

Dated10th.....May 2005

TRANSPORT FOR LONDON
and
PARSONS BRINCKERHOFF LIMITED

CONTRACT FOR THE PROVISION OF PROGRAMME MANAGEMENT SERVICES
Contract Ref. 01483 / 002

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Articles of Agreement

This Agreement is made the 10th day of May 2005 between:

- (1) **Transport for London**, a statutory corporation established under the Greater London Authority Act 1999 ("TfL"); and
-] (2) **Parsons Brinckerhoff Limited** a company registered in England and Wales under number 2554514 whose registered office or principal place of business is at Amber Court, William Armstrong Drive, Newcastle upon Tyne, NE4 7YQ (the "**Service Provider**").

Whereas:

- (A) TfL intend to implement a project for the enhancement and extension of the existing East London Line.
- (B) TfL require assistance in managing the delivery of the project and wish to appoint the Service Provider to provide the services set out in Schedule 4 (The Services).

Now it is hereby agreed as follows:

- 1 Subject to Article 4 below, The term this 'Agreement' shall mean the following documents which are hereby incorporated into and shall comprise this Agreement:
 - these Articles of Agreement; and
 - the Conditions of Contract; and
 - the Schedules:

–	–	Schedule 1	General Description of Project Structure and Scope
–	–	Schedule 2	Project Technical Requirements
–	–	Schedule 3	The Integrated Project Team
–	–	Schedule 4	The Services
–	–	Schedule 5	Fee and Payment
–	–	Schedule 6	Authority for Variation
–	–	Schedule 7	Deed of Novation
–	–	Schedule 8	Form of Parent Company Guarantee
- 2 Subject to Article 4 below, The Service Provider shall perform the Services in compliance with this Agreement.
- 3 Subject to Article 4 below, TfL will pay the Service Provider for performance of the Services in accordance with the terms of this Agreement.
- 4 Notwithstanding any other provision of this Agreement and without prejudice to any other right or remedy of TfL, at any time up to and including 31st May 2005 or the date 7 (seven) calendar days after the meeting of the TfL directors currently intended to take place on 18th May 2005, whichever is the later, TfL shall be entitled to send written notice to the Service Provider requiring the termination of the Service Provider's engagement under this

Agreement and such termination shall take place 3 (Three) calendar days after TfL shall have sent such notice to the Service Provider. Such termination shall be deemed to be a termination under Clause 19 of the Conditions of Contract referred to above and the provisions of Clauses 19.4, 19.5 and 19.6 shall apply to such termination. **Executed as a Deed** by the parties and delivered on the date of this Agreement.

The common seal of) [common seal]
Transport for London)
was affixed to this deed)
in the presence of)

...
[Name and description of authorised signatory]

*Managing Director
London Rail.*

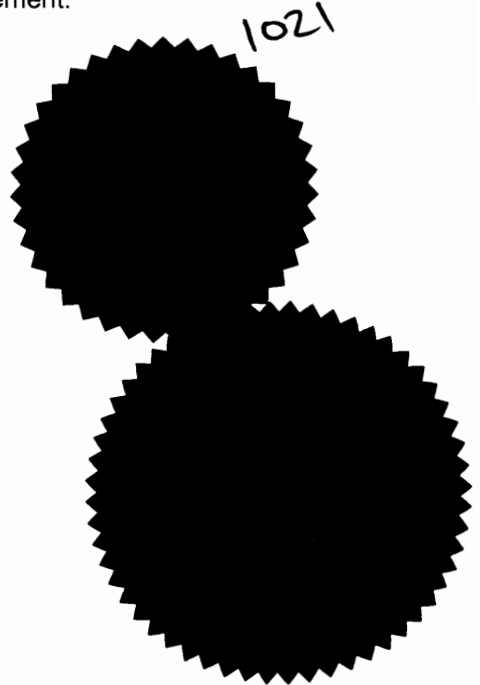
The common seal of *PARSONS* (common seal)
[name of company] *BRINCKERHOFF LTD.*
was affixed to this deed)
in the presence of)

[Redacted signature]

Director

[Redacted signature]

Secretary/~~Director~~



Conditions of Contract

1 Definitions

“Business Day”	means any day excluding Saturdays, Sundays or English public holidays;
“Confidential Information”	means all information (whether written or verbal) that by its nature is confidential (whether commercial, financial, technical or otherwise) including, but not limited to, information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of TfL or any member of the TfL Group or Network Rail and any other information which may be reasonably regarded as confidential by TfL, any member of the TfL Group or Network Rail;
“Contract Manager”	means Peter Richards or such replacement as TfL may designate from time to time as the Contract Manager for the purposes of this Agreement having the role and responsibilities described in Clause 9;
“Contractors”	means all or any of the Enabling Works contractor, the Infrastructure Works Contractor [and any of the contractors engaged by LUL or Network Rail for the purposes of carrying out other works forming part of the Project];
“DfT”	means the Department for Transport;
“Enabling Works”	means the civil and safety works more fully described in Schedule 1 (General Description of Project Structure and Scope);
“Enabling Works Contractor”	means the contractor or contractors appointed to undertake the Enabling Works;
“Euro Compliant”	means that the software, electronic or magnetic media, hardware or computer system (whichever is applicable) is capable of supporting the Euro and will not manifest any material error nor suffer a diminution in performance or loss of functionality as a result of the introduction of the Euro as a currency in certain EU member states 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;
“Fee”	means the agreed fee for the performance of the Services as described in Schedule 5 (Fee and Payment);

“Independent Technical Certifier”	means the single technical acceptance body appointed to deal with all design and construction submissions for the Project
“Infrastructure Works”	means the infrastructure and systems works more fully described in Schedule 1 (General Description of Project Structure and Scope);
“Infrastructure Works Contractor”	means the contractor or contractors appointed to undertake the Infrastructure Works;
“Integrated Project Team”	means the integrated team, including staff and consultants of TfL and the Service Provider’s personnel, with responsibilities for the Project as described in Schedule 3 (The Integrated Project Team);
“Initial Period”	means the period used to progress the Project and agree the Supplementary Agreement for the continuation of the Services
“Intellectual Property Rights”	means any patent, patent application, know-how, trade mark or name, service mark, design right, registered design, copyright, moral right, database right, rights in commercial or technical information or 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 anywhere in the world;
“LUL”	means London Underground Limited;
“Network Rail”	means Network Rail Infrastructure Limited;
“Passenger Services Operator”	means the operator of passenger services for the completed Project;
“Party” or “Parties”	means any or all of the parties to this Agreement and their successors and permitted assignees;
“Project”	means the project for the rebuilding and extension of the existing East London Line as more particularly described in Schedule 1 (General Description of Project Structure and Scope);
“Project Director”	means the person appointed by TfL to act as the overall leader of the Integrated Project Team;
“Rolling Stock Provider”	means the provider of rolling stock to the Project;
“Service Provider”	means the party named as such in the Articles of Agreement;
“Services”	means the services to be provided by the Service Provider as described in Schedule 4 (The Services);

“Specifier”	means First Class Partnerships as specifier of the duties of the Passenger Services Operator;
“SRA”	means the Strategic Rail Authority and its successor as franchising authority under the Railways Act 1993;
“Staffing Chart”	means the staffing chart set out at Appendix 4A to Schedule 4, as amended from time to time in accordance with this Agreement;
“Technical Adviser”	means any technical adviser appointed by TfL from time to time to specify and develop the design of the Project;
“Technical Case”	means the demonstration of the satisfaction of parts of or the whole of the system as further set out in Schedule 2 (Project Technical Requirements) Clause 2.4
“TfL”	means Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
“TfL Group”	means TfL and all its subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time;
“TfL Premises”	means land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group;

2 Service Provider’s Obligations

- 2.1** The Service Provider shall perform the Services in accordance with this Agreement and with such reasonable written instructions (if any) as TfL may give to the Service Provider.
- 2.2** The terms and conditions of this Agreement and the warranties and undertakings which it contains are deemed to apply to all Services performed and to be performed by the Service Provider in relation to the Project both before and after the date of this Agreement and to apply without prejudice each to the other. Where and to the extent that the Service Provider has already performed or partly performed any of the Services, the Service Provider warrants that:
- (a) Subject to Condition 2.3 below, it has done so in accordance with the standards of reasonable skill and care and all other terms and conditions set out in this Agreement;
 - (b) all warranties and undertakings in this Agreement apply to them;
 - (c) the Service Provider shall complete the performance of any part performed Services in due time in accordance with this Agreement; and

(d) all sums (if any) paid to the Service Provider to date in respect of services performed in relation to the Project are payments on account of sums due under this Agreement.

- 2.3** The Service Provider warrants that it has exercised and shall continue to exercise in the performance of its duties under this Agreement all the reasonable skill and care as is to be expected of a properly qualified and competent consultant experienced in providing services similar to the Services in relation to projects or activities of similar scope, nature, timescale and complexity and on a similar site or at a similar location to the Project.
- 2.4** In the performance of the Services, the Service Provider shall co-operate with and shall not impede the Enabling Works Contractor, Network Rail, LUL, the Technical Adviser, the Passenger Services Operator, the SRA, the DfT, the Specifier, the Rolling Stock Provider, the Infrastructure Works Contractor, any sub-contractors or any other consultants or parties working on the Project and shall comply with the requirements of TfL so that the Project shall be completed with all reasonable speed and economy and in accordance with the programme or programmes approved from time to time by TfL. The Service Provider shall perform the Services in such manner and at such time so that no omission or default of the Service Provider in relation thereto shall cause or contribute to any breach by TfL of any of their obligations under their contracts with the Enabling Works Contractor, Network Rail, the Technical Adviser, the Passenger Services Operator, the SRA, the DfT, the Specifier, the Rolling Stock Provider, the Infrastructure Works Contractor or any other consultants or parties working on the Project.
- 2.5** The Service Provider shall comply with the Construction (Design and Management) Regulations 1994 or any replacement or amendment of them as far as they relate to the Project and with all relevant legislation and other legal requirements including but not limited to the requirements of any relevant planning permission, building regulations or other consent, licence, approval or authority of which the Service Provider is or should be aware.
- 2.6** The Service Provider shall from time to time provide TfL and all other parties engaged on the Project (including but not limited to the Enabling Works Contractor, Network Rail, LUL, the Technical Adviser, the Passenger Services Operator, the SRA, the DfT, the Specifier, the Rolling Stock Provider, the Infrastructure Works Contractor and any sub-contractors) with all such information and/or additional information and details in connection with the Project as they may from time to time reasonably require and as may be either within its knowledge, or reasonably obtained from TfL or other consultants.
- 2.7** The Service Provider shall notify TfL in writing as soon as the Service Provider has become aware of any matter arising out of the performance of the Services which might materially affect the interest of TfL regarding the Project, which shall include, but not be limited to:
- (a) any matter which might cause a variation to the scope of the Project;
 - (b) any matter which might cause an increase in the cost of the Project or change financial viability, quality or function; and

- (c) any matter which might cause an increase in the time taken to complete the Project.

2.8 The Service Provider shall not be responsible for:

- (a) the advice or recommendations that may be provided by any other consultant or adviser appointed by TfL save to the extent that a prudent consultant, exercising reasonable skill and care, would notify TfL if he has any ground for disagreeing with such advice or recommendations;
- (b) any forecasts of financial viability or other financial data unless prepared by or on behalf of him.

2.9 The Service Provider acknowledges which acknowledgement shall be repeated at the time the Service Provider enters into the fixed fee arrangement referred to in Schedule 5 (Fee and Payment), that it:

- (a) has sufficient information about TfL, the Project and the Services; and
- (b) is aware of TfL's processes and business; and
- (c) has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement; and
- (d) is aware of the purposes for which the Services are required and acknowledges that TfL is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
- (e) shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by it of any fact relating to the Project or the Services.

2.10 The Service Provider warrants that any software, electronic or magnetic media, hardware or computer system used (except where supplied by TfL) or supplied by the Service Provider in connection with this Agreement:

- (a) shall be Euro Compliant; and
- (b) shall not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system; and
- (c) shall 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 TfL, on which it is used or with which it interfaces or comes into contact; and
- (d) any variations, enhancements or actions undertaken by the Service Provider in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Service Provider's compliance with this warranty.

2.11 The Service Provider acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL 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 Service Provider shall assist TfL to discharge TfL's duty where possible, and in doing so, it shall inter alia carry out any reviews of the Services reasonably requested by TfL from time to time. The Service Provider agrees to negotiate (acting reasonably) any changes to this Agreement in order for TfL to achieve best value.

- 2.12** Notwithstanding any other term of this Agreement except in the case of fraud, death or personal injury the Service Provider's liability hereunder whether in contract tort or howsoever arising in respect of any one occurrence or series of occurrences arising out of any one event shall be limited to whichever is the higher of: (1) the Fee earned to the occurrence of the event giving rise to liability; or (2) [REDACTED] and in respect of each subsequent occurrence or series of occurrences arising out of any one event the Service Provider's liability shall be similarly limited.

3 Fee and Bonus

TfL will pay the Fee, and subject to any contrary instruction the Performance Bonus and the Project Bonus as set out in Schedule 5 (Fee and Payment).

4 Variations

- 4.1** Without prejudice to the provisions of Condition 22, this Agreement may only be amended with the written agreement of TfL and the Service Provider.
- 4.2** TfL may instruct the Service Provider to make variations to the scope of the Services. The details of the variation will be set out in a variation form that is substantially in the form set out in Schedule 6 (Authority for Variation) and authorised on behalf of TfL by the Contract Manager. A duplicate copy of the variation form shall be signed by or on behalf of the Service Provider and returned to the Contract Manager as an acceptance by the Service Provider of the variation. A variation will not be binding until the Service Provider and TfL have both signed a variation form.
- 4.3** Variations to the scope, design or specification of the Enabling Works or Infrastructure, or their method of procurement, shall not of themselves constitute variations to the scope of the Services, the basis of which is expected to be only a request to increase or reduce the scope of work to be carried out by the Service Provider's personnel.
- 4.4** If the Service Provider is of the opinion that the issue of such variation form or any other instruction issued by the Contract Manager would be likely to require a change to the Fee (or the basis of calculation of the Fee) or the Service Provider's programme for the performance of the Services, the Service Provider shall so notify TfL, within 3 working days of receipt of such variation form or instruction, together with its reasons therefor and its estimate (supported by relevant substantiating documentation) of the quantitative effect upon the Fee and/or the programme.
- 4.5** Upon receipt of such a notice from the Service Provider, TfL and the Service Provider shall meet and seek to agree any consequent variation of the Fee, the instalments and the due dates for payment. Failing agreement on any consequent variation of the Fee and/or the instalments by which it shall be paid and/or the due

dates for payment, the Fee, the instalments and the due dates for payment shall be as is fair and reasonable in the circumstances but based where possible on the rates (if any) and other payment arrangements set out in Schedule 5 (Fee and Payment).

