manages expectations accurately - Issues are dealt with in reasonable timeframes, occasionally clarity of issue and ownership may be disputed Supplier regularly asks for feedback and displays evidence of applying it - Accepts responsibility for delivery of strategic responsibility	Supplier behaviours are sometimes inconsistent with their organisational values - Issues are not always owned or resolved within reasonable timeframes due to disagreements about ownership / lack of understanding / clarity about what was needed - Feedback is sought sporadically and whilst it is sometimes acted upon, it is not always constructive when it is offered Supplier staff can sometimes display a defensive attitude under pressure	Supplier behaviours are not very consistent with their organisational values - Trust and flexibility are not evident, however frustration, defensiveness and aggression are frequently exhibited to the detriment of the relationship - Constructive feedback is not sought for, nor offered and there is little evidence it is acted upon if it is given - Team does not appear able to deliver under pressure and is perceived as unreliable
MINIMISING DISRUPTIONS	Supplier holds itself accountable for delivering tasks, responsibilities and targets Supplier staff often exceed targets and proactively seek to take ownership of disruption issues Supplier exhibits understanding of the industry, environment and restraints their colleagues and other parties have to work within and proactively suggests changes to help reduce disruptions, even if it is not in their line of responsibility and demonstrates willingness and receptivity to such suggestions if made to them - Supplier escalates issues when appropriate, but also takes responsibility and makes executive decisions where necessary to ensure disruptions are minimised	Supplier holds itself accountable for delivering tasks, responsibilities and targets Supplier exhibits understanding of the environment, industry and restraints their colleagues / other parties have to work within and may suggest changes to help reduce disruptions from time to time and demonstrates receptivity to such suggestions if made to them Supplier is not afraid to escalate issues in their organisation when appropriate to expedite resolution	Supplier usually demonstrates responsibility for their tasks and does not make excuses for any minor failures but holds themselves accountable and displays ability to learn from any issues Supplier staff exhibit empathy of the environment, industry and any restraints their colleagues / other parties work within - Ownership is usually demonstrated of issues to minimise delays - Accepts no responsibility for delivery of strategic priorities	Supplier takes responsibility for their tasks and activities, however not always the targets, which are sometimes missed, causing unnecessary disruption Supplier does not always display a clear understanding of the environment, industry and restraints that their colleagues / other parties work within and as a result this sometimes causes disruption and delay	Supplier does not deliver against all targets Supplier frequently disputes the ownership of tasks and responsibilities, which can result in disruption and delays to projects - May sometimes apportion blame mistakenly for their non-delivery of targets and fails to manage expectations and escalate issues to resolve them - Does not demonstrate understanding of the environment, industry and restraints other colleagues / parties have to work within
INNOVATION	Supplier shows the ability to spot opportunities for mutual benefit and often comes up with new, innovative ideas - Supplier is receptive to and often solicits other people's new ideas Supplier proactively analyses trends / MI to anticipate new opportunities to add mutual value Supplier proactively establishes innovation workshop/meetings and their staff lead and facilitate these Supplier exhibits sound decision-making on feasibility and reality of the adoption of new ideas or ways of working	Supplier recognises changing demands / requirements and is able to offer and is receptive to differing solutions Supplier is open to new ideas / ways of working and is willing to host / facilitate innovation workshops/meetings and progress and develop initiatives from them Supplier staff are active and positive participants of any such meetings or workshops	Supplier recognises changing demands / requirements and is receptive to differing solutions Supplier is open to new ideas / ways of working Supplier is willing to attend innovation workshops/meetings and progress and develop initiatives from them	Supplier is open to other ideas but can be reluctant to embrace change or new and different ways of working - Suppliers willing to attend innovation workshops/meetings but their staff are not active participants	Supplier does not exhibit receptivity to, or offer new ideas or different ways of working to develop mutual value - TIL supplier is very reluctant to embrace change Supplier makes minimal effort to attend or contribute to innovation meetings or workshops
DELIVERY	Supplier demonstrates an excellent understanding of the industry and market other parties / clients operate in and has the ability to anticipate what their colleagues / partners need / aspire to Supplier staff collaborate, plan and organise themselves to ensure that their colleagues / partners / clients have everything needed for successful delivery Supplier staff are prompt to respond to queries or concerns, and goes the extra mile to add value and continually works to improve delivery of wider organisation Supplier demonstrates a strong working ethic in their culture and displays initiative when undertaking tasks and activities - Supplier staff are always professionally courteous, punctual to meetings and are respectful of other people's opinions Supplier staff display diligence in accurately documenting actions and meeting summaries or minutes, rarely forgetting actions and can juggle and deliver against conflicting and changing priorities	Supplier demonstrates a strong understanding of their colleagues / partners / clients industry Supplier staff work, plan and organise themselves to ensure that their colleagues / partners / clients have everything required for successful delivery Supplier staff respond to queries or concerns quickly and efficiently Supplier demonstrates a good working ethic in their culture and often displays initiative when undertaking tasks and activities Supplier staff are professionally courteous, are punctual to meetings and calls and respectful of other people's opinions Supplier staff display diligence in accurately documenting actions and meeting summaries/minutes	Supplier demonstrates a good understanding of partners / clients industries and is usually able to deliver efficiently - Supplier staff work and plan to ensure that clients / partners are able to deliver Supplier usually responds to queries or concerns Supplier demonstrates a good working ethic in their culture Supplier staff are professionally courteous, punctual and respectful of other people's opinions - Shares, promotes and seeks "buy-in" to vision	Supplier demonstrates a limited understanding of partners / clients industries Supplier sometimes struggles to plan and organise themselves to enable delivery - Supplier staff respond to most queries or concerns in a reasonable timeframe Supplier staff are sometimes late to meetings, or cancel meetings at short notice and are perceived as lacking in professional courtesy at times	Supplier does not demonstrate an understanding of partners / client industries - Supplier ignores obvious opportunities for business performance improvement Supplier is not able to demonstrate that they have the ability to plan and organise themselves to deliver as they often miss deadlines Supplier do not respond to queries or concerns raised in a timely manner Supplier staff frequently display a lack of professional courtesy to others (i.e. lateness, lack of planning, disrespectful of others opinions, etc). - Fails to convince/engage with audiences to the detriment of delivery
VALUE FOR MONEY	Supplier staff proactively seek to eliminate waste and unnecessary cost from the supply chain and exhibit collaboration, empathy and transparency in doing so - Supplier team demonstrate simplicity and fairness in their approach to agreeing financials and are well regarded by all who deal with them	Supplier displays an understanding of how their actions and decisions impact on other parties' profits, revenues and costs Supplier staff are active participants and collaborators in any initiatives to eliminate waste in their supply chain Supplier team demonstrate simplicity and fairness in their approach to agreeing financials and are well regarded by all who deal with them	Supplier team demonstrate simplicity and fairness in their approach to agreeing financials Supplier participates in some initiatives to reduce waste in their supply chain Supplier shows an understanding of how their actions impact on their own costs and those of other organisations	Supplier team are sometimes difficult in their approach to agreeing financials Supplier does not actively seek to eliminate hidden costs or waste from their supply chain Supplier sometimes displays a misunderstanding of how their actions and decisions impact on the costs, revenues and profits of their own organisation as well as other parties	Supplier is unable to gauge the impact of their financial decisions on themselves and other organisations Supplier staff often make financial decisions that are sub-optimal and overly complex and may be perceived as manipulative and difficult, resulting in a lack of trust with colleagues from other organisations Supplier has little or no evidence to support that they participate in or promote any waste reduction initiatives in their supply chain Supplier exhibits a lack of transparency / fairness / simplicity in their costing / pricing
RESPONSIBLE PROCUREMENT	Supplier senior management demonstrate a commitment to procuring goods and services responsibly within their organisation and Tier 1 suppliers by internal comms, hosting meetings etc on the topic Supplier staff display a conscientious outlook about promoting Responsible Procurement Supplier regularly attends collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management demonstrate a commitment to procuring goods and services responsibly within their organisation and Tier 1 suppliers by internal comms, hosting meetings etc on the topic Supplier staff display a conscientious outlook about promoting Responsible Procurement Supplier regularly attends collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management demonstrate a commitment to procuring goods and services responsibly within their organisation Supplier sometimes attends collaborative initiatives on Responsible Procurement with their peers to raise the profile of RP and to generate further developments on it within their supply chain	Supplier senior management do not appear to promote Responsible Procurement within their own organisation Supplier staff sometimes display ignorance of RP as a topic and what it entails Supplier occasionally attends a meeting on Responsible Procurement but is not an active participant	Supplier senior management do not appear to promote Responsible Procurement within their own organisation at all Supplier staff display ignorance of RP as a topic and what it entails - Supplier does not attend any meetings or workshops on Responsible Procurement

SCHEDULE 14

Strategic Labour Needs and Training (SLNT)

1 Introduction

- 1.1 Without prejudice to the other provisions in this Agreement relating to Consultant Personnel, this Schedule sets out the Consultant's obligations in respect of:
- (A) supporting the TfL Group (and Third Parties nominated by the TfL Group) in the implementation of the Skills and Employment Strategy; and
 - (B) ensuring that the Consultant attracts, develops and retains Consultant Personnel with the skills necessary to:
 - (i) deliver the Services, throughout the Term.

- 1.2 In this Schedule, the following terms shall have the corresponding meanings:

“Apprentice”	means a member of Consultant Personnel who is registered as an apprentice or technician with an industry recognised body;
“Agreed SLNT Plan”	means the Consultant's strategic labour needs and training plan set out at Appendix 3 (<i>Initial/Agreed SLNT Plan</i>) to this Schedule, to be prepared in accordance with the SLNT Plan Template and Approved by TfL;
“Initial SLNT Plan”	means the initial strategic labour needs and training plan set out at Appendix 3 (<i>Initial/Agreed SLNT Plan</i>), submitted by the Consultant prior to the Effective Date and to be agreed between the Parties in accordance with clause 2 of this Schedule;
“Monthly SLNT Monitoring Report”	means the report to be prepared by the Consultant in the form set out at Appendix 5 (<i>Monthly SLNT Monitoring Report Template</i>) and submitted to TfL in accordance with the provisions of clause 5.1 of this Schedule;
“Relevant Employment Vacancy”	means an employment vacancy within the Consultant's organisation for a member of Consultant Personnel;
“Skills and Employment Strategy”	means the TfL Group's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy dated March 2011 is provided at Appendix 1 (<i>Skills and Employment Strategy</i>) to this Schedule;
“SLNT Co-ordinator”	has the meaning set out in clause 3.1 of this Schedule;
“SLNT Infraction”	means any breach by the Consultant of any of its obligations under this Schedule;
“SLNT Output”	means the minimum number of Apprentice positions or equivalent to be delivered by the Consultant (either directly through its own personnel and the personnel of its Sub-Contractors) under this Agreement, as identified and agreed in the Agreed SLNT Plan;
“SLNT Plan Template”	means the template for the SLNT Plan set out at Appendix 2 (<i>SLNT Template</i>) to this Schedule, to be completed by the Consultant;
“Trainee”	means a member of Consultant Personnel who is registered as a trainee with an industry recognised body; and

2 Agreed SLNT Plan

- 2.1 Based on the Initial SLNT Plan, the Consultant shall:
- (A) further develop the Initial SLNT Plan to reflect the comments and requirements of TfL; and

- (B) submit a revised copy of the Initial SLNT Plan to TfL for Approval within twenty (20) Working Days of the Effective Date.
 - [(C) provide an Implementation Plan as contained in Appendix 4 of this Schedule based on the revised copy of the Initial SLNT Plan within forty (40) Working Days of the Effective Date;]
- 2.2 If the Initial SLNT Plan is:
- (A) Approved, it shall be adopted immediately and become the Agreed SLNT Plan; or
 - (B) not approved, the Consultant shall amend the Initial SLNT Plan and re-submit it to TfL for Approval within the time period agreed in writing between the Parties. If TfL does not approve the Initial SLNT Plan following its resubmission, the matters preventing such approval shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.3 Without limiting any other provision of this Agreement, the Consultant shall:
- (A) comply with provisions of the Agreed SLNT Plan; and
 - (B) at no additional cost to TfL and subject to the provisions of clause 2.4 below, review and amend the Agreed SLNT Plan and Implementation Plan:
 - (1) three (3) Months prior to the Commencement Date and
 - (2) every twelve (12) Months following the Commencement Date or at other times requested by TfL, to reflect:
 - (a) Good Industry Practice;
 - (b) any changes to the nature of the Services
 - (c) any amendments proposed by TfL.
- 2.4 Any changes or amendments to the agreed SLNT Plan shall be subject to a Change Control Request Procedure and shall not be implemented until approved in writing by TfL.
- 2.5 In order to facilitate the efficient implementation of the Consultants SLNT requirements as contained in the Agreed SLNT Plan, TfL will also require the Consultant to prepare an Implementation Plan as contained in Appendix 4 of this Schedule. The Implementation plan
- (1) will need to be completed within three (3) Months prior to the Operational Commencement Date and an either be prepared after the Agreed SLNT Plan has been formed or in
- 3 SLNT Co-ordinator**
- 3.1 Within twenty (20) Working Days of the Effective Date, the Consultant shall nominate a member of Consultant Personnel with the necessary skills and authority to:
- (A) be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan; and
 - (B) act as the single point of contact between TfL Personnel on all matters concerning the Agreed SLNT Plan,
- (the “**SLNT Co-ordinator**”).
- 3.2 The Parties shall add the SLNT Co-ordinator to a list of Key Personnel.
- 4 Community Relations**
- 4.1 The Consultant acknowledges and accepts that members of the TfL Group work closely with Third Party organisations to implement the Skills and Employment Strategy.
- 4.2 Accordingly, the Consultant shall:
- (A) **Not used**
 - (B) attend a minimum of two (2) events each year, at a time and location specified by TfL, to publicise employment and training opportunities arising from the provision of the Services.
- 5 Monitoring and Reporting**
- 5.1 Subject to clause 5.2 below, the Consultant shall provide TfL with a Monthly SLNT Monitoring Report by the Performance Indicator Report Date detailing the Consultant’s performance against the Agreed SLNT Plan.

- 5.2 Failure to provide TfL with a copy of the Monthly SLNT Monitoring Report within the timescales set out in clause 5.1 above shall constitute a failure to meet the Acceptable Service Level.
- 5.3 The Consultant shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the:
- (A) **Not used**
 - (B) collection and reporting of the information to TfL pursuant to clause 5.1 above.

6 SLNT Infractions

- 6.1 Failure to:
- (A) ensure that each SLNT Output for the monitoring period is delivered in accordance with Agreed SLNT Plan; and/or
 - (B) review the Agreed SLNT Plan in accordance with clause 2.3 of this Schedule (*Strategic Labour Needs and Training*),
- shall constitute a failure to meet the acceptable service levels.

7 SLNT Audit

- 7.1 TfL may from time to time undertake any audit or check of any and all information regarding the Consultant's compliance the provisions of this Schedule.
- 7.2 The Consultant shall maintain and retain records relating to the Agreed SLNT Plan and its compliance with the provisions of this Schedule for a minimum of 12 years.
- 7.3 TfL shall use reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Consultant is not, without due cause, disrupted or delayed in the performance of the Consultant's obligations under this Agreement.
- 7.4 The Consultant 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:
 - (1) premises used in the Consultant's performance of this Agreement, whether the Consultant's own premises or otherwise;
 - (2) equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Consultant's obligations under this Schedule 14, wherever situated and whether the Consultant's own equipment or otherwise; and
 - (B) complying with TfL's reasonable requests for access to senior personnel engaged in the Consultant's performance of this Agreement.

APPENDIX 1 TO SCHEDULE 14

Skills and Employment Strategy

A copy of the Skills and Employment Strategy can be obtained from:

<http://www.tfl.gov.uk/assets/downloads/corporate/skills-employment-strategy.pdf>

APPENDIX 2 TO SCHEDULE 14

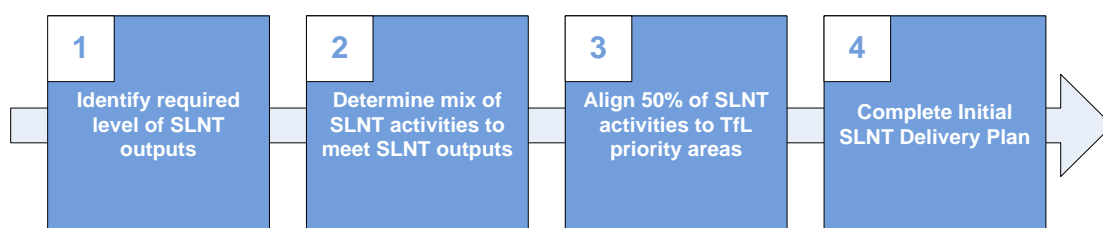
Note to Consultants: Appendix 2 of Schedule 14 is for reference only setting out the Consultants obligations should they be successfully awarded a Framework Agreement..

1. **Principles of Strategic Labour Needs and Training (SLNT)**

1.1 **Process Diagram**

1.1.1 To prepare the SLNT Delivery Plan, the *Consultant* should follow the process below, as outlined in Diagram 1:

Diagram 1:



1.2 **Determining Number of Required SLNT Outputs**

1.2.1 The *Consultant* can determine the number of required SLNT outputs based on the monetary value of aggregated call-off contracts:

Each £1 million in the aggregate under the suite of professional services framework agreements of call-off contract value for consultancy/ service call-off contracts 1 SLNT output

1.3 **Priority Areas**

1.3.1 To ensure the *Consultant's* SLNT outputs are aligned to the priorities in TfL's Skills and Employment Strategy, a **minimum of 50% of SLNT outputs must be from the Priority SLNT Activity Areas** (see Table 1 below).

1.4 **SLNT Activities**

1.4.1 The *Consultant* is able to select from a variety of SLNT activities to contribute towards their required SLNT outputs. SLNT activities, definitions and their output value, are detailed below in Table 1:

Table 1:

SLNT OUTPUT	DEFINITION	SLNT VALUE	PRIOR-ITY
Apprenticeships			
Apprentice Job Start	A new entrant who is recruited as an apprentice and enrolled on an approved Apprenticeship Framework. The apprentice must live within London. The apprentice can be any age from 16+.	1 SLNT Output 1 output for each year of the apprenticeship (e.g. a 3 year apprenticeship = 3 SLNT outputs)	✓
Workless Apprentice Job Start	A new entrant who is recruited as an apprentice and enrolled on an approved Apprenticeship Framework, and who was previously workless before starting the apprenticeship. The apprentice must live within London. The apprentice can be any age from 16+.	1 SLNT Output 1 output for each year of the apprenticeship (e.g. a 3 year apprenticeship = 3 SLNT outputs)	✓
Apprentice Start (existing staff)	An existing staff member who is enrolled onto an approved Apprenticeship Framework in order to up skill the workforce. The apprentice must live within London. The apprentice can be any age from 16+.	1 SLNT Output 1 output for each year of the apprenticeship (e.g. a 3 year apprenticeship = 3 SLNT outputs)	✓
Worklessness			
Workless Job Start	A new job start where the candidate was workless (economically inactive) prior to starting work. The candidate must live within London.	1 SLNT Output	✓
Workless Graduate Job Start	A graduate job start where the candidate was workless (economically inactive) prior to starting work. The candidate must live within London.	1 SLNT Output	✓
Educational/Career Support			
Placement Position	A position intended to enable an individual to learn, develop or enhance their knowledge and skills in an industry or job role by providing a short work experience placement. A placement is expected to last a minimum of 1 week. A placement position could be paid or unpaid and the individual must live within the London.	20 Days = 1 SLNT Output (e.g. 4 individuals each complete a 1 week placement: 4 x 5 days = 20 days = 1 output)	
School Engagement	Education activities that support schools and school students, by raising awareness of the educational and employment opportunities in the industry. This could include attending career fairs, school visits, ambassador programmes etc. Schools supported should be within London.	20 Days = 1 SLNT Output (e.g. 2 staff members attend 10 careers fairs: 2 x 10 days = 20 days = 1 output)	
Job Creation			
Job Start	A new job start for an individual who lives within London, recruited as a result of the contract. This could include a graduate job start (non workless).	1 SLNT Output	

1.5 **SLNT Definitions and Explanations**

1.5.1 The Consultant should be aware of the following definitions and explanations as set out in Table 2 below:

Table 2:

Apprenticeship Outputs ‘Carry Over’	Where an apprenticeship lasts for longer than 1 year, a <i>Consultant</i> can claim 1 SLNT output for each year the apprentice is enrolled onto, and completing, the apprenticeship framework. (E.g. 1 apprentice completing a 2 year apprenticeship would equate to 2 SLNT outputs over a 2 year period).
London	Defined as being within the boundaries of the Greater London Authority (GLA) and the 33 London Boroughs. <i>Consultants</i> are encouraged to recruit candidates who live within the vicinity of the project or works site.
Priority Activity Areas	SLNT Priority Activity Areas include Apprentice Starts, Workless Apprentice Starts, Apprentice Starts (existing staff), Workless Job Starts and Workless Graduate Starts (see Table 1).
Initial SLNT Delivery Plan	The bidder’s response to SLNT, to detail how they will meet the required SLNT outputs (see 3.1).
Worklessness	An individual is considered workless if they are ‘economically inactive’ and therefore not in paid employment or full time education. There is no minimum length of time the individual has to have been economically inactive to be considered workless. An individual who has moved into work from school, college or university is not considered workless.

1.6 **SLNT Exclusions**

1.6.1 Recognising that many products cannot be fully undertaken within a London or UK context, TfL is prepared to discount those elements from the overall value used to estimate the SLNT outputs.

1.6.2 Any exclusions will be balanced by the need to maximise SLNT outputs within a local London context and will only be agreed by TfL where it makes no sense to apply the SLNT requirements.

1.6.3 An example of this might be products that are manufactured outside of the UK. In such a case the value of the manufactured products would not be counted in determining the SLNT outputs, as compared to the installation and maintenance of those products which would be included.

1.7 **Accrual Method**

1.7.1 If the SLNT requirements are to be applied to a Framework Agreement, there is no initial value of work to be awarded. TfL will operate an accrual based system to transfer debits or credits associated with SLNT delivery over following years. For example, a *Consultant* undertaking SLNT activities in Year 1 can credit these activities into following years.

1.8 **Supply Chain/ Sub-consultants**

1.8.1 Where a *Consultant* will be using sub-consultants to deliver elements of any call-off contract, the *Consultant* will be required to apply the SLNT conditions/ requirements to these sub-consultants.

1.8.2 The *Consultant* will be responsible for ensuring monitoring and delivery of the SLNT requirements relating to their supply chain/ sub-consultants.

2 Supplier Skills Team

2.1 *TfL Supplier Skills Manager*

- 2.1.1 Working in partnership with the Greater London Authority (GLA), TfL has appointed a team of Supplier Skills Managers (SSM) to act as a central co-ordination point for TfL suppliers. This is to ensure that suppliers are able to access funding, work programmes, educational institutions etc in a controlled and co-ordinated manner.
- 2.1.2 After the commencement of the Framework Agreement the SSM and the *Consultant* must work together to understand their SLNT commitments as specified in the Initial SLNT Delivery Plan. During implementation the *Consultant* and SSM agree a final SLNT Delivery Plan to ensure SLNT Outputs are deliverable and take advantage of public sector funding and support.
- 2.1.3 Working to support the *Consultant*, the SSM will help to co-ordinate the various agencies and organisations (including Sector Skills councils, Department for Work & Pensions, National Apprenticeship Service, Skills Funding Agency etc) that offer skills or employment funding, into one integrated programme for the supplier.
- 2.1.4 The SSM is available to support the *Consultant* throughout the duration of the Framework Agreement.

2.2 *The Consultant's SLNT Coordinator*

- 2.2.1 It is a requirement of the Framework Agreement for the *Consultant* to appoint a SLNT Coordinator to manage the implementation of the SLNT Delivery Plan.
- 2.2.2 TfL expects the duties of the SLNT co-ordinator will include:
- Ensuring that the SLNT requirements are met
 - Acting as primary point of contact for TfL's Supplier Skills Manager
 - Managing sub-consultant compliance
 - Collection and presentation of the monitoring information including the monthly SLNT report
- 2.2.3 The role of the SLNT Co-ordinator is not required to be an exclusive appointment and may be combined with other duties.

3 Initial SLNT Delivery Plan

- 3.1 The Initial Strategic Labour Needs and Training Delivery Plan should be completed to demonstrate how the Consultant will deliver the required SLNT outputs. The plan is comprised of two components:
- a) Strategic Labour Needs and Training Activity Breakdown
 - b) Strategic Labour Needs and Training Method Statement

3.2 *SLNT Activity Breakdown*

- 3.2.1 The SLNT Activity Breakdown should show the Consultant's proposed SLNT activity to achieve the required SLNT outputs across the term of the Framework Agreements. The SLNT Activity Breakdown shall:
- b) Be prepared using the tables provided as Attachment 1.
 - c) Be constructed:

- In relation to the bidder's labour and/ or training plan
- In relation to each year of the Framework Agreements

3.3 SLNT Method Statement

3.3.1 The SLNT Method Statement should provide details of the SLNT activities the Consultant proposes to implement, as stated in the SLNT Activity Breakdown.

3.3.2 All elements of the questions should be addressed in the response.

4 SLNT: An Example

4.1 TfL has provided the following example to clarify the provisions of 1.1 – 1.8.2 above.

4.2 A supplier is bidding for a services contract with a value of £20 million over 4 years, and therefore has a requirement to delivery 20 SLNT outputs over the duration of the contract.

4.3 50% of the outputs must be from one of the Priority Activity Areas; this means that 10 of the SLNT outputs must be either an apprentice start, workless job start, workless graduate job start or apprentice start (existing staff). To meet these outputs the supplier has decided to:

- Recruit three new apprentices onto a two year apprenticeship framework; recruiting 2 apprentice in Year 1, and the next apprentice in Year 3 (3 apprentices x 2 years = 6 SLNT priority outputs)
- Recruit 4 new staff from a workless background (4 SLNT priority outputs)
- Deliver 5 educational engagement activities with local schools per year (5 days x 4 years = 20 days = 1 SLNT output)
- Offer 4 x 2 week placements to local unemployed young people across Year 2 and Year 3 (4 x 10 days = 40 days = 2 SLNT outputs)
- Recruit an extra 7 staff onto the contract (4 SLNT outputs).

6.4 The supplier's proposed SLNT Activity Breakdown is therefore set out in Table 3:

Table 3

SLNT Activity Breakdown - An Example								
SLNT Activity Area	Priority Output	Year 1	Year 2	Year 3	Year 4	Totals	Cross Check	
							SLNT Value	SLNT Totals
Apprenticeships								
- Apprentices Job Start (FTE)	Y	2	2	1	1	6	1	6
- Workless Apprentice Job Start (FTE)	Y					0	1	0
- Apprentice Start (Existing Staff)	Y					0	1	0
Worklessness								
- Workless Job Starts (FTE)		2	2			4	1	4
- Workless Graduate Job Start (FTE)						0	1	0
Educational/Career Support								
- Placement Positions (Days)			20	20		40	20	2
- School Engagement (Days)		5	5	5	5	20	20	1
Job Creation								
- Job Start (non-workless) (FTE)		3	2	2		7	1	7
						Total SLNT Activity		20
						Priority Activities		10

APPENDIX 3 TO SCHEDULE 14

Initial/Agreed SLNT Plan

NOTE TO Consultants: Consultants are required to submit their proposed Strategic Labour Needs and Training Plan in accordance with the requirements described in this Schedule 14. The Initial SLNT Plan will be inserted in this Appendix 3 on award of this Framework Agreement. When the content of such plan is approved by TfL such plan shall become the Agreed SLNT Plan.

APPENDIX 4 TO SCHEDULE 14

Implementation Plan

NOTE TO Consultants: *The implementation plan is required to be undertaken post contract award within the 3 month period specified in clause 2.3 1(B) of this schedule. The implementation plan is designed to provide additional information to TfL that allows the practical implementation of the bidders SLNT requirements, to be undertaken. The format of the implementation is appended below:*

SLNT Implementation Plan

1. Contact Information

TfL Contract

Supplier Skills Manager

Company

Contract Manager

TfL Stakeholder / SRM

SLNT Co-ordinator

Contact Phone Number

Contact Email

Reporting Requirements Quarterly / Monthly / Periodically

Report Period

Implementation Plan Review Date

2. Overview and Background

2.1 - Overview: Please provide an overview of the contract / project to which the SLNT requirements have been applied

2.2 - Method: Please outline how you will deliver your SLNT requirements with particular focus on TfL priority outputs

2.3 - Forecasted Outputs: Please indicate in the table below forecasted SLNT outputs

	Worklessness			New Entrants			Trainee's		Current workforce		Educational Activities
	Apprenticeship (FTE)	Job Starts (FTE)	Placement Positions	Apprenticeship (FTE)	Job Starts (FTE)	Graduates (FTE)	Placement Positions (Nos)	Taster Positions (Nos)	Adult Apprenticeships	Workforce Skills (days)	
Previous Year											
March											
April											
May											
June											
July											
August											
September											
October											
November											
December											
January											
February											
March											
Annual Total	0	0	0	0	0	0	0	0	0	0	0
Future Years											
TOTAL	0	0	0	0	0	0	0	0	0	0	0

2.4 - Milestones: Please detail key milestones related to the delivery of your SLNT outputs

Milestone 1		Milestone 6	
Milestone 2		Milestone 7	
Milestone 3		Milestone 8	
Milestone 4		Milestone 9	
Milestone 5		Milestone 10	

2.5 - Partners: Please detail any partner organisations that will assist you in your SLNT delivery (Organisation and Key Contact)

Partner 1		Partner 6	
Partner 2		Partner 7	
Partner 3		Partner 8	
Partner 4		Partner 9	
Partner 5		Partner 10	

3. Risks: Please detail any risks and associated mitigation measures for the delivery of your SLNT requirements

	Risk	Likelihood	Risk Mitigation
1			
2			
3			
4			
5			

4. Communications: Please outline any planned SLNT communication, events or publications (internal and external) and how TfL will be notified

5. Monitoring: You are required to complete the two monitoring templates attached to this document (Sheets 1 and 2 of this document)

1. **SLNT Monitoring Form** - Outlines SLNT outputs for each reporting period
2. **Job Start Monitoring Form** - Outlines specific information for TfL Priority SLNT outputs

6. Sign Off:

Suppliers SLNT Co-ordinator (Name)	Signature	Date
------------------------------------	-----------	------

TfL Supplier Skills Manager (Name)	Signature	Date
------------------------------------	-----------	------

Implementation Plan Review Date	
---------------------------------	--

APPENDIX 5 TO SCHEDULE 14

Monthly SLNT Monitoring Report Template

Organisation	
TfL Contract / Project	
Date	
SLNT Reporting Period	

SLNT Category	TfL Priority	Numbers				Additional Detail / Information
		Annual Target	Annual Forecast	Outputs this Period	Outputs To Date	
Worklessness						
- Apprentices (FTE)	Y					
- Job Starts (FTE)	Y					
- Placement Positions (Nos)	Y					
New Entrants						
- Apprentices (FTE)	Y					
- Job Starts (FTE)						
- Graduates (FTE)						
Trainee's						
- Placement Positions (Nos)						
- Taster Positions (Nos)						
Current Workforce						
- Adult Apprentices (FTE)	Y					
- Workforce Skills (Days)						
Educational Activities (Days)						

Additional Information
Highlights
Issues / Concerns / Risks

SCHEDULE 15

(Form of Warranty from *Consultant* to Infraco/PFI Contractor)

THIS DEED is made on ● 200●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**"); and
- (2) ● whose registered office is situate at ● (the "**Consultant**").