- 4.6 Evaluation of the cost implication of a variation shall comprise the presentation of the impact of the proposed change on resources identifying redundant, new and varied activities and detailing how these have been assessed.
- 4.7 Evaluation of the time implication of a variation shall comprise the presentation of the impact of the proposed change on the duration of activities identifying redundant, new and varied activities and detailing how these have been assessed. The Service Provider shall also identify how studies for recovery of the programme have been carried out and detail the remaining impact on critical activities and deliverables as appropriate.
- 4.8 Following notification by the Service Provider TfL may either withdraw the instruction or instruct the Service Provider to comply with it either before or after attempting to agree the amount of the increase. No additional payment shall become due and payable in respect of varied services if the Service Provider has not complied with the requirements of this Clause 4.

5 Intellectual Property Rights and Data

- 5.1 The Service Provider hereby grants TfL a perpetual, irrevocable, transferable and royalty-free licence to copy and use all Intellectual Property Rights in all designs, documents, drawings, recommendations, reports, computer software and any other work specifically prepared or developed by the Service Provider for TfL under this Agreement (the "Products"). The Service Provider shall provide TfL with copies of anything in the Service Provider's possession or control that is relied upon or referred to by the Service Provider in the Products.
- 5.2 The Service Provider shall procure that all personnel performing the Services (or part of them) contract with the Service Provider that any Intellectual Property Rights arising out of or relating to work done by that person pursuant to this Agreement shall be licensed to TfL in compliance with Clause 5.1.
- 5.3 The cost of preparing and providing the licences referred to in Clauses 5.1 and 5.2 above is incorporated into the Fee and the Service Provider is responsible for ensuring that relevant third parties are paid for the use of their Intellectual Property Rights.
- 5.4 Copyright in all documentation and Intellectual Property Rights in all items supplied by TfL, Network Rail and LUL to the Service Provider in connection with the Agreement shall remain the property of TfL, Network Rail and LUL (to the extent they are in the ownership of TfL, Network Rail and LUL).
- 5.5 TfL grants to the Service Provider a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned (or capable of being so licensed) by TfL required by the Service Provider or any of its personnel to provide the Services. Any such licence is granted for the duration of the Agreement solely to enable the Service Provider to comply with its obligations under this Agreement.

- 5.6** The Service Provider shall promptly notify TfL upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right which affects or may affect the provision or receipt of the Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right.
- 5.7** Subject to TfL's proper observance of its obligations under this Agreement, the Service Provider shall indemnify TfL against all actions, claims, demands, costs, charges or expenses (including legal costs) that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights and against all costs and damages of any kind which TfL may incur in or in connection with any actual or threatened proceedings before any court, arbitrator or adjudicator.
- 5.8** TfL will, at the request of the Service Provider, give the Service Provider all reasonable assistance for the purpose of contesting any such claim, demand, or action. The Service Provider shall reimburse TfL for all costs and expenses (including legal costs) incurred in doing so and/or the Service Provider shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action.
- 5.9** If a claim or demand is made or action brought to which Clause 5.8 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may, after consultation with TfL, at its own expense and within a reasonable time, modify or substitute any or all of the Products (as defined in Clause 5.1) so as to avoid the infringement or the alleged infringement, provided that the terms of this Agreement shall apply mutatis mutandis to such modified or substituted Products and such Products are accepted by TfL.
- 5.10** The Service Provider acknowledges that TfL is subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 1992 (and any provisions that replace these) and agrees to assist and co-operate with TfL to enable TfL to comply with its obligations under such legislation including providing to TfL such information as TfL may reasonably request concerning this Agreement and/or the Services and/or the Project. The Service Provider further acknowledges that TfL may be obliged under such legislation to disclose information without consulting or obtaining consent from the Service Provider. This Clause 5.10 shall survive the expiry or termination of this Agreement.

6 Prohibited Materials

- 6.1** The Service Provider warrants to TfL, subject to Clause 2.3, that to the extent the Service Provider either is obliged to specify or approve products or materials or does so specify or approve, the Service Provider will not specify or approve any products or materials which are generally known within the Service Provider's profession to be deleterious in the particular circumstances in which they are 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 to any later

edition thereof) other than the recommendations for good practice contained in Section 2 of that report;

- (b) relevant British or European Standards or Codes of Practice; or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

6.2 If in the performance of its duties under this Agreement, the Service Provider becomes aware that it or any contractor, sub-contractor or other consultant appointed by TfL to provide services in connection with the Project has specified or used, or authorised or approved the specification or use by others, of any of the products or materials referred to in Clause 6.1 the Service Provider shall immediately give written notice to TfL. This Clause 6.2 does not create any additional duty for the Service Provider to inspect or check the work of others which is not required by any other provisions of this Agreement.

7 Certification

7.1 The Service Provider warrants that TfL may:

- (a) rely on any certificate or report which the Service Provider may issue and any approvals which the Service Provider may give in relation to the Project; and
- (b) assume that the work or services to which such certificates or approvals relate has or have been carried out and completed or supplied (as the case may be) in accordance with the terms of the relevant contract or appointment.

8 Professional Indemnity Insurance

8.1 The Service Provider shall maintain, with reputable insurers carrying on business in the European Union, from the date of this Agreement and for the duration of the term of this Agreement, professional indemnity insurance in the amount of £20,000,000 for any one occurrence or series of occurrences arising out of any one event in relation to the Project provided that such insurance is generally available in the market to members of the Service Provider's profession at commercially reasonable rates and terms and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Service Provider's own claims record or other acts omissions matters or things peculiar to the Service Provider shall be deemed to be within the Service Provider's obligation. The Service Provider shall notify TfL in writing from time to time of any change in its professional indemnity insurance arrangements and, within 7 days of TfL's reasonable request at any time, the Service Provider shall produce for inspection documentary evidence as to its compliance with this Clause 8.1 and that payment has been made in respect of the last preceding premium payable under the policy.

8.2 If the Service Provider fails to comply with its obligations under Clause 8.1 TfL may take out insurance to cover some or all of the loss or damage which may result from the Service Provider's breach of this Agreement and TfL may deduct the costs and

expenses of taking out such insurance from any sums due to the Service Provider or may recover them from the Service Provider as a debt.

9 Contract Manager and Approvals

- 9.1** The Contract Manager is authorised by TfL to act as TfL's representative for all purposes of this Agreement and the Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under this Agreement unless notified otherwise. All correspondence between the Service Provider's Representative and other parties appointed by, or under control of, the Contract Manager shall be through the Contract Manager unless otherwise authorised by the Contract Manager.
- 9.2** The Contract Manager may delegate all or any of his responsibilities to another manager by issue of a letter to the Service Provider and the Service Provider will then accept instructions from the delegated manager in accordance with such delegation.
- 9.3** The Service Provider shall obtain TfL's prior written approval before:
- (a) making or permitting any change in the designs, specifications or other documents issued to third parties after they have been approved by TfL;
 - (b) taking any step immediately following and as a consequence of a material variation of the designs or specifications approved by TfL;
 - (c) agreeing any amendment to or waiver from any contract connected with the Project;
 - (d) doing anything which shall or might reasonably be expected to materially increase the cost of the Project or affect progress of or scheduled completion date for the Project in relation to any programme approved by TfL.

The Contract Manager may from time to time issue instructions to the Service Provider clarifying or modifying the scope of matters for which the Service Provider must obtain TfL's prior written approval as described above.

No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from TfL nor any enquiry or inspection which TfL may make or have carried out for its benefit or on its behalf shall operate to reduce, extinguish, exclude, limit or modify the Service Provider's obligation to fulfil its duties and obligations under this Agreement unless it is in writing, refers to this Agreement, clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified and is signed by the Contract Manager.

10 Service Provider's Personnel

- 10.1** The Service Provider shall before commencing performance of the Services appoint the persons named in the Staffing Chart, or where no person is named, appropriately qualified and competent persons whose identity has been approved in advance by TfL, to the posts relevant listed in the Staffing Chart. The Service

Provider shall subsequently appoint further appropriately qualified and competent persons to all other posts required for the Service Provider to carry out the Services, as reflected in the Service Provider's periodic revisions of the Staffing Chart and otherwise as necessary in order to meet its obligations under this Agreement.

- 10.2** The person named as Service Provider's Representative shall be a partner or main board director of the Service Provider and shall direct and control the overall performance by the Service Provider of the Services. Such person, or any replacement approved by TfL pursuant to Clause 10.4, shall have full authority to act on behalf of the Service Provider for all purposes in connection with this Agreement. The Service Provider's Representative shall be the single point of contact with the Contract Manager for the Service Provider for managing the Agreement and shall provide but not be limited to the following input:
- (a) project leadership and management of the Service Provider's personnel;
 - (b) maintenance of quality and safety as required by the Agreement;
 - (c) contract administration of the Agreement, including settlement of accounts; and
 - (d) Co-ordination and submission of strategies, programmes, resource analyses, variations and reports.
- 10.3** The Service Provider's Representative shall operate out of the Service Provider's own premises and shall not be a member of the Integrated Project Team. The Service Provider shall not be entitled to payment of any time charges in respect of the time spent by the Service Provider's Representative in connection with the Project.
- 10.4** The Service Provider shall not remove any of the persons appointed to the posts listed in the Staffing Chart without the prior written approval of TfL (not to be unreasonably withheld or delayed) to both the removal and the identity of the replacement, and, if such approval is given, the Service Provider shall be responsible for promptly replacing such persons with persons, to the satisfaction of TfL, who shall be of at least equal competency as the persons who they are appointed to replace. TfL will have the right, after consulting with the Service Provider, to require the removal of any person engaged in the performance of the Services if, in TfL's reasonable opinion, his performance or conduct is or has been unsatisfactory and the Service Provider shall promptly remove the person so specified, and notify TfL of the name of his replacement.
- 10.5** For the avoidance of doubt, it is expressly stated that it is not the intention of the Parties that any of the Service Provider's personnel shall transfer to the employment of TfL. The Service Provider is responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to its personnel and shall indemnify TfL against any claims or additional costs arising out of any of the Service Provider's personnel being deemed to be TfL employees.
- 10.6** The Service Provider shall not assign to the provision of the Services any person who is not a full-time employee of the Service Provider with out the prior written permission of the Contract Manager.

11 Assignment, Sub-Contracting and Novation

- 11.1** TfL may assign novate or otherwise transfer the Agreement (in whole or in part) and/or the benefit of and its benefits and rights under this Agreement to any company within the TfL Group by giving written notice to the Service Provider.
- 11.2** The Service Provider may not assign, sub-contract or otherwise transfer the whole or any part of the benefit of, or any of its rights or obligations and/or delegate or sub-contract the whole or any part of its duties under this Agreement without TfL's prior written consent, such consent to be given or withheld at TfL's absolute discretion.
- 11.3** Within 10 Business Days of a written request from TfL, the Service Provider shall at its expense execute one or more agreements substantially in the form specified in Schedule 7 with such amendments as TfL may require by which TfL shall transfer all or part of its rights and obligations under the Agreement to one or more persons nominated by TfL.
- 11.4** Within 10 Business Days of a written request from TfL, the Service Provider shall provide a Deed or Deeds of Collateral Warranty to such person or persons having a legitimate interest in the Project and/or providing funds for the Project and/or subject to statutory regulation in respect of the Project as TfL may from time to time direct in the form (or substantially in the form as TfL may direct) of the Collateral Warranty set out at Schedule 9.
- 11.5** Within 30 Business Days of a written request from TfL, the Service Provider shall at its expense execute, and shall procure that another person in good financial standing and acceptable to TfL acting a surety executes, one or more guarantee agreements substantially in the form specified in Schedule 8 with such amendments as TfL may require by which the Service Provider will procure from said other person a guarantee in favour of TfL of the Service Provider's performance of its obligations under this Agreement.

12 Confidentiality

- 12.1** The Service Provider acknowledges that during the course of this Agreement it may receive, obtain, prepare or create Confidential Information. The Service Provider undertakes that:
- (a) it shall receive and/or maintain the Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
 - (b) it shall not use the Confidential Information for any purposes whatsoever (and in particular shall not use the Confidential Information to the detriment of TfL) other than for the purpose of the performance of the Services;
 - (c) it shall not disclose the Confidential Information to any third party without the prior written consent of TfL except that the Service Provider is entitled to the extent strictly necessary to disclose the Confidential Information:
 - (i) to such of the Service Provider's personnel who need to know the Confidential Information for the performance of the Services

provided that the Service Provider shall be responsible for any breach of its obligations occasioned by any act or omission of such personnel; or

- (ii) to the Service Provider's auditors and any other person or body having a legal right or duty to know the Confidential Information in connection with the Service Provider's business provided that prior to such disclosure the Service Provider consults with TfL as to the proposed form of such disclosure;
- (d) it shall inform each of the persons referred to in Clauses 12.1(c)(i) and 12.1(c)(ii) to whom Confidential Information is disclosed of the restrictions as to use and disclosure of the Confidential Information and shall use its best endeavours to ensure that each of them observe such restrictions;
- (e) it shall, at TfL's request, deliver to TfL or destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Confidential Information and if instructed by TfL in writing, remove all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks; and
- (f) it shall not, except where provided in Clause 12.1(c), or without the prior written consent of TfL, disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.

12.2 The obligations set out in Clause 12.1 do not apply to any Confidential Information which:

- (a) the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Service Provider by TfL; or
- (b) is lawfully disclosed to the Service Provider without any obligations of confidence, by a third party who has not derived it directly or indirectly from TfL; or
- (c) is or has come into the public domain through no fault of the Service Provider or its personnel; or
- (d) is required by law and/or by order of a court of competent jurisdiction and/or by any regulatory body or governmental agency with the requirements of which TfL is accustomed to comply to be disclosed.

12.3 The Service Provider acknowledges that damages would not be an adequate remedy for any breach of Clause 12.1 and that (without prejudice to all other remedies which TfL may be entitled to as a matter of law) TfL will be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 12.3 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 12.

12.4 The Service Provider shall not advertise or announce this Agreement or that it is providing Services to TfL without the prior written consent of TfL.

13 Conflict of Interest

13.1 The Service Provider acknowledges and agrees that it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services (other than as Technical Adviser) and that (except as provided below) it shall not act for any person, organisation or company where there is or is reasonably likely to be a conflict of interest with the Services. This Clause 13.1 shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is currently providing services provided that the Service Provider shall:

- (a) not act for any such client in respect of any transactions between any member of the TfL Group and such client;
- (b) ensure that the personnel acting in any capacity for any such client are different from the personnel involved in providing the Services or in any other work which the Service Provider carries out in relation to any member of the TfL Group;
- (c) ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of the TfL Group; and
- (d) inform TfL of all such existing clients and the steps that it is taking to ensure compliance with the above provisions of this Clause 13.1.

The Service Provider and its associated companies will not be permitted to compete for any contract for works on the Project, either as a single entity or as part of a team or consortium or as a subcontractor or supplier. In this instance works include any works or services in any contract or subcontract to a main contract that includes construction.

13.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of this Agreement and shall notify TfL in writing immediately on becoming aware of any actual or potential conflict of interest with the Services provided under this Agreement. Breach of Clause 13.1 or this Clause 13.2 shall entitle TfL to terminate this Agreement and any other contracts between the Service Provider and any member of the TfL Group immediately.

14 Access to Premises and Use of Systems

14.1 The Service Provider shall carry out the Services at various locations as required by the Project. Such locations shall include an Integrated Project Team office, to be established by TfL, with appropriate facilities at a location or locations suitable for the Project and the Services. The Contractors will also provide site establishments and facilities that will accommodate Integrated Project Team staff and their needs, including the personnel of the Service Provider as appropriate.

14.2 Any TfL Premises made available to the Service Provider in connection with this Agreement shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services under this Agreement. The Service Provider shall have the use of such TfL Premises as non-exclusive licensee and

shall vacate such TfL Premises upon the termination or expiry of this Agreement or at such earlier date as TfL may determine.

- 14.3** TfL is responsible for maintaining the security of TfL Premises in accordance with its standard security requirements. The Service Provider shall comply with all of TfL's security requirements while on TfL Premises, and shall ensure that all of its personnel comply with such requirements. Upon request, TfL will provide the Service Provider with details of TfL's security procedures.
- 14.4** TfL reserves the right under this Agreement to refuse to admit to any TfL Premises any of the Service Provider's personnel who fail to comply with any of TfL's policies and standards referred to in this Agreement.
- 14.5** The Contract Manager reserves the right under this Agreement to instruct any of the Service Provider's personnel to leave any TfL Premises at anytime for any reason and such personnel shall comply with such instructions immediately.
- 14.6** The Service Provider shall ensure that all appropriate access permissions, entry permits and other necessary authorities are in place prior to the Service Provider's staff commencing the provision of the Services.
- 14.7** The Integrated Project Team, including the Service Provider, will utilise existing TfL systems where appropriate. The facilities provided by TfL will accommodate the use of such systems.

15 Compliance with Policies and Law

- 15.1** The Service Provider shall notify its personnel and TfL of any health and safety hazards that exist or that may arise in connection with the performance of the Services of which the Service Provider is aware or ought reasonably to be aware.
- 15.2** The Service Provider undertakes to procure that all its personnel comply with all of TfL's policies and standards that are relevant to the performance of the Services, including those relating to safety, security, business ethics, work place harassment, drugs and alcohol and any other on site regulations specified by TfL for personnel working at TfL Premises or accessing TfL's computer systems. TfL will provide the Service Provider with copies of such policies on request.
- 15.3** The Service Provider shall provide the Services in compliance with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Service Provider's business and/or TfL's business, from time to time in force which are or may become applicable to the Services. In all cases, the costs of compliance shall be borne by the Service Provider and the Service Provider shall indemnify TfL against all losses, costs, expenses, damages, liabilities, demands, claims, actions and proceedings which TfL may incur arising out of any breach by the Service Provider of the provisions of this Clause 15.3.
- 15.4** Without limiting the generality of Clause 15.3, the Service Provider shall not unlawfully discriminate, and shall procure that its personnel do not unlawfully discriminate, within the meaning and scope of the Sex Discrimination Act 1975, Race Relations Act 1976, and the Disability Discrimination Act 1995.

- 15.5** The Service Provider acknowledges that TfL is under a duty under section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In providing the Services, the Service Provider shall assist and cooperate with TfL where possible in satisfying this duty.
- 15.6** Where the Service Provider is required to access (with appropriate permission and approval of TfL, LUL or Network Rail (as applicable)) any areas under the control of any of TfL's PPP or PFI contractors, LUL's PPP or PFI contractors or Network Rail, the Service Provider must comply with all of their rules, regulations and standards as appropriate.

16 Corrupt Gifts and Payment of Commission

- 16.1** The Service Provider shall not pay any commission, fees or grant any rebates to any employee, officer or agent of TfL nor favour any employee, officer or agent of TfL with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of TfL other than as a representative of TfL, without TfL's prior written approval.
- 16.2** Without prejudice to any other rights or remedies which it may possess, TfL has the right to audit any and all such records necessary to confirm compliance with Clause 16.1 at any time during the duration of this Agreement and during the 12 year period following expiry or termination of this Agreement. Breach of Clause 16.1 shall entitle TfL to terminate this Agreement and any other contracts between the Service Provider and TfL immediately.

17 Records, Audit and Inspection

- 17.1** The Service Provider shall maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and all transactions entered into by the Service Provider for the purposes of this Agreement. Such records shall include:
- (a) records for all staff employed in providing the Services identifying name, grade, role, hourly commitment to the Services and activities carried out;
 - (b) detailed timesheets for all such staff;
 - (c) detailed records of all reimbursable expenses and associated items of cost involved in the provision of the Services; and
 - (d) detailed calculations in support of tendered and contract rates and percentages, applications for payment, variations and other such costs applicable to the services

The Service Provider shall retain all such records for a period of no less than 12 years (or such other period as may be required by law) following termination or expiry of this Agreement.

- 17.2** TfL has the right to audit any and all such records at any time during the performance of this Agreement and during the 6 year period (or such other period as may be required by law) following termination or expiry of this Agreement.

- 17.3** The Service Provider shall allow TfL authorised representatives, at any reasonable time, to undertake any inspection, audit or check of any aspect of the Service Provider's performance of the Services. TfL will give the Service Provider reasonable notice, in writing or verbally, of its intention to undertake an inspection, audit or check under this Clause 17.3.
- 17.4** The Service Provider shall provide TfL with all reasonable co-operation in relation to any inspection, audit or check including:
- (a) granting access to any premises or systems used in the Service Provider's performance of this Agreement, and where such premises or systems are not the Service Provider's own, using reasonable endeavours to procure such access;
 - (b) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit;
 - (c) making any information relating to the performance of this Agreement available for inspection and providing copies of such information if requested.

18 Time for Performance

- 18.1** The Service Provider shall proceed with its obligations under this Agreement regularly and diligently and shall perform its obligations whenever necessary in compliance with any requirements as to timing contained in:
- (a) any programmes, procedures or strategies issued or approved by TfL and
 - (b) any instructions issued by TfL.

PROVIDED THAT if the Service Provider is delayed in the performance of its obligations by any breach, neglect or default of TfL or any person acting for or on behalf of TfL, or by any matter for which TfL is responsible under this Agreement, then the time for the performance of the Service Provider's obligations under this Agreement shall be adjusted accordingly and any such adjustment shall be subject at any time to further adjustment by TfL based on further or revised information and (if requested in writing by the Service Provider) TfL shall issue written confirmation of such adjustment or further adjustment within 30 Business Days of such request.

- 18.2** Upon the Service Provider becoming aware that it is being or shall be prevented or delayed in the performance of the whole or any part of its obligations under this Agreement for any reason then the Service Provider shall immediately inform TfL in writing of the likely delay and shall, subject to confirmation of the actual delay, specify:
- (a) the cause or causes of the delay;
 - (b) the likely effect of such delay or delays to the progress of the Project; and
 - (c) the remedial action or actions the Service Provider believes are necessary.

19 Termination

- 19.1** In addition to any other rights and remedies which TfL may have, TfL may terminate its engagement under this Agreement in whole or in part at any time by giving the Service Provider a 30 day written notice of termination.
- 19.2** If TfL is in material and persistent breach of its obligations under this Agreement and fails to remedy the same after receiving a written 30 day notice from the Service Provider specifying the breach and requiring its remedy then the Service Provider shall be entitled by written notice to TfL immediately to terminate its engagement under this Agreement.
- 19.3** TfL may by written notice to the Service Provider suspend all or any of the Service Provider's duties under this Agreement. If such notice is given and TfL has not within six months requested the Service Provider to resume the duties suspended, the Service Provider may serve 30 days' written notice on TfL requiring it to end the suspension. If TfL has not notified the Service Provider within that 30 day period that the suspension is ended the Service Provider may immediately by written notice to TfL terminate its engagement under this Agreement.
- 19.4** Upon any suspension or termination under this Clause 19 (Termination) TfL will pay the Service Provider:
- (a) any instalments of the Fee and other sums which have become due to the Service Provider prior to the date of such suspension or termination and which remain unpaid; and
 - (b) a fair and reasonable proportion of the next following instalment of the Fee commensurate with the Services which the Service Provider has performed up to the date of such suspension or termination (the due date for which shall be the later of the date of termination or suspension and the date of issue of the Service Provider's valid VAT invoice for such proportion and the final date for which shall be 28 days after the due date for such proportion),
- less an amount equal to the sum of: (a) any amounts previously paid by TfL to the Service Provider for the period up to the date of suspension or termination; and (b) any amounts due to TfL from the Service Provider under or in connection with this Agreement.
- 19.5** Upon any suspension or termination under this Clause 19 (Termination) the Service Provider shall not be entitled to any sums in respect of loss of anticipated profit, loss of business, loss of use, loss of contracts or any other losses, damages and expenses arising by reason of or in connection with such suspension or termination. Subject to this, termination of the Service Provider's engagement, however it arises, shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination.
- 19.6** Following any termination of the Service Provider's engagement however it arises the Service Provider shall immediately take all necessary steps to vacate any TfL premises, and to end, in an orderly manner, the provision by it of the Services, such steps to be taken with all reasonable speed and economy. The Service Provider shall also deliver to TfL copies in such form as TfL may reasonably require of all documents (including negatives and CAD disks), whether in the course of

preparation or completed, which the Service Provider holds in connection with the Project together with the originals and any copies which the Service Provider may hold of all documents provided to it by TfL or by others in connection with the Project.

20 Notices

20.1 Subject to Clause 20.4, any notices or other documents to be given under this Agreement shall be in writing in English and shall be deemed to have been duly given if delivered by hand or by registered post or by facsimile to a Party at the address set out below for such Party or such other address as one Party may from time to time designate by written notice to the other:

TfL's address for service of notices is:

– Postal address: 2nd Floor, 1 Butler Place, London, SW1H 0PT

– e-mail address: [REDACTED]

– The Service Provider's address for service of notices is:

Postal address: Amber Court, William Armstrong Drive, Newcastle upon Tyne, NE4 7YQ

– e-mail address: [REDACTED]

20.2 In the event of any postal or other strike or industrial action affecting postal communications in the United Kingdom, notices shall be given by hand or sent by facsimile.

20.3 Subject to Clause 20.6, any such notices or other documents shall be deemed to have been received by the addressee two Business Days following the date of despatch if the notice or other document is sent by registered post, or on the next Business Day after despatch if given by hand or sent by facsimile

20.4 Notwithstanding Clause 20.1, TfL all notices or documents to be delivered under this Agreement, other than those referred to in Clause 20.8 below, may be sent by email ("Electronic Notices"):

20.5 Electronic Notices shall:

- (a) be sent to the email address(es) specified in Clause 20.1 for that purpose (or such other email address as one Party may from time to time designate by written notice to the other) and be in a form and context calculated to come to the recipient's immediate attention
- (b) be in immediately intelligible form and saveable to the relevant information systems;
- (c) in the case of any notice or document which is required under the terms of this Agreement to be given in writing, be confirmed by post (posted on the same day as the electronic mail communication); and
- (d) comply with any other requirements specified in writing by TfL.

20.6 If an Electronic Notice is received in an unintelligible or garbled form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender

shall re-send the Electronic Notice or shall send the notice or document in accordance with Clause 20.1.

- 20.7** An Electronic Notice that is in accordance with Clause 20.4 shall be deemed to have been received by the recipient on the next Business Day after despatch.
- 20.8** Notwithstanding anything to the contrary in this Agreement, notices of termination or suspension may not be sent by email and shall not be deemed to have been duly given if sent by email.

21 Disputes

21.1 Where and to the extent that Part II of the Housing Grants, Construction and Regeneration Act 1996 applies to this Agreement, either party may at any time refer any dispute or difference arising under this Agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body shall be the Technology and Construction Solicitors' Association or any successor organisation.

21.2 Subject to Clause 21.1 and save in respect of any claim to a Court of competent jurisdiction for interim relief:

- (a) TfL and the Service Provider shall use their best efforts to negotiate and settle any dispute or difference that may arise out of or relate to this Agreement before (save as aforesaid) resorting to litigation.
- (b) If any such dispute or difference is not settled through discussion between the Contract Manager and a representative of the Service Provider, TfL and the Service Provider may refer the dispute or difference to a director or chief executive (or equivalent) ("Senior Personnel") of TfL and the Service Provider for resolution.
- (c) If the dispute or difference is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose that a structured mediation or negotiation be entered into with the assistance of a mediator
- (d) If TfL and the Service Provider are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act, either Party may apply to the Centre for Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of a mediator shall be divided equally between TfL and the Service Provider.
- (e) If TfL and the Service Provider reach agreement on the resolution of the dispute or difference, such agreement shall be recorded in writing and once signed by TfL and the Service Provider' authorised representatives, it shall be final and binding on TfL and the Service Provider.
- (f) If TfL and the Service Provider fail to reach agreement within 40 Business Days of the appointment of the mediator, such failure shall be without prejudice to the right of either to refer the dispute or difference to litigation.

- (g) The Service Provider shall continue to provide the Services in accordance with this Agreement and without delay or disruption while a dispute or disagreement is being resolved.

22 Entire Understanding

This Agreement comprises the entire understanding of the Parties and there are no other arrangements between the Parties relating to the subject matter of this Agreement intended to form part of this Agreement and no amendment or modification of this Agreement shall be valid or binding on any party unless the same is made in writing and refers expressly to this Agreement and is signed by the Parties concerned or their duly authorised representatives. The Service Provider shall not rely upon any representation of any fact or matter made prior to the date of this Agreement.

23 Third Party Rights

- 23.1** Subject to Clause 23.2, any third party who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Party Act") to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of such third party which exists or is available apart from the Third Party Act.
- 23.2** The Third Party Act applies to this Agreement so that Network Rail and any member of the TfL Group has the right to enforce any provision contained in this Agreement against the Service Provider to the extent that such provision confers a benefit or purports to confer a benefit on Network Rail or that member of the TfL Group.
- 23.3** Notwithstanding Clause 23.2, TfL and the Service Provider are entitled to vary any term of this Agreement or terminate this Agreement without the consent of Network Rail or any member of the TfL Group

24 Relationship of the Parties

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall any Party be deemed to be the agent of another. Subject to any express provisions to the contrary in this Agreement, the Service Provider has no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of TfL or bind TfL in any way.

25 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the English courts.