WHEREAS:

- (A) [The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the *Employer*", which expression shall include its successors in title and assigns) under the public private partnership for the provision of infrastructure maintenance services on the ● Lines]/[The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the *Employer*", which expression shall include its successors in title and assigns) under the private finance initiative for ●].
- (B) By a call off contract dated ● (the "**Contract**") the *Employer* appointed the *Consultant* to design, carry out and complete certain [**Services**] (the "**services**") at ● ("the **Works**").

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
2. The *Consultant* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
3.
 - 3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
 - (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.

- 3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract
4. The *Consultant* further warrants and undertakes to the Beneficiary that:
- (a) subject to clause 2(a), the *services* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) subject to clause 2(a), the *services* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) his designs are integrated with the designs of Others and in particular the Infraco(s) and PFI Contractor(s);
 - (d) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
 - (e) the *services* will be carried out and completed timeously in accordance with the Accepted Programme; and
 - (f) the *services* will not on Completion render the Main Contract Works incapable of being Available.
5. The *Consultant* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the *Consultant* in relation to the *services*. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Consultant's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Consultant* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. To the extent that the intellectual property rights in any and all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Consultant* grants to the Beneficiary 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant*.

8. The *Consultant* agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the *Consultant's* expense to provide the Beneficiary with a set of all such material on Completion of the *services*.
9. If called upon to do so by the Beneficiary, the *Consultant* shall provide the Beneficiary with such information relating to the *services* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.
10. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary for the purpose specified in Recital (A), or to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Consultant* being required and the *Consultant* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Consultant*. For the purposes of this clause, "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary. The *Employer* is a member of the TfL Group.
11. The *Consultant* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Consultant* including without limitation any remedies in negligence.
- 14.1 The *Consultant* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Consultant* from the *Employer*.
- 14.2 The *Consultant* shall be entitled in any actions or proceedings brought by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
15. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 125 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
- 17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18. **IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

**[EXECUTED AND DELIVERED AS
A DEED by
[THE BENEFICIARY] acting by:**

Signature of Director
 Print name of Director
 Signature of Director/Secretary
 Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT] acting by:**

Signature of Director
 Print name of Director
 Signature of Director/Secretary
 Print name of Director/Secretary

SCHEDULE 16

(Form of Warranty from Subconsultant to Infraco/PFI Contractor)

THIS DEED is made on • 200•

BETWEEN:

- (1) • whose registered office is at • (the "**Beneficiary**")
- (2) • whose registered office is situate at • (the "**Subconsultant**"); and
- (3) • whose registered office is situate at • (the "**Consultant**").

WHEREAS:

- (A) [The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the *Employer*", which expression shall include its successors in title and assigns) under the public private partnership for the provision of infrastructure maintenance services on the • Lines.]/[The Beneficiary has entered into a contract with London Underground Limited whose registered office is at 55 Broadway London SW1H 0BD ("the *Employer*", which expression shall include its successors in title and assigns) under the private finance initiative for •.]
- (B) The *Consultant* has entered into a call off contract dated • (the " **Contract**") with the *Employer* for the carrying out of certain [**Services**] (the "**services**") at • ("the **Works**").
- (C) The Subconsultant has been invited to design certain parts (the "**design works**") of the *services* and [has entered] [will shortly enter] into a deed of appointment with the *Consultant* (the "**Appointment**") for the *design works*.

NOW IT IS AGREED:

19. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) "Infraco(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the public private partnership for the provision of infrastructure maintenance services on the Underground Network;
 - (c) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
 - (d) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;

- (e) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
20. The Subconsultant warrants and undertakes to the Beneficiary that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Consultant* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
- 21.
- 21.1 The Subconsultant warrants and undertakes to the Beneficiary that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:
- (a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
 - (b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
- 21.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.
22. The Subconsultant further warrants and undertakes to the Beneficiary that:
- (a) subject to clause 2(a), the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the Beneficiary, the *Consultant* and others (and in particular the Infraco(s) and PFI Contractor(s));
 - (d) the *design works* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards; and

- (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
23. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[2/5 million] [in respect of each and every claim and in the aggregate] which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
24. As and when reasonably requested by the Beneficiary, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
25. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Consultant*, the Subconsultant grants to the Beneficiary 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 Subconsultant incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of the Works provided always that the Subconsultant 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 freely transferable to third parties without the prior consent of the Subconsultant.
26. The Subconsultant agrees:
- (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
- (b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.
27. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
28. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary for the purpose specified in Recital (A), or to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

29. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
30. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *services*.
- 31.1 The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.
- 31.2 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.
32. The rights and benefits conferred upon the Beneficiary to any person providing finance to the Beneficiary for the purpose specified in Recital (A) by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
33. The *Consultant* and *Employer* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
34. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 35.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with [Clause 125] of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 35.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 35.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
36. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
37. **IN WITNESS** whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

[EXECUTED AND DELIVERED AS

A DEED by

[THE BENEFICIARY] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE SUBCONSULTANT] acting by:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT] acting by:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



Master Project Database

Desk Reference

September 2007

Contents

PREFACE – OVERVIEW AND STRATEGY OF THE MPD	V
Why was the MPD created?.....	v
The Benefits of the MPD.....	v
Primary Components of the MPD	vi
Key Outputs of the MPD	vi
1 YOUR PROJECT AND THE MPD.....	1
1.1 Software.....	1
1.2 Work Breakdown Structure.....	1
1.3 Activities and Milestones	1
1.4 MPD Codes and Planning Packages	3
1.4.1 Global Activity Codes	3
1.4.2 PPID - Planning Package Identifier Code	3
1.4.3 LOCN - Location Code.....	4
1.4.4 LIFE - Lifecycle Code.....	6
1.4.5 RESP - Responsibility Code.....	6
1.4.6 MPD Milestone Codes	8
1.4.7 ESMA - Engineering Safety Management Code	8
1.4.8 FUND - Funding Source Code	9
1.4.9 Project Codes.....	9
1.4.10 Planning Packages	9
1.5 Budget Loading.....	10
1.6 Interfaces	11
1.7 Project Baseline	11
1.8 Project Status.....	11
1.8.1 Proposed Project Programmes	12
1.8.2 Initial Project Programmes	12
1.8.3 Active Project Programmes.....	13
1.8.4 Complete Project Programmes	13
1.8.5 Closed Project Programmes	13
1.8.6 Discontinued Project Programmes.....	13
1.9 Progress	13
1.9.1 Data Date	13
1.9.2 Physical % Complete	14
1.9.3 Actual Costs.....	14
2 YOUR SUBMISSIONS TO THE MPD	15
2.1 Process Map.....	15
2.2 Master Project List.....	15

2.2.1	Master Project List Updates	16
2.3	Submission Process.....	16
2.3.1	Submission Cycle.....	17
2.3.2	Data Validation.....	18
2.3.3	Validation Categories	19
2.3.4	Validation Areas	20
2.3.5	MPD Holding Area	20
2.3.6	MPD Accepted Area.....	20
2.3.7	MPD Failed Area.....	20
2.3.8	MPD Archive Area.....	21
3	USING THE MPD	22
3.1	MPD Website	22
3.1.1	Logging On To the Website.....	22
3.1.2	Finding Your Project.....	23
3.1.3	MPD Project Summary Page	24
3.1.4	Project Gantt Chart	24
3.1.5	Milestone Summary Chart.....	25
3.1.6	Earned Value and 'S' Curve Reports	25
3.1.7	Earned Value Grid and Commentary	26
3.1.8	Interfaces	27
4	FINDING HELP / GLOSSARY.....	28
4.1	Finding Help	28
4.2	Glossary.....	28
4.2.1	Glossary of Terms and Abbreviations	29

Table of Figures

Figure 1.1 - Work Breakdown Structure	1
Figure 1.2 - Sample Project data in MPD (Example Project X)	2
Figure 1.3 - Global Activity Codes.....	3
Figure 1.4 - Location Code Hierarchy	4
Figure 1.5 - 3 rd Level Location code identifiers	5
Figure 1.6 - Example Location Code Scheme	5
Figure 1.7 - Example use of Location Codes	5
Figure 1.8 - Example use of Splitting activities for Location Codes.....	6
Figure 1.9 - Lifecycle Codes	6
Figure 1.10 - Lifecycle Gantt Chart	8
Figure 1.11 - MPD Milestones Codes	8
Figure 1.12 - Funding Source Code.....	9
Figure 1.13 - Compilation of Planning Package.....	10
Figure 1.14 - Six categories of project programmes	12
Figure 2.1 - Submissions Process Map	15
Figure 2.2 - Master Projects List view on the MPD Website	16
Figure 2.3 - Submissions Timetable.....	18
Figure 2.4 - Validation Summary.....	19
Figure 2.5 - Validation Categories.....	20
Figure 3.1 - Log-On Screen	22
Figure 3.2 - Finding Your Project	23
Figure 3.3 - Change Search Criteria	23
Figure 3.4 - MPD Project Summary Page.....	24
Figure 3.5 - Project Gantt Chart.....	24
Figure 3.6 - Milestone Summary Report	25
Figure 3.7 - Earned Value 'S' Curve.....	26
Figure 3.8 - Earned Value Grid and Commentary.....	26
Figure 3.9 - Interface Setup Screen	27

Preface – Overview and Strategy of the MPD

Why was the MPD created?

The Master Projects Database (MPD) is a database of project information which has been developed by London Underground (LU) for the purpose of facilitating the co-ordination of works, projects and programmes between all parties carrying out work on the Underground Network.

These parties, referred to herein as MPD Data Suppliers, are required to maintain and update project programmes at regular reporting intervals in a format and level of detail consistent with the requirements described in this document.

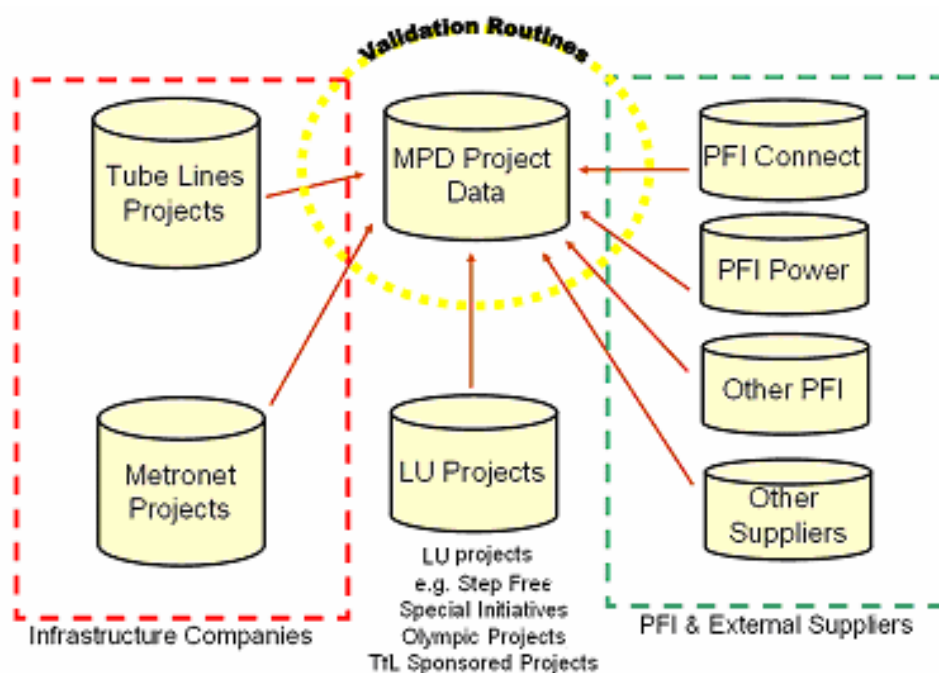


Figure P-1 - MPD Data Suppliers

The Benefits of the MPD

- Co-ordination of works across the network
- Information to support business decisions
- Identify and communicate critical business issues
- Tracking of milestones
- Single source of project progress and forecast data
- Enables management of interfaces

Primary Components of the MPD

The MPD comprises three separate but closely integrated components that work together to provide the overall MPD system functionality:

1. **The MPD Primavera Database** - a planning tool which uses critical path method programmes as the primary source of data stored in the MPD.
2. **The MPD Data Warehouse** - where data is validated, controlled, analysed and archived as appropriate and from which the periodic reports are generated.
3. **The MPD Web Site** - which is hosted on the LU Intranet and provides the general user interface to the MPD project data and reports.

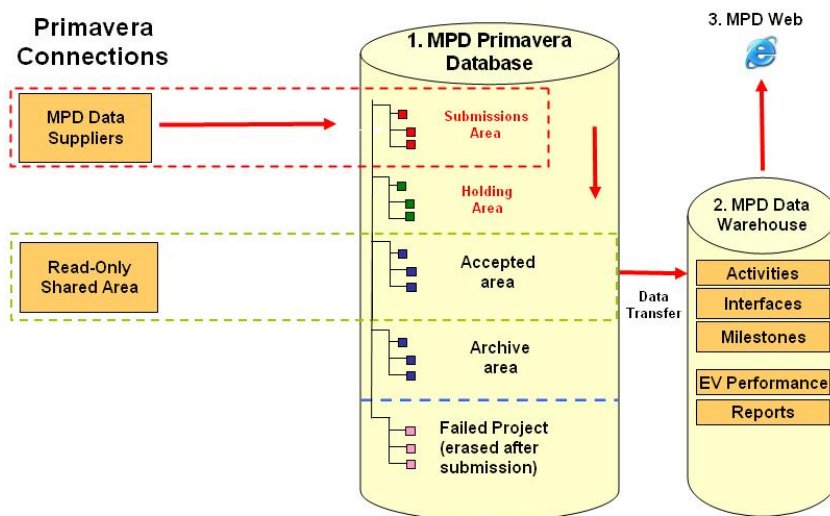


Figure P-2 - Primavera Enterprise and the MPD

Key Outputs of the MPD

Gantt Charts

A visual representation for project activities, milestones and interfaces phased over time:

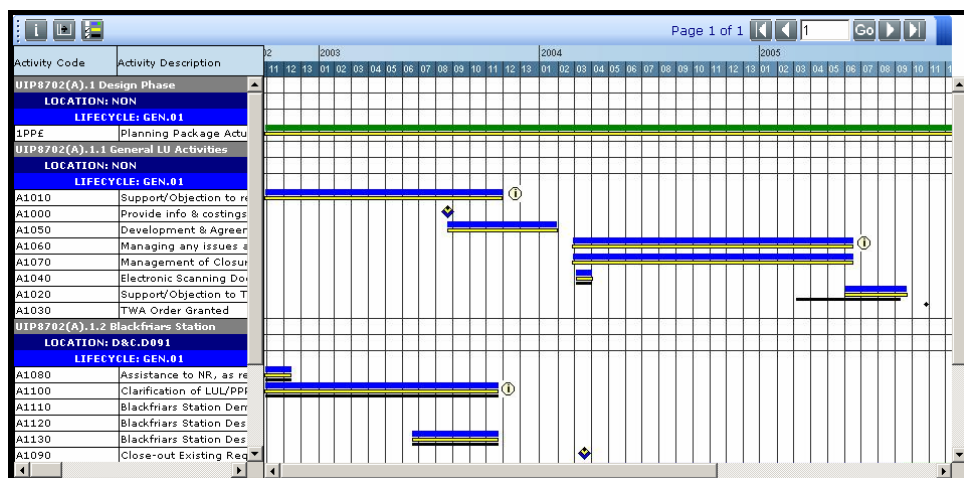


Figure P-3 - Gantt Chart Example

Project Summary

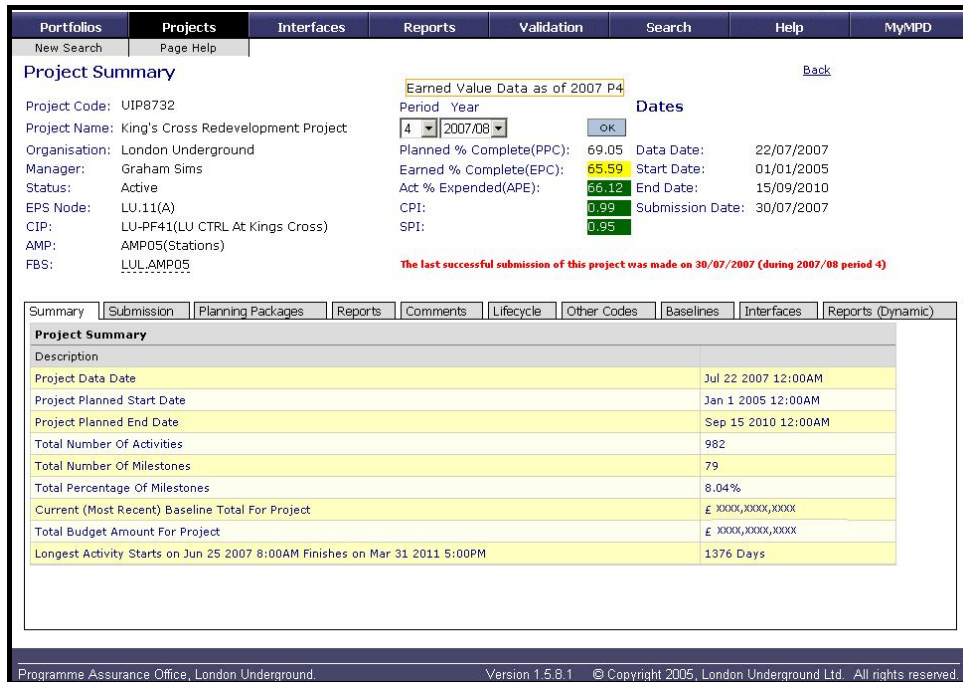


Figure P-4 Project Summary Page

Earned Value Reporting

EV Reporting provides typical schedule and cost performance information:

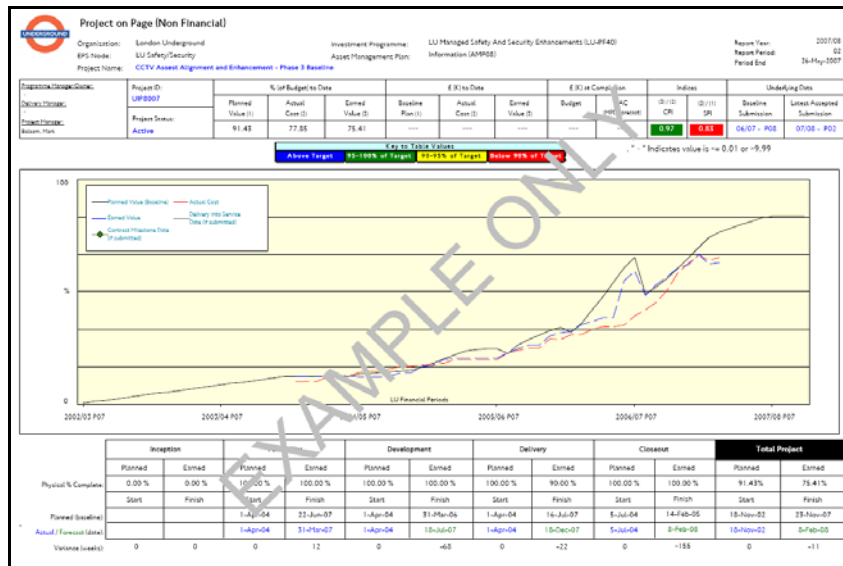


Figure P-5 Example of a 'Project on a Page Report-Non Financial'

Programme Level Reporting

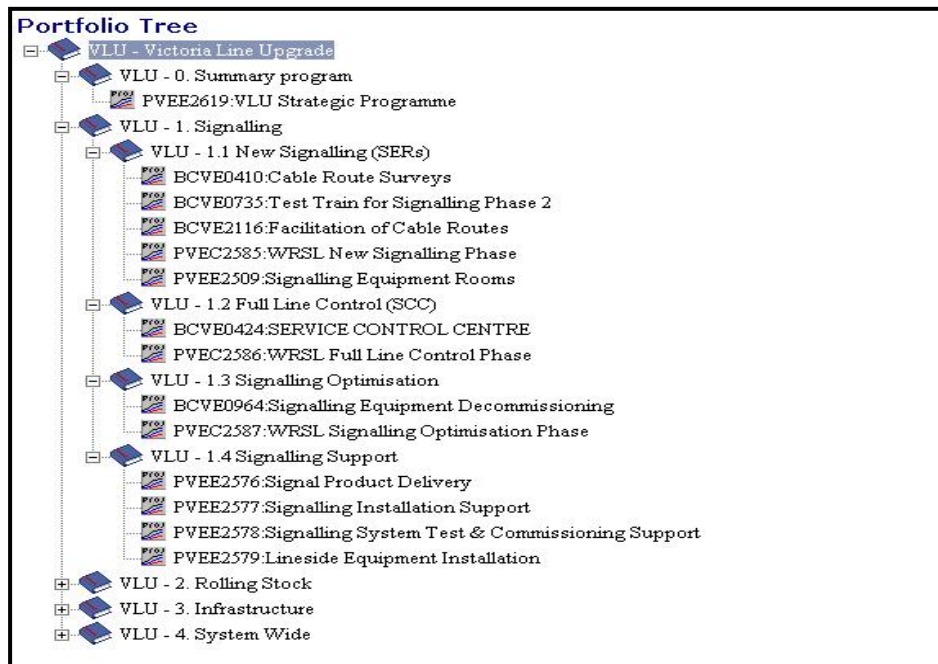


Figure P-6 Example of an MPD Portfolio

Portfolio Delivery Measurement
 LU-PF32 LU Modernisation and Refurbishment - PPP BCV
 LU Modernisation and Refurbishment - PPP BCV (LU-PF32) MPD generated CIP portfolio

Report Year: 2007/08
 Report Period: 02
 Period End Date: 26-May-2007

Project	Description	Status	% of budget to date			E(K) to date			E(K) at completion		Indices		Underlying Data	
			Planned Value (1)	Actual Cost (2)	Earned Value (3)	Baseline Plan (1)	Actual Cost (2)	Earned Value (3)	Budget	EAC (100 forecast)	CI (1)	SP (2)	Baseline Submission	Latest Accepted Submission
SCVA3375	Leyton Station Refurbishment	Complete	100.00	106.41	100.00						0.94	1.00	04/07 P12	07/08 P01
SCVA2306	Shepherd's Bush Station Modernisation	Complete	100.00	945.89	501.09						0.81	0.81	05/06 P13	04/07 P13
SCVA0661	Orford Circus Etc. 3 and 9 Refurbishment	Complete	100.00	98.35	86.92						0.81	0.81	04/07 P06	04/07 P10
SCVE2101	Addressing Surveys of V/L Line Stations - To Close Out	Complete	100.00	100.00	100.00						1.00	1.00	06/06 P07	04/07 P05
SCVF0413	Walthamstow Car Subway Interchange Site	Complete	100.00	99.99	100.00						1.00	1.00	04/07 F11	04/07 F11
SCVD0907	Refurbishment of Warren St 7.5 Bond St 3	Complete	100.00	100.00	100.00						1.00	1.00	04/07 P06	04/07 P06
SCVA0956	B275 Centre Line 11 HD Excitators In-rush Replacement	Complete	100.00	100.00	100.00						1.00	1.00	04/07 P06	04/07 P13
SCVA0650	Bond St. Etc's 6 and 7 Refurbishment	Complete	98.99	117.15	103.41						0.99	1.00	04/07 P01	04/07 P10
SCVA2220	Seven Sisters Etc. 5 Refurbishment	Complete	100.00	120.43	101.09						0.84	0.84	04/07 P08	04/07 P10
SCVA2227	Warren St. Etc's 4 and 6 Refurbishment	Active	13.36	1.99	1.44						0.71	0.11	07/08 P01	07/08 P02
SCVA2228	Warren St. Etc. No. 9 Refurbishment	Active	1.41	0.65	0.36						1.00	0.81	04/07 P13	07/08 P02
SCVA0916	Worstead Excitators 1 & 3	Active	100.00	94.56	99.99						1.04	1.00	04/07 P13	07/08 P02
SCVA2209	Chancery Lane Etc. No. 3 Refurbishment	Active	100.00	117.34	129.46						1.10	1.00	04/07 P13	07/08 P02

Note:
 1. + Indicates Reprofile project as source of baseline.
 2. * Indicates an underlying data issue. Please refer to the Ineligible Project Report for more information.
 3. - Indicates performance indices are outside valid limits - 0.01 or + 9.99
 4. Where a valid submission has not been made for the reporting period, the latest previously accepted submission will be rolled forward.

09-Jun-2007 10:19 Final Page 9 of 13

Figure P-7 Example of a 'Portfolio Delivery Measurement Summary Report'

How to Use the MPD Desk Reference

The main sections of this desk reference describe in greater detail the Master Project Database application. It assumes the reader has a working knowledge of project planning/management. Section 1 describes the data requirements for a Primavera project file to be submitted. Section 2 describes the submission process and the validation rules. Section 3 describes how data can be accessed from the MPD web site and how project data is communicated.

1 Your Project and the MPD

1.1 Software

MPD Data Suppliers will use Primavera Enterprise (the current version is Primavera 5.1) to provide the project information in a format and level of detail consistent with the requirements of the MPD.

1.2 Work Breakdown Structure

Every Project programme shall utilise the Primavera Enterprise functionality for the Work Breakdown Structure at an appropriate level of detail to enable clear identification of the delivery elements of scope. A clear WBS is particularly important in the MPD because it is the primary method of organising Gantt chart views visible to other Data Suppliers.

The exact number of levels and design of each WBS is within the governance of the MPD Data Supplier.

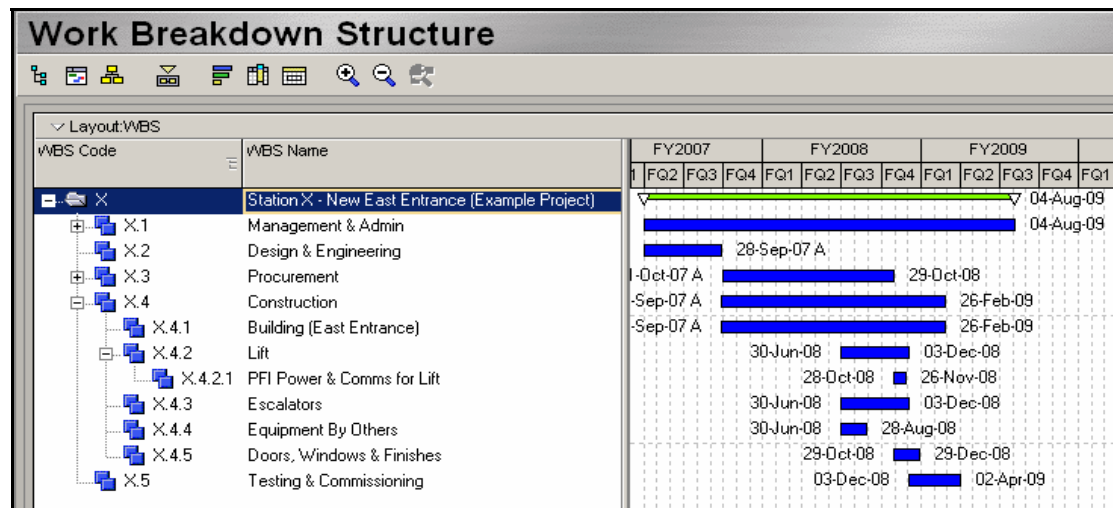


Figure 1.1 - Work Breakdown Structure

1.3 Activities and Milestones

A project shall have sufficient activities and milestones to understand, communicate and co-ordinate the scope of the project at different management levels.

See Figure 1.2 - Sample Project data in MPD (Example Project X)

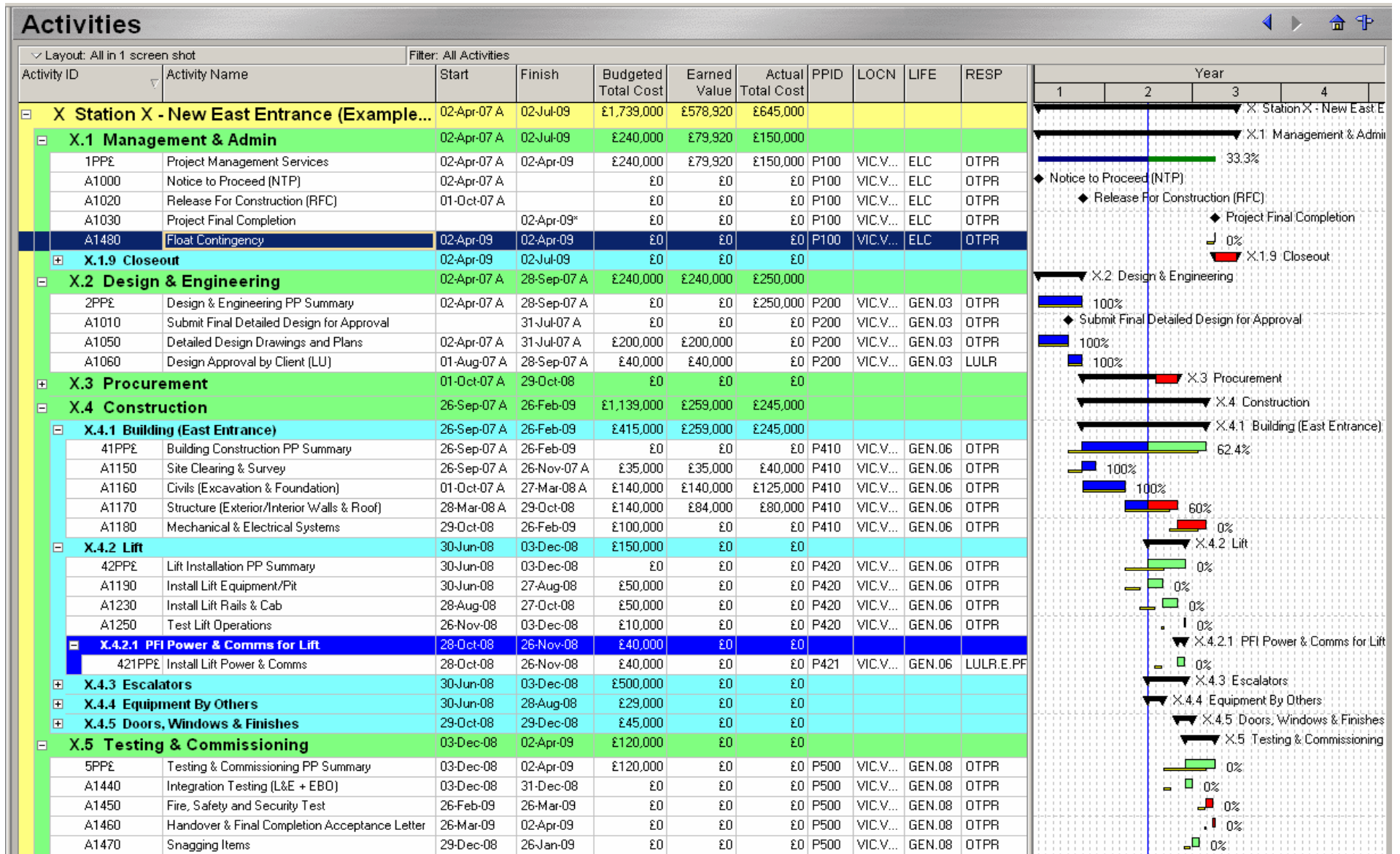


Figure 1.2 - Sample Project data in MPD (Example Project X)

1.4 MPD Codes and Planning Packages

1.4.1 Global Activity Codes

The MPD uses global activity codes to categorise the activities for sorting, grouping or filtering by key attributes. Through the life of the MPD there will be hundreds of contractors using many different ways to describe their work. The MPD global codes provide all MPD Data Suppliers and users with a common language for categorising work. All programmes imported into the MPD must have these codes correctly applied to all activities in order to comply with the MPD Submission and validation requirements.