SCHEDULE 1

General Description of Project Structure and Scope

1

1.1 East London Line Project Overview and Objectives

The Project requires work on three sections of existing or former rail infrastructure and the establishment of links between them as follows:

- (i) the rehabilitation and upgrading of the existing London Underground East London Line;
- (ii) the reinstatement of disused National Rail routes to connect to Dalston in the north; and
- (iii) modifications to existing infrastructure to connect to West Croydon and Crystal Palace in the south

The requirements for the Project are to provide, at the completion of Phase 1 (as set out in Clause 1.2 below), an operational service of 12 train paths per hour (tph) in each direction between Surrey Quays and Dalston Junction and 4 tph in each direction to each of New Cross, West Croydon and Crystal Palace. The infrastructure to be installed in Phase 1 will be designed to accommodate an ultimate planned operational capacity of 18 tph (and 24 tph during perturbations) at the completion of Phase 2 (as set out in Clause 1.2 below).

The Project will be required to provide infrastructure and systems that will allow this intensive train service to operate safely and reliably.

The success of the Project and of each and all members of the Integrated Project Team will be determined by:

- the public opening of the extended East London Line in June 2010 in accordance with the Development Remit¹;
- the approval of the System Technical Case;
- there being no outstanding technical qualifications by any of the approving bodies or stakeholders;
- there being no outstanding contract claims;
- all with a good safety record; and
- all within the approved budget of £914.5m in cash terms as may be subsequently amended.

1.2 Phasing

¹ Development Remit: ELM-TEC-225-14-05-0001 Issue 1 February 2005

TfL currently anticipate that the Project will be completed in two phases. Phase 1 is the subject of the Services and this Agreement and will extend the existing line north to Dalston Junction and south to Crystal Palace and West Croydon.

The existing East London Line, which comprises the railway line from Shoreditch, north of the River Thames, passing under the river to New Cross and New Cross Gate, south of the river, is currently operated by LUL and will be closed.

The Project will convert the existing East London Line to national rail standards, extend it north and south and connect it at its south end to Network Rail's lines from London Bridge to Brighton. The infrastructure (the stations and structures, the track, and the signalling and other systems) will be upgraded and rolling stock will be procured to operate on the East London Line.

Phase 2, which is not the subject of this Agreement, is proposed to be undertaken at a future date and will further extend the line west to Clapham Junction and connect to the North London Line to provide East London Line services at Canonbury and Highbury and Islington.

1.3 Stakeholders

The successful implementation of the Project will require not only the updating of the existing East London Line by TfL but also the undertaking of works by a number of other organisations. These organisations are termed stakeholders. The relationship between these stakeholders has yet to be finalised but is likely to be governed by a set of stakeholder agreements. The stakeholders currently sit on the East London Line Project Board and the East London Line Project Delivery Group², to which issues that cannot be resolved at operating level may be escalated.

The stakeholders and the work currently seen to be in their remits are set out below:

- **TfL** is the overall Project sponsor and the Project forms a central part of its transport strategy.
- **Network Rail** will enhance their rail infrastructure at West Croydon and Crystal Palace Station areas in accordance with the Projects requirements.

The final operational structure of the line has yet to be formalised but it is currently planned that Network Rail will be the network operator of the new and refurbished infrastructure and the Project is basing it's building standards and approval processes on the use of, Network Rail Company and Railway Group Standards, with London Underground Standards as required. The products used shall also be Network Rail approved products with LUL approved products in relevant areas.

- **LUL** will modify their existing interchange stations, where they will continue to be the operator, at Canada Water and Whitechapel to accommodate the impacts of the Project and in accordance with the Projects requirements.

² ELLP Project Delivery Group (PDG) Governance Structure: ELM-SUP-306-05-0002_01

The LUL works will also include changes to their PFI contracts to accommodate the severance of the East London Line from the LUL network.

- **SRA** will award a franchise to the Passenger Services Operator who will operate the train services on the new line.

SRA will also procure the provision of the rolling stock, either new or cascaded, which will be needed to ensure compatibility with the Project requirements.

1.4 Technical Advisor

TfL will require the Technical Advisor to develop the infrastructure design to a preliminary design stage of 'Approval in Principle' (AiP) / Form A as defined in Network Rail Company Standards and act as TfL's Technical Advisor through the rest of the Project.

1.5 Independent Technical Certifier

As the Project spans multiple technical jurisdictions, it is desirable that an Independent Technical Certifier acts as the single technical acceptance body for the Project, to deal with all design and construction submissions.

TfL (via the Independent Technical Certifier) will operate a number of processes to facilitate the staged acceptance of work.

1.6 Overall Delivery Strategy

The stakeholders have agreed that the design should be developed to Approval in Principle (AIP) stage and shall then be contracted out for Detailed Design and Build to either the direct TfL contractors or to the respective Stakeholders.

1.7 Enabling Works

In order that the Project can be completed as required TfL are, as of February 2005, in the process of tendering for some early works particularly on the Kingsland Viaduct, on road and utility diversions, site clearance and preparation, ecological and archaeological preparation, bridge deck replacement and drainage and other works amounting to approximately 10% of the TfL direct scope (the "**Enabling Works**").

1.8 Contract packaging

TfL Works – It is currently proposed that the rest of work to be carried out for or on behalf of TfL (the "**Infrastructure Works**") shall be procured and delivered as a single package. However, when the Integrated Project Team is fully assembled TfL will have the opportunity to consider and validate proposed changes to this approach.

Stakeholder Works – The contract packaging and detailed strategy of the work to be carried out for and on behalf of LUL, Network Rail and SRA will be the accountability of the respective stakeholders.

1.9 Route description

Northern Extension

Provision of this section of twin-track route consists of the restoration of a 3-kilometre section of the redundant North London Railways route that formerly ran from Broad Street station to Dalston Junction along the Kingsland viaduct. A new station is to be constructed at Dalston Junction within retained cutting.

Two new stations are to be constructed on the Broad Street viaduct, at Haggerston and Hoxton. At the southern end of the remaining viaduct the extended East London Line leaves the viaduct on a tight curve over a new bridge, crossing first the former Bishopsgate Goods Yard site on the new Bishopsgate Viaduct and finally the Great Eastern Line just east of Liverpool Street station. The new Shoreditch High Street station will be on the Bishopsgate Viaduct.

An early works contract demolished part of the Bishopsgate Goods Yard brick arches as far as Brick Lane. The spoil has been crushed and left on site, with the intention that such of it as meets the Project's requirements shall be used as fill. The Infrastructure Works Contractor will be responsible for determining whether it can be used. It must remove from site any that does not meet the specification and replace it with the necessary amount of replacement fill that does.

South of the Bishopsgate Viaduct, the route crosses over the Great Eastern Main Line on bridge GE19. The current scheme comprises a new large span bridge over the six tracks. The construction programme for the new bridge will depend heavily on how long it takes to demolish the existing bridge and clear the site.

After bridge GE19, the route passes over a new embankment at Shoreditch Cutting and then descends into the existing cutting to the tunnel portal at Valance Road near Whitechapel. The crushed spoil from the Bishopsgate viaduct brick arches which meets the technical specification is to be used in the earthworks for the Shoreditch Cutting embankment.

Existing East London Line

The Northern Extension joins the existing LUL alignment at Valance Road. This connection will sever the line to Shoreditch station, which will be permanently closed. The route then follows the existing twin-track alignment for about 5.5 km through Whitechapel to Surrey Quays station. The works to this length of the route require the replacement of the existing LUL systems with systems that meet Railway Group and Network Rail Company Standards, except for the track support slab at Canada Water and in the Thames Tunnel, which was recently constructed and has a significant residual life. New crossovers are required for operational robustness. The existing connection to the LUL District Line at St Mary's Curve will be severed.

This section of route between Whitechapel and Surrey Quays is in tunnel and goes under the River Thames through the Thames Tunnel, which is a listed structure. No major works are anticipated to these existing structural assets but the works will include a detailed assessment of all existing assets.

The existing East London Line will be closed during the works on this section.

Southern Extension

South of Surrey Quays station the existing routes to New Cross Gate and New Cross stations will both be refurbished to Railway Group Standards and Network Rail Company Standards. It will be necessary to construct a new grade-separated junction north of New Cross Gate to allow the up line of the East London Line to cross over the main line from London Bridge to Brighton.

The works to this section include earthworks and structures to provide stabling facilities to the north of New Cross Gate Station and grade separated connections to the Brighton line.

East London Line trains will use the existing network on the Southern Region, but there will be a requirement for remodelled track and new facilities at Crystal Palace Station and a new turnback at West Croydon Station.

1.10 Stations

New Stations

New stations will be constructed at Dalston Junction, Haggerston, Hoxton and Shoreditch High Street.

The stations are to be designed to accommodate the peak projected passenger flows safely and meet the required operational criteria. Designs shall comply with the conditions and commitments associated with the TWA Orders and other planning consents and agreements for the project. New ticketing systems and barrier lines will also be required. The new stations will include all modern station facilities and facilities to allow passengers to interchange with buses and other rail systems existing and proposed.

Existing East London Line Stations

Whitechapel and Canada Water stations are LUL interchange stations and will continue to be owned and operated by LUL. At these stations, therefore, LUL standards and operational requirements will continue to apply. In particular, materials must comply with LUL's Code of Practice for Fire Safety, and all works should be undertaken in such a way as to pose no operational or safety risk to the surrounding operational LUL railway.

Shadwell, Rotherhithe, Wapping and Surrey Quays will continue to be owned by LUL, but it is currently anticipated that the Passenger Services Operator will lease these stations from LUL and will be the station operator.

Existing NRN Stations

It is not anticipated that there will be any change to the ownership or operation arrangements for the existing stations on the national rail network, including New Cross Gate and New Cross.

It is anticipated that work at intermediate stations will be limited to signage with the exception of the modifications at West Croydon and Crystal Palace.

Disability Discrimination Act

Phase one of the project will construct four new stations and connect them to seven existing ELL stations operated by LUL and ten existing stations on the national rail network. Full mobility impaired access will be put in place at all new stations.

TfL has a responsibility to determine the impact of DDA on the infrastructure that it owns. Two existing ELL stations already have step free access, the project will implement accessibility improvements to all others in accordance with LUL accessibility strategy.

Network Rail stations that are served by the project will continue to be covered by the SRA/DFT strategic policy for the rail industry and a proposed 'Access for All fund' that is scheduled to be implemented in the summer of 2005.

1.11 Major structures

Existing structures

There are at least 120 major existing structures along the route that will be affected by the Project, including but not limited to:

- thirty-five overbridges - highway bridges;
- twenty-nine underbridges - highway bridges (including one canal bridge);
- seven overbridges - rail bridges;
- seven underbridges - rail bridges;
- several tunnels;
- eleven air shafts; and
- three footbridges (two over the railway and one under).

Some of these structures are up to 150 years old; they have been built from a variety of materials and are in various states of repair. The structures will be surveyed to determine whether they are capable of serving the extended East London Line for the required design life.

Most of the bridges affected by the Project are on the Northern Extension. The work, which is proposed under the Enabling Works Contract, will include deck replacement works and substructure refurbishment on ten existing bridges, and the refurbishment of decks and substructures on another fifteen bridges, mostly on the Kingsland Viaduct.

At the proposed Shoreditch High Street station, the new route passes close to the Grade 2 listed Braithwaite viaduct and traverses, on a new viaduct, the site of the structure, now demolished, that supported the Bishopsgate Goods Yard. The Project leaves the Braithwaite viaduct in place and untouched by the new infrastructure; but since the new viaduct will pass very close to the old one, the works will need to be sympathetic to the listed structure.

The Northern Extension also runs over some 20 masonry arches most of which are tenanted, and which will require significant community liaison and management.

New structures

Some new bridges and viaducts will need to be built. Most significant are the new structures that will be needed to carry the track above grade eastwards from Shoreditch High Street, descending below ground level south of the line from Liverpool Street to Hackney Downs. It is a planning condition that the bridge over Shoreditch High Street shall be a bowstring girder structure; the works are covered by the deemed planning permission.

On the Southern Extension the only significant new railway structure will be the New Cross Gate Link flyover.

1.12 Track work

Although it may be possible to reuse some of the existing track, it has been anticipated that at least eighty per cent of the track on the existing East London Line will need to be replaced in order to meet the required standards. New track work includes not only the design and construction of new sections of running track but the provision of track for sidings and stabling. Works on the existing infrastructure to incorporate the necessary crossovers and turn-back sidings will also be necessary.

There may need to be a change to the track form at structures and in tunnels, to improve gauging and clearances and to reduce track construction depth. It may be necessary to refurbish or replace existing sections of slab track to achieve the design life required.

Noise and vibration mitigation measures will be necessary in sensitive areas such as the Bishopsgate Curve (the link from the old Bishopsgate Goods Yard to the former North London Railway viaduct), the section north of Haggerston station, the area west of the Silwood triangle and in stations, depots and stabling areas.

1.13 Railway systems

Traction power supply and distribution

Traction power will be distributed by the standard Network Rail third-rail equipment throughout the extended East London Line. This will entail the construction of new traction substations and track paralleling huts.

Auxiliary power supplies

The Project will require auxiliary power supplies for signalling, telecommunications, station systems and other systems.

Signalling

A signalling system, to provide the required operating headway between New Cross Gate junction and New Cross at the southern end of the line through to Dalston Junction, is required.

A new control centre adjacent to the stabling sidings at New Cross Gate is to be procured for this route. Control of signalling at New Cross Gate Junction, West Croydon and Crystal Palace will be from the existing Network Rail control centres at London Bridge, Three Bridges and Victoria (located at Clapham Junction) respectively.

The signalling system shall interface with the existing Network Rail infrastructure at the boundaries of the Project. The signalling and control centre systems must comply with Railway Group Standards and Network Rail Company Standards.

Telecommunications

The Project will include the upgrade of existing telecommunications systems, both 'operational' and 'non-operational', and the design, installation and commissioning of new systems, compliant with Railway Group Standards and/or LUL standards, to meet operational requirements in normal, abnormal and emergency conditions.

The Project will also include the design, installation and commissioning of a cab-secure radio infrastructure to provide voice communication between train drivers and the signalling control centres. Full coverage for voice and data must be achieved not only over the whole of the running line (much of which is in tunnel) but everywhere within the boundary of the extended East London Line, including the depot.

Electromagnetic compatibility (EMC)

Electromagnetic compatibility between the infrastructure works, rolling stock and the existing infrastructure, including interfaces with LUL, Network Rail and the railway's neighbours, will be required to meet all relevant standards and legislation.

Business systems

The Project will require modifications to Network Rail's business systems, such as the Control Centre of the Future (CCF), TOPS and TRUST as necessary to incorporate the new infrastructure. The works will not affect third-party users of the railway communications bearers.

LUL interfaces

LUL has PFI contracts for its traction power (EDF Energy), telecommunications (Connect) and ticketing systems (Prestige) in place, and collaboration will be needed to accommodate interface conditions including for works at the Whitechapel and Canada Water stations where LUL retain control. This will be part of the LUL scope of works.