Activity Code	Description and application
PPID	Planning Package Identifier code identifies all the activities in a Planning Package.
LOCN	Location code identifies the physical location of the work/activities on the Underground Network.
LIFE	Lifecycle code identifies the particular phase of a project that an activity occurs in.
RESP	Responsibility codes identify the parties responsible for carrying out an activity.
MPD_Milestone	MPD milestone code identifies project or programme critical deliverables.
ESMA	Engineering Safety Management code identifies Safety Management scope.
FUND	Funding source code identifies ISC, PFI or UIP funding source.

Figure 1.3 - Global Activity Codes

Each of these codes has a pre-defined set of values that must be assigned to the activities in each project. The codes are managed via a change control process and therefore can only be modified by the MPD Administrator. MPD Data Suppliers may create as many other Activity Codes (global or project-specific) as required for their own purposes within their own Primavera Enterprise working environment.

NB: All Global Activity Codes which are hierarchical must be applied at the lowest level of the hierarchy.

1.4.2 PPID - Planning Package Identifier Code

Primavera Enterprise uses activity level attributes such as codes, budgets and durations. Although the MPD uses this activity level data for reporting it also uses summarised data. In particular, budget, actual cost and percent complete data are only reported at a summarised level called a Planning Package. The method of summarising this financial data is by grouping like activities using the Planning Package Identifier Code. The code is a series of values ranging from "P001" through "P999". The code is not meant to assign a

title or description to the Planning package only to indicate that all activities which share the code are financially associated. Read more about Planning Packages in Section 1.4.10.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of how PPID values are assigned.

1.4.3 LOCN - Location Code

Location Codes identify the physical location of the work/activities on the Underground Network and have a hierarchical structure. The Location Codes used in the MPD follow the LU Standard Codes for locations, (e.g. Location Coding Structure (LCS) formerly BRS codes LU Standard E1115). Figure 1.4 shows an example of a location code and its hierarchy:

Location Code Hierarchy		
BAK.	B063.	NB
LEVEL 1	LEVEL 2	LEVEL 3

Figure 1.4 - Location Code Hierarchy

The three hierarchical parts as of a location code are as follows:

- Level 1 identifies the London Underground Line; e.g. D&C for District and Circle Line.
- Level 2 the second level identifies the non-track or trackside area between adjacent stations, at stations, in depots, sidings or major junctions; e.g. DO91 for Blackfriars Station (this is the same as the LU Level 1 LCS Code).
- Level 3 identifies either:
 - The direction of travel (obtained from the LU 'Traction Current Station Diagrams')
 - The station areas (other than the platforms & associated track) within a station envelope. (This is the same as the LU Level 3 LCS Code.)
 - Only one Location Code may be assigned to an activity. If an activity spans several locations, e.g. an activity whose location encompasses both track directions, then the activity must be divided into smaller activities with one Location Code assigned to each. The figures below show example Location Codes.

Character	Meaning
NB	Northbound
EB	Eastbound
SB	Southbound
WB	Westbound
NET	Network wide
XX	Infrastructure (All station areas other than platforms & track)
NON	Not on the LU Network

Figure 1.5 - 3rd Level Location code identifiers

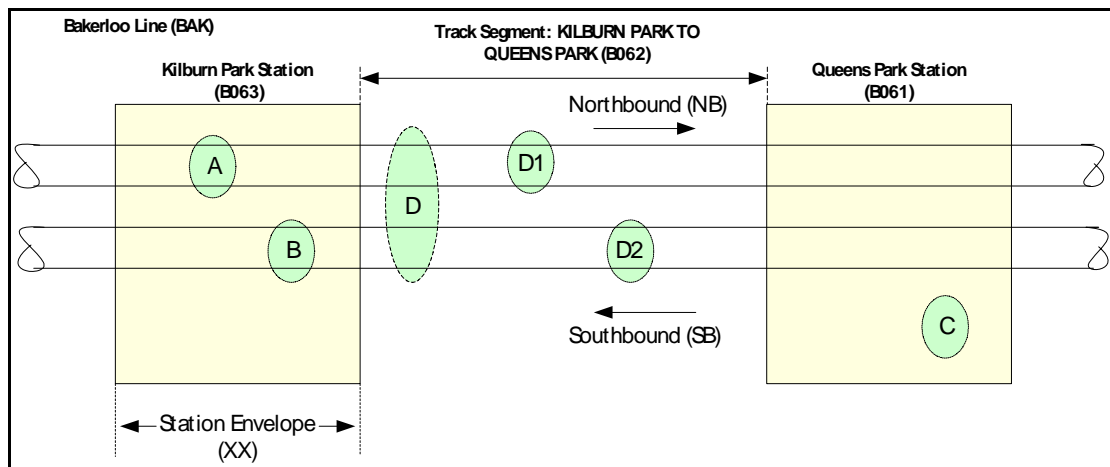


Figure 1.6 - Example Location Code Scheme

Area	Location Code
A	BAK.B063.NB
B	BAK.B063.SB
C	BAK.B061.XX

Figure 1.7 - Example use of Location Codes

Work represented in the diagram as 'D' cannot be entered as a single activity as it spans more than one location. Therefore activity D must be split into two activities as follows:

Area	Location Code
D	BAK.B062.NB
D	BAK.B062.SB

Figure 1.8 - Example use of Splitting activities for Location Codes

1.4.4 LIFE - Lifecycle Code

MPD Data Suppliers are free to use whichever lifecycle model is most appropriate to represent activities in their specific projects. However, the use of a particular lifecycle model and its associated code sets must be consistent within any one project. Where a hierarchical structure is used, activities must be coded at the lowest practical level to accurately reflect the activity scope of work. Activities must be created at a level of detail allowing all Lifecycle Codes to be applied throughout a project programme.

The duration of a lifecycle is determined by its activities. Since milestones do not represent work, Lifecycle Codes applied to Milestones are ignored by the MPD when calculating total lifecycle duration.

Activity Code TfL Reporting Code	Generic Code	Description
INCEP		
FEASI	GEN.01	Requirements Definition, Feasibility Assessment & Business Case
DEVEL	GEN.02	Specification
	GEN.03	Design/Engineering
	GEN.04	Design Acceptance
DELIV	GEN.05	Procurement
	GEN.06	Installation
	GEN.07	Integration
	GEN.08	Commissioning
CLOSE	GEN.09	Service Acceptance
WHOLE	ELC	Entire Lifecycle

Figure 1.9 - Lifecycle Codes

1.4.5 RESP - Responsibility Code

The MPD defines responsibility codes that are used to identify the parties responsible for carrying out respective activities and supplying the relevant resources to achieve this as follows:

BCVR	- used by Metronet Rail BCV to identify all its own activities
JNPR	- used by Tube Lines Limited to identify all its own activities
SSLR	- used by Metronet Rail SSL to identify all its own activities
CONN	- used by PFI Connect to identify all its own activities
POWR	- used by PFI Power to identify all its own activities
PRES	- for all PFI Prestige activities
OTPR	- used by any other organisations (Other Third Parties) to identify their own activities
LULR	- for all London Underground activities, using an appropriate sub-code for activities to be undertaken by LU (LULR.I – Internal) or activities to be assigned to another organisation (LULR.E – External) using the code hierarchy as described below.

All MPD Data Suppliers other than LU must select either their own organisation RESP code for all activities delivered by their own organisation or an LU Responsibility code for any other activity. Therefore a particular data supplier must not assign another party's RESP code value to any activities within their own programme.

The RESP Code and Co-ordination of Works

Some of the most important and useful functionality that the MPD provides is the facility for users to co-ordinate their programmes and manage programme interfaces with others at an activity level.

This functionality depends upon the Responsibility Code. It is therefore essential that all activities in a project programme have accurately assigned Responsibility Codes.

The London Underground Responsibility Codes (LULR)

The LULR Responsibility code is hierarchical and should be coded at the lowest possible layer. The base level comprises 3 sets of sub-codes as follows:

- LULR.I (Internal) Responsibility Codes refer to and are assigned to specific activities for which LU uses its own resources and over which LU has direct control. In general, these codes are also referred to as “LU Obligations”
- LULR.E (External) Responsibility Codes refer to and are assigned to specific activities that LU will facilitate the co-ordination of works with other parties involved in the works on the Underground Network. In general, these codes are also referred to as Interfaces and should be coded to the 5th level.
- LULR.P (Procurement) Responsibility Codes refer to activities associated with the procurement process which leads to an LULR.E delivery milestone.

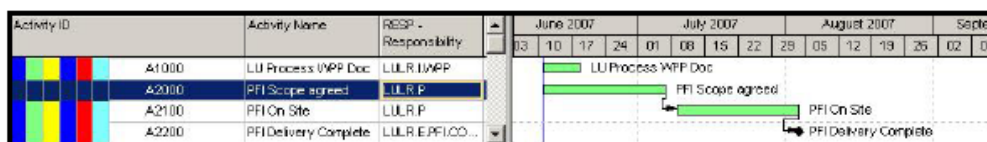


Figure 1.10 - Lifecycle Gantt Chart

1.4.6 MPD Milestone Codes

The MPD Milestone Codes allow data suppliers to identify key dates to increase visibility and support/improve performance analysis across the business. See Figure 1.11 - MPD Milestones Codes for the current list of MPD Milestone Codes.

MPD Milestone Code	Milestone Description
WPP	Works Package Plan Approval by LU
PAP	Project Assurance Plan Approval by LU
DSN	Commence Detailed Design
CA	Compliance Approval by LUL
CTA	Contract Award by LUL
SOS	Start On Site
PRC	Approval of Practical Completion Submission by LU
DIS	Delivery into Service
FOS	Finish on Site (Snagging List Complete)

Figure 1.11 - MPD Milestones Codes

1.4.7 ESMA - Engineering Safety Management Code

Engineering Safety Management Activity (ESMA) is the process of safety risk management specified with regards to physical, organisational or process change to the LU Network. ESMA Codes identify activities that are involved in the development and progression of the Engineering Case for Safety for the purpose of safety approval. The ESMA Code is required to enable clear communication of the Safety Management scope and process.

There are two possibilities/types of ESMA code:

ESMA - Applied to activities that are involved in the development and progression of the Engineering Case for Safety for the purpose of safety approval.

NA - (Not applicable), which is applied to all other activities.

1.4.8 FUND - Funding Source Code

NOTE: This is not yet implemented (as of September 2007)

This code allows clear identification of scope associated with a specific funding source. In projects with multiple funding sources, each activity must select one of three possible code values (ISC, PFI or UIP) for funding source. See Figure 1.12 - Funding Source Code:

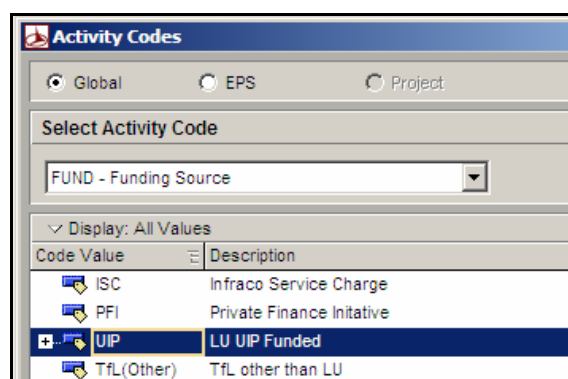


Figure 1.12 - Funding Source Code

1.4.9 Project Codes

Every project must have an AAMP_FBS (Annual Asset Management Plan Financial Breakdown Structure) code assigned. This allows the grouping of projects by asset management type.

The method of communicating to the MPD that a project is to be rebaselined is via the Baseline_Period project code. A project re-target (similar to a rebaseline) is communicated by adding "Base_" as a prefix to the Project ID before submission to MPD.

1.4.10 Planning Packages

The Planning Package is a summary of the time frame, budget, actual costs and physical percent complete data associated with a group of one or more activities. The Planning Package Identifier Code (PPID) is discussed in section 1.4.2 and is the method used to communicate this grouping to the MPD.

The Planning Package forms the basis from which progress analysis is reported.

Planning Packages are typically formed by grouping activities together that have mutually common global code values (as suggested in Figure 1.13 - Compilation of Planning Package).

<p>PLANNING PACKAGE = WBS + LOCN + LIFE + RESP + FUND</p> <p>(Asset) + (Station) + (Phase) + (DeliveryOrg) + (FundSource)</p> <p>What? Where? When? Who? How?</p>
--

Figure 1.13 - Compilation of Planning Package

There are four sets of data associated with Planning Packages which are used for calculation and summarised reporting as follows:

Time Frame

The Planning Package takes on the earliest start and the latest finish dates of the group of activities that it represents.

Budget

The budget associated with a Planning Package is the sum of activity level budgets in the group. The MPD stores this sum in one cumulative budget figure per period through the entire time frame of the Planning Package.

Physical Percent Complete

The physical percent complete associated with a Planning Package is the aggregate sum of earned value for activities within the group divided by the total budget for the Planning Package.

Actual Cost

The actual cost associated with a Planning Package is calculated by the sum of the actual costs reported on each activity in the group.

1.5 Budget Loading

Primavera Enterprise provides many options for loading budget in a project. In the MPD, budget loading of the project is carried out by the data suppliers and therefore may be subject to their protocol with one exception.

The budget must NOT be loaded by assigning a unit rate pound value to a resource and then applying multiple units of the resource to an activity.

The MPD utilises the Primavera Enterprise field labelled 'budgeted total cost' in calculations which measure the performance or trends of a project. The ability to predict future performance of a project is enhanced when the project budget is spread across many activities which have durations that are less than two reporting periods. The total cost should reflect the cost of all work in the project including subcontractors.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of budget loading.

1.6 Interfaces

The term "Interface" is used to describe an activity or milestone where one organisation has identified a dependency on, or expectation of, another organisation to perform work or supply a deliverable. Both the organisation performing the work and the organisation receiving the deliverable must represent this 'interface' in their own project. The MPD Interface functionality is largely based on the correct use of the RESP (Responsibility) codes LULR.E (External) and LULR.P (Procurement) as described above. In addition the following requirements apply.

Summary of Requirements:

1. Final activity in a logic-string is coded to the lowest level as an interface using 'LULR.E...'.
2. Key procurement activities leading to the interface must be coded using 'LULR.P'
3. All Interface activities must be coded at the lowest RESP code level available.

The MPD Interface tool assists users in managing the relative status of the interface activities.

1.7 Project Baseline

The MPD uses baseline budget loaded projects as the basis for analysing and reporting progress. By default, the project baseline is taken to be the first accepted submission into the MPD. The supplier may change or modify the Baseline Programme by informing LU at time of submission. The budgeted total cost of the current schedule must remain equal to the baseline.

Acceptance of the Baseline Programme by LU shall not relieve the Supplier of any duties or obligations under the Contract.

1.8 Project Status

The MPD represents the MPD Data Supplier's total scope and budget for capital works in the form of project programmes. In order to facilitate the co-ordination of works all projects are to be submitted to the MPD. The level of detail and frequency of submission are determined by the Project Status.

There are 6 categories of project status in the MPD:

- **Proposed**
- **Initial**
- **Active**
- **Completed**
- **Closed**
- **Discontinued**

A summarised view of the six types of project programmes in the MPD is shown in Figure 1.14 and the conditions that define the status of each project programme are described in the following paragraphs.

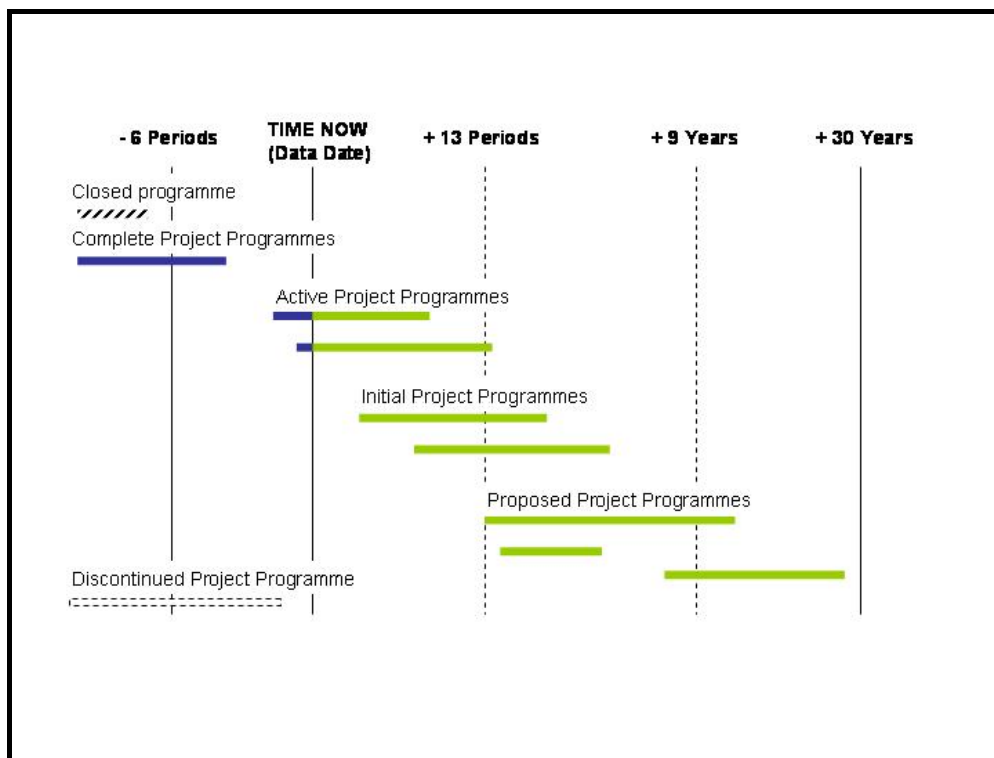


Figure 1.14 - Six categories of project programmes

1.8.1 Proposed Project Programmes

A Proposed project programme is a representation of a project that is planned to start after the forthcoming thirteen periods (to commence in next or future financial year).

With respect to Infraco PPP contracts, its purpose is to identify capital projects planned to be undertaken in accordance with the Annual Asset Management Plan (AAMP). It is expected that the sum of the Proposed, Initial and Active project programmes for the forthcoming nine years will be equal to the cost data submitted in the MPD Data Suppliers' AAMP.

1.8.2 Initial Project Programmes

The purpose of an Initial Project Programme is to highlight resources required by LU and others for works that may impact the MPD Data Supplier's delivery.

An Initial project programme is a representation of a project that is planned to start within the forthcoming thirteen periods and contains, as a minimum, a single activity for works to be performed by the data supplier and a detailed plan containing a forecast or long-term view of activities that require LU or other third party resources.

1.8.3 Active Project Programmes

An Active project programme is a detailed representation of the total scope and budget for a Project which has started.

1.8.4 Complete Project Programmes

A Complete project programme is a representation of a Project that has all activities complete. Its purpose is to record the fact that there will be no further progress on a project. An Active Project Programme becomes a Complete Project Programme in the MPD when all its activities are 100% complete. By definition Complete Project Programmes are not updated unless actual cost data changes prior to the project being Closed.

1.8.5 Closed Project Programmes

A closed project programme is a representation of a Project that has all activities complete and is financially closed in the data suppliers accounting system. Its purpose is to record that there will be no further updates of a project. An Active Project Programme becomes a Closed Project Programme in the MPD when all its activities are 100% complete and when the final budget, earned value and actual cost are equal. In addition the data supplier must notify MPD Admin of their wish to close the project via the Master Project List.

By definition, Closed Project Programmes can no longer be updated.

NB: Notification to MPD Admin to close a project programme in the MPD should be one period after the final submission (this **must** be first approved by the PAO Level 1 and sent to MPDAdmin@tube.tfl.gov.uk). Otherwise the project will be closed in the MPD just prior to the final submission.

1.8.6 Discontinued Project Programmes

A Discontinued Project Programme is a representation of a Project that should never have been submitted to the MPD. This representation of a project programme means that no previous submission data will be visible in the MPD. No future submission of the project will be allowed.

1.9 Progress

1.9.1 Data Date

It is important that the Data Date for all programmes submitted to the MPD each period are synchronised. The Data Date of the imported projects shall be the first day of the period following midnight of the submission period; e.g. for all projects submitted at the end of Period 1 the Data Date must be the first day of Period 2.

1.9.2 Physical % Complete

Physical progress will be recorded (updated) on programme activities by the Contractor each period using physical % complete as the basis for 'progress status'. The entire updated programme will be submitted each LU 4-weekly reporting period in accordance with the LU MPD Desk Reference requirements.

1.9.3 Actual Costs

The actual costs of work done as of the data date must be recorded on the programme.

See Figure 1.2 - Sample Project data in MPD (Example Project X) for examples of applying actual costs to date.

2 Your Submissions to The MPD

2.1 Process Map

A summary of the submission process is shown in figure 2.1 below:

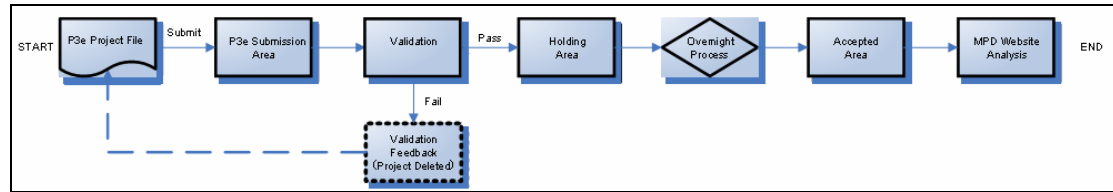


Figure 2.1 - Submissions Process Map

2.2 Master Project List

All projects being submitted to the MPD must first exist on the Master Projects List (MPL). The MPL is used to manage Project IDs in order for the MPD to correctly determine whether each project is a new submission or an update. It shows all projects that have ever been submitted to the MPD and projects expected to be submitted for the first time in the current period.

The MPL is displayed on the MPD Website and is an essential reference that identifies valid Project IDs and facilitates various groupings of projects into MPD maintained public portfolios.

The MPD uses the Project ID of a submitted project to match it to previously submitted versions (if available). Submitted projects are checked against the Master Projects List to ensure they have a recognised and valid Project ID. If a match is found, the system determines it to be an update to an existing submission. If a match is not found, it is flagged as “unrecognised” (Project ID is suffixed with ‘U’ for identification and subsequent correction).

NB: The first submission of a project to the MPD is used as its Original Baseline.

Portfolios	Projects	Interfaces	Reports	Validation	Search	Help	MyMPD		
Submission Stats	Period Statistics	Master Project List	Validation Rules	View Alerts	Project Managers	Page Help			
Master Projects List									
Organisation:	LUL	<input checked="" type="checkbox"/> Exclude closed and discontinued Projects		<input type="checkbox"/> Show Projects accepted in this period only		Search			
Projects Listed: 597									
Status	Number Of Projects								
Active	223								
Initial	9								
Proposed	4								
Complete	353								
Not Stated	8								
Edit Project Assignments									
Project ID	Project Name	EPS Node	Status	Baseline Period	AMP Code	CIP Code	Investment Code	LU Manager	FBS Code
UIP1297	Every Second Counts	LU.99(A)	Active	2006 P01	AMP10	NON-CIP	REV	Desmond Moffatt	LUL AMP1
UIP8804	Work flow standards regime	LU.99(A)	Complete	2006 P06	AMP08	NON-CIP		John Wood	LUL AMP0
UIP8744	Victoria Transport Interchange	LU.99(A)	Complete	2006 P06	AMP05	NON-CIP	REV	Steve Hodgson	LUL AMP0
UIP1470	Train Number Box 72 Stock	LU.99(A)	Active	2006 P07	AMP08	NON-CIP		Steve Dodd	LUL AMP0
UIP8312	PPP Variations Support - Contracts	LU.99(A)	Complete	2006 P06	AMP10	NON-CIP	REV	Chris Durno	LUL AMP1
UIP8912	Train Crew Accommodation 01/02 - Phase 2	LU.13(A)	Complete	2006 P07	AMP10	LU-PF47		Stephen Sinnott	LUL AMP1
UIP1168	Project Scoping Feasibility BCV	LU.99(A)	Complete	2006 P08	AMP05	NON-CIP	REV	Stephan Helal	LUL AMP0
UIP8413	Earls Court Train Crew Accommodation (COMPLETE)	LU.13(A)	Complete	2006 P07	AMP04	LU-PF47	CAP	Stephen Sinnott	LUL AMP0
UIP8944	ACIS 10 - Telephone Services	LU.99(A)	Complete	2006 P06	AMP08	NON-CIP	REV	Vic Smith	LUL AMP0

Figure 2.2 - Master Projects List view on the MPD Website

2.2.1 Master Project List Updates

MPD Data Suppliers must advise LU of any changes or additions to the MPL in an agreed format (via a notification email to the MPD Administrator) each period in accordance with the Submission Cycle. MPD Data Suppliers are not able to delete projects from the MPL and must ensure that all Project IDs are unique. MPD Data Suppliers are responsible for populating and keeping this register current and up-to-date. In addition, all changes to the Master Projects List and associated data are controlled and recorded by the MPD Administrator.

MPD Data Suppliers must inform the MPD Administrator of any required changes **before** beginning project submissions. Such amendments may include:

- Adding a new project to the list
- Change of Project ID
- Discontinued Projects
- Closed Projects

The MPD Data Supplier must provide the MPD Administrator with any details of new projects they wish to submit to the MPD. If a project ID is added to the Master Project List it is deemed a brand new project to be submitted. The name of a submitted project (project description) is updated from the Primavera Project Name. It is not possible to delete projects from the Master Projects List.

If an MPL project ID is changed, it signifies an ID change of an existing project. In the event of this happening, the system will link all previous ID's for the project to ensure data summarisation and reports are continuous. Proposed or Initial project programmes may be discontinued to reflect scope or budget changes within an organisation.

Projects that are discontinued are listed on the Master Projects List but are not visible on MPD reports.

The Project ID of a discontinued project is held within the system and no future submissions are allowed. Discontinued and Closed projects must be authorised by the respective Programme Manager.

2.3 Submission Process

Every LU Period, MPD Data Suppliers shall export or otherwise save their project programmes from their own Primavera Enterprise environment and then import ("submit") these project programmes to the MPD submission area. In order to achieve this, authorised users within the MPD Data Supplier's organisations are granted access to the submissions window of the MPD to submit the necessary projects.

Submissions are controlled and monitored by the MPD Administration Team. Preliminary project and organisation level reports are produced each day for projects submitted during the submission window. Once the submission window is closed for a given organisation, final reports and other outputs are produced and made available to MPD Data Suppliers and Users.

A project can be submitted for 4 purposes:

- 1) Initial Submission – To establish the original baseline for a project (usually un-progressed)
- 2) Update Only – This submission will be used to update earned value, actual cost and forecast data of this project in the MPD.
- 3) Update and Re-baseline- This submission will be used as above and in addition will be used to reset the planned (target) value for the current and all future periods for the project
- 4) Re-target – This submission type is also used to reset the planned (target) value for the current and all future periods for the project but its submission may have a data date earlier than the current period. This type of submission allows an organisation to maintain a set of un-stated baselines that reflect all scope changes to date.

2.3.1 Submission Cycle

The submission and reporting cycle revolves around the standard LU reporting calendar (every 4 weeks beginning the 1st of April for 13 periods per year). For a given period (in this example, 'Period A'), all submissions of project schedule and cost related data must be imported into the MPD Submissions Area by the end of the second week of the following period (e.g. 'Period B').

NB: At the end of the second week of 'Period B', 'Period A' is closed and reports are produced and made available on the MPD Website.

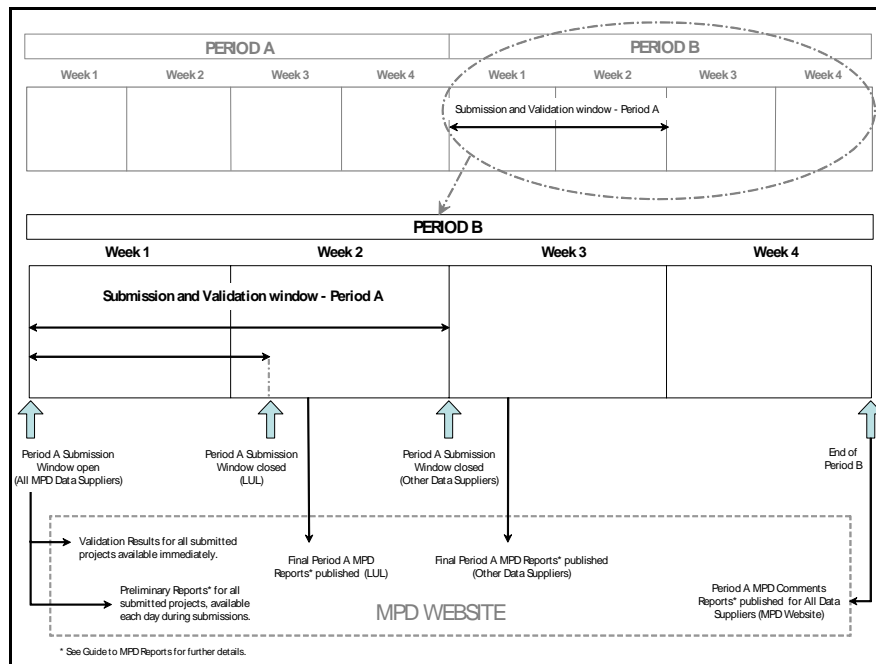


Figure 2.3 - Submissions Timetable

2.3.2 Data Validation

Projects submitted to the MPD are subject to a number of validation checks before they are processed by the system. These validation checks ensure that Projects with missing or invalid data do not enter the system. Once the MPD Data Supplier has closed all imported projects and logged out of Primavera, their submitted projects will undergo the Validation process. The Validation process runs on all projects in the MPD Submissions Area every 15 minutes during the submissions window. Projects are validated in batches grouped by Submission ID. The validation results and further explanation of any exceptions are immediately made available on the MPD Website.

Portfolios	Projects	Interfaces	Reports	Validation	Search	Help	MyMPD
Submission Stats	Period Statistics	Master Project List	Validation Rules	View Alerts	Project Managers	Page Help	
Validation Summary							
Organisation:	LUL	<input checked="" type="checkbox"/> Passed Without Warnings	<input checked="" type="checkbox"/> Active				
Year:	2006/07	<input checked="" type="checkbox"/> Passed with Warnings	<input checked="" type="checkbox"/> Proposed				
Period:	3	<input type="checkbox"/> Failed	<input checked="" type="checkbox"/> Initial				
			<input checked="" type="checkbox"/> Complete				
View:	<input type="radio"/> Project	<input checked="" type="radio"/> Submission					
<input type="button" value="Show >>"/>							
Project ID	Project Name	Submission Date	Submission Status	Status	Planned CSV	Progress CSV	
UIP1034							
UIP1034	Smartcard Billing-AutoLoad Replav (completed)	26/06/2006 09:30:04	Success with warnings	Complete	No	No	
UIP1115							
UIP1115	Customer Info. System (CIS) - Pic Line	26/06/2006 14:30:05	Successful	Active	No	No	
UIP1120							
UIP1120	CCS - Track Access Control System	26/06/2006 17:15:08	Successful	Active	No	No	
UIP1142							
UIP1142	Car Park Development Strategy	26/06/2006 09:30:04	Successful	Active	No	No	
UIP1175							
UIP1175	Capture North End Bakerloo Line	26/06/2006 09:30:04	Successful	Active	No	No	
UIP1198							
UIP1198	Victoria Station Re-Signage	26/06/2006 14:30:05	Successful	Active	No	No	
UIP1199							
UIP1199	MI - Performance Reporting Transformation	26/06/2006 12:30:04	Success with warnings	Active	No	No	

Figure 2.4 - Validation Summary

2.3.3 Validation Categories

The Validation Rules cover several main areas of integrity and planning categories and are applied to submitted projects at various levels of detail; e.g. at the Project, Lifecycle, Planning Package and Activity Level. In the event of a single activity or Planning Package failing validation, the whole project will also fail. The MPD cannot accept and store parts of a project. The categories of Validation Rules are summarised in Figure 2.5 - Validation Categories:

Validation Category	Description
Project Categories	Ensures the projects are assigned to one of the mandatory categories – for example AMP Code.
Activity Coding	Used to ensure activities have been assigned codes allowed into the system and that there are no missing codes.
Financials	Rules covering budget assignment and budget changes between submissions.
Master Projects List	Projects are validated against the Master Projects List to ensure the Project ID is unique and that the submission is not closed or discontinued.
Planning Logic	This category includes rules that are fundamental to planning to prevent inaccuracies and incorrect project logic being imported into the system.
Planning Packages	Planning packages of activities are validated for data alignment and status.
Primavera Settings	Certain Primavera options must be selected to ensure projects are not submitted with invalid auto compute settings.
Project Structures	Rules covering WBS logic and the count of activities between submissions are enforced within this category.