1.14 Utilities

The Project will include for the investigation of utilities along the route and must plan any necessary diversion works in conjunction with the appropriate utility companies. It will be the responsibility of the relevant Contractor(s) to interface with the utility companies and programme their works into the Project works.

1.15 Highway and reinstatement works

The Project will include for consultation with the relevant highway authority on temporary and permanent closures and diversions of roads and footpaths. The TWA Orders list the roads for which specific powers have been obtained.

1.16 Work sites

The TWA Orders for the Northern and Southern Extensions allow the temporary use of land for the purposes of the Project, and list the land over which temporary possession may be taken.

The TWA Orders' deposited plans show the limits of deviation of work along the East London Line route, within which the Project must design the permanent works. They also show locations of the work sites along the route and land for the provision of access for construction purposes. The Project may use for work sites any land along the East London Line route that is not required for permanent works but is within the limits of deviation.

1.17 Asset condition

TfL has assembled significant existing asset data. However, the asset database is not complete and is not warranted in any way. Additional site surveys will be undertaken as the programme allows.

1.18 Site conditions

Ground conditions

TfL has assembled significant geotechnical data. TfL makes no warranty as to this survey and none shall be inferred. Additional ground condition surveys, including intrusive geotechnical investigations on site that may be necessary to facilitate the design and construction of the Enabling Works and Infrastructure Works are currently being planned and undertaken.

Contaminated land

There are areas along the route where current or historically potentially contaminating land uses have occurred. A contaminated land survey, a 'desktop' study, of the route has been undertaken to identify land use and potential areas of contamination.

Additional geotechnical investigations, including intrusive investigation works and testing in potentially contaminated areas that may be necessary to facilitate the design and construction of the Project are currently being planned and undertaken.

Archaeology

The TWA Orders require that archaeological surveys and works be undertaken before any construction work starts. Holywell Priory (adjacent to Holywell Lane, EC2) and the Bishopsgate Goods Yard are sites of particular interest. The archaeological works have been divided into two phases, namely an Archaeological Impact Assessment (AIA) and an Archaeological Site Investigation (ASI). The AIA is a 'desktop' exercise and the ASI goes into more detail about the sites in the AIA where on-site investigations are to be undertaken.

Heritage issues

In parallel with the TWA Orders and the deemed planning consents, listed building and conservation area consents have been obtained for certain elements of the

Project. The Project Consents Register³ shows these consents. A number of the conditions, undertakings and assurances have already been discharged, as identified in the Project Consents Register; but, as with planning consents, this is an ongoing process.

1.19 Land and property

Categories of Required Land

The Required Land is the land on which the extended East London Line Project will be constructed. It falls into four categories:

- Network Rail land: Land that is already owned by Network Rail south of New Cross Gate junction.
- TWA land: Land that is subject to compulsory purchase order (CPO) powers conferred by the Northern or Southern TWA Orders.

The acquisition of relevant property interests for Phase 1 has been carried out by LUL in the TWA Land on the Northern Extension. The CPO powers on the Phase 2 Southern Extension have not yet been exercised but it is intended that acquisition will be complete before powers expire

- LUL land: The land on which the existing East London Line (an operational underground railway) is situated.
- Land to be acquired: If the approved design requires land over and above the Required Land (as defined above) TfL will procure any land to be acquired.

Licence over the land

The Infrastructure Works Contractor will be granted a licence to carry out construction on the Required Land, but will not be granted exclusive rights (still less, sole access) or licences over the land. They will not have any involvement in or rights to any development or future development on, over or under the land, nor will they be entitled to any potential equity from any such development.

1.20 Testing and commissioning

Test Running

Test Running is to be conducted by the Infrastructure Works Contractor to demonstrate that the completed Project achieves the levels of performance and outputs set out in the Functional Specification, and to validate the modelling of the design. The definition and execution of Test Running will be the responsibility of the Infrastructure Works Contractor as part of his commissioning activity. It will require the Infrastructure Works Contractor to identify resource requirements from TfL in terms of rolling stock and drivers. Completion of Test Running will be certified by the Independent Technical Certifier to certify acceptance of the infrastructure by Network Rail.

³ Project Consents Register, ELM-TEC-216-14-05-0002

Trial Operations

Trial Operations will follow successful completion of Test Running and Network Rail acceptance of the assets. The aim of Trial Operations will be to demonstrate that the railway system as a whole performs safely and reliably as an integrated railway. Trial Operations will be managed by the Service Provider and involve the Passenger Services Operator, the Rolling Stock Provider, Network Rail and (at interchange stations) LUL. The Infrastructure Works Contractor will also be required to participate in Trial Operations. Although the trains will not be in passenger service, Trial Operations will be undertaken with a representative load and a full complement of operating and maintenance staff in accordance with operational rules, processes and procedures. The railway must be demonstrated to operate in accordance with the functional requirements during normal, perturbed and emergency operation, and the trials will need to include some emergency exercises including the evacuation of trains and stations.

SCHEDULE 2

Project Technical Requirements

2

2.1 Overview of Approvals, assurance, monitoring, and acceptance

The engineering and technical management activities and the assurance activities for the Project are founded upon a co-operative strategy. In order to facilitate this, the assurance process requirements are required to be common to TfL and the Contractors. This co-operative approach shall also extend to safety, quality and environment aspects of the Project.

2.2 System Assurance Strategy

TfL has established a System Assurance Strategy that describes the assurance strategies and assurance policies that will be used to provide the assurance for the Project. This System Assurance Strategy also addresses technical compliance for the design and construction, integration acceptance and transfer into operations of the infrastructure, rolling stock and operations components of the Project.

The System Assurance Strategy applies to all technical activities throughout the Project lifecycle to ensure that there is sufficient confidence in the delivery of Project outputs. In addition it provides assurance that the Project outputs will meet their respective requirements (including, safety, quality, engineering, environment, cost and timescales).

The System Assurance Strategy deliberately does not prescribe how the systems are to be developed, that is left to each Contractor who is expected to use best practice, based on the appropriate standards for systems engineering and railway developments.

2.3 Progressive Assurance

TfL recognising the difficulties and nature of the Project, and in order to minimise the risk of 'failure to obtain acceptance', has developed the concept of 'Progressive Assurance'. This provides the continual development of the argument that the system has met, or is on track to meet, its requirements through the provision of objective evidence, commensurate with the stage in the project. In this manner, technical acceptance is gained in a controlled and progressive manner to deliver an operational railway system.

Progressive Assurance provides a framework for an open and definitive process to demonstrate that the required Project outputs have been attained during the execution of the Project and are delivered at the point of acceptance. Progressive Assurance is based upon good engineering practice. In its simplest form, Progressive Assurance is based upon a policy of 'no surprises'. 'No surprises' refers to the definition of a series of criteria to be satisfied at each lifecycle stage-gate.

Achieving this goal requires that the acceptance criteria for final acceptance be specified at the outset of the Project.

The acceptance bodies and the Project stakeholders, such as Network Rail and LUL, then agree these acceptance criteria. At each lifecycle stage-gate a demonstration that these criteria are (or will be) satisfied is made so that both TfL and the Contractors can have confidence in the progress of the Project. In endorsing these acceptance criteria, the assurance arguments and the evidence required to satisfy them, the acceptance bodies can ensure that the Project has the appropriate management framework, activities and processes in place to ensure the successful delivery of fully integrated and operational services.

The demonstration that these acceptance criteria have been met will be by assurance arguments that are supported by evidence. This evidence will be compiled into a series of technical cases to be assessed and accepted by the Independent Technical Certifier as the acceptance criteria for the system and its constituent subsystems.

2.4 Technical Case

The Technical Cases will show that the Project requirements have been (or will be) satisfied. The demonstration of the satisfaction of requirements (and acceptance criteria) will be based upon progression of submissions at each of the Project lifecycle stage-gates from requirements definition through to the operations and maintenance phase. The collective term of a related series of assurance arguments is a Technical Case. The details of this evidence will be addressed in the Technical Case frameworks to identify the particular items at each stage and from whom acceptance is required.

The use of a series of Technical Cases effectively “signs off” elements of design, construction and test & commissioning against the requirements as the project progresses through its lifecycle rather than waiting until the end of the project to confirm delivery of the requirements.

The Technical Cases provide the assurance argument for all aspects of Progressive Assurance, including safety. However, ‘safety cases’ in the railway environment have a particular meaning relating to the statutory requirements of the Railway Safety Case Regulations. In addition ‘safety cases’ are used as the approvals documents for other Regulations and to meet the guidance given in the Yellow Book⁴ and are required to be submitted to various different bodies for approval. Therefore the ‘safety cases’ for Project shall be prepared as standalone components of the Technical Cases and the arguments and evidence presented within them referenced from each Technical Case.

The individual Technical Cases will support the overall system Technical Case which provides the assurance argument for the Project.

2.5 Acceptance Body

⁴ Engineering Safety Management, Yellow Book 3, Fundamentals and Guidance and Application Note 1 - available from:www.yellowbook-rail.org.uk/site/the_yellow_book/the_yellow_book.html

An independent review group, the Independent Technical Certifier, will undertake the assurance activities of the relevant acceptance bodies such as Network Rail and LUL and act as a single point for submissions. The scope of what is to be self certified by the Contractors and what is to be submitted to the Independent Technical Certifier for review will be agreed between TfL and the relevant acceptance bodies such as Network Rail and LUL. Notwithstanding this, the “burden of proof” that the requirements (or acceptance criteria) have been met rests on the Contractors, not on TfL.

2.6 Product approval

The Project strategy is to use only products, systems, methods and equipment that have Network Rail's or LUL's approval. The processes for the approval of new, non-approved products, materials and methods are stringent and time-consuming.

2.7 Standards

The Project will be undertaken, where necessary, to Railway Group Standards, Network Rail Company Standards and London Underground Standards.

2.8 Safety Management

The Conventional Interoperability Regulations are expected to come into force in late 2005.

The East London Line infrastructure will be subject to the Conventional Interoperability Regulations. The Notified Body for the purposes of these Regulations will be appointed by TfL.

LUL operations will be subject to the Railway and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 or their successor in law.

The Contractors will design and construct the Project to be compatible with all Technical Specifications for Interoperability (TSIs) published at AIP or Notified National Standards where TSIs have not yet been published. The Contractors will be responsible for obtaining approval from TfL for any areas that would require derogations and non-conformances prior to work commencing. The necessary derogations and non-conformance will be sought by the Contractors or TfL.

The Contractors will produce safety cases for the infrastructure works, giving all necessary information about construction and construction-related activities. These safety cases will follow and utilise the safety argument developed by the Integrated Project Team.

The infrastructure safety case will be combined with the rolling stock safety case produced by the Rolling Stock supplier to produce an overall project safety case enabling Network Rail and London Underground to modify their operational Railway Safety Cases.

In accordance with the principles of Progressive Assurance, development and preparation of the safety documentation shall be progressive, starting at the AIP stage of the design development. TfL will provide the preliminary safety documentation and undertake authorisation of any safety documentation that the Contractors produce.

Safety Planning and Safety Strategy

TfL has prepared an overall ELLP Systems Assurance Strategy⁵ and Safety Strategy⁶. TfL's ELLP Assurance Plan⁷ and Safety Plan⁸ are working documents that detail the team's assurance and safety tasks. They set out a co-ordinated approach to SQE management and the compliance of the design and the works. Achievement of the Project Outputs will be demonstrated through engineering safety management and design acceptance (including modelling), inspection of implemented designs and testing.

The ELLP Safety Strategy makes general provisions for the management of safety in all aspects of the project. It complies with and supports Network Rail's and London Underground's Railway Safety Cases. It addresses both the project and safety risks and issues identified by TfL in such a way as to ensure that they can be managed and controlled to allow the Project to be completed successfully.

Planning for Risk Assessment

The ELLP Safety Strategy and Safety Plan are underpinned by a more detailed Health and Safety Plan (currently issued as a Pre-tender Health and Safety Plan for the Enabling Works) to satisfy the requirements of the Construction (Design and Management) (CDM) Regulations. Separate Pre-tender Health and Safety Plans will be issued for each works package.

A Hazard Log has been established as part of the Project Risk Register as the means of managing all hazards and safety risks on the Project to ensure that a safety case can be successfully produced. TfL's Safety team will hold the master Hazard Log and the Hazard Log will be managed in accordance with the ELLP Hazard Management Procedure⁹.

Implementation and Operation - Management System Documentation

All fundamentals within the Yellow Book are addressed in the ELLP SQE management system. The following fundamentals of engineering safety management have been specifically identified within the ELLP SQE management system:

- Assumptions, Dependencies and Caveats (ADC)¹⁰ shall be explicitly identified in all safety documentation.
- The As Low As Reasonably Practicable (ALARP) principle shall be demonstrated and documented in all Project work.
- All safety documentation and analyses shall be in accordance with the Yellow Book.

⁵ ELLP Systems Assurance Strategy, ELM-TEC-204-04-05-0002, Issue 1, February 2005

⁶ ELLP Safety Strategy, ELM-TEC-214-09-04-0001, Issue 2, January 2005

⁷ ELLP System Assurance Plan, ELM-TEC-204-04-05-0006_01

⁸ ELLP Safety Plan, ELM-TEC-214-09-04-0002, Issue 1, February 2004

⁹ ELLP Hazard Management Procedure, ELM-TEC-214-18-05-0002, Issue 1, January 2005

¹⁰ Engineering Safety Management, Yellow Book 3, Fundamentals and Guidance and Application Note 1 - available from: www.yellowbook-rail.org.uk/site/the_yellow_book/the_yellow_book.html

- A competence management system shall be operated.
- Hazard Identification shall be consistent with the good practice outlined in the ELLP Hazard Identification procedure¹¹.
- Safety Assessment shall be consistent with the good practice outlined in the ELLP Safety Risk Assessment Procedure¹².

Project procedures exist for the following:

- Site Visits¹³;
- Safety Induction¹⁴;
- Railway Safety Training¹⁵;
- Health and Safety Manual¹⁶.

Independent Safety Auditing and Assessment

Current plans are that TfL will perform the function of independent safety auditor and assessor and perform independent Peer Reviews, apart from any circumstances that may be mandated by existing or planned legislation.

Consultation

TfL has established a Project Safety Committee that meets every 2 months.

2.9 Quality management

The ELLP Quality Management Strategy¹⁷ sets out the framework of the quality management arrangements both for the management of the Project and for the arrangements to be implemented by the Contractors.

2.10 Environmental assurance

Environmental Strategy

The overall approach to environmental management is detailed within the ELLP Environmental Strategy¹⁸. The environmental aspects of the design, construction and operation have been reviewed and documented within the Environmental Review report¹⁹. A number of reports have been produced on various environmental subjects, including the Environmental Statements for the northern and southern extensions. These reports are detailed within Environmental Literature²⁰.

¹¹ ELLP Hazard Identification Procedure, ELM-TEC-214-18-05-0001, Issue 1, January 2005

¹² ELLP Safety Risk Assessment Procedure, ELM-TEC-214-18-05-0003, Issue 1, January 2005

¹³ ELLP Site Visits Procedure, ELM-SUP-301-21-04-0001, Issue 1, January 2005

¹⁴ ELLP Safety Induction Procedure, 213-39-09-0024, Issue 1, February 2004

¹⁵ ELLP Railway Safety Training Procedure, 213-39-09-0025, Issue 1, January 2005

¹⁶ ELLP Health and Safety Manual, 213-25-53-0001, Issue 1, January 2004

¹⁷ ELLP Quality Management Strategy, ELM-TEC-224-14-05-0001, Issue 1, February 2005

¹⁸ ELLP Environmental Strategy, ELM-TEC-211-14-05-0004, Issue 1, February 2005

¹⁹ ELLP Environmental Review, 213-83-04-0072, Issue 1, May 2004

²⁰ ELLP Environmental Literature, 213-16-04-0001, Issue 3, August 2004

A number of environmental requirements are placed on the project as a result of the deemed planning permissions given at the time of the Transport and Works Act Orders for the northern and southern extensions and the Undertakings and Assurances given during the Public Inquiries. In addition further environmental requirements are placed on the Project through the need to implement and comply with the ELLP SQE Policy Statement²¹, environmental and planning consents and to manage environmental risks. These requirements are detailed in Environmental Requirements²².

Environmental Requirements for construction are principally included in the Code of Construction Practice Part A²³ outlines general construction requirements. Part B documents are required to detail how specified items in Part A are to be applied for each element of the work on a site-specific basis. At least one Part B document will need to be agreed with each London Borough.

Environmental Forum

TfL has established an Environmental Forum to ensure regular communication with environmental consultees including Environmental Health Officers, Environment Agency, English Nature, English Heritage and the Greater London Authority. Other environmental consultees will be invited as required. The forum is also used to agree the Code of Construction Practice Part A and other environmental protocols as appropriate.

A number of technical sub groups are utilised to agree technical issues such as and Acoustic Group to agree the process for submitting Section 61 of the Control of Pollution Act 1974 consents and the agreement of an operational noise specification for the Permanent Works. A Nature Conservation Group has also been established.

2.11 Planning and consents

Existing Planning Consents

Two Transport and Works Act (TWA) Orders were obtained for the extension to the East London Line:

- The London Underground (East London Line) Order 1997 Statutory Instrument No. 264;
- The London Underground (East London Line) (No.2) Order 2001, Statutory Instrument No. 3682.

In parallel with determining the requests for consent for the Orders under the Transport and Works Act, the Secretary of State also determined requests for approval under the Town and Country Planning Act 1990 for the same scheme. Planning consent for the extensions to the East London Line were granted subject to conditions at the same time as the TWA Orders.

²¹ ELLP SQE Policy statement, ELM-SUP-301-29-05-0001, January 2005

²² ELLP Environmental Requirements, 213-83-04-0095, Issue 2, September 2004

²³ ELLP Code of Construction Practice Part A, ELM-TEC-211-14-05-0002, Issue 1, January 2005

In determining the TWA Orders the Secretary of State appointed an inspector to chair a Public Inquiry for each of the Orders. During the Inquiry process LUL agreed to give a number of Undertakings and Assurances to third party objectors.

Deemed planning consent for the northern extension, including Silwood Triangle was given on 20th January 1997. Consent was granted subject to twenty three (23) conditions relating to areas throughout the Limits of Deviation of the 1997 Order. These conditions are listed in the Project Consents Register²⁴.

Deemed planning permission for the southern extension was given on 19th October 2001. Consent was granted subject to thirty nine (39) conditions relating to areas throughout the Limits of Deviation of the Southern Order. These conditions are listed in the Project Consents Register.

Planning Consents Strategy

The Project shall be designed and constructed in accordance with all current and any additional consents, conditions, undertakings and assurances (as identified in the Project Consents Register) and with any additional planning, listed building and conservation area consents.

TfL has developed a Planning Consents Strategy in order to:

- manage the discharge of existing planning conditions;
- identify and submit any additional planning consents which might be required as a result of the Service Provider's own design changes;
- demonstrate that further consents are compliant with the Project's Undertakings and Assurances.

This process incorporates change requirements of all contractors, sub contractors or suppliers.

Planning Conditions, Undertakings and Assurances

Some of the conditions relating to both the northern and southern extensions have been discharged by TfL. The Contractors will discharge those conditions identified in the Project Consents Register, which is included within the planning requirements of the infrastructure requirements document, as being their responsibility. The Contractors will discharge these conditions in accordance with the East London Line Planning and Consents Procedure²⁵.

Consultation

TfL manages a quarterly Planners' Forum that brings together all Local Planning Authorities affected by the route to discuss planning issues routewide.

²⁴ Project Consents Register, ELM-TEC-216-14-05-0002

²⁵ ELLP Planning and Consents Procedure, 213-39-09-0004, Issue 1, June 2003

SCHEDULE 3

The Integrated Project Team

3

3.1 Introduction

TfL's delivery strategy for the Project requires the assembly of an Integrated Project Team consisting of TfL and external contractor staff. The main elements of this will include:

- the Technical Advisor (known as TA3);
- a Programme Services Manager (i.e. the Service Provider); and
- the Independent Technical Certifier.

The Service Provider will be part of the Integrated Project Team. The Integrated Project Team is charged with the successful delivery of the Project. The current structure is shown in Appendix 3A to this Schedule 3.

3.2 General Duties of the Integrated Project Team

The following is a list of the general duties required of the Integrated Project Team for the Project. The programme of works and services will include but not be limited to the following duties to be executed by the Integrated Project Team:

Scope Development and Sponsorship

- Operation of change control procedures for scope change and emerging issues throughout design and implementation of the programme.
- Compliance with and management of Major Project Notices, Network Change, Station Change, Depot Change, possessions, access and similar requirements.
- Management of the Project's cultural development.
- Development and management of incentivisation strategies for the Project works and services.
- Project review at key stages of development. Value Management at pre-agreed stages and implementation of agreed outputs.
- Development of functional requirements, operational procedures, hand-back strategy, maintenance and training requirements.
- Management of TfL's business continuity issues, including emergency planning, disaster recovery etc.

Technical and Engineering

- Develop requirements from Development Remit to define scope and allocate to implementation packages.

- Management of design development to provide assurance that the approved preliminary design and detailed designs are consistent with the infrastructure requirements. Provision of overall design management to ensure delivery of design to programme, cost and quality standards.
- Management of the requirements for and production of asset condition surveys, registers and systems.
- Performance modelling of the designed and specified requirements and outputs.
- Integration of systems across the Project including all train/infrastructure interface issues. Development and implementation of configuration management systems.
- Development of the assurance strategy and provision of interfaces between the Independent Technical Certifier, designers and Contractors.
- Management of the process of achieving construction to standards, including acceptance, hand-back and other approvals. Delivery of the hand-back strategy including spares, training and maintenance and operational data provision.
- Management of the design development and implementation of the Project works to ensure that the Project delivers the defined performance and maintenance strategy and requirements. Validation as required, including performance.
- Managing the process for obtaining HMRI, LFB and similar acceptances and approvals for the Project works and rolling stock.
- Approval of construction method statements, including buildability and access.
- Management of value engineering systems to promote optimum value within the constraints and requirements of the Project.

Stakeholder Management

- Stakeholder management issues flowing down from the agreements with stakeholders.
- Planning and provision of rolling stock with Specifier and responsible stakeholder.
- Planning and provision of Passenger Services Operator with responsible stakeholder.
- Planning and liaison on prospective service and other disruptions.
- Incorporation and mitigation of impact of dependencies from related bodies and projects. (e.g. planning and consents, conditions from stakeholder and other third party agreements).

- Public, media and community relations interfaces, including procedures for communication and escalation of issues.

Procurement

- Development of the existing Procurement Strategy for the Enabling Works and Infrastructure Works as may be appropriate to award of contracts.
- Production of Invitation to Tender or Invitation to Negotiate documentation and processes in support of the Project.
- Participation in tender evaluation activities with TfL where directed and development of joint recommendations for award.

Commercial

- Cost management of the Project including estimates of the cost of the works and any actual or prospective change. Estimates to include whole life impacts where appropriate.
- Implementation of a programme of continuous risk management including assessment of risks, analysis of risk budgets, mitigation planning and monitoring, draw down of contingency and residuals.
- Project and commercial insurance provisions.
- Specification of requirements and management of the administration of payments and purchasing systems.

Project Management

- Production, verification and validation of all management systems required for the execution of the Project works.
- Development and documentation of an execution plan for the Project, incorporating all directly managed works and third party activities and interfaces.
- Direct project and contract management of the design, infrastructure construction, rolling stock procurement and other works contracts, including the Enabling Works. Administer the contracts on behalf of TfL as required.
- Validation of sequencing of design, construction, rolling stock procurement and other third party works. Development and maintenance of an integrated master programme, including reports on programme variances and corrective action as required.
- Verification and validation of resource plans for the Project.
- Full time management of the Project works including programme and programme analysis, planning and monitoring. Planning and monitoring of railway access, service diversions and rail and road plant movements as necessary.

- Definition of organisation and communication lines for the programme. Production of RACI charts and other documents as required to fully define roles and responsibilities.
- Liaison with developers on associated projects.
- Management and liaison to achieve successful test running and trial operations including for the provision of suitably trained train crew.
- Management and assessment of completion of the project works and services.
- Performance measurement for the application of incentives.

Project Controls and Reporting

- Definition and implementation of Project Control systems and procedures.
- Production of progress, commercial and other reports on the status of the Project at regular intervals to fully inform TfL and stakeholders of the progress of the works, resolution of design and construction issues and commercial agreements and settlements. Provision of forecasts of future progress, costs and cashflow.

Safety, Quality and Environment

- Establishing and working to safety, quality and environment (SQE) policy, strategies and plans for the Project, complying with all relevant health and safety and environmental legislation. Establishment of assurance, control and monitoring systems, including reporting and audit regimes.
- Health and safety planning and performance of the works, including security and safety of sites.
- Development and management of the environmental management systems for the project, including impact statements and plans.
- Development and management of quality management systems for the Project.
- Safety assessment and safety assurance.
- Quality assurance of all aspects of the work including monitoring all Contractors' quality systems and site surveillance to ensure efficient and cost effective delivery of works to required standards and the minimisation of waste and abortive works.
- Delivery of a safe Project.
- Compliance with governance and procedural requirements of TfL, including compliance by designers, suppliers and contractors by implementing audit programmes where necessary.

Administration & Support

- Document management standards and systems for issue and recording of correspondence, drawings, contract documents, change control documents etc. Development of arrangements for archiving and retrieval.
- Administration support to the Project. (e.g. common offices, facilities, welfare, security, equipment, IT services, planners).
- Management of labour relations across all contracts where required.
- Management of human resources, including defining and monitoring competency requirements.

3.3 Maintenance, training and spare parts

Maintenance

Prior to taking into use, the Integrated Project Team will develop a project maintenance strategy with input from the Passenger Services Operator, rolling stock provider, Network Rail, LUL and others. The strategy will cover all aspects of the Project's maintenance requirements including infrastructure, services installations, depot, stabling and rolling stock needs both prior to handover and for post taking into use.

The responsibility for maintaining the infrastructure after taking into use will revert to TfL. TfL may wish to enter into maintenance agreements prior to commencement of operations.

Training

The Integrated Project Team will develop a project training strategy with input from the Passenger Services Operator, rolling stock provider, Network Rail, LUL and others covering all aspects of training required for the Project both prior to handover and for post taking into use.

Spare parts

The integrated team will develop a project spares strategy with input from the Passenger Service Operator, Rolling Stock Provider, Network Rail, LUL and others covering all aspects of spares required for the project both prior to handover and for post taking into use.

3.4 Key Specification Documents

The Integrated Project Team will perform its duties so as to deliver the requirements of the following key specification documents:

- the Development Remit defines project objectives, requirements and outputs;
- the Functional Specification states the operational requirements and outputs the Project is to achieve; and
- the Project Design Specification defines the scope of work and performance parameters that must be achieved by the Project.

3.5 Project organisation charts

A series of inter-related organisational charts²⁶ is included as Appendix 3A. The charts identify the management and administration required to be provided by the Integrated Project Team in support of the Project Director and include the following functional groupings:

- Engineering
- Commercial
- Delivery management
- Support services

In addition specialist functions provide input, complementary works and services, management and interfaces and include the following:

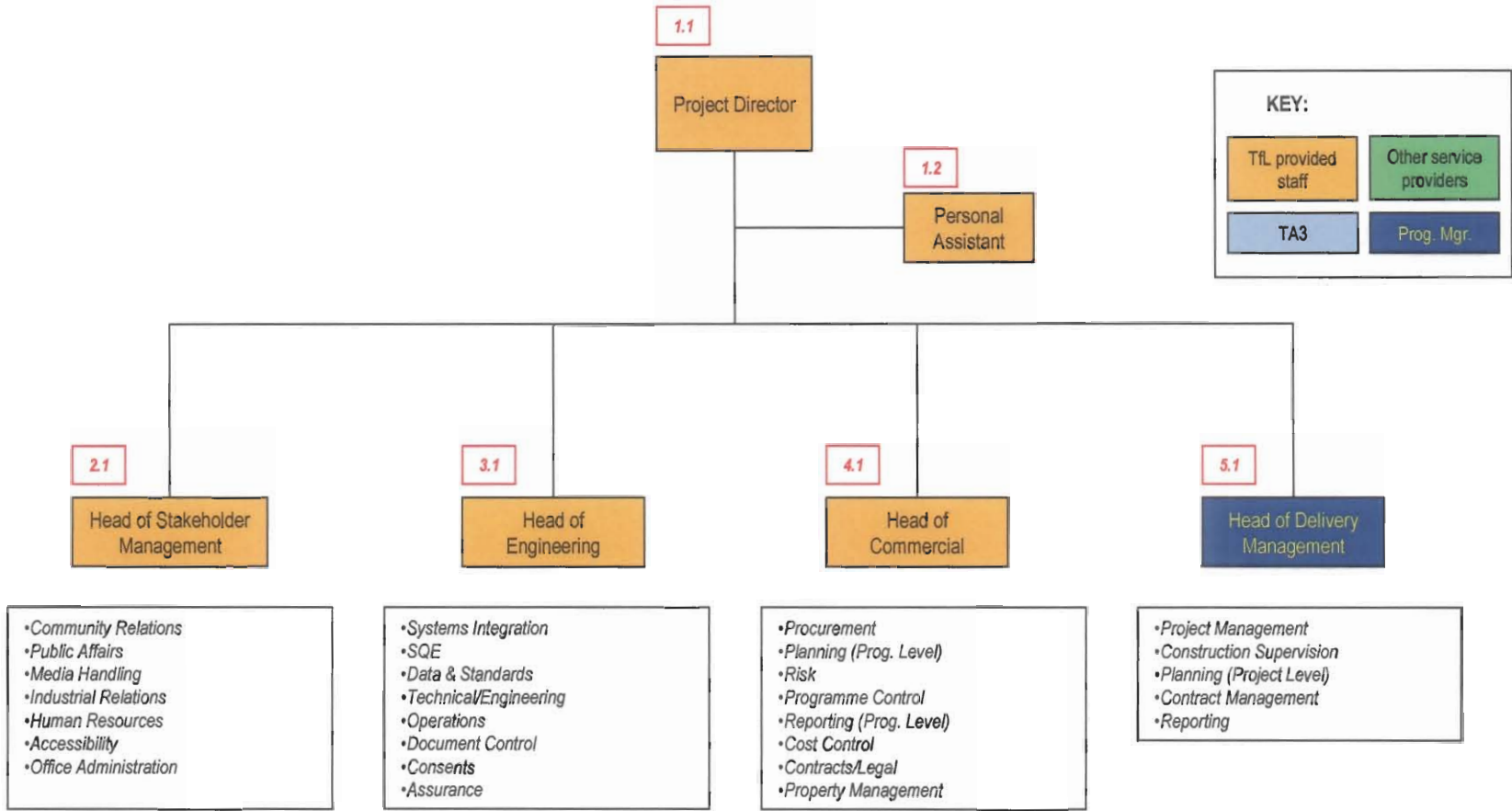
- Independent Technical Certifier body reporting to the Head of Engineering
- TfL central resources for financial, legal, insurance and procurement support reporting direct to the Commercial group
- Enabling Works, utilities works, Passenger Services Operator, rolling stock provision, Network Rail and London Underground projects reporting direct to the Delivery Management group