Figure 2.5 - Validation Categories

2.3.4 Validation Areas

2.3.5 MPD Holding Area

Projects which successfully pass validation are moved to the Holding Area where they remain until being moved to the Accepted Area at the end of each day during the submissions window.

2.3.6 MPD Accepted Area

The Accepted Area contains the latest accepted version of a project. It is this version of the project that is extracted into the MPD system for reporting. Data in these projects is subject to recalculation, history storage and processing for Earned Value Analysis.

2.3.7 MPD Failed Area

Projects which fail validation are immediately moved to the Failed Area. MPD Data Suppliers can access validation results and exception details on the MPD Website. Failed projects should be corrected at the

source, re-scheduled and re-submitted by the MPD Data Supplier within the same submission window. There is no limit to the number of times a project can be submitted to the MPD. The MPD does not use Failed Area project data.

2.3.8 MPD Archive Area

As subsequent project submissions are made to the MPD the existing Accepted Area project is moved to the Archive Area and is replaced (in the Accepted Area) by the latest accepted version of the same project.

3 Using the MPD

This section assumes that your project has passed and you are now ready to log on to the MPD.

NB: Draft project reports are available the next business day following a valid submission to the MPD.

3.1 MPD Website

The MPD website provides the general user interface and access to query tools and reports. It is hosted on the LU Intranet and provides users with the ability to:

- Check the status of Project submissions
- View Validation Rules, results and exceptions
- See project details such as status, EPS node, submission history, lifecycle summaries and Earned Value data
- Create and manage user-defined portfolios
- Add comments to projects and portfolios
- Set-up or create interfaces between projects
- View and print current and historical reports
- Personalise the web interface using MyMPD

NB: The MPD website is a secure site managed by LU Information Management (LU IM). MPD Data Suppliers should direct all access requests and fault reports to the MPD Administrator ('MPDadmin@tube.tfl.gov.uk')

3.1.1 Logging On To the Website

The Master Project Database website is accessed by following the link on the Chief Programmes Office web page. It can also be accessed at <http://mpd.lul.co.uk>. The following screen allows users to log in. If you are new to the MPD and require a username and password, use the link for 'New Users'.

The screenshot shows the login interface for the Master Projects Database. At the top left is the London Underground logo. The header text reads 'Master Projects Database Programme Assurance Office'. The main content area starts with a welcome message: 'Welcome to the Master Projects Database (MPD) web site' followed by a brief description of the site's purpose. Below this is a login form with the prompt 'Please enter your login name and password'. It contains two input fields: 'User name:' and 'Password:'. A note below the password field states 'Note: password is case sensitive'. At the bottom of the form area, there are three links: 'Click here if you have forgotten your password', 'New Users click here to request a login', and a 'Login >>' button.

Figure 3.1 - Log-On Screen

3.1.2 Finding Your Project

As you enter the MPD you will first see the MyMPD page. You may customise this area to automatically include your projects. Prior to setting up MyMPD you may find your project by clicking the ‘projects’ button in the blue bar in the upper left of the screen.

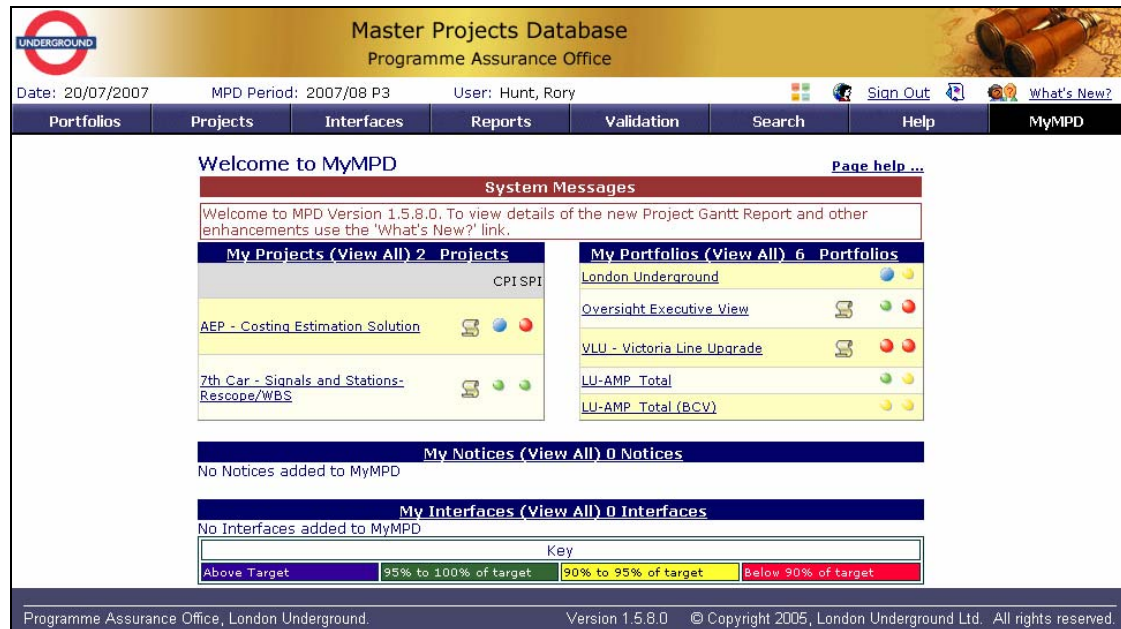


Figure 3.2 - Finding Your Project

The project search screen lets you find your projects by typing in either the project ID or part of the project name to search the database. Enter some text from the title of your project and press ‘Search’. You may change the Organisation, Project Status or MPD area fields to expand your search.

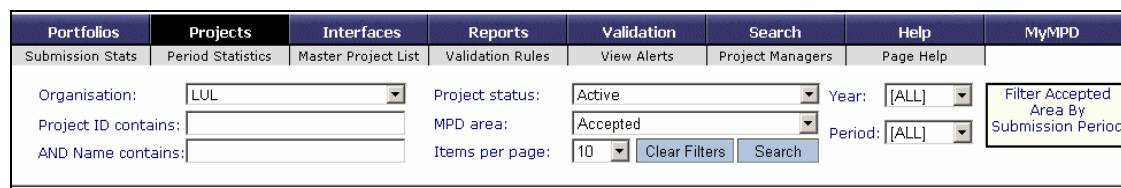


Figure 3.3 - Change Search Criteria

The search will return a list of projects. When you have found your project you may add it to MyMPD by ticking the box on the far right of the project list. Clicking on the name of your project will take you to the Project Summary page.

3.1.3 MPD Project Summary Page

The Project Summary Page can be reached from many areas of the Web Application and provides a convenient synopsis of the project's vital statistics.

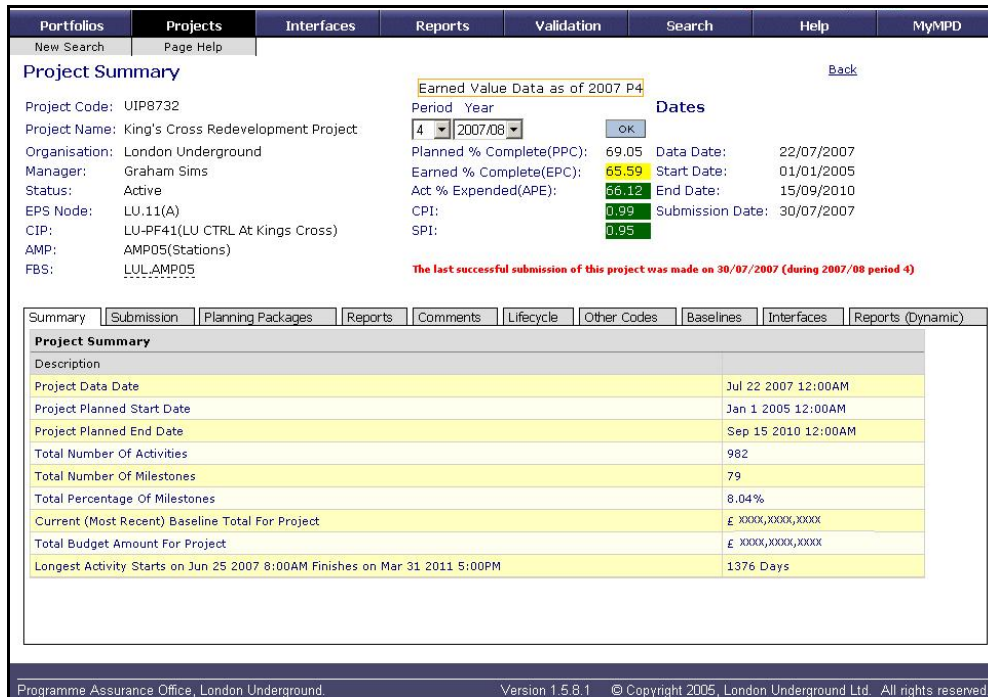


Figure 3.4 - MPD Project Summary Page

The summary page contains sub tabs, with links to project reports, submission data, codes used and interfaces etc.

3.1.4 Project Gantt Chart

A visual representation for project activities, milestones and interfaces phased over time. The MPD Gantt chart is available for all projects in the MPD accepted area and can be found under the 'Reports (Dynamic)' tab on the project summary page.

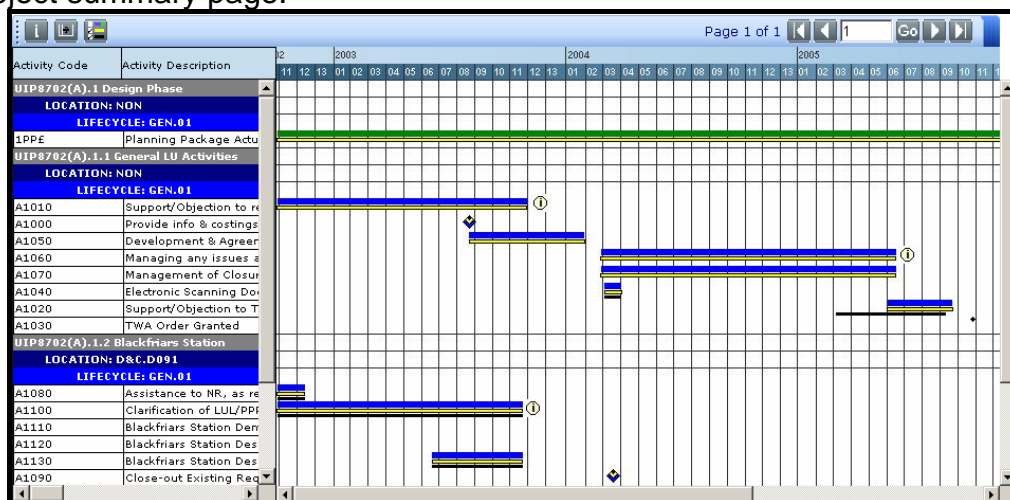


Figure 3.5 - Project Gantt Chart

3.1.5 Milestone Summary Chart

Also available through the 'Reports (Dynamic)' tab, the milestone summary screen displays milestones coded with the MPD_Milestone code. These are summarised by period and allow a drill down to project activity details.

Milestone Summary										Report																																																																																																																																																																																																																						
Portfolio Name: Chief Programme Officer								Year:	2007		Back																																																																																																																																																																																																																					
Portfolio Alias:								Report Period:	1																																																																																																																																																																																																																							
Portfolio Manager: MD, Portfolio Manager								Period End Date:	Apr 28 2007 11:58PM																																																																																																																																																																																																																							
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Planned value	Actual Cost	Earned value	Baseline Plan value	Actual Cost	Earned value	Budget	EOC (MPD Forecast)	CPI	SPI																																																																																																																																																																																																																							
45.92	42.94	49.09	0.255,628	1,277,933	1,279,811	2,975,707	0.115,009	1.00	0.94																																																																																																																																																																																																																							
Note: The latest recalc date was: May 22 2007 01:57AM																																																																																																																																																																																																																																
Choose Milestone Year: 2007/08 Choose Planned Type: Baseline Planned																																																																																																																																																																																																																																
<table border="1"> <thead> <tr> <th rowspan="2">Milestone</th> <th rowspan="2">Planned</th> <th rowspan="2">Actual/Forecast</th> <th colspan="10">Choose Milestone Year: 2007/08</th> <th rowspan="2">Previous Planned Period One 2007/09</th> <th rowspan="2">Baseline Planned</th> </tr> <tr> <th>P1</th><th>P2</th><th>P3</th><th>P4</th><th>P5</th><th>P6</th><th>P7</th><th>P8</th><th>P9</th><th>P10</th><th>P</th> </tr> </thead> <tbody> <tr> <td>P&P Project Assurance Plan Approved by LUL</td> <td>Planned</td> <td>Actual/Forecast</td> <td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>WFP Work Package Plan Approved by LUL</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>4</td><td>3</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>1</td> </tr> <tr> <td>DSN Commence Detailed Design</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>2</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>3</td> </tr> <tr> <td>CA Compliance Approval by LUL</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>1</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>2</td> </tr> <tr> <td>CTA Contract Award by LUL</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>2</td><td>2</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>8</td> </tr> <tr> <td>SOS Start on Site</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>3</td> </tr> <tr> <td>PPC Approval of Practical Completion Submission by LUL</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>1</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>2</td> </tr> <tr> <td>DIS Delivery into Service</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>1</td> </tr> <tr> <td>POS Finish on Site (Snagging List Complete)</td> <td>Planned</td> <td>Actual/Forecast</td> <td>1</td><td>1</td><td>1</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> <td>-</td> <td>11</td> </tr> <tr> <td>Total Planned</td> <td></td> <td></td> <td>11</td><td>5</td><td>2</td><td>1</td><td>1</td><td>1</td><td>1</td><td>2</td><td>-</td><td>1</td><td>1</td><td>1</td> <td>35</td> <td></td> </tr> <tr> <td>Actual/Forecast</td> <td></td> <td></td> <td>3</td><td>22</td><td>8</td><td>5</td><td>3</td><td>3</td><td>3</td><td>-</td><td>1</td><td>-</td><td>1</td><td>4</td> <td>8</td> <td>52</td> </tr> </tbody> </table>												Milestone	Planned	Actual/Forecast	Choose Milestone Year: 2007/08										Previous Planned Period One 2007/09	Baseline Planned	P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P	P&P Project Assurance Plan Approved by LUL	Planned	Actual/Forecast	-	-	-	-	-	-	-	-	-	-	-	-	-	-	WFP Work Package Plan Approved by LUL	Planned	Actual/Forecast	1	4	3	-	-	-	-	-	-	-	-	-	-	1	DSN Commence Detailed Design	Planned	Actual/Forecast	1	1	2	-	-	-	-	-	-	-	-	-	-	3	CA Compliance Approval by LUL	Planned	Actual/Forecast	1	1	1	-	-	-	-	-	-	-	-	-	-	2	CTA Contract Award by LUL	Planned	Actual/Forecast	1	2	2	-	-	-	-	-	-	-	-	-	-	8	SOS Start on Site	Planned	Actual/Forecast	1	1	-	-	-	-	-	-	-	-	-	-	-	3	PPC Approval of Practical Completion Submission by LUL	Planned	Actual/Forecast	1	1	1	-	-	-	-	-	-	-	-	-	-	2	DIS Delivery into Service	Planned	Actual/Forecast	1	1	-	-	-	-	-	-	-	-	-	-	-	1	POS Finish on Site (Snagging List Complete)	Planned	Actual/Forecast	1	1	1	-	-	-	-	-	-	-	-	-	-	11	Total Planned			11	5	2	1	1	1	1	2	-	1	1	1	35		Actual/Forecast			3	22	8	5	3	3	3	-	1	-	1	4	8	52
Milestone	Planned	Actual/Forecast	Choose Milestone Year: 2007/08												Previous Planned Period One 2007/09	Baseline Planned																																																																																																																																																																																																																
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Actual/Forecast			3	22	8	5	3	3	3	-	1	-	1	4	8	52																																																																																																																																																																																																																

Figure 3.6 - Milestone Summary Report

The planned data in this report can be drawn from baseline, previous period or start of financial year data for comparison.

3.1.6 Earned Value and 'S' Curve Reports

Earned Value Reporting

Earned Value Management best practice is a project control process based on a structured approach to planning, cost collection and performance measurement. It facilitates the integration of project scope, schedule and cost objectives and the establishment of a baseline target programme for performance measurement.

Earned Value Reporting

Earned Value Analysis is a method for comparing planned value, actual spend and progress in the same units.

Earned Value (EV) is a measure of the completed work expressed in terms of the budget assigned to that work

Planned Value (PV) is the 'baseline' or target budget scheduled to be achieved in the same time period

Actual Cost (AC) the costs actually incurred and recorded in accomplishing work performed

The MPD displays the earned value data in the industry standard 'S' curve format, an example is shown below.

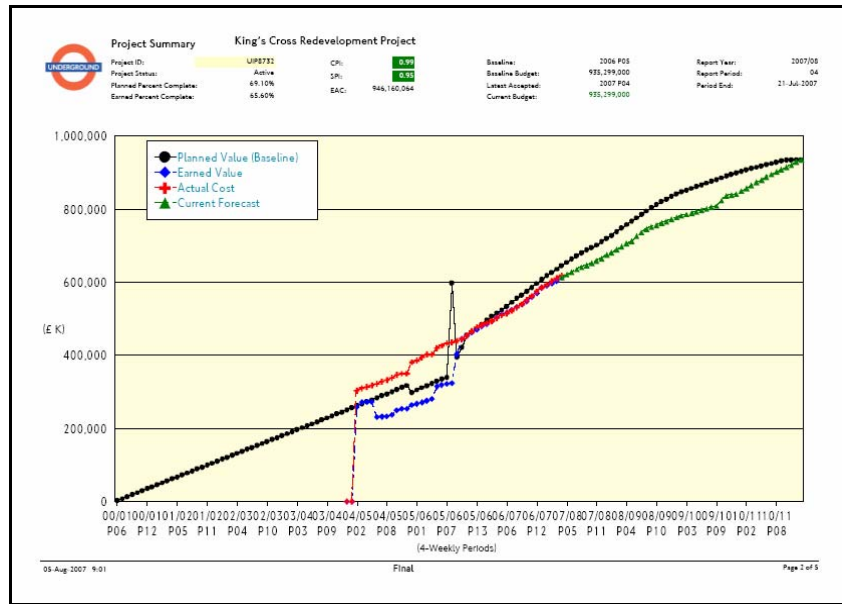


Figure 3.7 - Earned Value 'S' Curve

3.1.7 Earned Value Grid and Commentary

Project performance is measured in physical terms (i.e. physical percent complete of deliverables), financial terms (i.e. over/under budget) and schedule terms (i.e. ahead/behind planned finish date).

Project performance analysis is provided to the MPD by the project managers in the form of 'PM Commentary'. The screen below shows a combined input screen to enable comments to be added whilst viewing earned value data.

Project Managers: Progress Page

Organisation: London Underground Investment Programme: LU-PF41(LU CTRL at Kings Cross) Report Year: 2007

EPS Node: LU.11(A) Asset Management Plan: AMP05(Stations) Report Period: 4

Project Name: King's Cross Redevelopment Project Project Manager: graham sims Period End: 21/07/2007

Project ID:	% (of budget) to Date		E (K) to Date		E (K) to Completion		Indices		Submission Data				
	Planned Value	Actual Value	Earned Value	Actual Cost	Budget	EAC	CPI	SPI	Baseline	Start	Finish	Last Accepted	
UIP8732	69.05	66.12	65.59	XXXXXX	XXXXXX	XXXXXX	XXXXXX	0.99	0.95	06/07 P5			07/08 P4

Values	Previous Years	2007/08 P1	2007/08 P2	2007/08 P3	2007/08 P4	2007/08 P5	2007/08 P6	2007/08 P7	2007/08 P8	2007/08 P9	2007/08 P10	2007/08 P11	2007/08 P12	2007/08 P13	Future Years
Planned Value (Baseline)	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M
Earned Value	XXX M	XXX M	XXX M	XXX M	XXX M	0	0	0	0	0	0	0	0	0	0
Actual Cost	XXX M	XXX M	XXX M	XXX M	XXX M	0	0	0	0	0	0	0	0	0	0
Forecast	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M	XXX M
CPI	1	1	0.99	0.99	0.99	-	-	-	-	-	-	-	-	-	-
SPI	0.96	0.96	0.95	0.95	0.95	-	-	-	-	-	-	-	-	-	-

PM Comments Progress Issues and Risks: Assign Notes to: houston, sam

PM Comments Financial Issues and Risks: Assign Notes to: houston, sam

King's Cross CTRL CPI 0.99 SPI 0.95
 Phase 1: Completion was due on 10 Dec 06. Physical works are complete and all public areas are in use. Assurance evidence from MR to support completion continues to be received and LU is due to respond in due course.
 Phase 2: Northern Ticket Hall: The critical activity in the NTH, the excavation below the TH level, continued during the period and is achieving programme. Concreting of the mezzanine slab is due to commence on programme during period 5. Bomb Gap: Bomb Gap enabling works have not generally progressed in line with the programme. 13 calendar days of float was lost during the period, mainly due to design issues with Network Rail. However, mitigation measures are being developed. Tunnelling: Activities in the period in the PLA have included continuing the mining of the cross passages and continuation of the enlargement of the link beyond the cruciform. In the NLA, activities have been commencement of intrusive works in the over bridge and continuation of the enlargement of the NLA escalator barrel. 3 calendar days of float was lost in the period.

A cost-loaded, integrated Level 2 programme to support the Recovery Programme was presented to LUL by MRSSL. Preliminary assessment indicates that there is still a great deal of work that needs to be completed on this programme to demonstrate full confidence in the Recovery Programme.

Send an eMail notification to the Assigned User? Tick this box if you wish to report a Critical Project Issue Send an eMail notification to the Assigned User?

Figure 3.8 - Earned Value Grid and Commentary

3.1.8 Interfaces

The MPD Web Application allows setup and monitoring of interfaces between different projects. Reports are available to show variances as project dates change. An example of the interface setup screen is shown below.

Interface Agreement (inter-project) [Add Interface Notes](#)

Interface ID: 2875 Creation Date: 23/07/2007

Interface Status: Connected Interface Creator: Henderson, Cheryl (Henderch01)

**Please complete all Mandatory fields*

Interface Name: *Prestige - Wood Green Due Date: *01/09/2008 Next Action Date:

Interface Type: *PPP/PFI non Annex 2 interface Milestone Code:

Variation Order: *JNP : 999 : Prestige Works

Requester	Provider
<p>Start to Start <input type="text"/></p> <p>Organisation: *JNP</p> <p>Project: T-SN581L: Wood Green Station Modernisation</p> <p>Activity: WGPRE120: PFI Prestige Works</p> <p>PFI Prestige Works</p> <p>Location Code: PIC_P025.XX</p> <p>Responsibility: LULR,E,PFI,PRE</p> <p>WBS Path: T-SN581L(A).1.E.CC</p> <p>Current Start: 08/08/2008 Current End: 21/08/2008</p> <p>Contact: *Tomlinson, Ray (tomlinra)</p>	<p>Interface Priority: Low</p> <p>Organisation: *PRE</p> <p>Project: PRE_NONA2: Prestige All Non-Annex II Interfaces</p> <p>Activity: A1330: Non A2 Trigger Date (Auth Notice Placed)</p> <p>Non A2 Trigger Date (Auth Notice Placed)</p> <p>Location Code: MHC_B093</p> <p>Responsibility: LULR,E,PFI,PRE</p> <p>WBS Path: PRE_NONA2(A).5</p> <p>Current Start: 06/11/2006 Current End: 06/11/2006</p> <p>Contact: *Barrett, Sue (barretsu)</p>

Scope:

Note: This interface was last updated on 23/07/2007 by Cheryl Henderson

Figure 3.9 - Interface Setup Screen

4 Finding Help / Glossary

4.1 Finding Help

In addition to the Help tab found on the MPD web page you may direct queries to **MPDAdmin@tube.tfl.gov.uk** .

4.2 Glossary

As attached in Appendix 1 – Glossary.

Appendix 1 – Glossary

4.2.1 Glossary of Terms and Abbreviations

Refer also the LU Intranet for standard abbreviations and the LU “Jargon Buster”.

Term	Abbreviation	Description
Active Project Programme		An Active Project Programme is a representation of a project that has commenced. It is a detailed programme representing the total scope and budget for the programme
Actual Cost	AC	The actual costs incurred in accomplishing the work performed to the data date
AMP Codes		Codes used to report a consistent asset structure for projects in the MPD. Comprises a standard of 10 flat codes
Annual Asset Management Plan	AAMP	A contractually defined document supplied by each Infracore on an annual basis listing management strategy and scope for the coming year
Baseline Programme		The Project Programme that the MPD uses as the basis for analysing and reporting the project progress. By default the project baseline date for reporting is taken to be the first accepted submission period of the project in the MPD. Thereafter, MPD Data Suppliers may request any current period submission period as the reporting baseline by formally advising MPD Admin
Budget at Completion	BAC	The total budget for achieving the project scope of work
CIP Codes	CIP	A hierarchical set of codes used to define funding and deliverables listed in the TfL 5 year Investment Programme
Complete Project Programme		A project programme which has all activities marked as 100% complete and no remaining budget on any Planning Packages; representing the fact that there will be no further progress or updates on this piece of work

Term	Abbreviation	Description
Contractual/Delivery Milestones	CM	Contractual/Delivery Milestones represent the latest completion dates or latest implementation dates for objectives such as station modernisation, station refurbishment and line upgrades
Cost Performance Index	CPI	This is an indicator of cost efficiency. It is calculated as a ratio of Earned Value to Actual Cost ($CPI = EV/AC$). Above 1.0 is good, below 1.0 is bad. It is often used to predict the magnitude of a possible cost overrun
Cost Variance	CV	A measure of the cost performance of a project. It is the difference between Earned Value and Actual Cost ($CV = EV - AC$). A positive value indicates a favourable position and a negative value indicates an unfavourable position
Data Date		The date up to which progress data are recorded on the project. The Data Date of the projects imported to the MPD shall be the first day of the period following the submission period
Discontinued Project Programme		A project which has been completely removed from MPD reporting and the submitted Primavera file has been archived
Earned Value	EV	Value of work completed expressed in terms of budget assigned to that work. EV is calculated as the Physical Percent Complete multiplied by Budget at Completion
Enterprise Project Structure	EPS	The Enterprise Project Structure is a hierarchical structure of projects which allows individual project teams to manage their projects separately and allows projects to be rolled up or summarised to any node of the EPS
FBS Codes	FBS	The Infracore Financial Breakdown Structure recorded in the MPD used to represent used to represent their assets
Estimate at Completion	EAC	The estimated cost of completing all of the project scope
Gantt Charts		A graphical display of a project's schedule information or the order in which the activities occur over the course of the project

Term	Abbreviation	Description
Global Activities Codes		A code that may be assigned to activities in order to communicate an important attribute. Global Activity Codes are defined at Enterprise level and are therefore accessible to all projects in the MPD. The MPD uses several types of Global Activity Codes which must be used by all MPD Data Suppliers. See also Project Activity Codes
Good Industry Practice		As stated in the Infraco Service Contract, Master Definition Agreement, and the Infraco Service Contract, Schedule 1.9, Annex 2, Guidance to the Statutory Arbiter, paragraph 6.5
Infraco Service Contract	ISC	A contract between an Infraco and London Underground
Infracos Also 'Infrastructure Companies'		The consortia of private companies forming the Public Private Partnership (PPP) with LU; namely Metronet Rail BCV Limited, Metronet Rail SSL Limited and Tube Lines Limited
Initial Project Programme		A representation of a project that is planned to start within the forthcoming 13 periods and contains as a minimum a single activity for the project and all activities that require LU or OTP resources
Interface		Activity or Milestone where an organisation has identified a dependency on, or expectation of another organisation to perform work or supply a deliverable required for completion of the overall project
Interface Management		Co-ordination of works; Projects and/or Programmes
London Underground Network (or "the Underground Network")		All operational and supporting assets which make up the London Underground railway
Master Project Programme	MPP	A non-financial programme view of all projects in the MPD available in a Primavera Enterprise environment at the end of each submission period used to analyse the past as it relates to the future across the Enterprise. The Master Programme comprises 3 levels of detail, project, lifecycle and planning package

Term	Abbreviation	Description
Master Project List	MPL	The agreed list of all projects that a MPD Data Supplier will issue to the MPD, visible on the MPD website
Milestone		A scheduled event that signifies the completion of a major deliverable or a set of deliverables. Milestones have a duration of zero and no effort; i.e., no work is associated with a Milestone
MPD Data Suppliers		Groups, companies or individuals supplying data to the MPD, i.e. LU, Infracos, PFIs and Other Third Parties (OTPs)
MPD Milestones		A set of 9 agreed Milestone Codes which, when assigned to activities in MPD Data Supplier projects, are used to track key Milestones and provide visibility and performance analysis across the business
MPD Reports		A suite of reports produced using summary data for all (eligible) projects in the MPD. These reports are produced at the Enterprise, Organisation, Portfolio and Project level at the end of each reporting cycle
MPD Users		Groups or companies accessing MPD data via the MPD Web Application
Non-UIP		Projects within the MPD that are not Underground Initiative Projects (UIP projects)
Other Third Party	OTP	Any group other than LU, Infracos and PFIs involved in undertaking work on the Underground Network
P3e/Primavera Enterprise		Primavera Project Management Planning and Control software which is the primary user interface for project programme data input into the MPD

Term	Abbreviation	Description
PFI Contractor	PFI	The consortia formed under the Government's Private Finance Initiative (PFI) Scheme, formed to upgrade and replace key LU network-wide assets while maintaining ongoing support and maintenance to LU operations. Specifically, the PFI MPD Data Suppliers are Power PFI and Connect PFI
Period	P	LU Financial calendar is based on a 28 day (4 weekly) reporting cycle known as a period
Physical Percent Complete	PPC	This is a measure of progress. It is the MPD Data Suppliers' assessment of the completeness of an activity
Planned Value		Planned Value is the cumulative total value of budget, at any point in time, as per the project programme baseline
Planning Package	PP	A group of activities that need to be performed to achieve a deliverable, and summarises the time frame, budget, actual costs and physical percent complete data of the group. The MPD uses Planning Packages as the basis for producing Earned Value reports
Portfolio Baselines		The frozen planned data of certain groups of Portfolios are set as baselines in the MPD for reporting purposes
Project Activity Codes		A project-specific code that may be assigned to activities in order to communicate an important attribute. Project activity codes are created by the individual project teams and defined at project level, and are therefore accessible only to that project and not enterprise-wide. See also Global Activity Codes
Project Baselines		A project level Baseline Programme used for reporting purposes (see Baseline Programme)
Project Category		Identifies project programme category in the MPD, i.e. Proposed, Initial, Active, or Closed
Project Milestones		Activities codes as Milestones by an MPD Supplier are used to represent the completion of a major deliverable or set of related deliverables