²⁶ ELLP Organisation Chart: ELM-SUP-306-17-05-0001_F1

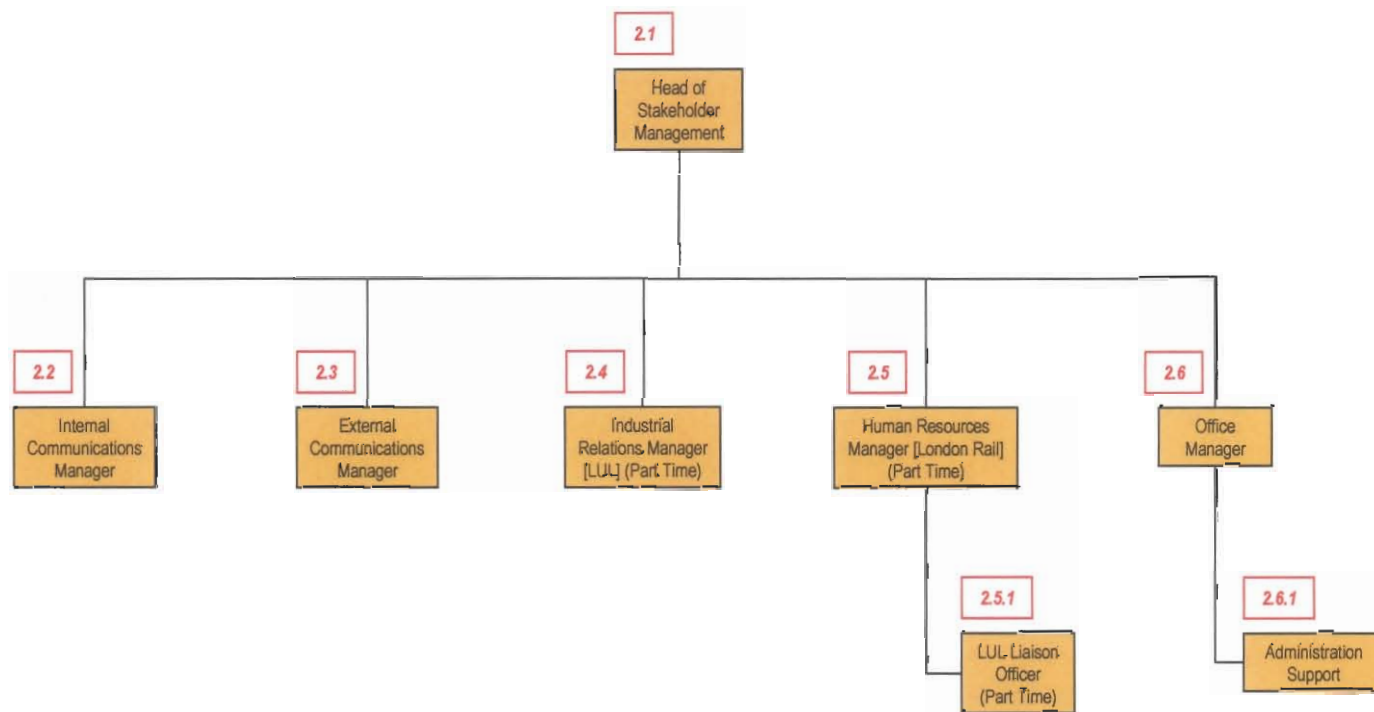
Appendix 3A – Integrated Project Team: Project Organisation Charts

[To be inserted as per the Project Organisation Charts (which include the Service Provider's posts) available on the CD ROM – Organisation Charts – ELM-SUP-306-17-05 Issue 0001_F1 .]

EAST LONDON LINE ORGANISATION



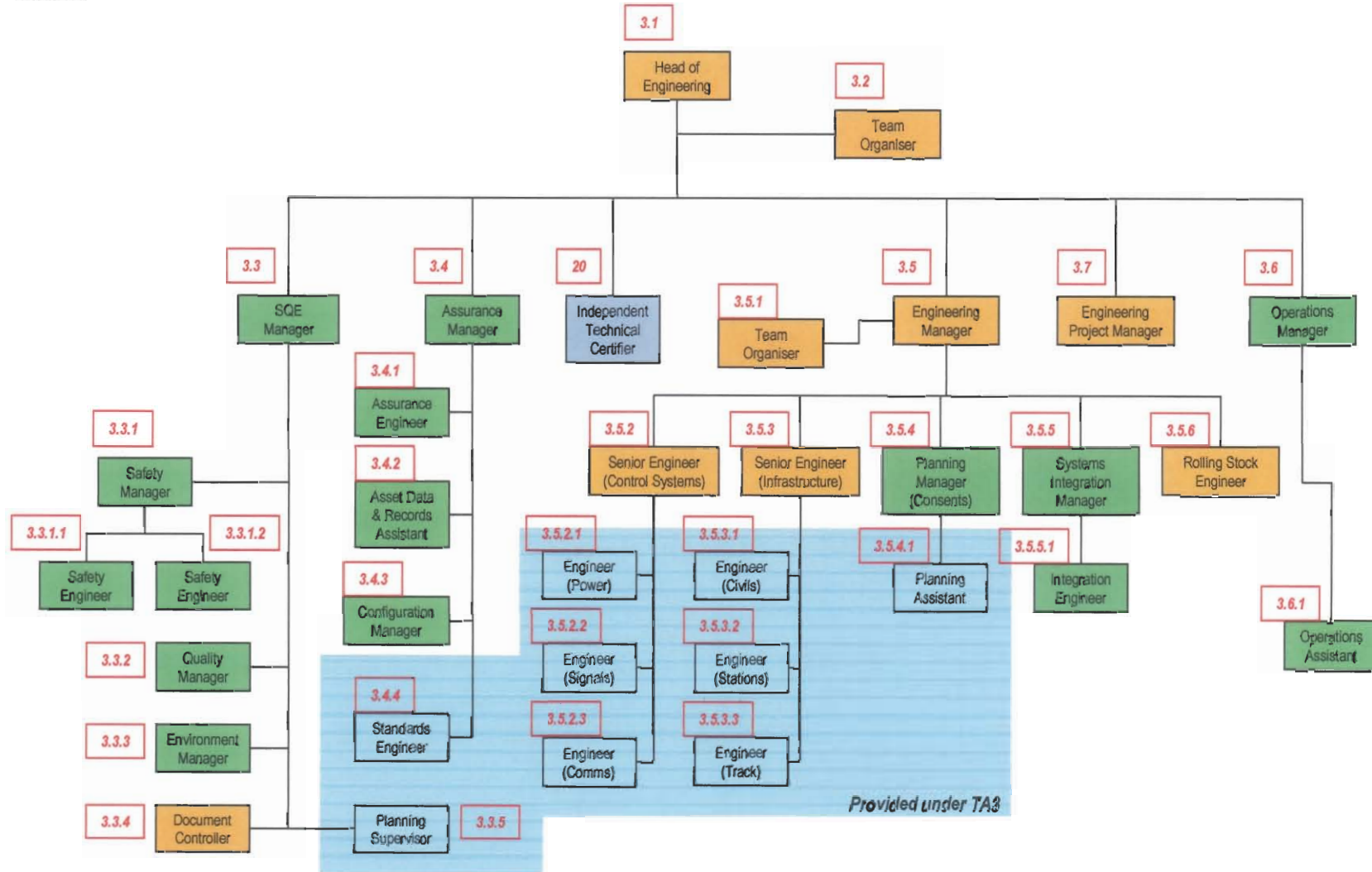
PROJECT ORGANISATION CHART - SUPPORT SERVICES



16 February 2005

Revision F

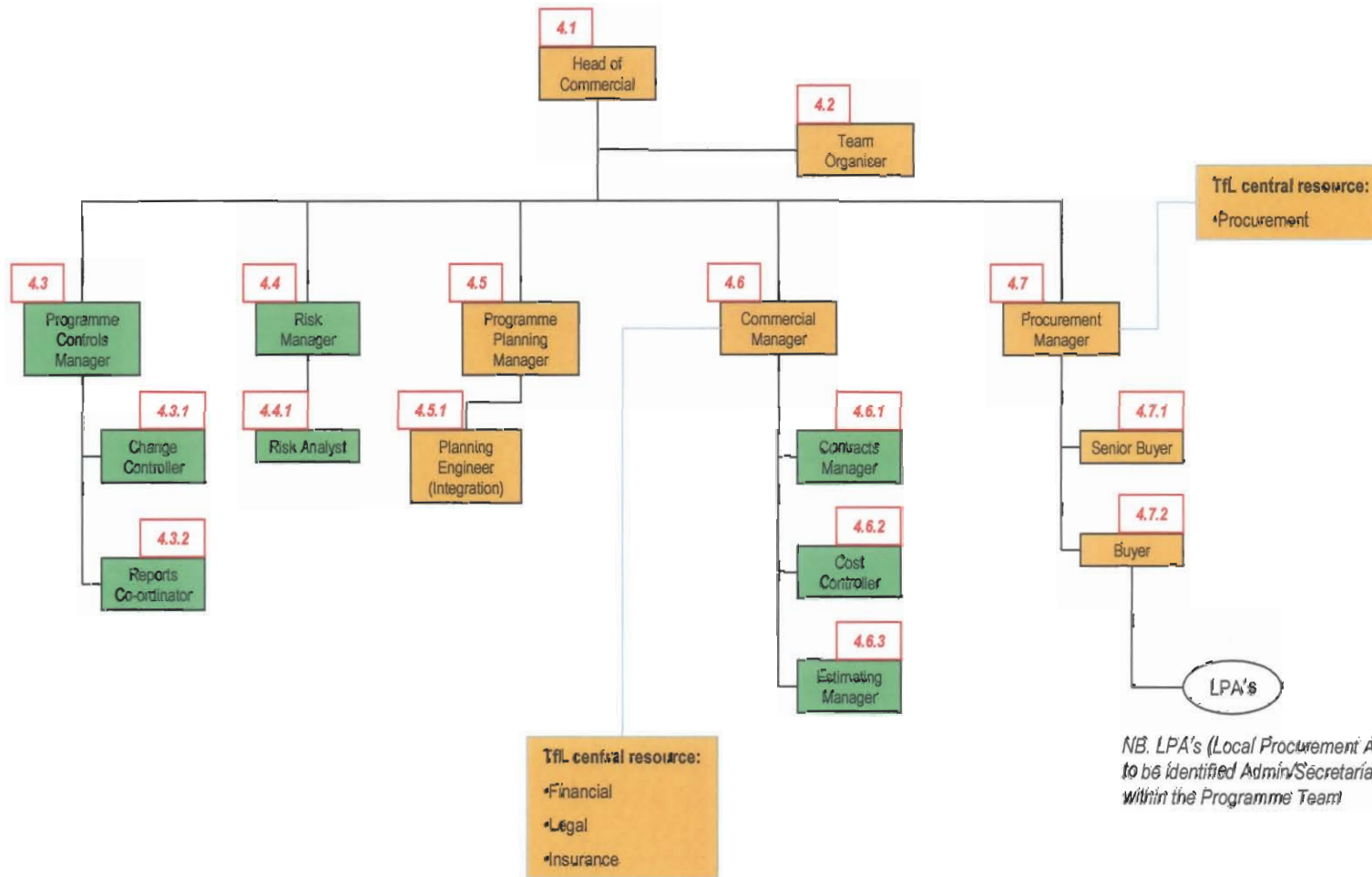
PROJECT ORGANISATION CHART - ENGINEERING