Term	Abbreviation	Description
Project Programme		A representation of a project, specifically the project data that is stored in the MPD; Project Programme may be Proposed, Initial, Active, complete or Discontinued
Project Status		The definition of a project within the MPD determined by the range of its activities in relation to the Data Date; Project status in determined by the validation process
Proposed Project Programme		A representation of a project that is planned to start after the forthcoming 13 periods and is used to identify Capital projects planned to be undertaken in accordance with the AAMP documents
SAP	SAP	Integrated Finance and Business Management solution used by TfL to co-ordinate Financials, Accounting, Banking, HR etc
Schedule Performance Index	SPI	Indicates how far behind or ahead of the programme the project is (in terms of the value of work accomplished). It is calculated as a ratio of Earned Value to Planned Value ($SPI = EV/PV$). An index greater than 1.0 is good, an index below 1.0 is bad
Schedule Variance	SV	A measure of the schedule performance on a programme. It is the difference between Earned Value and Planned Value ($SV = EV - PV$). A positive value indicates a favourable position and a negative position indicates an unfavourable position
UIP	UIP	Underground Investment Programme
Variation Order	VO	The commercial documents covering requests for PPP partners to get PFI organisations to do work. The MPD holds records of each VO to show where an interface describes this work
Work Breakdown Structure	WBS	The Work Breakdown Structure is a hierarchical arrangement of scope ranging from the highest level of management deliverable or asset groups to detailed task-based activities that are to be carried out during the delivery of the project

(Access Code and relevant definitions)

Definitions

Abnormal Conditions means any condition which would in the reasonable opinion of LUL be likely unduly to increase journey times or result in Customer overcrowding at Stations;

Access Booking means an Access Request confirmed in accordance with the procedures in the Access Code;

Access Code means the code of that name governing rights of access to the LUL Network;

Access Party means any of LUL (but only on its own behalf and on behalf of Third Parties and other parties for whom LUL reasonably requires access in relation to LUL's obligations in connection with the National Railway Network, Infrastructure Protection and other similar requirements arising in the ordinary course of LUL's operation of the Underground Network), an Infraco (on its own behalf and on behalf of its contractors and sub-contractors) and a PFI Contractor; and *Access Parties* shall mean any two or more of them;

Access Request Form means a request properly completed by any party setting out such party's requirements for advance access and short notice access, delivered to the Access Reservation Agency or a Responsible Infraco, as the case may be;

Access Reservation Agency means a division of LUL which shall be responsible for recording Access Requests on SABRE and administering the procedure set out in the Access Code;

Advance Access Request means a request for access to any part of the LUL Network submitted prior to the relevant Latest Request Date for which such access relates;

Advance Engineering Train Path Request means a request for access for the passage of an Engineering Train over the LUL Network submitted prior to the Latest Engineering Train Path Request Date;

All Night Running means the period of operation of a Train Service throughout an entire period of Engineering Hours as agreed between the parties in accordance with paragraph 1.2.9 (*All Night Running*) of Schedule 2.1 of the PPP Contract;

Amended Time means the amendment to the Published Time for traction current in a Traction Current Section to be switched on or off to allow access as notified on SABRE by the Access Reservation Agency not less than 28 days prior to the first Business Day of the week in respect of which access is sought;

Applicable Rate means a rate of interest expressed as a percentage being the sum of:

(a) one (1) per cent; and

(b) the display rate per annum of the offered quotation for deposits in sterling for six months which appears on Telerate page 3750 at or about 11.00 am on the date on which the Applicable Rate is first applied (or, if the relevant amounts are still outstanding, the dates falling at successive six month intervals after that date) or if no such offered quotation appears on the Telerate page 3750 at or on about 11.00 am on such date, the per annum rate at which National Westminster Bank plc is offering deposits in sterling for six months to leading banks in the London Interbank Market at or about 11.00 am on the date on which the Applicable Rate is first applied, such interest to accrue daily on the basis of a 365 day year;

Approved Debt means, on any date, the amount which is equal to:

(a) all amounts outstanding as at that date from each Finance Obligor to the Senior Funders (including amounts borrowed in respect of Reimbursable Law & Safety Change Costs and amounts borrowed by each Finance Obligor under standby facilities which the relevant Finance Obligor has stated in its drawing notice is being borrowed for the purposes stated in the relevant Funding Agreements) including principal, accrued interest, fees and other amounts payable thereunder and further including, to the extent incurred as a consequence of LUL default, any marginal increase in the rate of interest applying only by reason of a default in payment, provided that these amounts shall include any amounts representing payments owing to the Senior Funders which have not been paid and/or repaid by the due date therefore (including any applicable grace period) where this occurs before acceleration, only if:

(i) in relation to a missed payment which is a single missed payment or the first in a continuous sequence of missed payments, the Senior Funders have given written notice (**Senior Funders Notice**) to LUL of such missed payment within thirty (30) days of the relevant payment default (including any applicable grace period); and

(ii) in respect of any subsequent missed payment in a continuous sequence of missed payments including the missed payment in (i) above, LUL has not, within thirty (30) days after receipt of the Senior Funders Notice, notified the Senior Funders that it will not treat any such subsequent missed payments as outstanding for the purposes of this definition,

unless any such amount remains outstanding as a direct result of a failure by LUL to comply with its obligations under the Transaction Documents in which event it shall be regarded as outstanding for the purposes of this definition;

plus:

- (b)
 - (i) any amounts that would have been payable by any relevant Finance Obligor if the interest rate or other hedging arrangements (including for the avoidance of doubt guaranteed investment contracts) had been terminated on the date of acceleration of each Finance Obligor's payment obligations under the relevant Funding Agreements or, if no such acceleration had occurred by the Contract Disposal Calculation Date, then such date; and
 - (ii) any other breakage costs, premia or sums (including any early redemption amounts payable in respect of any bonds or other instruments and including any such sums that would have been incurred had such bonds or other instruments been redeemed on such date) subject to each Finance Obligor and the Senior Funders mitigating such costs to the extent reasonably possible payable by each Finance Obligor to the Senior Funders as a result of a prepayment or acceleration of payment obligations under the relevant Funding Agreements or the exercise of the Put Option by the Senior Funders or any Finance Obligor pursuant to the Put Option Agreement (provided that such obligation to mitigate shall not require the Senior Funders either to forego any right to any payment due to them in respect of any such breakage costs, premia or other sums nor shall such obligation require the Senior Funders to alter the time when they might otherwise exercise any right available to them under any Funding Agreement to require prepayment, acceleration of payment obligations or redemption),

in the case of each of (a) and (b) above, pursuant to the terms of Funding Agreements:

- A which have been approved by LUL for the purposes of this definition; or
- B in relation to Required Finance to the extent that it has been included by the Statutory Arbiter in the cashflows referred to in paragraph 7 (*Cashflows*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts for the purpose of establishing the payment obligation to be assumed by LUL at a Periodic Review or Extraordinary Review and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts but, to the extent not all material terms in such Funding Agreements have been identified by the Statutory Arbiter during the Periodic Review, such remaining terms are substantially the same as the terms of other Funding Agreements which have been approved by LUL or are terms which otherwise have characteristics of Required Finance as directed pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts; or
- C (1) in relation to standby or liquidity facilities (other than facilities in respect of Reimbursable Law & Safety Change Costs which shall in all circumstances be regarded as Approved Debt for the purposes of this definition) as it would be prudent for a Notional Infraco to have; or (2) for the purposes of financing

Net Adverse Effects less than the Materiality Threshold, in each case, to the extent that the Statutory Arbiter has directed that such facilities would be prudent for a Notional Infraco to have pursuant to paragraph 1.4A (*Required Finance*) of Schedule 1.9 (*The Statutory Arbiter and Reviews*) of the PPP Contracts and subject to compliance by Infraco with clause 31.4(d) of the PPP Contracts,

provided that the terms of any Funding Agreement falling within paragraphs A, B or C above shall not cease to be approved by reason of any subsequent amendment or variation thereof but in calculating Approved Debt at any time the parties shall disregard any amendment or variation to the terms of any such Funding Agreements which has not been approved by LUL, to the extent such amendment or variation increases LUL's liability under the terms of the Transaction Documents,

less:

- (c) (i) credit balances on any bank accounts held by or for the benefit of any Finance Obligor as at the relevant date (other than (1) to the extent that any such account shall not have been the subject of a charge which takes effect at such relevant date as a valid fixed charge in favour of the Senior Funders and/or the credit balance thereon shall have been reduced by virtue of having been dealt with by a PPP Administrator (2) any credit balances on any bank accounts held by or for the benefit of any Finance Obligor which are subject to a charge which takes effect at such relevant date as a valid first fixed charge in favour of any person who is not a Senior Funder and (in relation to JNP only) (3) any credit balances on the JNP Insurance Proceeds Account which have been paid to Infraco for costs to be incurred by Infraco in complying with clause 26.1 of the PPP Contract and clause 9.2 of the Insurance Agreement) or any other bank accounts over which such Senior Funders have security which has taken effect as a valid first fixed charge;
- (ii) any amounts that would have been payable by the Senior Funders to any relevant Finance Obligor if the interest rate or other hedging arrangements had been terminated on the date of acceleration of each Finance Obligor's payment obligations under the relevant Funding Agreements or, if no such acceleration had occurred by the Contract Disposal Calculation Date, then such date; and
- (iii) any amounts claimable by each Finance Obligor in respect of Deferred Funding Liabilities;

Asset Damage Insurance has the meaning ascribed to in clause 3.1(a) (*The Insurances*) of the Insurance Agreement;

Assets means all assets and rights, including property (both real and personal), owned, controlled or otherwise held by Infraco or in respect of which Infraco has an interest of whatsoever nature (including directly or indirectly pursuant to the terms of any lease, licence or similar arrangement but excluding those Allocated to another Infraco pursuant to the Inter- Infraco Assets and Facilities Agreement), or in respect of which Infraco is given responsibility pursuant to the Property Schedules and Plans, from time to time including:

- (a) those demised or to be demised to Infraco pursuant to the Lease or any Ancillary Lease or Supplemental Lease (save in each case to the extent comprised in a Depot Sub-lease granted to another Infraco or third party) or any Depot Sub-lease granted to Infraco (including fixtures and any elements which are presumed to be the responsibility of Infraco as set out in the Leasing Principles and save for those Allocated to another Infraco pursuant to the Inter-Infraco Assets and Facilities Agreement); and
- (b) those vested in Infraco pursuant to the Infrastructure Transfer Scheme (including the constituent parts of such assets) (other than those Allocated to another Infraco pursuant to the Inter-Infraco Assets and Facilities Agreement); and
- (c) those Allocated to Infraco pursuant to the Inter-Infraco Assets and Facilities Agreement; and
- (d) those in, on or over which LUL at the date hereof has Historic Rights or enjoys rights by custom or pursuant to a National Network Agreement and which are necessary to enable Infraco to provide the Services, (but excluding the Office Accommodation Properties and the Office Accommodation Leases) and Asset means any one of them. References to an Asset (as so defined) shall be a reference to the physical Asset owned, controlled or otherwise held by Infraco and, where Infraco has an interest of whatsoever nature in respect of an Asset and where the context requires, includes the lease, licence or similar arrangement pursuant to which such physical asset is controlled or otherwise held;

Available means that:

- (a) subject to clauses 9.2 and 9.3 (*Standards*) of the PPP Contracts, the Asset or system (or group of Assets or systems) concerned complies with Category 1 Standards and Category 2 Standards;
- (b) the Asset or system (or group of Assets or systems) concerned is safe and fit for purpose at all times insofar as this is reasonably practicable;

- (c) there are no foreseeable hazards to the use of the Asset or system (or group of Assets or systems) concerned except insofar as a risk assessment has been carried out by Infraco and any risk is expressly accepted by LUL; and
- (d) the Asset or system (or group of Assets or systems) concerned is readily accessible and operable by LUL throughout the periods stipulated and agreed for each generic Asset or system group;

Base Allocation of Minor Closures means the BCV Base Allocation of Minor Closures, the SSL Base Allocation of Minor Closures and the JNP Base Allocation of Minor Closures or any one of them;

Base Allocation of L&E Closures means the BCV Base Allocation of L&E Closures, the SSL Base Allocation of L&E Closures and the JNP Base Allocation of L&E Closures or any one of them;

BCV means Infraco BCV Limited whose registered office is at 55 Broadway, London SW1H 0BD (Company No. 03923496);

BCV Base Allocation of Minor Closures means, in respect of Minor Closures, a maximum of 10,350,000 Lost Customer Hours per Review Period;

Business Day means any day but excluding Saturdays, Sundays and English bank holidays;

Category 1 Standards means the individual requirements contained within standards documents issued to Infraco by LUL as Category 1 Standards on or before the Start Date and as subsequently adjusted pursuant to the Standards Code;

Category 2 Standards means the individual requirements contained within the Standards documents issued by LUL to Infraco as Category 2 Standards on or before the Start Date and as subsequently adjusted pursuant to the Standards Change Procedure for Category 2 Standards and, after the Transfer Date, means the individual requirements contained within the Standards documents issued by Infraco to LUL as Category 2 Standards and as may subsequently be adjusted pursuant to the Standards Change Procedure for Category 2 Standards;

CDM Regulations mean the Construction (Design and Management) Regulations 1994;

Closure means any planned disruptive works which result in those Facilities which are required under Schedule 2.1 (*Service Outputs*) of the PPP Contracts not being Available in accordance with the Access Code which is either a Major Closure, a Minor Closure, a CTRL Closure or an L&E Closure;

Closure Request Form means a written request properly completed by any party setting out such party's requirement for a Major Closure, a Minor Closure, a CTRL Closure or L&E Closure delivered to the Access Reservation Agency;

Compensation Rate means the rate determined in accordance with the table set out at Appendix 1A (*Compensation Rate*) of the Access Code;

Connect Contract means the PFI Contract for Project Connect being the Transmission and Radio Contract dated 19 November 1999 between London Underground Limited and Citylink Telecommunications Limited;

Contract Disposal Calculation Date means the earlier of:

- (a) the Contract Disposal Date; and
- (b) the date an amount becomes payable under clause 41.6B of the PPP Contracts;

Connect Contractor means the PFI Contractor under the Connect Contract;

CTRL Closure means a Minor Closure or Partial Station Closure, as the case may be, for the purpose of performing SSL's obligations under the CTRL Works Agreement or obligations of SSL's contractors and/or consultants which arise out of a CTRL Construction Contract or a CTRL Consultant Contract;

CTRL Closures Allocation means, in respect of CTRL Closures, a maximum of 3,500,000 Lost Customer Hours for the first Review Period;

CTRL Construction Contract has the meaning ascribed to the term Construction Contract in the CTRL Works Agreement;

CTRL Consultant Contract has the meaning ascribed to the term Consultant Contract in the CTRL Works Agreement;

CTRL Works Agreement means the agreement entered into between SSL and LUL relating to the construction of the works to the existing St. Pancras ticket hall being part of the works comprised in Work No. 4 of the Channel Tunnel Rail Link Act 1996 and the entirety of Work No. 5R referred to in Section 1 of Schedule 1 to the Channel Tunnel Rail Link Act 1996 and, if the Secretary of State requests, works for the construction of the northern ticket hall being part of the works comprised in Work No. 4 of the Channel Tunnel Rail Link Act 1996;

Customer means a customer on the Underground Network;

Defect means where an Asset is or is suspected to be deviating from its design specification to the extent that it cannot be used safely or within its normal operational parameters, as determined by the asset operator;

Dispute Resolution Agreement means the Transaction Document of that name;

Emergency Access means access to Stations and/or railway infrastructure required to deal with an Incident as defined in the Manual;

End of Initial Delay has the meaning ascribed to it in respect of different types of Disruptions as set out in Table 2 of Part B of Schedule 5 (*Disruption, Defects and Failures*) of the Performance Measurement Code;

Engineering Hours means (i) in relation to Stations, the period of time scheduled for the relevant Station to be closed on the relevant day in accordance with the Station Times Book and, (ii) in relation to a particular Traction Current Section as defined in the *Guide to Switching Traction Current On and Off* to the Manual, the period of time between the Published Time or, if later, the Amended Time traction current is switched off and the Published Time or, if earlier Amended Time, the Traction Current is switched on any Line (other than the Putney Bridge to Wimbledon section of the District Line). For Putney Bridge to Wimbledon section of the District Line Engineering Hours are between 1.30am to 4.30am on any day to allow Infraco to perform such scheduled maintenance and other works as may be required to enable it to perform the services;

Engineering Trains means Rolling Stock used for the maintenance of the Underground Network;

Engineering Train Access Request Form means a request form properly completed by any party setting out such party's requirements for access for an Engineering Train Path delivered to the Access Reservation Agency;

Engineering Train Path means a train path used for the movement of Engineering Trains;

Engineering Works Prioritisation Factors means the factors set out at Appendix 4 (*Engineering Works Prioritisation Factors*) of the Access Code;

Engineering Works Safety Arrangements (EWSA) means the weekly publication by the Access Reservation Agency of all planned engineering track works on the LUL Network including Engineering Train Paths;

Enhanced Station Refurbishment has the meaning ascribed to it in paragraph 1 of Appendix 15 (*Station Modernisation, Enhanced Station Refurbishment and Station Refurbishment*) of Schedule 2.1 to the PPP Contracts;

Essential Services means any services (not involving the execution of any works) which but for clause 29.5 (*Essential Works and Services*) Infraco would not be obliged to perform for LUL under any provision of its PPP Contract but which are required to facilitate any project, work or activity in connection with LUL Commercial Exploitation or a Major Enhancement and which (having regard to

Infraco's rights and obligations under its PPP Contract) cannot reasonably be performed by anyone other than Infraco;

Essential Works means any works which but for clause 29.5 (*Essential Works and Services*) Infraco would not be obliged to carry out for LUL under any provision of its PPP Contract but which are required to facilitate any project, work or activity in connection with LUL Commercial Exploitation or a Major Enhancement and which (having regard to Infraco's rights and obligations under its PPP Contract) cannot reasonably be carried out by anyone other than Infraco;

Exceptional Amounts means any amounts which are payable by LUL to Infraco or, as the case may be, by Infraco to LUL, as lump sum payments (other than amounts which are accounted for in the calculation of Baseline ISC and the ISC Adjustment or which are payable in respect of Non-ISC Services) including, without limitation, payments arising as a result of:

- (a) Law Change Costs payable pursuant to clause 28.11(b) (*Costs and other Consequences*) of the PPP Contract;
- (b) Safety Change Costs payable pursuant to clause 28.11(b) (*Costs and other Consequences*) of the PPP Contract;
- (c) amounts payable under the Access Code;
- (d) Infraco's share of cost-savings pursuant to clause 16.3 (*Cost Saving Proposals*) of the PPP Contract; Excess Costs or Exceptional Costs payable pursuant to clauses 26.2, 26.3 (*Reinstatement of Infrastructure*) or 28.5 (*Cost Calculations*) of the PPP Contract; incremental costs payable pursuant to clause 26.5 (*Reinstatement of Infrastructure*) of the PPP Contract;
- (g) any payment for Minor Works pursuant to paragraph 6.4 of Schedule 2.1 (*Service Outputs*) of the PPP Contract;
- (h) any payment for Intermediate Works pursuant to paragraph 6A.5 of Schedule 2.1 (*Service Outputs*) of the PPP Contract;
- (i) any claim for LUL Breach pursuant to clauses 16.7 (*LUL Breach*) and 50 (*Claims*) of the PPP Contract;
- (j) Increased Infraco Costs payable pursuant to clauses 16.8 (*Non-Compliance with LUL Safety Case*) and 50 (*Claims*) of the PPP Contract;
- (k) Increased Infraco Costs payable pursuant to clause 17.1 (*LUL Specified Rights*) of the PPP Contract or costs and expenses recoverable in respect of the LUL Specified Rights procedure pursuant to clause 17.8 (*Action following Receipt of Notice*) of the PPP Contract;

- (l) any amounts recoverable pursuant to clause 18.16 (*Overpaid and Wrongfully Paid Amounts*) of the PPP Contract as a result of them being overpaid, wrongfully paid or allowed;
- (m) any amounts payable to LUL or Infraco as a result of LUL exercising its Step-in Rights pursuant to clauses 23.3, 23.4 and 23.9 (*LUL Step-In Rights*) of the PPP Contract;
- (n) any amounts payable pursuant to clause 23 (*LUL Step-in Rights*) of the PPP Contract;
- (o) any amounts payable by LUL to Infraco or Infraco to LUL as a result of indemnities contained in clause 24 (*Indemnity*) of the PPP Contract;
- (p) irrecoverable VAT payable pursuant to clause 28.13 (*VAT Law Changes*) of the PPP Contract;
- (q) payment for Essential Works or Essential Services pursuant to clause 29.5 (*Essential Works and Services*) of the PPP Contract;
- (r) administration charge levied for access to the LT Museum pursuant to clause 37.7 (*Infraco Access to Drawings in London Transport Museum*) of the PPP Contract;
- (s) any amounts payable in respect of parallel remedial action pursuant to clause 40.6(b) (*Infraco to remedy despite dispute etc.*) of the PPP Contracts;
- (t) any amounts payable on the Expiry Payment Date pursuant to clause 42.3 (*Payment on Expiry*) of the PPP Contract;
- (u) any amounts payable in relation to Hostilities and Acts of Violence pursuant to clause 44.3 (*Hostilities and Acts of Violence*) of the PPP Contract;
- (v) any amounts payable in relation to Heritage and Records pursuant to clause 51.1, 51.2 and 51.11 (*Heritage and Records*) of the PPP Contracts;
- (w) the Compensating Sum pursuant to clause 53.2 (*Compensating Sum*) of the PPP Contracts;
- (x) any amounts payable in taking reasonable steps to enable another party to mitigate pursuant to clause 65 (*Mitigation*) of the PPP Contract;
- (y) any amounts payable for interest pursuant to clause 66 (*Default Interest*) of the PPP Contract;
- (z) any amounts payable for Metered Utilities and excessive use of utilities pursuant to paragraph 2 and 3 of Schedule 1.4 (*Utilities*) of the PPP Contract;

- (aa) (in relation to the JNP Contract only) any amounts payable pursuant to paragraphs 1.4.1(d), 7.1, 7.2.1(b), 7.2.2, 7.2.3, 8.4, 8.6.2(ii), 8.6.3, 9.1, 9.4 and 11.2 and any Increased Infraco Costs payable pursuant to paragraphs 8.1.2 and 11.3.2 of Schedule 1.5 (*Property Provisions and Documentation*) of the PPP Contract;
- (bb) (in relation to the BCV Contract and SSL Contract only) any amounts payable pursuant to paragraphs 1.4(d), 7.1, 7.2.1(b), 7.2.2, 7.2.3, 8.1.2, 8.4, 9.1, 9.4, 11.2 and 11.3.2 of Schedule 1.5 (*Property Provisions and Documentation*) of the PPP Contract;
- (cc) any amounts payable under Schedule 2.1 (*Service Output*) of the PPP Contract including temporary changes to working timetable (paragraph 1.2.8), all night running (paragraph 1.2.9), limit of LUL remedies (paragraph 7) and provision of emergency services by Infraco (paragraph 4.2);
- (dd) any amounts elected to be paid through the ISC under the Major Enhancement Agreement;
- (ee) any amounts payable under the CTRL Works Agreement (but excluding those payable in respect of clause 22.3.1 of the CTRL Works Agreement, which shall be paid in accordance with the terms of that agreement); or
- (ff) any amounts payable by LUL to Infraco as a result of the indemnity contained in clause 37.10 (*Liability for Existing Key IPRs*) of the PPP Contracts;
- (gg) any amounts (including Increased Infraco Costs and amounts in respect of Increased Infraco Risk) payable under the Standards Code;
- (hh) any amounts payable in respect of the Working Capital Debtor Adjustment pursuant to clause 4.12 or 4.15 of the Share Purchase Agreement;
- (ii) any amounts payable in respect of Changes in Costs to Complete Transition Projects and Special Projects pursuant to clause 8.1 of the Share Purchase Agreement;
- (jj) any amounts payable under the TIMIS Agreements;
- (kk) any amounts payable in respect of Law Change Costs and Safety Change Costs pursuant to clause 28.10 of the PPP Contract or any Excess Expenditure payable pursuant to clause 28.11(b);
- (ll) any amounts payable in respect of premiums, insurance premium tax payable thereon, or any insurance brokerage or fees pursuant to clause 3.6.3, 4.3, 4.5 or 4.6 of the Insurance Agreement and (in relation to the BCV Contract and the SSL Contract only) any amounts payable in respect of deposit premiums

pursuant to paragraph 3.3 of Schedule 5.19 (*Insurance*), any amounts payable in respect of premiums, insurance premium tax payable thereon, or any insurance brokerage or fees pursuant to paragraph 3.4 of Schedule 5.19 (mm) (*Insurance*) and any amounts payable in respect of deductibles pursuant to paragraph 3.6 of Schedule 5.19 (*Insurance*);

(mm) (in relation to the BCV Contract and SSL Contract only) any amounts payable in respect of the Shortfall pursuant to paragraph 3.3 of Schedule 5.19 (*Insurance*);

(nn) Interim Payment Amounts;

Exceptional Damage means damage to the Infraco Network (excluding damage arising from the rising Water Table) arising from one event or incident where, applying Good Industry Practice, it would cost more than £25 million to reinstate the Infraco Network to at least the standard of repair and performance which existed before the damage occurred PROVIDED THAT (save as set out below) it shall not include the cost of replacing, repairing or rectifying any asset as a result of:

- (a) defective parts, whether or not such defective parts are contained within the damaged asset; or
- (b) the use of substandard materials in any asset; or
- (c) bad workmanship in any asset; or
- (d) the design of any asset; or
- (e) any defect or omission in the design or specification of any asset; or
- (f) any latent defect in any asset,

save that such proviso shall not apply to the extent of any insurance proceeds receivable pursuant to the Insurance Agreement in respect of the cost of replacing, repairing or rectifying such asset;

Expiry Payment Date means the date which is twenty (20) Business Days after the Expiry Date;

Facilities means Station Facilities and Train Facilities and **Facility** shall be construed accordingly;

Failure means where an Asset cannot be used safely or within its normal operational parameters as a result of a Defect or other reason;

Generic Access Request means a request for access by an Access Party on behalf of itself or other third parties to such parts of the LUL Network for the performance of repetitive, routine and non-disruptive activities on the LUL Network during Traffic Hours and/or Engineering Hours in accordance with their contractual obligations to that Access Party;

Generic Access Request Form means a written Generic Access Request properly completed by any Access Party setting out such party's access requirements delivered to the Access Reservation Agency;

Good Industry Practice means, in respect of any aspect of the Services and subject always to its statutory safety obligations, whilst always ensuring that risks are reduced to a level which is as low as is reasonably practicable the exercise of the degree of skill, diligence, prudence and foresight and practice which could reasonably and ordinarily be expected from a skilled and experienced person engaged in:

(a) carrying out the same type of responsibilities of Infraco under the Contract with respect to such aspect of the Services; or

(b) carrying out responsibilities, whether individually or as a package of responsibilities, which could reasonably be regarded as being comparable to the responsibilities of Infraco under the Contract with respect to such aspect of the Services; in each case, performing its obligations under the same, reasonably comparable or similar circumstances and utilising all the information available at the relevant time;

Incident means (i) a Failure of or Defect in a Facility or (ii) a failure to make Available the Facilities, including platforms, lifts, escalators and Customer conveyors as specified in paragraphs 1.2, 1.3, 2.1 and 2.2 of Schedule 2.1 (*Service Outputs*) of the PPP Contracts;

Incident Officer means such person as is so defined in the Manual;

Infraco means:

(a) when used in this Agreement, one of SSL, BCV or JNP (as relevant) and **Infracos** means all of them together; and

(b) when used in the Insurance Agreement, the Disputes Resolution Agreement, the Codes and, the Codes Accession Agreement, any one of SSL, BCV or JNP (whichever one is relevant by virtue of it being party to the applicable PPP Contract, as the context requires) and Infracos means all of them together;

(c) when used in the Inter-Infraco Assets and Facilities Agreement any one of SSL, BCV or JNP (whichever one is relevant by virtue of it being party to the applicable PPP Contract, as the context requires, and including its successors

in title to its obligations under the Transaction Documents) and Infracos means all of them together; and

- (d) when used in a Transaction Document other than those set out in (b) and (c) above, that one of SSL, BCV or JNP which is a party to that Transaction Document and references in any such Transaction Document to the **other Infracos** means SSL, BCV and JNP other than the Infraco party to that Transaction Document and a reference to **any other Infraco** means any one of SSL, BCV and JNP other than the Infraco party to that Transaction Document;

Infrastructure Controller has the meaning ascribed to it in the Railways (Safety Case) Regulations 2000;

Initial Delay means the time period from the Start Time to the End of Initial Delay as described in Part B of Schedule 5 (*Disruption, Defects and Failures*) of the Performance Measurement Code;

Insurance Agreement means the Transaction Document of that name;

Intermediate Works means any work (other than a Minor Work) in connection with the Infrastructure Services under the applicable PPP Contract, not otherwise required to be performed by Infraco, which has a value of more than £20,000 and less than or equal to £5,000,000;

Invoice Date means the seventh day of each Payment Period;

ISC means the Infrastructure Service Charge;

JNP means Infraco JNP Limited whose registered office is at 55 Broadway, London SW1H 0BD (Company No. 03923425);

JNP Base Allocation of Minor Closures means, in relation to Minor Closures, a maximum of 16,065,000 Lost Customer Hours per Review Period;

JNP Contract means the contract between JNP and LUL for the provision of infrastructure maintenance services dated the date hereof as amended from time to time in accordance with its terms;

Jubilee Line Extension means that part of the Jubilee Line east of Green Park Station and any other parts of the Jubilee Line at which works have been or are being carried out pursuant to the London Underground (Safety Measures) Act 1991, the London Underground Limited (Jubilee Line Extension) Act 1992, the London Underground Limited (Jubilee Line) Act 1993 or the London Underground Limited (Green Park Station) Act 1994;

L&E Closure means any Closure (not being a Minor Closure or a Major Closure) which will result in any lifts, escalators, travelators, fixed stairways, routeways or cross-passageways not being Available for any period of time where such non-Availability does not, for safety or operational reasons, require a Full Station Closure or a Platform Closure;

L&E Compensation Rate means the rate determined in accordance with the table set out at Appendix 1B (*L&E Compensation Rate*) of the Access Code;

Latest Engineering Train Path Request Date means 42 days prior to the first Business Day of the week in respect of which the access is sought;

Latest Request Date means, in the case of access to track 28 days prior to the first Business Day of the week in respect of which access is sought, and in the case of access to Stations 21 days prior to the first Business Day of the week in respect of which access is sought;

Level B means the level of LUL Staff or Infraco Staff of a higher level of seniority than Level A, who deal with the procedures set out in Schedule 4 (*Fault Attribution Procedures*) of the Performance Measurement Code which have not been resolved at Level A;

Losses means all liabilities, damages, losses, costs and expenses;

Lost Customer Hours means the total additional journey time measured in hours, applying NACHS, experienced by Customers using the Underground Network as a result of Service Disruptions;

LRT means London Transport;

LUL means London Underground Limited whose registered office is at 55 Broadway, London SW1H 0BD;

LUL Breach means (a) breach by LUL of any LUL Obligations, or (b) any act or omission which the PPP Contracts or the Transaction Documents expressly state is an LUL Breach;

LUL Network means that part of the Underground Network for which LUL is Infrastructure Controller save that in the Access Code the expression shall exclude any reference to Depot Premises or to the premises comprised in the Acton Works Lease;

LUL Obligations means all of LUL s obligations and liabilities under and pursuant to the PPP Contract and such of the Transaction Documents to which both LUL and Infraco are party;

LUL Specified Right means each of LUL's rights under:

- (a) clause 29.4 (*Disruptive Commercial Exploitation*) of the PPP Contracts to undertake, authorise or permit Disruptive Commercial Exploitation;
- (b) section 3 (*Surplus Property*) of the Property Code relating to Surplus Property in circumstances where paragraph 1(a)(vii)(B) or 1(b) of that section applies;
- (c) paragraph 7.2 of Schedule 1.1 (*National Network*) of the PPP Contracts relating to the negotiation of any new contracts, agreements or arrangements with any National Network Parties which LUL requires to be treated as National Network Agreements and the amendment, variation or replacement of National Network Agreements unless following such amendment, variation or replacement the agreement would qualify as a Relevant Third Party Agreement;
- (d) paragraph 5 (of the BCV and SSL Contracts) and paragraph 6 (of the JNP Contract) of Schedule 1.2 (*Third Party Contracts*) of the said Contracts relating to the amendment, variation or replacement of Third Party Contracts unless following such amendment, variation or replacement the agreement would qualify as a Relevant Third Party Agreement;
- (e) paragraph 3 of Schedule 1.3 (*PFI Contracts*) of the PPP Contracts relating to the amendment, variation or replacement of PFI Obligations unless following such amendment, variation or replacement the agreement would qualify as a Relevant Third Party Agreement;
- (f) clauses 8.1.1 (*Performance by an Alternative Provider*) or 9.1 (*Suspension of Infraco for Duration of Major Enhancement*) of the Major Enhancement Agreement relating to performance of Major Enhancement Works by an Alternative Provider;
- (g) clause 51.13 (*Heritage Trains*) of the PPP Contracts relating to the running of Heritage Trains;
- (h) clause 11A (*TIMIS*) of the BCV Contract and clause 11C (*TIMIS*) of the JNP Contract relating to the ongoing maintenance of the respective parts of the TIMIS System, and clause 11A (*TIMIS*) of the SSL Contract relating to the maintenance of the TIMIS System or any part thereof;
- (i) clause 11B (*Terminal 5*) of the JNP Contract to require JNP to undertake certain obligations in respect of Project T5;
- (j) clause 11B.2 (*East London Line*) of the SSL Contract to require SSL to undertake certain obligations in respect of the East London Line;

- (k) clause 1.2(r) (*Interpretation of Transaction Documents*) of the MDA regarding the withdrawal of approval by LUL;
- (l) clause 11C (*Croxley*) of the SSL Contract to require SSL to undertake certain obligations in respect of the Croxley Link;
- (m) paragraph 8.1.4 of Schedule 1.5 (*Property Provisions and Documentation*) of the PPP Contracts to grant interests in or rights of use of or access to land where such grant is in favour of a New PFI Contractor;
- (n) clause 11D (*East London Line*) of the JNP Contract to require JNP to undertake certain obligations at Canada Water station in respect of the East London Line;
- (o) clause 11E (*Jubilee Line Upgrade*) and 11H (*Jubilee Line*) of the JNP Contract to require JNP to undertake additional obligations in respect of the Jubilee Line;
- (p) clauses 11F (*Project Thameslink*) of the JNP Contract, 11B (*Project Thameslink*) of the BCV Contract and 11D (*Project Thameslink*) of the SSL Contract to require Infraco to undertake certain works and services in relation to Project Thameslink;
- (q) clause 11G.1 (*Connect Enabling Works*) of the JNP Contract, clause 11C (*Connect Enabling Works*) of the BCV Contract and clause 11E (*Connect Enabling Works*) of the SSL Contract relating to certain works and services in respect of the Connect Contract;
- (r) paragraph 6A.1 of Schedule 2.1 (*Service Outputs*) of the PPP Contracts to require Infraco to carry out Intermediate Works;
- (s) (in respect of the JNP Contract only) the SSL Contract or any other documentation whatsoever to terminate in whole or in part any Lease or Ancillary Lease granted to SSL in circumstances where clause 3.2 of the Depot Facilities Agreement requires that LUL complies with the provisions of clause 17 (*LUL Specified Rights*) of the JNP Contract in respect of such termination;
- (t) [Not used];
- (u) (in respect of the JNP Contract and the SSL Contract only) the BCV Contract or any other documentation whatsoever to terminate in whole or in part any Lease or Ancillary Lease granted to BCV in circumstances where clause 13.4 of the Ruislip Depot Loading Area Agreement requires that LUL complies with the provisions of clause 17 (*LUL Specified Rights*) of the JNP Contract and/or the SSL Contract (as the case may be) in respect of such termination;

- (v) paragraph 1.6A of Schedule 3.2 (*Reasonable Life Expectancy, Condition Benchmarks and Residual Life Benchmarks*) of the BCV and SSL Contracts to require Infraco to carry out more extensive works to bring a Grey Asset into a condition to be specified by LUL; (w) the right of LUL to require that property which has temporarily been Surplus Property shall cease to be Surplus Property, in the circumstances set out in paragraph 4(a) of Section 3 of the Property Code;
- (x) clause 11F (*Circle Line Trains*) of the SSL Contract to require SSL to undertake certain works and services in relation to Trains on the Circle Line; and
- (y) clause 11G (*Air Conditioning*) of the SSL Contract to require SSL to undertake works and services in relation to the installation and maintenance of air-conditioning systems on Trains on the SSL Lines;
- (z) clause 11H.1 and 11H.2 of the SSL Contract to amend Fixed Parameters and determine Infraco Measures for the inclusion of Barking Sidings, Rayners Lane Terminus and Rayners Lane Flat Junction in the Capability Model Workbook and to require Infraco to complete additional infrastructure or enabling works at such locations;
- (aa) clause 11K of the JNP Contract to require JNP to provide a Train Service Management Information System for the Jubilee Line;
- (bb) clause 11G.2 (*Northern Line Train Service Contracts*) of the JNP Contract to procure certain variations in relation to the radio system on the Northern Line and assist LUL in procuring certain variations to the Connect Contract;
- (cc) clause 11J.1 (*Northern Line Train Service Contracts*) of the JNP Contract regarding changes to the terms of the Northern Line Train Service Contracts;
- (dd) clause 11J.2 (*Northern Line Train Service Contracts*) of the JNP Contract regarding the exercise of voluntary termination rights under the Northern Line Train Service Contracts;
- (ee) clause 11J.3 (*Northern Line Train Service Contracts*) of the JNP Contract regarding the service of certain notices under the Northern Line Train Service Contracts;
- (ff) paragraph 2.3 of the Access Code to allow PFI Contractors other than the Prestige Contractor, the Power Service Contractor, the Connect Contractor and (subject to the specific provisions of clause 11B of the JNP Contract) any PFI Contractor in respect of Project T5 to have Access pursuant to the Access Code;

- (gg) clause 11I of the SSL Contract to require Infraco to undertake certain works and services in relation to Train Refurbishments on the District Line;
- (hh) clause 11L (*Legal Proceedings*) of the JNP Contract to require Infraco to provide certain services in relation to legal proceedings involving LUL in respect of the Jubilee Line;
- (ii) clause 11D (*OPO CCTV*) of the BCV Contract and clause 11J (*OPO CCTV*) of the SSL Service Contract regarding the implementation and maintenance of one-person-operation (OPO) closed circuit television (CCTV) systems;

Major Closure means any Closure (not being a Minor Closure or an L&E Closure) which will result in Facilities not being Available for any period of time between 6am to 9pm on any Business Day;

Manual means the LUL reference manual or any part of it;

Master Definitions Agreement means this Agreement;

Minor Closure means any Closure (not being a Major Closure or an L&E Closure) which will result in Facilities not being Available for any period of time following the run down of services between 9pm to 6am on any Business Day or at any time during a day other than a Business Day;

Minor Works means any work in connection with the Infrastructure Services under the applicable PPP Contract, not otherwise required to be performed by Infraco which has a value of less than £20,000;

Net Present Value means the net present value of any stream of cashflows calculated as at the stated reference date, determined by discounting any such cashflows subsequent to the reference date by:

- (a) for the purposes of calculating the DCF Amount, the weighted average interest rate (taking into account hedging arrangements) of principal indebtedness falling within paragraph (a) of the definition of Approved Debt at the commencement of business on the Contract Disposal Calculation Date on the assumption that Infraco has complied with its payment obligations in respect of such indebtedness;
- (b) for the purposes of calculating any benefit pursuant to paragraph 1.5(aa) of Schedule 1.9 (*The Statutory Arbitrator and Reviews*) of the PPP Contracts, the Equity Rate of Return as at the Contract Disposal Calculation Date;
- (c) for the purposes of calculating Rectification Costs and components A and B of the Estimated Fair Value of the Contract, the rate set out in clause 41.16 (*Net Present Value*) of the applicable PPP Contract; for the purposes of calculating

component E of the Estimated Fair Value of the Contract, the Equity Rate of Return as at the Contract Disposal Calculation Date; and

- (e) for the purposes of calculating component F of the Estimated Fair Value of the Contract, the weighted average interest rate (taking into account hedging arrangements) of principal indebtedness falling within paragraph (a) of the definition of Approved Debt at the commencement of business on the Contract Disposal Calculation Date on the assumption that Infracore has complied with its payment obligations in respect of such indebtedness;

OAEW Standard means the Operational Assurance for Engineering Work Standard bearing reference number Bb228;

Objective Requirements means the requirements set out in paragraphs 4.2 to 4.9 of the Standards Code;

Office Accommodation Leases means leases or licences of office accommodation in the agreed form (to be read in conjunction with the Facilities Management Agreement as defined therein);

Office Accommodation Properties means the premises comprised or to be comprised in the Office Accommodation Leases;

Operational Assurance means, in the case of Advance Access Requests and Short-Notice Access Requests, the issuance by LUL of an Operational Assurance certificate in accordance with the OAEW Standard or, in the case of Under 48 Hours Access Requests, confirmation of the access sought by the relevant LUL personnel for the purposes of compliance with the OAEW Standard;

Partial Station Closure means where one or more Ticket Halls, Ticket Office, Routeway or Station Entrance is not available as more particularly described in Table 1 of Part A of Schedule 5 of the Performance Measurement Code;

Payment Date means the date upon which amounts specified in an Invoice shall become due and payable by LUL to Infracore in accordance with the provisions of clause 18 (*Payment Provisions*) of the PPP Contracts which shall be, in relation to each Invoice Date, the last Friday of the Payment Period during which the Invoice is submitted;

Payment Period means a period of 28 days duration (or such other duration as may be calculated in accordance with the provisions of clause 18 (*Payment Provisions*) of the PPP Contracts for the first and thirteenth Payment Periods) used for the purposes of the payment provisions set out in clause 18 (*Payment Provisions*) of the PPP Contracts and in Schedule 5.7 (*Non-ISC Invoicing*) of the PPP Contracts;

Performance Measurement Code means the code of that name governing the processes and procedures by which the parties to each PPP Contract shall monitor and measure the degree to which the relevant Infraco is fulfilling its obligations under clause 4.1 (*Infrastructure Services*) of the applicable PPP Contracts;

PFI Contract means, in each case, the main project contract entered into or to be entered into by LUL and/or London Transport and the relevant private sector partner in respect of a PFI Project;

PFI Contractors means those contractors who have entered into or will enter into PFI Contracts save that in the Access Code the expression shall exclude the Northern Line Contractors;

Power Service Contract means the PFI Contract for the Power Project being the Power Service Contract dated 13 August 1998 between London Underground Limited, Seaboard Powerlink Limited and Power Asset Development Company Limited;

Power Service Contractor means the PFI Contractor under the Power Service Contract;

PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract, **PPP Contract** means any one of them or, as the context requires, a particular one of them, and **applicable PPP Contract** means that PPP Contract applicable to a particular Infraco by virtue of such Infraco being a party thereto;

Prestige Contract means the PFI Contract for Project Prestige being the contract for the Procurement and Supply of Ticketing Services dated 13 August 1998 between London Transport and Transaction Systems Limited;

Prestige Contractor means the PFI Contractor under the Prestige Contract;

Project T5 means the project for the T5 Extension;

Published Time means the time published in the Guide to Switching Traction Current on and off to the manual for traction current in a traction current section to be switched on or off;

Qualifying Change of Law means:

- (a) a Discriminatory Change of Law, Specific Change of Law, and/or Discriminatory Change of Tax Law which was not foreseeable at the Start Date; and/or
- (b) any enhancement, modification or improvement to the Underground Network carried out or to be carried out by the Infraco in order to comply with the Disability Discrimination Act 1995 in accordance with any policy as to

implementation that LUL may notify to Infraco from time to time, other than one required:

- (i) pursuant to paragraphs 2.5 to 2.8 of Schedule 2.1 of the PPP Contracts (*Service Outputs*) and paragraph 2.3 of Appendix 8 of Schedule 2.1 (*Service Outputs*) of the PPP Contracts;
- (ii) to comply with Rail Vehicle Accessibility Regulations as set out in Part V of the Disability Discrimination Act 1995,

in each case, not being a Safety Change;

Responsible Infraco means, in respect of a Line, the Infraco to whom a Line has been allocated and, in respect of a Station, the Infraco to whom a Station has been allocated;

Review Date means each of the dates which are 7½ years (the *First Review Date*), 15 years (the *Second Review Date*) and 22½ years (the *Third Review Date*) following the Transfer Date;

Review Period means the period prior to the first Review Date, between Review Dates or after the last Review Date, as the context requires;

Routeways means those areas of a Station structure identified by a Station Area identification function code in the range 071 to 110, 201 to 233 and 601 to 630 as set out in the Station Layout Plans identified in Appendix 12 (*Station Plans*) to Schedule 2.1 of the PPP Contracts which are used by Customers to travel from platforms to the Ticket Hall, between platforms or between intermediate parts of the Station;

SABRE (Site Access Booking for Railway Engineering) means the access booking system used by the Access Reservation Agency to record requests for access and includes a reference to any other access booking system used by the Access Reservation Agency;

Safety Change means any enhancement, modification or improvement to the Underground Network, carried out or to be carried out by Infraco or any change in working practices by Infraco:

- (a) in order to enable Infraco to remain in compliance with its safety obligations under the Safety Agreement, or the Contract (other than those arising from a Qualifying Change of Law but including, for the avoidance of doubt, those arising from any other Law Change relating to health and safety);
- (b) in order to enable LUL, Infraco or another Infraco to comply with any modifications of or additions to the body of Railway Group Standards which are not covered by a Railway Group Standards Derogation;

- (c) in order to enable LUL to remain in compliance with its statutory safety obligations (other than those arising from a Qualifying Change of Law but including, for the avoidance of doubt, those arising from any other Law Change relating to health and safety); or
- (d) that LUL reasonably determines is necessary for reasons of security (being in the nature of criminal acts and any acts or events requiring the intervention of the police, emergency services or other Authorised Third Parties or similar matters),

and which in the absence of LUL s agreement is determined in accordance with the procedure set out in the Dispute Resolution Agreement that such enhancement, modification or improvement is necessary or appropriate to enable the objectives at, as the case may be, either (a), (b), (c) or (d) above to be satisfied;

Sell Back Rate means the marginal rate of payment adjustment, per Lost Customer Hour, between Benchmark and Cap levels in accordance with the calculation of Availability Adjustment set out in Schedule 4.1 (*Performance Payment Mechanism*) of the PPP Contracts;

Service Disruption means the category in which an Incident causing a Disruption is recorded for the purposes of Schedule 3 (*Reporting Procedures*) of the Performance Measurement Code;

Short-Notice Access Request means a request for access to any part of the LUL Network submitted after the relevant Latest Request Date and prior to midday on the date falling two (2) Business Days prior to commencement of Engineering Hours on the date on which such access is sought;

Special Equipment means any equipment necessary for the provision of the Weed Control Service, the Track Recording Vehicle Service and Engineering Train movements between TransPlant Depot Premises (each as defined in the TransPlant Agreement) and the Tamping Service, which for any reason, is incapable of making use of an Engineering Train Path;

Specified Line Upgrades means those Line upgrade projects resulting in a step change in Journey Time Capability as more particularly identified in Appendix 5A of Schedule 2.1(*Specified Line Upgrades*) and Appendix 3 (*Specific Projects*) of Schedule 4.1 of the PPP Contracts;

SSL means Infracore Sub-Surface Limited whose registered office is at 55 Broadway, London SW1H 0BD (Company No.03923484);

SSL Base Allocation of L&E Closures means, in relation to L&E Closures, a maximum of 1,100,000 Lost Customer Hours per Review Period;

SSL Base Allocation of Minor Closures means, in relation to Minor Closures, a maximum of 17,522,500 Lost Customer Hours per Review Period subject to a maximum annual usage of 4,800,000 Lost Customer Hours in relation to Minor Closures and CTRL Closures (for the avoidance of doubt including both Minor Closures and Partial Station Closures);

Start Time has the meaning ascribed to it in respect of different Disruption types as set out in Table 2 of Part B of Schedule 5 (*Disruption, Defect and Failure Definitions*) of the Performance Measurement Code;

Statement of No Objection means:

- (a) in the case of Advance Access Requests, Short-Notice Access Requests, Under 48 Hours Access Requests and Generic Access Requests, the confirmation by the Responsible Infraco; and
- (b) in the case of Advance Engineering Train Path Requests and Urgent Engineering Train Path Requests the confirmation by the Access Reservation Agency, that, at the time the relevant Access Request is lodged with the Responsible Infraco or the Access Reservation Agency, as the case may be, the information provided by the party requesting access is satisfactory for the purposes of CDM Regulations compliance;

Station means a building, equipment or facilities designed to be used by Customers to access or leave a Train and where the term ***Station*** is used in a Transaction Document, unless otherwise stated, it means those Stations which form part of Infraco's Assets;

Station Accessibility Project means a project enabling a step-free route for Customers between the street outside a Station entrance and each platform of that Station and between each platform at a Station;

Station Entrance means the immediate exterior of the Station, including gates, doors, windows, canopy, stairwells, railings, external signage (including those signs which are remote from the property ownership boundary, e.g. at the ends of access subways) and access subways and other access routes leading to the Station entrance insofar as they are the responsibility of Infraco and for the purposes of the Performance Measurement Code, this shall mean those areas of a Station identified with a letter designation or by Shared Area identification function code in the range 186 to 195 and 601 to 630 as set out on the Station Layout Plans identified in Appendix 12 (*Station Plans*) of Schedule 2.1 of the PPP Contracts;

Station Modernisation has the meaning ascribed to it in paragraph 1 of Appendix 15 (*Station Modernisation, Enhanced Station Refurbishment and Station Refurbishment*) of Schedule 2.1 to the PPP Contracts;

Station Refurbishment has the meaning ascribed to in paragraph 1 of Appendix 15 (*Station Modernisation, Enhanced Station Refurbishment and Station Refurbishment*) of Schedule 2.1 to the PPP Contracts;

Station Service means the service to be provided to Customers in relation to Stations (including platforms, lifts, escalators, Customer Conveyors or other Station areas) as required by the applicable PPP Contract and **Station Services** shall be construed accordingly;

Station Works Plan means the weekly publication by the Access Reservation Agency of all planned station works on the Underground Network;

Third Party Contracts means those contracts, agreements and arrangements between LUL and third parties listed at Annex 1 (*Contracts, Agreements and Arrangements*) of Schedule 1.2 of the PPP Contracts;

Ticket Hall means that area of a Station where Customers may purchase tickets as identified by a Station area identification function code in the range 001 to 010 as shown on the Station Layout Plans identified in Appendix 12 (*Station Plans*) to Schedule 2.1 of the PPP Contracts; **Ticket Office** means a secure room or suite of rooms at a Station used by LUL Staff to sell tickets and answer Customer enquiries;

Traffic Hours means the time between the end of one period of Engineering Hours and the beginning of the subsequent period of Engineering Hours as may be amended in accordance with paragraphs 1.2.7 (*Permanent Changes to Working Timetables*) or 1.2.8 (*Temporary Changes to Working Timetables*) of Schedule 2.1 of the PPP Contracts;

Train Service means the service to be provided to Customers in relation to Trains as required by Schedule 2.1 (*Service Outputs*) of the applicable PPP Contract and **Train Services** shall be construed accordingly;

Transfer Date means, in relation to each Infraco, the date upon which LUL disposes of its share ownership of that Infraco to a third party which is not a subsidiary of either LUL or any parent company of LUL;

Under 48 Hours Access Request means a request for access to any part of the LUL Network submitted at any time between midday on the day falling two (2) Business Days prior to the day and on the day on which such access is sought;

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

Urgent Access means urgent, unplanned access which is required during Engineering Hours in order to rectify the Failure of an Asset which, if not rectified, would have a material adverse impact on passenger services for the following day s service;

Urgent Engineering Train Path Request means a request for an Engineering Train Path made after the Latest Engineering Train Path Request Date;

Water Table Damage means damage to the Infraco Network arising from the rising Water Table;

Weekend Minor Closure means any Disruptive Access to Station and to track affecting Customer services at weekends and/or English bank holidays;

Access Code (Amended and Restated)

Purpose

- 1.1** The purpose of this Access Code is to facilitate a safe, orderly and equitable system of obtaining access to the LUL Network having regard to:
- (a) the need to allocate access as equitably as possible between the Access Parties in addition to other third parties having regard to their respective obligations and to incentivise the efficient use of access by such parties;
 - (b) the need to promote effective advance planning of work requiring access;
 - (c) the need to create an orderly process using accurate information for the booking and allocation of access creating certainty for all relevant parties; and
 - (d) the respective obligations of the Access Parties in addition to other third parties with regard to safety, safety-related matters which shall include the CDM Regulations and the OAEW Standard.
- 1.2** The parties to this Access Code agree to act in accordance with, and so as to promote, its stated purpose as the same is provided in clause 1.1 above.

Introduction

- 2.1** The parties to this Access Code acknowledge that, notwithstanding an Access Booking, access may be cancelled or delayed for safety reasons (including for the purpose of CDM Regulations and OAEW Standard compliance).
- 2.2** The parties to this Access Code acknowledge LUL's right to introduce All Night Running in accordance with paragraph 1.2.9 of Schedule 2.1 of the PPP Contracts.
- 2.3** The parties to this Access Code acknowledge LUL's obligations to provide all access as LRT or LUL is required to provide by the terms and conditions of the Prestige Contract, the Power Service Contract, the Connect Contract and any PFI Contract in respect of Project T5 in accordance with this Access Code. Should LUL wish to allow PFI Contractors other than the Prestige Contractor, the Power Services Contractor, the Connect Contractor and (subject to the specific provisions of clause 11B of the JNP Contract) any PFI Contractor in respect of Project T5 to have access pursuant to this Access Code, it shall be entitled to do so only if it has exercised an LUL Specified Right.

- 2.4 The parties to this Access Code acknowledge LUL's obligation to provide all access as LUL is required to provide by the terms and conditions of those Third Party Contracts in Annex 1 of Schedule 1.2 of the PPP Contracts in accordance with this Access Code.
- 2.5 Having regard to the need to provide passenger services, LUL shall, insofar as reasonably practicable, retain each year not less than the number of Engineering Train Paths provided during Traffic Hours as were provided during the twelve month period prior to the Transfer Date.
- 2.6 To the extent applicable, the provisions of this Access Code shall be interpreted in accordance with clause 1.2 of the Master Definitions Agreement between LUL, JNP, BCV and SSL (the *MDA*).
- 2.7 Words and expressions used in this Access Code shall, to the extent applicable and unless defined herein or the context otherwise requires, have the meaning assigned to them in Schedule 2 of the MDA.

The Access Reservation Agency

- 3 The Access Reservation Agency shall make SABRE available to the Responsible Infraco where it is recording the reservation of access to the LUL Network pursuant to any of clauses 4.1.2, 4.1.4, 4.1.6, 4.1.7, 4.2.1, 4.2.2, 4.2.4, 4.2.5, 4.4, 4.5 or 4.8. The Access Reservation Agency shall record Access Bookings in respect of Generic Access Requests, Closures and Engineering Train Paths and notify any affected Access Parties accordingly. It shall publish all relevant access plans including but not limited to the Station Works Plan and the Engineering Works Safety Arrangements.

4 Access in Traffic Hours and Engineering Hours

4.1 Advance Access Requests

- 4.1.1 Subject to LUL's rights to use any Station during the opening hours for Stations (as determined by reference to Appendix 11A of Schedule 2.1 of the PPP Contracts) and to prepare any Station for use during the station preparation times set out in Appendix 11B of Schedule 2.1 of the PPP Contracts and to the terms of this Access Code, access to the LUL Network during Engineering Hours and Traffic Hours shall be allocated in accordance with the provisions of this clause 4.
- 4.1.2 Subject to clause 4.1.8 an Advance Access Request may be made by an Access Party submitting an Access Request Form to the Responsible Infraco on any date prior to the relevant Latest Request Date for which access is being requested. The

Responsible Infraco shall forthwith record all such Advance Access Requests on SABRE. The Access Party requesting the access shall, simultaneously with the submission of the relevant Access Request Form to the Responsible Infraco, seek Operational Assurance in respect of the access sought. When Operational Assurance has been granted or it is confirmed that Operational Assurance is not required, the Access Party requesting the access shall provide evidence to that effect to the Responsible Infraco.

4.1.3 The Access Parties shall, at the request of the Access Reservation Agency, meet from time to time with a view to ensuring the most efficient allocation and booking of access.

4.1.4 Not later than fourteen (14) days after receipt of the relevant Access Request Form, the Responsible Infraco shall record on SABRE whether the access sought has been approved or rejected, provided always that it shall reject an Advance Access Request if:

- (a) it does not have evidence that Operational Assurance has been granted or if Operational Assurance does not have a reasonable prospect of being granted under the OAEW Standard (unless it is confirmed that Operational Assurance is not required);
- (b) it is unable, in the exercise of its safety responsibilities, to issue a Statement of No Objection;
- (c) subject to clause 4.1.7, an Access Booking conflicts with the access sought;
- (d) subject to clause 4.1.7, there exists a potentially conflicting request for access which, in the opinion of the Responsible Infraco or LUL, as the case may be, (acting reasonably and having regard to the purposes of this Access Code and the Engineering Works Prioritisation Factors) has equal or higher priority; or
- (e) the request for access is inconsistent with the purposes of this Access Code as set out in clause 1.1; and may not reject a request for any other reason. Where the Responsible Infraco determines that the access sought cannot be approved for the reasons set out in paragraphs (a) to (e) above, it shall advise the party requesting access of its reasons for withholding approval and shall, where

access cannot be approved for the reasons set out at (c) or (d) (after consulting with LUL where necessary), propose an alternative time when the access sought could be accommodated (which time shall be reserved on SABRE pending acceptance or rejection of such alternative in accordance with clause 4.1.6) and, when proposing an alternative time, the Responsible Infraco shall use reasonable endeavours to propose times which are compatible with the time originally requested.

4.1.5 Where the access sought under clause 4.1.2 has been approved in accordance with clause 4.1.4 the Responsible Infraco shall forthwith notify the party requesting such access.

4.1.6 Not later than two (2) Business Days after notification of the alternative time offered, the party seeking access shall notify the Responsible Infraco whether the alternative time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements. Where the alternative time offered is acceptable to the party seeking access and subject always to paragraphs (a) to (e) of clause 4.1.4 above, the Responsible Infraco shall notify the party requesting access that the access has been approved and record details of such approved access on SABRE. If access has been rejected by the Responsible Infraco and the requesting party disputes the reasonableness or otherwise of the relevant Responsible Infraco's rejection of the access sought, it may seek resolution of such dispute under the Dispute Resolution Agreement, provided that such action shall, if successful, be limited to the sum of an award made in accordance with clause 8.5.

4.1.7 If an Advance Access Request is received by the Responsible Infraco which potentially conflicts with an existing Advance Access Request or an Access Booking, the Responsible Infraco shall notify the relevant parties of such potential conflict together with the identity of the conflicting parties whereupon such parties shall use all reasonable endeavours to accommodate their respective access requirements, provided that in the case of Advance Access Requests, only those which have obtained Operational Assurance, are in the opinion of the Responsible Infraco (acting reasonably) likely to obtain Operational Assurance or do not require Operational Assurance shall be considered. If, within fourteen (14) days of being notified of the potential conflict, the relevant parties have been unable to resolve such conflict, any Access Booking shall take priority

over an Advance Access Request and the priority of potentially conflicting Advance Access Requests shall be determined having regard to clause 4.1.4(d) and informing the relevant parties of its decision accordingly. If potentially conflicting Advance Access Requests are made which relate to more than one Responsible Infraco, the Responsible Infraco to whom the first such request relates shall determine the priority, such priority to be determined in accordance with clause 4.1.4(d). The Responsible Infraco shall forthwith record details of the successful Advance Access Request on SABRE.

- 4.1.8** Where an Advance Access Request is made by an Access Party more than one hundred and eighty (180) days in advance of the Latest Request Date, such access shall not be confirmed in accordance with the foregoing provisions of this clause 4.1 without the prior written consent of LUL and the relevant Responsible Infraco (which may not be unreasonably withheld and which shall have regard to the need to plan and provide for Closures and to the provisions of paragraph 4 of Appendix 2 of Schedule 18.9 of the Power Service Contract).

Advance Engineering Train Path Requests

- 4.1.9** Subject to clause 4.1.12, an Advance Engineering Train Path Request may be made by an Access Party submitting an Engineering Train Access Request Form to the Access Reservation Agency on any date prior to the Latest Engineering Train Path Request Date for which access is being requested. The Access Reservation Agency shall forthwith record all such Advance Engineering Train Path Requests on SABRE.

- 4.1.10** Not later than fourteen (14) days after receipt of the Engineering Train Access Request Form, the Access Reservation Agency shall record on SABRE whether the Advance Engineering Train Path Request sought has been approved or rejected, provided always that it shall reject an Advance Engineering Train Path Request if:

- (a) it is without evidence from the requesting party that use of an Engineering Train has been secured for the period in question;
- (b) it is unable, in the exercise of its safety responsibilities, to issue a Statement of No Objection; or

- (c) the request for access is inconsistent with the purposes of this Access Code as set out in clause 1.1; and may not reject a request for any other reason. Where the Access Reservation Agency notifies the requesting party that the access sought cannot be approved for any of the reasons set out in paragraphs (a) to (c) above, no alternative time shall be offered.

4.1.11 If access has been rejected by the Access Reservation Agency and the requesting party disputes the reasonableness or otherwise of the Access Reservation Agency's rejection of the access sought, it may seek resolution of such dispute under the Dispute Resolution Agreement, provided that such action shall, if successful, be limited to the sum of an award made in accordance with clause 8.5.

4.1.11A Where the Engineering Train Path sought under clause 4.1.9 has been approved in accordance with clause 4.1.10 the Access Reservation Agency shall forthwith notify the party requesting such Engineering Train Path.

4.1.12 Notwithstanding any other provision of the Access Code, an Advance Engineering Train Path Request shall not in any event be made more than five hundred and forty (540) days in advance of the Latest Engineering Train Path Request Date.

4.1.13 LUL shall use all reasonable endeavours to ensure an Engineering Train Path shall be made available to the Access Party requesting it so as to enable the relevant Engineering Train to arrive at its destination not later than twenty five (25) minutes following the commencement of the relevant Engineering Hours.

Urgent Engineering Train Path Requests

4.1.14 Notwithstanding the foregoing provisions of this clause 4, an Urgent Engineering Train Path Request may be made, subject to clause 4.1.16, by an Access Party, submitting an Engineering Train Access Request Form to the Access Reservation Agency as soon as reasonably practicable.

4.1.15 Where an Urgent Engineering Train Access Request is made by an Access Party at any time between two (2) Business Days prior to the date and on the date on which such access is sought, Infraco shall not be obliged to submit an Engineering Train

Access Request Form, but shall make contact with the Access Reservation Agency.

4.1.16 Subject to Infraco complying with clause 4.1.14 or 4.1.15 (as the case may be) the Access Reservation Agency shall notify the requesting party as soon as reasonably practicable whether the Urgent Engineering Train Path Request sought has been approved or rejected, provided always that it shall reject an Urgent Engineering Train Path Request if:

- (a) it is without evidence from the requesting party that use of an Engineering Train has been secured for the period in question;
- (b) it is unable, in the exercise of its safety responsibilities, to issue a Statement of No Objection; or
- (c) the request for access is inconsistent with the purposes of this Access Code as set out in clause 1.1; and may not reject a request for any other reason. Where the Access Reservation Agency notifies the requesting party that the access sought cannot be approved for any of the reasons set out in paragraphs (a) to (c) above, no alternative time shall be offered.

4.1.17 Where an Urgent Engineering Train Path Request is approved the Access Reservation Agency shall record such approved access on SABRE, retrospectively if necessary.

Short-Notice Access Requests

4.2.1 A Short-Notice Access Request may be made by an Access Party submitting an Access Request Form to the Responsible Infraco at any time after the relevant Latest Request Date and prior to midday on the date falling two (2) Business Days prior to the commencement of Engineering Hours on the date on which access is being sought. The Responsible Infraco shall forthwith record all such Access Requests on SABRE. All parties to this Access Code shall use all reasonable endeavours to accommodate a Short-Notice Access Request. The Access Party requesting the access shall, simultaneously with the submission of the relevant Access Request Form to the Responsible Infraco, seek Operational Assurance in respect of the access sought. When Operational Assurance has been granted or it is confirmed that Operational Assurance is not required, the Access Party requesting the access shall provide evidence to that effect to the Responsible Infraco.

4.2.2 As soon as reasonably practicable following receipt of the Access Request Form in respect of a Short-Notice Access Request (having regard to the time remaining until the time when access is being sought), the Responsible Infraco shall record on SABRE whether the access sought has been approved or rejected, provided always that it shall reject a request if:

(a) it does not have evidence that Operational Assurance has been granted or if Operational Assurance does not have a reasonable prospect of being granted under the OAEW Standard (unless it is confirmed that Operational Assurance is not required);

(b) it is unable, in the exercise of its safety responsibilities, to issue a Statement of No Objection;

(c) it has not been possible in the time available to secure Operational Assurance (if applicable) or a Statement of No Objection;

(d) subject to clause 4.2.5, an Access Booking conflicts with the access sought;

(e) subject to clause 4.2.5, the Responsible Infraco has given priority to an existing conflicting Short-Notice Access Request; or

(f) the request for access is inconsistent with the purposes of this Access Code as set out in clause 1.1; and may not reject a request for any other reason. Where the Responsible Infraco determines that the access sought cannot be approved for any of the reasons set out in paragraphs (a) to (f) above, it shall advise the party requesting access of its reasons for withholding approval and shall, where access cannot be approved for the reasons set out at (d) or (e) (after consulting with LUL where necessary), propose an alternative time when the access sought could be accommodated (which time shall be reserved on SABRE pending acceptance or rejection of such alternative in accordance with clause 4.2.4) and, when proposing an alternative time, the Responsible Infraco shall use reasonable endeavours to propose times which are compatible with the time originally requested.

4.2.3 Where the access sought under clause 4.2.1 has been approved in accordance with clause 4.2.2 the Responsible Infraco shall forthwith notify the party requesting such access.

4.2.4 As soon as reasonably practicable (having regard to the time remaining until the time when access is being sought but in any event not later than two (2) Business Days) after notification of the alternative time offered, the party seeking access shall notify the Responsible Infraco whether the

alternative time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements. Where the alternative time offered is acceptable to the party seeking access and subject always to paragraphs (a) to (f) of clause 4.2.2 above, the Responsible Infraco shall notify the party requesting access that the access has been approved and record details of such approved access on SABRE. If access has been rejected by the Responsible Infraco and the requesting party disputes the reasonableness or otherwise of the relevant Responsible Infraco's rejection of the access sought, it may seek resolution of such dispute under the Dispute Resolution Agreement, provided that such action shall, if successful, be limited to the sum of an award made in accordance with clause 8.5.

- 4.2.5** If a Short-Notice Access Request potentially conflicts with an existing Short-Notice Access Request or an Access Booking, the Responsible Infraco shall forthwith notify the relevant parties of such potential conflict together with the identity of the other conflicting parties whereupon such parties shall use all reasonable endeavours to accommodate their respective access requirements, provided that only those Short-Notice Access Requests which have obtained Operational Assurance, are in the opinion of the Responsible Infraco (acting reasonably) likely to obtain Operational Assurance or do not require Operational Assurance shall be considered. If, within a reasonable time (having regard to the time remaining until the date on which access is being sought), the relevant parties (including, if relevant, the Responsible Infraco) have been unable to resolve such conflict, any Access Booking shall take priority over a Short-Notice Access Request and the priority of potentially conflicting Short-Notice Access Requests shall be allocated by the Responsible Infraco to the request first received by the Responsible Infraco and the relevant parties informed of its decision accordingly. The Responsible Infraco shall forthwith record details of the successful Short-Notice Access Request on SABRE.

Under 48 Hours Access Requests

- 4.3** An Under 48 Hours Access Request may be made by an Access Party contacting the Responsible Infraco at any time between midday on the day falling two (2) Business Days prior to the date and on the date on which such access is sought. The Responsible Infraco shall forthwith:
- (a) determine whether a Statement of No Objection may be issued; and
 - (b) if it does not have evidence that Operational Assurance has already been granted, notify the Access Party who shall notify the relevant

LUL personnel of the access sought who shall decide whether to grant Operational Assurance (or confirm that Operational Assurance is not required) in respect of the work to which the Under 48 Hours Access Request relates. The Access Party shall notify the Responsible Infraco whether or not Operational Assurance has been granted.

- 4.4 The parties to this Access Code shall use all reasonable endeavours to accommodate an Under 48 Hours Access Request. Provided that (i) the Under 48 Hours Access Request does not potentially conflict with an Access Booking nor another potentially conflicting Under 48 Hours Access Request, (ii) Operational Assurance has been granted or it is confirmed that Operational Assurance is not required and such decision communicated to the Responsible Infraco and a Statement of No Objection granted and (iii) the Access Request is not inconsistent with the purposes of this Access Code as set out in clause 1.1, the Responsible Infraco shall grant the Under 48 Hours Access Request and issue an Access Confirmation Number and notify the relevant LUL personnel. The Responsible Infraco shall record details of such approved access on SABRE, retrospectively if necessary.

Urgent Access

- 4.5 Notwithstanding the foregoing provisions of this clause 4, if an Infraco or a PFI Contractor requires Urgent Access, the provisions of clause 4.3 shall apply, provided that in such circumstances the Responsible Infraco shall not grant Urgent Access unless such request has first been agreed by any Access Party whose Access Booking would be cancelled as a result of granting such request for Urgent Access (such agreement not to be unreasonably withheld). In circumstances where a request for Urgent Access is denied by a PFI Contractor, LUL shall have the ability to override such denial of access if it elects to do so. Where a request for Urgent Access is approved, the Responsible Infraco shall (i) cancel any Access Booking which conflicts with the request for Urgent Access, (ii) confirm the request for Urgent Access as an Access Booking and (iii) record such information on SABRE and notify the affected parties accordingly.

4.6 NOT USED

Special Equipment Access

- 4.7 LUL shall provide access for Special Equipment during Traffic Hours and shall, where necessary, make adjustments to its operational arrangements to facilitate access for Special Equipment.

Emergency Access

- 4.8.1** Where Emergency Access is required at any time during Traffic Hours or Engineering Hours, it shall take priority over any Access Booking or Access Request as directed by the Incident Officer.
- 4.8.2** Any delay caused to Station Services or Train Services as a result of Emergency Access shall be deemed to be an Initial Delay for the purposes of the Performance Measurement Code.

Cancellation of access by LUL for safety reasons

- 4.9** Where an Access Request has been approved but at the time the relevant Infraco, PFI Contractor or other third party wishes to take its access LUL, acting reasonably, determines that:
- (a) as a consequence of a Station being affected by Abnormal Conditions; or
 - (b) in its role as Infrastructure Controller and operator of the Underground Network, it would be unsafe to permit the relevant Infraco, PFI Contractor or other third party to commence access, access shall be delayed or cancelled (subject to an obligation on LUL to use reasonable endeavours to minimise the impact of such delay or cancellation).

Cancellation of access by Responsible Infraco for safety reasons

- 4.10** Where a request for access has been approved as an Access Booking but at the time the relevant Access Party wishes to take its access, the Responsible Infraco, acting reasonably, determines that it would be unsafe to permit the relevant Access Party to commence such access (including for the purpose of compliance with the CDM Regulations), such access shall be delayed or cancelled (subject to an obligation on the Responsible Infraco to use reasonable endeavours to minimise the impact of such denial, delay or cancellation).
- 4.11** Where cancellation of access for safety reasons arises from an anticipated conflict in circumstances where there is inconsistency with the information provided by an Access Party in connection with its application for access and in respect of which a Statement of No Objection was issued, the Responsible Infraco shall delay or cancel the access of that Access Party and no compensation shall be payable to any Infraco where its access is dealt with in this way. Where there is no such inconsistency, the Responsible Infraco shall determine the priority of Access Bookings having regard to Appendix 4 (*Engineering Works Prioritisation Factors*), with compensation being payable to the denied, delayed or cancelled Infraco in the manner contemplated by clause 8.5.

Generic Access

- 4.12.1** A Generic Access Request may be made by an Access Party submitting a Generic Access Request Form to the Access Reservation Agency at least twenty eight (28) days prior to the date from which such access is sought.
- 4.12.2** The Access Reservation Agency shall forthwith record the Generic Access Request on SABRE and provide a copy of the Generic Access Request Form to LUL and each Infraco.
- 4.12.3** Not later than fourteen (14) days after receipt of the relevant Generic Access Request Form each Infraco and LUL shall notify the Access Reservation Agency whether the access sought has been authorised or rejected, provided always that a request shall only be rejected if:
- (a) any Infraco is unable, in the exercise of its safety responsibilities, to issue a Statement of No Objection;
 - (b) the request for access is inconsistent with the purposes of this Access Code as set out in clause 1.1; or
 - (c) LUL objects for reasons of safety; and a request may not be rejected for any other reason.
- 4.12.4** Where any Infraco or LUL notifies the Access Reservation Agency that the access sought cannot be approved, LUL and the relevant Infraco or Infracos, as the case may be shall discuss alternative proposals and use reasonable endeavours so as to enable the request to be granted.
- 4.12.5** Where access is authorised, the Access Reservation Agency shall record details of such approved access on SABRE and forthwith notify the party requesting the access whether such access has been approved or rejected.
- 4.12.6** For the avoidance of doubt, any Access Booking or Access Request (not being a Generic Access Request) made under this Access Code shall take priority over an approved Generic Access Request, and no compensation shall be due.

Minor Closures

- 5.1.1** JNP, SSL and BCV shall, respectively, be entitled to the JNP Base Allocation of Minor Closures, the SSL Base Allocation of Minor Closures and the BCV

Base Allocation of Minor Closures. If, during a Review Period, an Infraco is unable to fulfil its obligations to LUL pursuant to the PPP Contracts as a consequence of LUL not properly permitting such Infraco's proper requests for Minor Closures pursuant to this clause 5 and as a result of which such Infraco has been unable to use all of its Base Allocation of Minor Closures by the end of the relevant Review Period, then such failure shall be an LUL Breach.

- 5.1.2** Where an Infraco's application for a Minor Closure is approved, the total number of Lost Customer Hours representing each such Minor Closure (which include the Lost Customer Hours accrued during the run down and run up of services) shall be deducted from the relevant number of Lost Customer Hours then standing to such Infraco's Base Allocation of Minor Closures. In circumstances where, in relation to the same Infraco, a Minor Closure and an L&E Closure coincide with one another at the same Station, the Lost Customer Hours attributable to the L&E Closure shall be deducted from the relevant Infraco's Base Allocation of L&E Closures with the balance being deducted as a Minor Closure from the relevant Infraco's Base Allocation of Minor Closures.
- 5.2.1** Additional Minor Closures may be granted at LUL's sole discretion.
- 5.2.2** For the avoidance of doubt, LUL may grant Minor Closures to third parties (including PFI Contractors) other than an Infraco in accordance with this Access Code.
- 5.3.1** Where an Infraco requires access for a Minor Closure it shall submit a Closure Request Form to the Access Reservation Agency and the Access Reservation Agency shall forthwith record the request on SABRE and provide a copy of the Closure Request Form to LUL.
- 5.3.2** Subject to clause 5.3.2A the Closure Request Form for access for a Minor Closure shall be submitted no later than two hundred and twenty two (222) days (but in any event no more than five hundred and forty (540) days) in advance of the date when such access is required. LUL shall not be obliged to consider requests for Minor Closures submitted outside of these time limits.
- 5.3.2A** JNP, SSL and BCV agree that any Closure Request Form for access for a Minor Closure relating to all or any part of the LUL Network which comprises the Piccadilly Line west of Hatton Cross Station shall be submitted not later than two hundred and twenty two (222) days but in any event not more than two hundred and ninety (290) days in advance of the date when such access is required.
- 5.3.3** Not later than twenty one (21) days following receipt of the Closure Request Form LUL shall notify the Access Reservation Agency which shall forthwith notify the relevant Infraco of the time the run down will be completed and the

time when the run up will commence and within ten (10) days of such notification the relevant Infraco shall notify the Access Reservation Agency whether the relevant Infraco wishes to proceed with its Access Request and the Access Reservation Agency shall notify LUL accordingly.

5.3.4 Save where the relevant Infraco notifies the Access Reservation Agency that it does not wish to proceed, not later than forty two (42) days after the date on which the relevant Infraco has notified the Access Reservation Agency that it wishes to proceed with the Minor Closure, LUL shall notify the Access Reservation Agency that the Minor Closure has been confirmed, provided that LUL shall not be obliged so to confirm the Minor Closure if:

(a) it would be operationally unsafe to grant such Minor Closure;

(b) to do so would unduly limit journey opportunities for a significant number of customers;

(c) such Minor Closure, when taken together with any other Minor Closures previously confirmed for that Infraco, would, collectively, exceed a maximum of two track-related and five Station-related Minor Closures at any time; or

(d) the Lost Customer Hours representing such Minor Closure would exceed the Base Allocation of Minor Closures then standing for the relevant Infraco, having regard in the case of paragraphs (a) and (b) above, to (i) the purposes of this Access Code; (ii) any previously confirmed access taking place concurrently with the Minor Closure being sought; (iii) any special event, subject to clause 5.11, taking place which requires or may require the LUL Network (or the relevant part of it over which a Minor Closure is sought) to operate without closure for the duration of the Minor Closure sought or any part thereof; and (iv) the views of any other Infraco which would be affected by the Minor Closure.

Where LUL notifies the Access Reservation Agency that the access sought cannot be confirmed, it shall concurrently advise the Access Reservation Agency of the reasons for withholding confirmation and, where applicable (using the criteria provided in paragraphs (a) to (d) above), shall also propose an alternative date(s) (and hours) when the access sought could be accommodated (which time and date(s) shall be reserved pending Infraco's acceptance or rejection of such alternative in accordance with clause 5.3.7) and, when proposing an alternative date(s) (and hours), LUL shall use reasonable endeavours to propose times which are, as near as possible, of equivalent utility as the time

originally requested and which should not, in LUL's reasonable opinion, have a materially adverse impact on the Infraco's costs of providing the Services. Where the Minor Closure sought would require a run down service prior to such access commencing, LUL shall state the time (if any) after 9.00p.m. when any run down of service is to be complete such that the Minor Closure may commence and/or the time prior to 6.00a.m. when service is to commence such that the Minor Closure must cease.

5.3.5 By way of guidance only and without limitation a proposed Minor Closure may be considered as unduly limiting journey opportunities where there would be a:

(a) Closure of a central station during a seasonal event in central London;

(b) Closure of a key station for access to a popular one-off event during the period of the event;

(c) Closure of a key branch for access to airport terminals during a peak travel weekend; or

(d) Closure of a part of a line when there is a concurrent Closure on the only alternate line during an abnormally busy period.

5.3.6 Where LUL advises the Access Reservation Agency that the access sought cannot be confirmed the Access Reservation Agency shall, forthwith, notify the Infraco requiring access that access has been denied and advise the Infraco of LUL's reasons for denying the access requested and, if applicable, the alternative date(s) (and hours) offered.

5.3.7 If applicable and not later than ten (10) days after notification of the alternative date(s) (and hours) offered, the Infraco seeking access shall notify LUL and the Access Reservation Agency whether the alternative time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements. Where the alternative time offered is acceptable, LUL shall notify the Access Reservation Agency and the Access Reservation Agency shall notify the Infraco requesting access that the access has been confirmed and record the confirmed access on SABRE.

5.3.8 Where LUL notifies the Access Reservation Agency that the access requested has been confirmed or fails to respond within the time limit in clause 5.3.4 of this Access Code the Access Reservation Agency shall forthwith notify the

Infraco requesting access that the access requested has been confirmed and record the confirmed access on SABRE.

5.3.9 When a Minor Closure has been confirmed, LUL shall, where applicable, provide the relevant Infraco with a timetable pursuant to which it shall agree to:

(a) complete the run down of services prior to the commencement of the Minor Closure; and

(b) commence the run up of services at the end of the Minor Closure.

In preparing such timetable, LUL shall, taking into account any limitation on journey opportunities for a significant number of customers, plan to commence:

(i) the run down of services at 9.00p.m and complete it as soon as reasonably practicable thereafter; and

(ii) the run up of services at such time as to ensure that the run up is completed at 6.00a.m..

5.3.10 LUL shall be obliged to meet the requirements of any timetable prepared in accordance with clause 5.3.9 for the purposes of clause 8.4 of this Access Code unless any failure to meet such requirements is attributable to the acts or omissions of the relevant Infraco.

5.4 Where the Infraco requesting access has failed to accept the alternative time offered or where no alternative time has been offered no compensation shall be due.

5.5 At the end of each Review Period, an Infraco may sell back to LUL any unused portion of its Base Allocation of Minor Closures at the Sell Back Rate. If an Infraco elects so to sell back, it shall notify LUL in writing at least one hundred and eighty (180) days prior to the end of the relevant Review Period. LUL may, at its option, either elect:

(a) on the Payment Date next following the agreement or other determination of the amount due for such unused portion or, if applicable, on the Expiry Payment Date, to make a lump sum payment to the relevant Infraco in an amount representing the total sum payable for the relevant unused portion of the Base Allocation for Minor Closures; or

(b) other than in the final Review Period, to compensate the relevant

Infraco for such amount by an adjustment to the ISC from the next Review Date representing the Net Present Value at the Applicable Rate.

- 5.6** Any Infraco requesting a Minor Closure outside of the time limits in this clause 5 (and which LUL is nonetheless willing to consider) shall adhere to the procedure set out in this clause 5 save that the time periods and limits shall not apply.
- 5.7** **NOT USED**
- 5.8** Where an Infraco cancels a booked Minor Closure, such Infraco shall compensate LUL its direct costs reasonably and properly incurred in effecting the Minor Closure.
- 5.9** Where an Infraco cancels a booked Minor Closure, LUL shall reimburse such Infraco in accordance with the Lost Customer Hours for the cancelled Minor Closures in accordance with Appendix 2. If LUL cancels a booked Minor Closure, LUL shall reimburse such Infraco the Lost Customer Hours for the cancelled Minor Closure.

Cancellation of Minor Closure by LUL for safety reasons

- 5.10** Subject to clause 5.11 where an Access Request for a Minor Closure has been approved, but at the time the relevant Infraco, PFI Contractor or other third party wishes to take its access LUL, acting reasonably, determines that:
- (a) as a consequence of a Station being affected by Abnormal Conditions; or
 - (b) in its role as Infrastructure Controller and operator of the Underground Network, it would be unsafe to permit the relevant Infraco, PFI Contractor or other third party to commence access, access shall be delayed or cancelled (subject to an obligation on LUL to use reasonable endeavours to minimise the impact of such delay or cancellation).
- 5.11** Where, after the date of the submission of a Closure Request Form, LUL becomes aware of a special event which requires (or may require) the LUL Network (or the relevant part of it over which a Minor Closure is sought) to operate without closure for the duration or any part of the Minor Closure sought, LUL shall use reasonable endeavours to persuade the relevant authorities or persons (including but not limited to the organiser of the special event, the police and the local authority) that as a result of the special event clashing with the occurrence of a Minor Closure envisaged by a pre-existing Closure Request Form the special event should take place at a time when it

will not clash with the occurrence of a Minor Closure envisaged by a pre-existing Closure Request Form.

CTRL Closures

5A.1.1 SSL shall be entitled to the CTRL Closures Allocation until the first Review Date. If, during the first Review Period, SSL is unable to fulfil its obligations to LUL pursuant to the CTRL Works Agreement as a consequence of LUL not properly permitting SSL's proper requests for CTRL Closures pursuant to this clause 5A and as a result of which SSL has been unable to use all of its CTRL Closures Allocation by the end of the first Review Period, such failure shall be an LUL Breach.

5A.1.2(i) Where SSL's application for a CTRL Closure is approved and the CTRL Closure is a Minor Closure, the total number of Lost Customer Hours representing each such CTRL Closure (which include the Lost Customer Hours accrued during the run down and run up of services) shall be deducted from the relevant number of Lost Customer Hours then standing to SSL's CTRL Closures Allocation. In circumstances where the CTRL Closure is a Minor Closure and the CTRL Closure and an L&E Closure coincide with one another at Kings Cross Station, the Lost Customer Hours attributable to the L&E Closure shall be deducted from the SSL Base Allocation of L&E Closures with the balance being deducted as a Minor Closure from the CTRL Closures Allocation.

5A.1.2(ii) Where SSL's application for a CTRL Closure is approved, and the CTRL Closure is a Partial Station Closure the total number of Lost Customer Hours representing such CTRL Closure (which shall be calculated in accordance with Table 1, Part A of Schedule 5 of the Performance Measurement Code) shall be deducted from the relevant number of Lost Customer Hours then standing to SSL's CTRL Closures Allocation. Where the CTRL Closure is a Partial Station Closure such Partial Station Closure shall be deemed not to be an Incident for which SSL is responsible pursuant to Clause 2 of Appendix 4 of the Performance Measurement Code and consequently SSL shall not be abated for non-Availability in accordance with paragraph 4 of section two of the Performance Measurement Code.

5A.2.1 If SSL demonstrates that:

- (a) SSL is performing its obligations under the CTRL Works Agreement in accordance with Good Industry Practice; and
- (b) without an increase to the CTRL Closures Allocation SSL will be unable to perform its obligations under the CTRL Works Agreement and SSL's contractors and/or consultants will be unable to perform their

respective obligations which arise out of a CTRL Construction Contract or a CTRL Consultant Contract without SSL incurring any abatement for non-Availability in accordance with the Performance Measurement Code

LUL shall review the CTRL Closures Allocation (including the maximum annual usage cap in relation to Minor Closures and CTRL Closures (which are Minor Closures)) and at no cost to SSL increase the maximum allocation of Lost Customer Hours to the extent reasonably necessary for the performance by SSL of its obligations under the CTRL Works Agreement and SSL's contractors and/or consultants obligations which arise out of a CTRL Construction Contract or a CTRL Consultant Contract.

5A.2.2 Where SSL requires access for a CTRL Closure it shall submit a Closure Request Form to the Access Reservation Agency and the Access Reservation Agency shall forthwith record the request on SABRE and provide a copy of the Closure Request Form to LUL.

5A.2.3 Where the CTRL Closure is a Minor Closure the Closure Request Form for access shall be submitted no later than two hundred and twenty two (222) days (but in any event no more than five hundred and forty (540) days) in advance of the date when such access is required. Where the CTRL Closure is a Partial Station Closure, the Closure Request Form shall be submitted no later than ninety (90) days (but in any event no more than five hundred and forty (540) days) in advance of the date when such access is required. LUL shall not be obliged to consider requests for CTRL Closures submitted outside of these time limits.

5A.2.4 Where the CTRL Closure is a Minor Closure LUL shall not later than twenty one (21) days following receipt of the Closure Request Form notify the Access Reservation Agency which shall forthwith notify SSL of the time the run down will be completed and the time when the run up will commence and within ten (10) days of such notification SSL shall notify the Access Reservation Agency whether SSL wishes to proceed with its Access Request and the Access Reservation Agency shall notify LUL accordingly.

5A.2.5 Where the CTRL Closure is

- (i) a Minor Closure no later than forty two (42) days after the date on which SSL has notified the Access Reservation Agency that it wishes to proceed with the Minor Closure (except where SSL notifies the Access Reservation Agency that it does not wish to proceed); or
- (ii) a Partial Station Closure no later than forty two (42) days after receipt of the Closure Request Form,

LUL shall notify the Access Reservation Agency that the CTRL Closure has been confirmed, provided that LUL shall not be obliged so to confirm the CTRL Closure if:

- (a) it would be operationally unsafe to grant such CTRL Closure;
- (b) to do so would unduly limit journey opportunities for a significant number of customers;
- (c) such CTRL Closure where it is a Minor Closure, when taken together with any other Minor Closures previously confirmed for SSL, would, collectively, exceed a maximum of two track-related and five Station-related Minor Closures at any time;
- (d) the Lost Customer Hours representing such CTRL Closure would exceed the CTRL Closures Allocation; or
- (e) the CTRL Closure in conjunction with concurrent L&E Closures at Kings Cross Station would unduly limit customer movement at that station, having regard in the case of paragraphs (a), (b) and (e) above, to (i) the purposes of this Access Code; (ii) any previously confirmed access taking place concurrently with the CTRL Closure being sought; (iii) any special event, subject to clause 5A.10, taking place which requires or may require the LUL Network (or the relevant part of it over which a CTRL Closure is sought) to operate without closure for the duration of the CTRL Closure sought or any part thereof; and (iv) the views of any other Infraco which would be affected by the CTRL Closure.

Where LUL notifies the Access Reservation Agency that the access sought cannot be confirmed, it shall concurrently advise the Access Reservation Agency of the reasons for withholding confirmation and, where applicable (using the criteria provided in paragraphs (a) to (e) above), shall also propose an alternative date(s) (and hours) when the access sought could be accommodated (which time and date(s) shall be reserved pending Infraco's acceptance or rejection of such alternative in accordance with clause 5A.3.7) and, when proposing an alternative date(s) (and hours), LUL shall use reasonable endeavours to propose times which are, as near as possible, of equivalent utility as the time originally requested and which should not, in LUL's reasonable opinion, have a materially adverse impact on the Infraco's costs of providing the Services. Where the CTRL Closure is a Minor Closure and the Minor Closures sought would require a run down service prior to such access commencing, LUL shall state the time (if any) after 9.00p.m when any run down of service is to be complete such that the

CTRL Closure may commence and/or the time prior to 6.00a.m. when service is to commence such that the CTRL Closure must cease.

5A.3.6 Where LUL advises the Access Reservation Agency that the access sought cannot be confirmed the Access Reservation Agency shall, forthwith, notify SSL that access has been denied and advise SSL of LUL's reasons for denying the access requested and, if applicable, the alternative date(s) (and hours) offered.

5A.3.7 If applicable and not later than ten (10) days after notification of the alternative date(s) (and hours) offered, SSL shall notify LUL and the Access Reservation Agency whether the alternative time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements. Where the alternative time offered is acceptable, LUL shall notify the Access Reservation Agency and the Access Reservation Agency shall notify the Infraco requesting access that the access has been confirmed and record the confirmed access on SABRE.

5A.3.8 Where LUL notifies the Access Reservation Agency that the access requested has been confirmed or fails to respond within the time limit in clause 5A.3.5 of this Access Code the Access Reservation Agency shall forthwith notify SSL that the access requested has been confirmed and record the confirmed access on SABRE.

5A.3.9 When a CTRL Closure has been confirmed and the CTRL Closure is a Minor Closure, LUL shall, where applicable, provide SSL with a timetable pursuant to which it shall agree to:

(a) complete the run down of services prior to the commencement of the CTRL Closure; and

(b) commence the run up of services at the end of the CTRL Closure.

In preparing such timetable, LUL shall, taking into account any limitation on journey opportunities for a significant number of customers, plan to commence:

(i) the run down of services at 9.00p.m and complete it as soon as reasonably practicable thereafter; and

(ii) the run up of services at such time as to ensure that the run up is completed at 6.00a.m..

5A.3.10 LUL shall be obliged to meet the requirements of any timetable prepared in accordance with clause 5A.3.9 for the purposes of clause 8.4 of this Access

Code unless any failure to meet such requirements is attributable to the acts or omissions of SSL.

5A.4 Where SSL has failed to accept the alternative time offered or where no alternative time has been offered no compensation shall be due.

5A.5 At the end of the first Review Period, SSL may sell back to LUL any unused portion of its CTRL Closures Allocation at the Sell Back Rate. If SSL elects so to sell back, it shall notify LUL in writing at least one hundred and eighty (180) days prior to the end of the first Review Period. LUL may, at its option, either elect:

(a) on the Payment Date next following the agreement or other determination of the amount due for such unused portion to make a lump sum payment to SSL in an amount representing the total sum payable for the relevant unused portion of the CTRL Closures Allocation; or

(b) to compensate SSL for such amount by an adjustment to the ISC from the first Review Date representing the Net Present Value at the Applicable Rate.

5A.6 If SSL requests a CTRL Closure outside of the time limits in this clause 5A (and which LUL is nonetheless willing to consider) it shall adhere to the procedure set out in this clause 5A save that the time periods and limits shall not apply.

5A.7 Where SSL cancels a booked CTRL Closure, SSL shall compensate LUL its direct costs reasonably and properly incurred in effecting the CTRL Closure.

5A.8 Where SSL cancels a booked CTRL Closure which is a Minor Closure, LUL shall reimburse SSL in accordance with the Lost Customer Hours for the cancelled CTRL Closures in accordance with Appendix 2. If LUL cancels a booked CTRL Closure, which is a Minor Closure, LUL shall reimburse SSL the Lost Customer Hours for the cancelled CTRL Closure.

Cancellation of CTRL Closure by LUL for Safety Reasons

5A.9 Subject to clause 5A.10 where an Access Request for a CTRL Closure has been approved, but at the time SSL wishes to take its access LUL, acting reasonably, determines that:

(a) as a consequence of a Station being affected by Abnormal Conditions; or

(b) in its role as Infrastructure Controller and operator of the Underground Network, it would be unsafe to permit SSL to commence

access, access shall be delayed or cancelled (subject to an obligation on LUL to use reasonable endeavours to minimise the impact of such delay or cancellation).

5A.10 Where, after the date of the submission of a Closure Request Form, LUL becomes aware of a special event which requires (or may require) the LUL Network (or the relevant part of it over which a CTRL Closure is sought) to operate without closure for the duration or any part of the CTRL Closure sought, LUL shall use reasonable endeavours to persuade the relevant authorities or persons (including but not limited to the organiser of the special event, the police and the local authority) that as a result of the special event clashing with the occurrence of a CTRL Closure envisaged by a pre-existing Closure Request Form the special event should take place at a time when it will not clash with the occurrence of a CTRL Closure envisaged by a pre-existing Closure Request Form.

L&E Closures

6.1.1 JNP, SSL and BCV shall, respectively, be entitled to the JNP Base Allocation of L&E Closures, the SSL Base Allocation of L&E Closures and the BCV Base Allocation of L&E Closures. If, during a Review Period, an Infraco is unable to fulfil its obligations to LUL pursuant to the PPP Contracts as a consequence of LUL not properly permitting such Infraco's proper requests for L&E Closures pursuant to this clause 6 and as a result of which such Infraco has been unable to use all of its Base Allocation of L&E Closures by the end of the relevant Review Period, then such failure shall be an LUL Breach.

6.1.2 Where an Infraco's application for an L&E Closure is approved, the total number of Lost Customer Hours representing each such L&E Closure shall be deducted from the relevant number of Lost Customer Hours then standing to such Infraco's Base Allocation of L&E Closures. In circumstances where, in relation to the same Infraco, a Minor Closure (including in the case of SSL where the CTRL Closure is a Minor Closure) and a L&E Closure coincide with one another at the same Station, the Lost Customer Hours attributable to the L&E Closure shall be deducted from the relevant Infraco's Base Allocation for L&E Closures with the balance being deducted as a Minor Closure from the relevant Infraco's Base Allocation for Minor Closures (or in the case of SSL where the CTRL Closure is a Minor Closure from the CTRL Closures Allocation).

6.2.1 Additional L&E Closures may be granted at LUL's sole discretion.

6.2.2 For the avoidance of doubt, LUL may grant L&E Closures to third parties (including PFI Contractors) other than an Infraco.

- 6.3.1** Where an Infraco requires access for an L&E Closure it shall submit a Closure Request Form to the Access Reservation Agency and the Access Reservation Agency shall forthwith record the request on SABRE and provide a copy of the Closure Request Form to LUL.
- 6.3.2** The Closure Request Form for access for an L&E Closure shall be submitted no later than ninety (90) days (but in any event no more than five hundred and forty (540) days) in advance of the date when the access is required. LUL shall not be obliged to consider requests for L&E Closures submitted outside of these time limits, provided that if Infraco requests access for an L&E Closure less than ninety (90) days in advance of the date when the access is required following a failure of the relevant Asset for which such L&E Closure is required, LUL shall use all reasonable endeavours to consider such a request.
- 6.3.3** Not later than forty two (42) days after receipt of the Closure Request Form, LUL shall notify the Access Reservation Agency that the L&E Closure has been confirmed, provided that LUL shall not be obliged so to confirm the L&E Closure if:
- (a) it would be operationally unsafe to grant such L&E Closure;
 - (b) to do so would unduly limit journey opportunities for a significant number of customers;
 - (c) in the case of each of SSL and BCV, such L&E Closure would exceed a maximum of six (6) escalator Closures at any one time and in the case of SSL and BCV such L&E Closure would exceed a maximum of two (2) lift Closures at any one time and in the case of JNP save for in relation to any lift located at a Jubilee Line Extension Station such L&E Closure would exceed a maximum of three (3) lift Closures at any one time;
 - (d) to do so would result in the Closure of all lifts at more than three (3) Jubilee Line Extension Stations at any one time during the refurbishment of any lift at such Stations ten (10) and twenty (20) years after the date of its installation provided always that no lift (including non Jubilee Line Extension Station lifts) may be closed at any one time at both Waterloo and London Bridge Stations concurrently;
 - (e) in the case of JNP, such L&E Closure in respect of escalators would exceed the number of L&E Closures set out in Appendix 5; or
 - (f) the Lost Customer Hours representing such L&E Closure would exceed the Base Allocation of L&E Closures then standing for the

relevant Infraco, having regard in the case of paragraphs (a) and (b) above, to (i) the purposes of this Access Code; (ii) any previously confirmed access taking place concurrently with the L&E Closure being sought, (iii) any special event subject to clause 6.11 taking place which requires or may require the LUL Network (or the relevant part of it over which an L&E Closure is sought) to operate without closure for the duration of the L&E Closure sought or any part thereof; and (iv) the views of any other Infraco which would be affected by the L&E Closure.

Where LUL notifies the Access Reservation Agency that the access sought cannot be confirmed it shall concurrently advise the Access Reservation Agency of the reasons for withholding confirmation and, where applicable (using the criteria provided in paragraphs (a) to (f) above), shall also propose an alternative date(s) when the access sought could be accommodated (which date(s) shall be reserved pending Infraco's acceptance or rejection of such alternative in accordance with clause 6.3.5) and, when proposing an alternative date(s), LUL shall use reasonable endeavours to propose times which are, as near as possible, of equivalent utility as the time originally requested and which should not, in LUL's reasonable opinion, have a materially adverse impact on the Infraco's costs of providing the Services.

- 6.3.4** Where LUL advises the Access Reservation Agency that the access sought cannot be confirmed the Access Reservation Agency shall, forthwith, notify the Infraco requiring access that access has been denied and advise the Infraco of LUL's reasons for denying the access requested and, if applicable, the alternative date(s) offered.
- 6.3.5** If applicable and not later than ten (10) days after notification of the alternative date(s) offered, the Infraco seeking access shall notify LUL and the Access Reservation Agency whether the alternative time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements. Where the alternative time offered is acceptable, LUL shall notify the Access Reservation Agency and the Access Reservation Agency shall notify the Infraco requesting access that the access has been confirmed and record the confirmed access on SABRE.
- 6.3.6** Where LUL notifies the Access Reservation Agency that the access requested has been confirmed or fails to respond within the time limit in clause 6.3.3 of this Access Code the Access Reservation Agency shall forthwith notify the Infraco requesting access that the access

requested has been confirmed and record the confirmed access on SABRE.

6.4 Where the Infraco requesting access has failed to accept the alternative time offered or where no alternative date has been offered no compensation shall be due.

6.5 **NOT USED**

6.6 Where an Infraco cancels a booked L&E Closure, LUL shall reimburse such Infraco in accordance with the L&E Lost Customer Hours for the cancelled L&E Closure in accordance with Appendix 3. If LUL cancels a booked L&E Closure, LUL shall reimburse Infraco accordingly the Lost Customer Hours for the cancelled L&E Closure.

6.7 At the end of each Review Period, an Infraco may sell back to LUL any unused portion of its Base Allocation of L&E Closures at the Sell Back Rate. If an Infraco elects so to sell back, it shall notify LUL in writing at least one hundred and eighty (180) days prior to the end of the relevant Review Period. LUL may, at its option, either elect:

(a) on the Payment Date next following the agreement or other determination of the amount due for such unused portion or, if applicable, on the Expiry Payment Date, to make a lump sum payment to the relevant Infraco in an amount representing the total sum payable for the relevant unused portion of the Base Allocation for L&E Closures; or

(b) other than in the final Review Period, to compensate the relevant Infraco for such amount by an adjustment to the ISC from the next Review Date representing the Net Present Value at the Applicable Rate.

6.8 Any Infraco requesting an L&E Closure outside of the time limits in this clause 6 (and which LUL is nonetheless willing to consider) shall adhere to the procedure set out in this clause 6 save that the time periods and limits shall not apply.

L&E Closure Early Handback

6.9 Where an L&E Closure has been commenced and no more than fifty per cent. (50%) of the L&E Closure is left to run, an Infraco may return each lift, escalator, travelator, fixed stairway, routeway or cross-passageway which is the subject of an L&E Closure to service, and LUL shall refund the Infraco fifty per cent. (50%) of the Lost Customer Hours attributable to the part of the L&E Closure which will not be used.

Cancellation of L&E Closure by LUL for Safety Reasons

6.10 Where an Access Request for an L&E Closure has been approved but at the time the relevant Infraco, PFI Contractor or other third party wishes to take its access, LUL, acting reasonably determines that:

(a) as a consequence of a Station being affected by Abnormal Conditions;
or

(b) in its role as Infrastructure Controller and operator of the Underground Network,

it would be unsafe to permit the relevant Infraco, PFI Contractor or other third party to commence access, access shall be delayed or cancelled (subject to an obligation on LUL to use reasonable endeavours to minimise the impact of such delay or cancellation).

Special Events

6.11 Where, after the date of the submission of a Closure Request Form, LUL becomes aware of a special event which requires (or may require) the LUL Network (or the relevant part of it over which a L&E Closure is sought) to operate without closure for the duration or any part of the L&E Closure sought, LUL shall use reasonable endeavours to persuade the relevant authorities or persons (including but not limited to the organiser of the special event, the police and the local authority) that as a result of the special event clashing with the occurrence of a L&E Closure envisaged by a pre-existing Closure Request Form the special event should take place at a time when it will not clash with the occurrence of a L&E Closure envisaged by a pre-existing Closure Request Form.

Major Closures

7.1 LUL may, at its sole discretion, and after consulting with Infracos grant Major Closures, either to an Infraco or another third party (including PFI Contractors), following negotiation between itself and the relevant Infraco.

7.2 The Access Reservation Agency shall record any Major Closure on SABRE.

Cancelled or Delayed Access

8.1.1 No compensation shall be due to any Infraco where Emergency Access has caused the cancellation or delay of access confirmed under the procedures of this Access Code.

- 8.1.2** Subject to the other provisions of this clause 8, where Urgent Access has caused the cancellation or delay of an Access Booking, the Access Party to whom the Urgent Access is granted shall be liable for any direct costs reasonably and properly incurred by the Access Party having suffered such cancellation or delay. For the purposes of this paragraph 8.1.2 direct costs shall include the costs incurred in relation to the hire of any equipment and the purchase of any materials but shall not include any abatement suffered.
- 8.1.3** An Infraco shall not be entitled to claim any compensation pursuant to the remaining provisions of this clause 8 where, notwithstanding any subsequent delay of such Infraco's confirmed access, the relevant Infraco fails to make a bona fide attempt to use such access.
- 8.1.4** No compensation shall be due to any Infraco where confirmed access is delayed or cancelled by LUL pursuant to clauses 4.9, 5.10 and 6.10.
- 8.1.5** Notwithstanding the provisions of clauses 8.2 to 8.5, no compensation shall be due to any Infraco where access confirmed in respect of that Infraco as a result of Under 48 Hours Access Request is subsequently delayed or cancelled by LUL.
- 8.1.6** No compensation shall be due where access confirmed as a result of a Generic Access Request is subsequently delayed or cancelled.
- 8.1.7** An Infraco shall not be entitled to claim any compensation pursuant to this clause 8 if, in respect of Advance Access Requests and Short-Notice Access Requests, Operational Assurance is not ultimately granted by LUL in circumstances where Infraco believed such request has a reasonable prospect of being granted, provided always that, in determining whether or not to grant Operational Assurance, LUL shall have complied with its obligations under the OAEW Standard.
- 8.1.8** Where LUL cancels access in circumstances where the Access Reservation Agency, having regard to relevant information available at the time of the booking, should have determined that there was a Clash notwithstanding any provision to the contrary in this Code, compensation shall be due from LUL to the Access Party whose access has been cancelled in accordance with the Compensation Rate.
- 8.1.9** Where the Responsible Infraco or LUL (as the case may be) cancels access, then the party cancelling such access shall provide within a reasonable period of time a written explanation of the grounds on which access is cancelled to the affected Access Party (save where the affected Access Party is a PFI Contractor in which case such explanation shall be provided to LUL).

8.1.10 The Access Parties acknowledge that save as expressly provided compensation paid under this clause 8 shall be the sole remedy available under this Access Code in respect of any cancellation or delay to an Access Party.

8.2 If, as a consequence of any disruption by LUL, a PFI Contractor or another Infraco, an Infraco's confirmed access during Engineering Hours is delayed for a period of not greater than fifteen (15) minutes at the commencement of such access or, in the case of track only, reduced by a period less than twenty (20) minutes prior to the end of Engineering Hours, no compensation shall be due or payable to such Infraco. For the purposes of this clause, the commencement and end of Engineering Hours shall be the Amended Time.

8.3 Subject always to clauses 8.1.3 and 8.5A, LUL shall compensate an Infraco in accordance with the Compensation Rate where such Infraco's physical presence during Engineering Hours is delayed for a period in excess of the periods stipulated in clause 8.2 above as a consequence of any disruption by LUL or any PFI Contractor.

8.4 Where confirmed access for a Minor Closure, CTRL Closure (where the CTRL Closure is a Minor Closure) or an L&E Closure is cancelled or delayed (in the case of (i) a Weekend Minor Closure, for a period in excess of two (2) hours; (ii) a Weekday Minor Closure, for a period in excess of fifteen (15) minutes; and (iii) an L&E Closure, for a period in excess of one (1) day) as a consequence of any disruption by LUL, LUL shall, subject to clause 8.5A, compensate the delayed Infraco in accordance with the Compensation Rate or the L&E Compensation Rate, as the case may be, and reimburse the Lost Customer Hours deducted from the Base Allocation of Minor Closures, the CTRL Closures Allocation or the Base Allocation of L&E Closures, as the case may be.

8.5 Subject to clause 8.5A, where confirmed access during Engineering Hours is cancelled or delayed for a period in excess of fifteen (15) minutes as a consequence of any disruption by an Infraco, the delaying Infraco shall compensate:

(a) the cancelled or delayed Infraco; or

(b) LUL; or

(c) in the case of a cancelled or delayed PFI Contractor, LUL,

in accordance with the L&E Compensation Rate and the Compensation Rate as appropriate. For the purposes of this clause, the commencement and end of Engineering Hours shall be the Amended Time.

- 8.5A** Where the disruption leading to a claim for compensation under clauses 8.3, clause 8.4(ii) (a Weekday Minor Closure for a period in excess of fifteen (15) minutes) or clause 8.5 (as the case may be) is caused in whole or in part by any Urgent Engineering Train Path Request approved in accordance with clause 4.1.16, then the Access Party to whom the access in respect of the relevant Engineering Train Path has been granted shall be liable for the compensation payable (and where two (2) or more Access Parties have been granted such access leading to a claim for compensation, those Access Parties shall be so liable on a pro-rata basis according to the number of Urgent Engineering Train Paths granted to each of them causing the relevant disruption).
- 8.6** Where compensation is liable to be paid by one party to another in accordance with the provisions of this clause 8, the party to whom compensation is due to be paid shall, within fourteen (14) days of the relevant cancellation or delay giving rise to the compensation, submit a written request to the party liable to pay such compensation setting out the relevant amount due and payable and the reasons therefore. Compensation shall not be payable where a party to whom compensation is due to be paid fails to comply with such initial notification requirement. If the amount is undisputed by the party in receipt of a written request, it shall pay such amount to the cancelled or delayed party as an Exceptional Amount. If the amount is disputed, then the matter shall be treated as if it were an Incident at the next following Level B Meeting pursuant to the procedure set out in paragraphs 1.4.8 - 1.4.11 of Schedule 4 of the Performance Measurement Code.
- 8.7** Without prejudice to the right of the Access Party whose access has been cancelled to recover compensation in accordance with the provisions of this Access Code where any booked access is cancelled the Access Party cancelling such access shall concurrently or as soon as possible thereafter notify the Access Party whose access has been cancelled of an alternative date and time when the cancelled access could be accommodated. Such alternative date and time shall be reserved on SABRE pending the Access Party's acceptance or rejection of such alternative. When proposing an alternative date and time, the Access Party cancelling the access shall use reasonable endeavours (which shall include liaising with the party whose access has been cancelled in an attempt to accommodate their respective requirements) to propose a date and time which is, as near as possible, of equivalent utility as the date and time originally granted.
- 8.8** Not later than ten (10) days after notification of the alternative date and time offered, the Access Party which has had its access cancelled shall notify the relevant Access Party whether the date and time offered is acceptable. The parties shall liaise in an effort to accommodate their respective requirements.

Where the alternative date and time offered is acceptable the Access Party cancelling the access shall record the confirmed access on SABRE.

Interest on Late Payments

8.9 Interest shall accrue at the Applicable Rate on any amount payable under this Access Code from the date such amount is payable until the date of payment.

Qualifying Change of Law, Safety Change, Exceptional Damage or Water Table Damage Access

8.10 LUL acknowledges and agrees that where and to the extent that LUL requires any work to be performed which would constitute a Safety Change or which is required as a consequence of a Qualifying Change of Law, Exceptional Damage or Water Table Damage which would require a Minor Closure any access required to affect such work shall not be deducted from the relevant Infraco's Base Allocation of Minor Closures and shall be provided to the Infraco without cost.

Service of Access Request Forms and other Notices

9 Each Access Request Form, Engineering Train Access Request Form, Closure Request Form and Generic Access Request Form shall be sent to the Responsible Infraco or the Access Reservation Agency as appropriate by electronic service on SABRE, by fax or by prepaid recorded delivery, special delivery or registered post. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

(a) in the case of fax, the Business Day after the despatch; or

(b) in the case of recorded delivery, special delivery or registered post, when delivered; or

(c) in the case of electronic service on SABRE, on the date that the notice or communication was sent provided that the date of transmission is verifiable.

Disputes

10 Any dispute shall be resolved in accordance with the Dispute Resolution Agreement.

Damages and Claims

11.1 Each party to this Access Code:

(a) covenants that in exercising its rights under this Access Code it shall avoid damage and disturbance to the property of any other party

to this Access Code; and

(b) agrees that it shall not be entitled to seek the remedy of specific performance for any reason arising under this Access Code.

11.2 Each Infraco covenants to make good any physical loss or damage to any Asset caused in the performance of its Services. If the loss or damage to the Asset is covered by the Asset Damage Insurance then clause 7 of the Insurance Agreement shall apply. If the loss or damage to the Asset is uninsured, subject to the Responsible Infraco having taken all reasonable steps to mitigate its Losses, any other Infraco in breach of this clause shall compensate the Responsible Infraco for the direct Losses incurred in consequence of the Responsible Infraco being unable to perform the Services in accordance with its PPP Contract.

11.3 The Responsible Infraco and LUL shall render all reasonable assistance to all Access Parties (including, but not limited to, granting access at reasonable times to the Responsible Infraco's Lines during Engineering Hours and LUL granting such access to the LUL Network during Traffic Hours) as may reasonably be required for the purpose of defending or settling any claim or for carrying out any remedial action arising out of clause 11.

Changes to This Access Code

12.1 This clause 12 sets out the process by which LUL or an Infraco can promote changes to this Access Code.

Responsibilities of the parties

12.2 LUL carries the principal responsibility for the operation of the change process for this Access Code. When asked, Infracos shall participate willingly in the following roles:

(a) ensuring that any proposed change to this Access Code is adequately reviewed by its organisation and that comments are sent within the appropriate time scale; and

(b) ensuring that any change proposals to this Access Code are brought to the attention of those organisations under its control which need to comply with them for their review and comment.

LUL Authorisation and Control

12.3 Where LUL determines that the change of this Access Code meets the Objective Requirements (as if this Access Code were a Category 1 Standard), LUL shall:

(a) in the case of a change which is safety related, authorise its change;

(b) in the case of a change which is not safety related, authorise its change to take effect no less than fourteen (14) days after the date of its authorisation subject to the right of LUL or any one or more of the Infracos which considers that the change of this Access Code would cause an increase in risk to arise or an increase in costs to be incurred by it in performing its PPP Contract or (in the case of LUL) in the operation of the LUL Network , (in this Access Code, collectively or separately as the context requires, an *increase in costs*) so to notify the other parties to this Access Code;

(c) in any case where a notice has been given under clause 12.3(b), inform each of the Infracos that LUL's authorisation of the change of this Access Code shall not become effective except with the written agreement of all parties who have given notice under clause 12.3(b) or where it is determined in accordance with the Dispute Resolution Agreement that such change of this Access Code would not cause an increase in costs. Upon such written agreement or determination, LUL shall confirm its authorisation is effective.

12.4 There shall be an appropriate and effective rapid response procedure, to cater for changes that require to be progressed, for safety or other reasons, in advance of the completion of the full procedures set out in this Access Code. The rapid response procedure shall not be an alternative to such full procedures and shall require LUL authorisation and control in accordance with clause 12.3 of this Access Code.

Disputes to Access Code Changes

13 LUL's authorisation, confirmation or refusal to authorise a change to this Access Code shall be final and binding on LUL and the Infracos and shall not be challenged nor referred to dispute resolution under the Dispute Resolution Agreement or otherwise except upon the grounds that:

(a) the procedures of this Access Code have not been followed; or

(b) the Objective Requirements (as apply to this Access Code) have not been applied; or

(c) it would result in an increase in costs in circumstances where such

change is not safety related and a notice has been given under clause 12.3(b) of this Access Code and authorisation has not been agreed in writing by all of the parties who gave such notice and it has not been determined in accordance with the Dispute Resolution Agreement that such change would not cause an increase in costs.

Contracts (rights of third parties) Act 1999

14 PFI Contractors shall have the right to submit Access Requests in accordance with the relevant provisions of clause 4 of this Access Code but, for the avoidance of doubt, they shall not be entitled to make any claim against any party to this Access Code or seek any resolution of any dispute pursuant to the Dispute Resolution Agreement or any other dispute resolution process as a result of any breach of this Access Code and shall not have the right to enforce the terms of this Access Code (to the extent such terms extend to them) under the Contracts (Rights of Third Parties) Act 1999 (the *Act*). A person who is not a party to this Access Code shall have no right under the Act to enforce any of its terms.

	<i>Abortive costs for routine, planned or preventative works including planned preventative, routine or reactive maintenance fault fixing (including all investigation and/or rectification works).</i>	<i>Any other works agreed by the relevant parties as not being routine, planned preventative works including Specified Line Upgrades, Station Modernisation, Enhanced Station Refurbishment, Station Refurbishment and Station Accessibility Projects.</i>
<i>Any booking during Engineering Hours, a CTRL Closure (where the CTRL Closure is a Weekday Minor Closure) or for a Weekday Minor Closure which is</i>	£800 per Access Booking	£6,000 per Access Booking

<i>delayed or cancelled</i>		
<i>Any booking for Weekend Minor Closure, a CTRL Closure (where the CTRL Closure is a Weekend Minor Closure) which is delayed or cancelled</i>	Nil	£180,000 per Access Booking

APPENDIX 1B - L&E Compensation Rate

<i>L&E Closure on a weekday which is delayed or cancelled.</i>	£2,000 per day up to £40,000 per L&E Closure.
<i>Routeway or partial station closure per L&E Closure which is delayed or cancelled.</i>	£500 per day up to £10,000 per L&E Closure.

APPENDIX 2 - Minor Closures and CTRL Closure Lost Customer Hours Rebate Rate

Number of full weeks' notice given before Minor Closure due to commence	% of Lost Customer Hours Refunded
More than 6	90%
Between 3 and 6	50%

Less than 3	0%
-------------	----

APPENDIX 3 - L&E Lost Customer Hours Rebate Rate

Number of full weeks' notice given before Closure due to commence	% of Lost Customer Hours Refunded
More than 6	90%
6 or less	0%

Number of full weeks' notice given before Closure due to commence

% of Lost Customer Hours Refunded

More than 6

90%

6 or less

0%

APPENDIX 4 - Engineering Works Prioritisation Factors

The following is to have overriding priority:

A. Safety impact

The work to be done during the requested access has an impact on safety such that it would be unacceptable for the work to be delayed.

The following is to have priority unless clearly outweighed by factors C, D and E:

B. PFI impact

Delaying the work to be done during the requested access materially puts at risk the achievement by a PFI Contractor of its material obligations under the relevant PFI Contract and/or the achievement of the PFI Contractor's key programme milestones.

The following, taken together, are normally to determine priority when factors A and B do not apply:

C. Impact on customer service

Delaying the work to be done during the requested access would have a material adverse impact on the customer service which LUL is able to provide in the immediate or near future.

D. Impact on cost and programme

Delaying the work to be done during the requested access would materially:

- increase the requesting party's costs; and/or
- disrupt an established programme of work; and/or
- deprive the requesting party of critical resources; and/or
- deny synergy benefits with other proposed work.

E. Impact on performance

Delaying the work to be done during the requested access would materially put at risk the achievement by the requesting party of its contractual performance obligations and thereby expose it to the risk of adverse financial impacts.

The following are to be considered where factors C, D and E do not clearly indicate which request should have priority:

F. Other impacts on customers, staff and operations

Delaying the work to be done during the requested access would have a material effect on benefits to customers or staff or the operations of the LUL Network, beyond that already accounted for under the foregoing factors.

G. Impact on reputation

Delaying the work to be done during the requested access would be perceived significantly negatively by stakeholders.

APPENDIX 5 - L&E Closures for JNP

<i>Contract Year</i>	<i>Concurrent Escalator Closures</i>
2002-2004	24
2005-2009	15
2010-2012	19
2013-2016	9
2017-2020	22
2021-2024	31
2025-2027	20
2028-2031	7

SCHEDULE 19

QUENSH (London Underground's Quality, Environmental Safety and Health Conditions)

For work undertaken for London Underground (LU), QUENSH conditions will apply. Below is a link to the LU Management System library. As QUENSH is constantly under review, the Consultant may find that some or all of the conditions change a number of times within the term of the Framework Agreement.

Follow the link and the online instructions for registration. Once your registration has been approved, you will be given access to the library. You will then be able to view QUENSH.

<http://www.tfl.gov.uk/assets/downloads/businessandpartners/access-to-lu-management-systems.pdf>

Whenever QUENSH applies to a Call Off Contract, the Employer will select from the QUENSH menu (sample shown overleaf) those conditions, which it considers to be applicable to the work involved. The QUENSH menu includes guidance as to how the Consultant must complete the QUENSH menu.

NOTE: The QUENSH menu included as a separate attachment is a **sample only**. It is provided only for information and it **should not** be completed by the Consultant.

F0780 Contract Menu

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

Contract Menu

Contract No: SAMPLE FOR INFORMATION ONLY

Contract Name Professional Services

Client: London Underground

Supplier: x

Principal Contractor: Yes No

Guidance

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

How to complete the menu

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

Queries on the menu

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

Contract menu

Requirements in QUENSH

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
4	Agreement of the applicable QUENSH contract conditions				
5	Supplier's selection of sub-contractors		Y		
6	Identification of Safety Critical Activities	Please contact TfL if you believe the works to be undertaken are deemed 'Safety Critical'.	N		
7	Works Environmental Management		N		
8	Emergency Plan	Due to scope / nature of Contract	N		
9	Method Statements		Y		
10	Health, Safety and Environment File	Where applicable to design work	Y		
11	Pre-start health, safety and environment meeting	If advised as required by TfL	Y		
12	Supplier's site induction	Due to scope / nature of Contract	N		
13	Site Person in Charge	Due to scope / nature of Contract	N		
14	Staff requirements				
14.1	Behaviours				
14.1.1	Alcohol and drugs		Y		
14.1.2	Control of hours worked		Y		
14.2	Knowledge				
14.2.1	English language		Y		
14.2.2	Access Card and Worksite Briefing	Please note clause 14.2.3	Y		
14.2.3	Visitors to sites		Y		
14.3	General competence				
14.3.1	Evidencing competence of safety critical staff	Due to scope / nature of	N		

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
		Contract			
14.3.2	Identification of safety critical staff	Due to scope / nature of Contract	N		
14.3.3	Competent external safety critical personnel	Due to scope / nature of Contract	N		
14.3.4	Training		Y		
14.3.5	Asset specific competence	Due to scope / nature of Contract	N		
14.4	Medical requirements	Due to scope / nature of Contract	N		
14.5	Identification of Suppliers staff		Y		
14.6	Clothing		Y		
15	Permits and licences				
15.1	LU specific permits and licences	As applicable to Clauses 14.2.2 & 14.2.3 ONLY	Y		
15.2	Permits, licences and certificates for Supplier's staff	Due to scope / nature of Contract	N		
16	The Principles of Access				
16.1	Introduction		Y		
16.2	Access to Stations		Y		
16.3	Access to Track	No access to the track permitted	N		
16.4	Access to depots		Y		
17	Applying for Planned Access				
17.1	Introduction		Y		
17.2	Private Finance Initiative Suppliers and Third parties	Due to scope / nature of Contract, Clause 18 applies	N		
17.3	Suppliers contracting with Tube Lines	Due to scope / nature of Contract	N		
18	Applying for Generic Access		Y		
18.1	Constraints that apply to Generic Access		Y		
19	Access for fault repair	Due to scope / nature of	N		

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
		Contract			
20	Operational Assurance	Due to scope / nature of Contract	N		
21	Closures and possessions				
21.1	Requirements for closures	Due to scope / nature of Contract	N		
21.2	Requirements for possessions	Due to scope / nature of Contract	N		
22	Controls at point of access				
22.1	Publication of works	Due to scope / nature of Contract	N		
22.2	Checks at point of access		Y		
22.3	Signing-on with the Station Supervisor - The Station Visitors Record Sheet and Person in Charge Evacuation Register (PICER)		Y		
22.4	Track specific requirements				
22.4.1	Protection Master	No access to the track is permitted	N		
22.4.2	Possessions (Possession Master, Technical Officer, Cable Lineman, Signal Operator, etc.)	No access to the track is permitted	N		
23	Removal of supplier's personnel from LU Premises		Y		
24	Incidents		Y		
25	Notification of regulatory concern or action		Y		
26	Confidential Incident Reporting and Analysis System (CIRAS)		Y		
27	Monitoring				
27.1	LU inspections	Due to scope / nature of Contract	N		
27.2	Monitoring the supply chain	Due to scope / nature of Contract	N		
27.3	Health, safety and environmental audits, inspection and tours by the Supplier's personnel	Due to scope / nature of Contract	N		
27.4	Work location inspection and audit		Y		
27.5	Timescales for rectifying non-compliances		Y		

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

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

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
45	Plant and equipment	Due to scope / nature of Contract	N		
46	Clearance approvals	Due to scope / nature of Contract	N		
47	Access equipment	Due to scope / nature of Contract	N		
48	Temporary works	Due to scope / nature of Contract	N		
49	Temporary fences and hoardings	Due to scope / nature of Contract	N		
50	Temporary lighting and power supplies				
50.1	General requirements	Due to scope / nature of Contract	N		
50.2	Lighting in tunnels and shafts	Due to scope / nature of Contract	N		
51	Screening of lights and positioning	Due to scope / nature of Contract	N		
52	Environmental requirements				
52.1	General environmental requirements		Y		
52.2	Environmental nuisance	Due to scope / nature of Contract	N		
52.3	Water	Due to scope / nature of Contract	N		
52.4	Waste management	Due to scope / nature of Contract	N		
52.5	Noise and vibration	Due to scope / nature of Contract	N		
52.6	Archaeology, historical interest and listed buildings	Due to scope / nature of Contract	N		
52.7	Wildlife and Habitats	Due to scope / nature of Contract	N		
52.8	Resource Use	Due to scope / nature of Contract	N		

Applicable requirements identified by Client				Identified by Supplier	
Section	Topic	Other documents / Comments	Y / N	Agreed? Y / N	Reference to explanation
52.9	Pest control	Due to scope / nature of Contract	N		
52.10	Land and water pollution prevention	Due to scope / nature of Contract	N		
53	Quality requirements				
53.1	Records		Y		
53.2	Retention period		Y		
53.3	Availability of records for inspection		Y		
53.4	Statistical process control, audit and inspection procedures		Y		
53.5	General quality requirements	Due to scope / nature of Contract	N		
53.6	Quality Plan	Due to scope / nature of Contract	N		
53.7	Testing and inspection	Due to scope / nature of Contract	N		
53.8	Certification of conformity	Due to scope / nature of Contract	N		
53.9	Quarantine	Due to scope / nature of Contract	N		
53.10	Traceability	Due to scope / nature of Contract	N		
53.11	Maintenance and servicing	Due to scope / nature of Contract	N		
53.12	Design		Y		
53.13	Computer aided design		Y		
53.14	Asset commissioning and handover		Y		

Other requirements / comments

Please note:

A) Throughout this document, where clauses are identified as applicable these shall only apply to works undertaken on London Underground infrastructure and / or assets;

B) In the completion of this menu, work scope has been assumed to comprise of design work and the provision of design guidance including associated visual surveys only;

C) If work undertaken directly by the identified supplier comprises of intrusive surveys, construction work (as defined by the Construction (Design & Management) Regulations 2007), demolition and / or activity outside of that established in point B above, advice must be sought from TfL prior to proceeding, as it is likely that this menu will need to be revised.

Client/Supplier approval

Client Menu (Invitation to Tender)

Prepared by: X Signature: X

Approved by (the Client's representative): X Signature: X

Title: X

Address: X

Phone No: X

Email: X

Revision of this menu: 01

Supplier Menu (Tender)

Approved by (the Supplier's): _____ Signature: _____

Title: _____

Address: _____

Phone No: _____

Email: _____

Revision of this menu: _____

Contract Menu (Final Approval of Menu)

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

Client's representative approval: X Signature: X

Supplier's representative acceptance: _____ Signature: _____

**Signed by
for and on behalf of
The Consultant**

Signature

Print name and position

Date