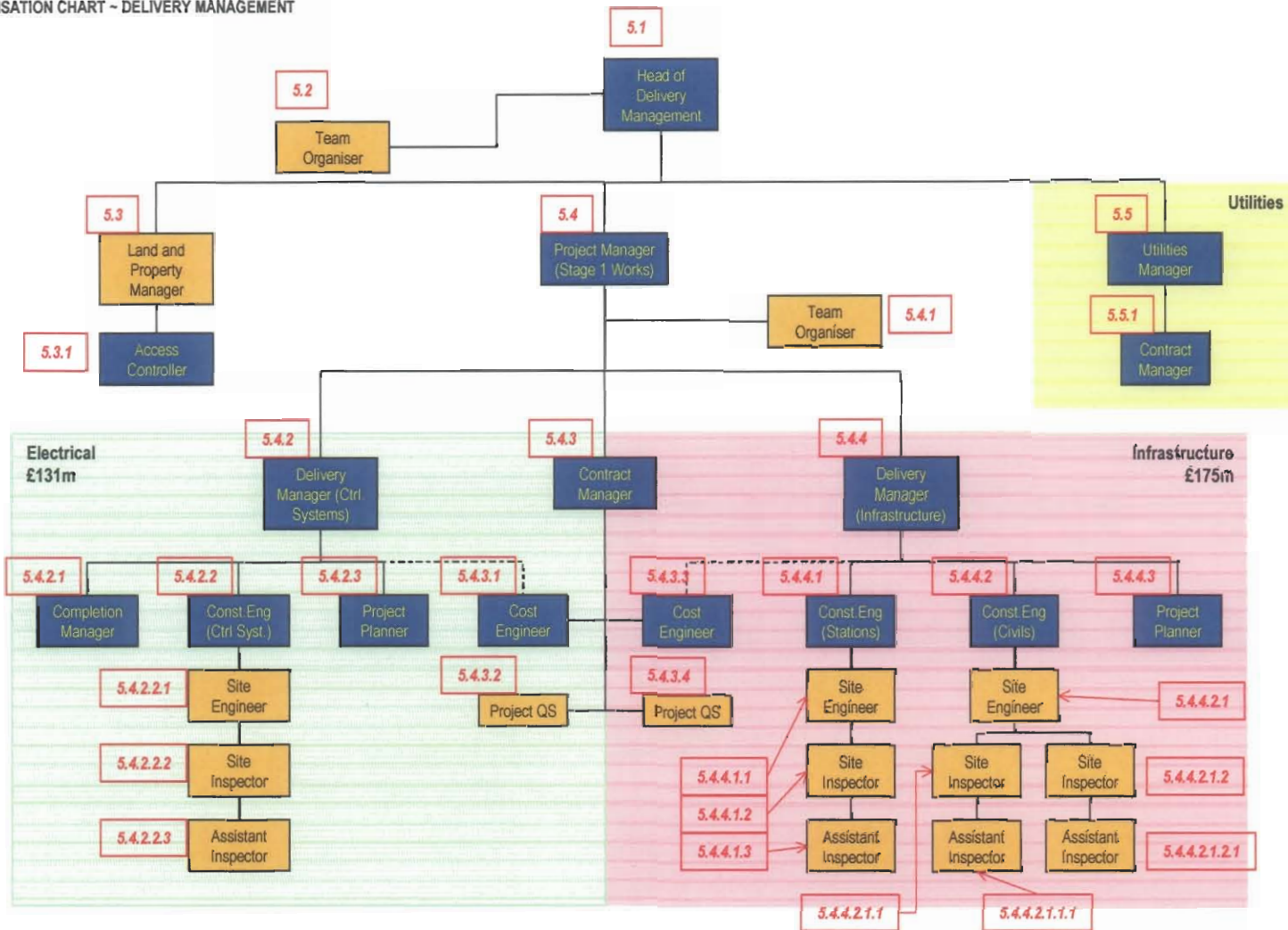
16 February 2005

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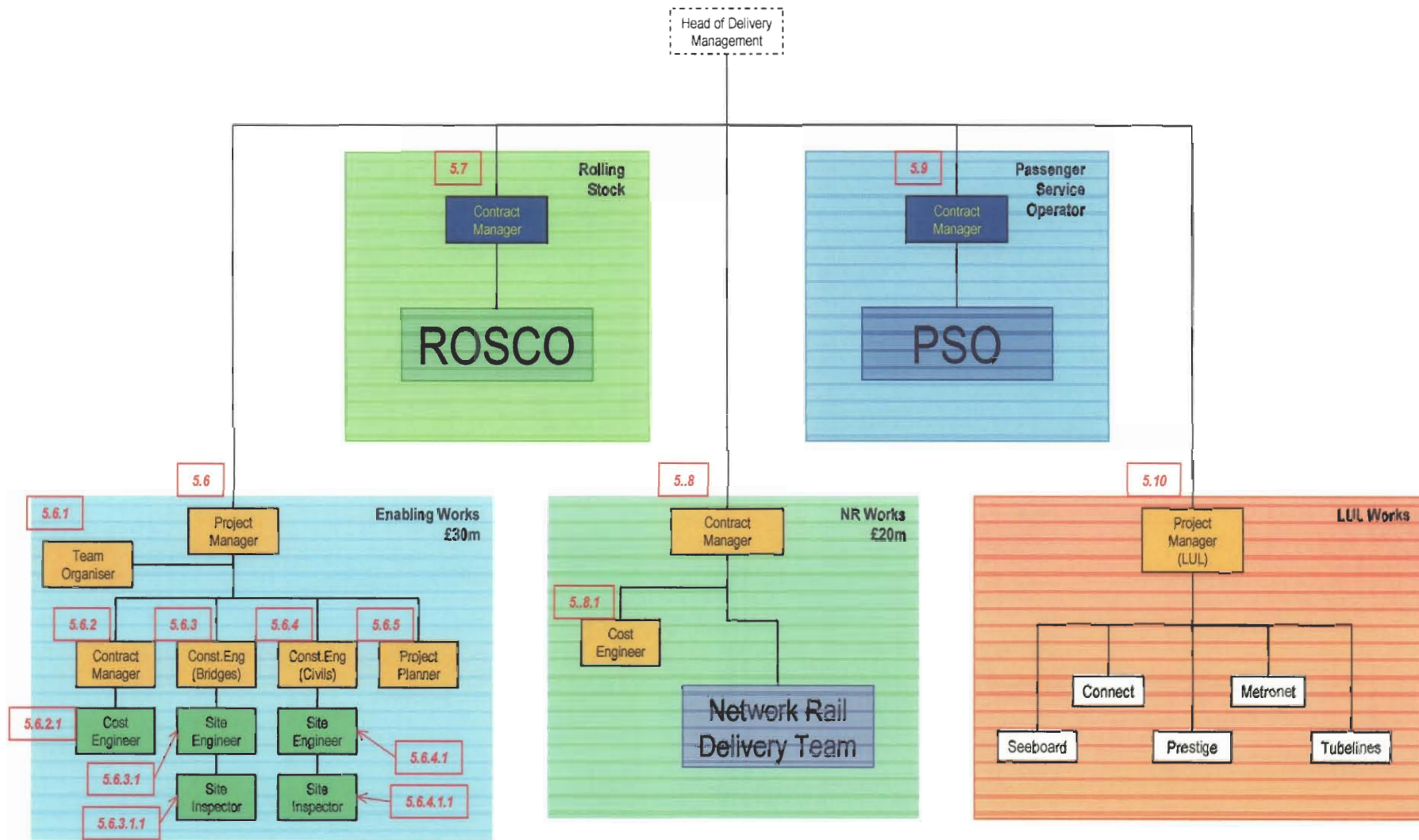
PROJECT ORGANISATION CHART - COMMERCIAL



PROJECT ORGANISATION CHART - DELIVERY MANAGEMENT



PROJECT ORGANISATION CHART – DELIVERY MANAGEMENT



16 February 2005

Revision F

SCHEDULE 4

The Services

4

4.1 Introduction

TfL wish to employ an experienced Programme Management Services Provider to bring skills, processes, procedures and experienced people to supplement and support the Integrated Project Team so that the East London Line will be delivered successfully. Subject to all TfL's rights and remedies set out in this Agreement, TfL confirm that TfL currently intend that the Service Provider will provide personnel in support of and until the target opening of the ELL currently scheduled for October 2009 and to the end of period 3 2010 to allow for close out of the Project.

During this process it is intended that there will be a transfer of such skill, processes and procedures to TfL's own staff.

The Service Provider shall provide the staff, knowledge, systems and leadership resource together with the necessary corporate support to provide the delivery and construction leadership and direction for the Project. The Service Provider's personnel assigned to the Project shall work as members of the Integrated Project Team, the duties of which are described in Schedule 3 above.

The Service Provider shall directly manage the delivery of the construction of the TfL assets and shall ensure that all the other assets required for the successful completion and implementation of the Project are co-ordinated with and delivered by the respective stakeholder.

The object is that the Service Provider shall provide sufficient staff in the relevant roles so that he can deliver the requirements of this Agreement. It is not the intention that he should fill every role in the delivery function.

In view of the current state of the Project's definition, it is proposed to select a Service Provider for an initial period to actively and jointly progress the Project and to work-up the detailed scope, programme/schedule and delivery plans to both provide a firm basis for the delivery of the Project and the agreement of a final remuneration agreement with the Service Provider for the rest of his services. TfL's preferred option is to agree a fixed fee with an incentive/bonus regime, although the final solution will depend on the outcome of the work done by the Service Provider and the discussions at the end of this initial period.

In the absence of such agreement on a fixed fee and bonus, TfL may either terminate this Agreement or require the Service Provider to continue the performance of the Services under this Agreement on the basis of time based charging as further set out in Schedule 5 (Fee and Payment) Clause 5.2

TfL may vary the projected works and Services as may be appropriate during the development of the Project.

Schedules 2 (Project Technical Requirements) and 3 (The Integrated Project Team) above refer to an anticipated procurement strategy for the infrastructure works and

other associated works, services and supply contracts. The structure and content of these contracts have yet to be finalised and may be open to input from the Service Provider but will only be changed with the agreement of the Project Delivery Group²⁷.

4.2 Principal Accountabilities

The Service Provider shall:

- Provide the project management systems and resources to ensure the delivery of the Project to the agreed time, cost and quality parameters including all aspects of scheduling, supervision, and contract management.
- Work to the requirements of the Development Remit, the Functional Specification and the Project Design Specification, and shall be responsible, as part of the integrated team, shall for ensuring that such requirements are delivered
- Manage the development and delivery of the various work packages to provide consistent and integrated delivery
- Provide line management to the Land, Property and Utilities management teams to ensure alignment of programme and scope with the other works packages.
- Manage the site monitoring and verification of all works to substantiate compliance with all legislation, standards and design requirements and to ensure effective and safe delivery of the works
- Define and validate construction methodology during design and delivery to ensure effective use of resources and minimise waste
- Provide contract and cost management and co-ordination for works packages delivered by other stakeholders.
- Deliver the construction works in a safe manner and provide safety leadership to the delivery team.
- Manage the construction and acceptance of the Technical Cases

Services during the Initial Period

4.3 Initial Period

The Service Provider's appointment will include an initial review period of six months' from the date of this Agreement. The review period will include the provision of specific deliverables by the Service Provider.

It is TfL's intention that at the end of this period the Integrated Project Team, incorporating the Service Provider and the Technical Advisor, should have:

- generally progressed the Enabling Works and Infrastructure Works in a satisfactory manner such that the Project is still on target to achieve its measures of success;

²⁷ ELLP Project Delivery Group (PDG) Governance Structure:ELM-SUP-306-05-0002_01

- a common understanding and agreement within the Integrated Project Team on such areas of the Project as:
 - scope;
 - design;
 - programme;
 - stakeholder agreements;
 - management processes and procedures;
 - work packaging;
 - the roles and responsibilities of all constituent members of the Integrated Project Team (i.e. TfL, the Technical Advisor, the Services Provider and the Independent Technical Certifier) and the make-up of the Team; and
 - the Project cost plan and cash flow, including the costs of the Integrated Project Team;
- an agreement between TfL and the Service Provider on:
 - the scope of the Services;
 - a programme for the performance of the Services;
 - roles and responsibilities and the make-up of the Service Provider's team;
 - costs and cash-flow; and
 - an incentive and KPI scheme;

which is captured in a supplemental agreement to be entered into by TfL and the Service Provider.

The continuation of the Agreement shall depend upon the performance of the Service Provider during this initial six month period and upon reaching agreement on the basis of the supplemental agreement referred to above.

Within the initial period the Service Provider shall also work with other members of the Integrated Project Team to:

- finalise the full scope of Services required to support the Project's delivery to time and budget;
- complete a review the existing strategies, processes and procedures, identifying areas where additional procedures would be beneficial and agreeing a delivery programme for production of such procedures;
- complete the development of the Project's delivery management processes;
- manage the process for obtaining Major Project Notices, Network Change, Station Change, Depot Change, possessions and access and providing

detailed plans to support the processes and ensure they are issued as necessary;

- provide input into the procurement of the second Enabling Works Contract including but not limited to:
 - agreement with the Integrated Project Team on a Delivery Plan for the Enabling Works including setting level 3 programme milestones for performance measurement purposes; and
 - establishing key milestones for the Enabling Works Contractor.
- demonstrate a successful collaboration between all parties involved in delivering the Enabling Works;
- successfully manage the Enabling Works including but not limited to achieving acceptance of the Enabling Works Contractor's designs by the appropriate bodies, ongoing works delivered to programme and budget, provide effective change control, and ensure the delivery of the works to the required standards for safety, quality and environmental conditions;
- for the Infrastructure Works Contract :
 - agree with the Integrated Project Team a Delivery Plan for the Infrastructure Works including setting level 3 programme milestones for performance measurement purposes.
 - agree the content of the Invitation to Tender documents.
 - provide constructability and all other advice necessary from a delivery point of view for reviewing the tenderers' proposals.
- successfully manage the process of achieving the timely issue of the Preliminary Design Addendum during the Infrastructure Works tender period;
- for the procurement of the Passenger Services Operator:
 - agree with the Integrated Project Team a Delivery Plan for the Passenger Services Operator including setting level 3 programme milestones for performance measurement purposes;
 - provide all necessary input into the content of the Invitation to Tender documents; and
 - deliver all other matters required to achieve delivery of the Project as required.
- for the procurement of the Rolling Stock Provider:
 - agree with the Integrated Project Team a Delivery Plan for the Rolling Stock Provider including setting level 3 programme milestones for performance measurement purposes;

- provide all necessary input into the content of the Invitation to Tender documents; and
- deliver all other matters required to achieve delivery of the Project as required.
- for the management of the design produced by the Technical Advisor :-
 - agree with the Integrated Project Team a Delivery Plan for the production of design information including setting level 3 programme milestones for performance measurement purposes;
 - provide advice on the content of the anticipated issue of an interim technical addendum by the Technical Advisor during the Infrastructure Works tender period; and
 - provide input on constructability and other advice in connection with the review of the Infrastructure Works design development.
- for the procurement of the Network Rail works and LUL works:
 - agree with the Integrated Project Team Delivery Plans for the Network Rail works and LUL works including setting level 3 programme milestones for performance measurement purposes;
 - gain acceptance by Network Rail, LUL and the PPP and PFI companies to the Delivery Plans; and
 - advise on the content of the Invitation to Tender documents.
- provide such other input as may be necessary in order to maintain the Project programme.

The Delivery Plans, which shall be written by the Service Provider, shall include but not be limited to:

- a detailed method of procurement;
- an outline of key contract conditions required;
- detailed processes from commencement of procurement through to completion of the works and achieving successful handover;
- detailed programme requirements and key critical path activities;
- identification of resources requirements;
- identification of how interface and co-ordination conditions will be managed; and
- identification of risks and mitigation measures.

Services during and after the Initial Period

4.4 Specification

The Service Provider shall work to the requirements of the Development Remit²⁸, the Functional Specification²⁹ and the Project Design Specification³⁰, and shall be responsible, as part of the Integrated Project Team, for ensuring that such requirements are delivered.

The Service Provider shall have responsibility for managing the Contractors' design, construction (including as appropriate refurbishment and renewals), integration, installation, testing and commissioning of the works required to fulfil the Project Design Specification and to satisfy the demands of the Project.

4.5 Interoperability

The Service Provider shall be accountable for ensuring that the Conventional Interoperability Regulations are applied in the delivery of the Project.

4.6 Interfaces

The Service Provider will be required to provide liaison and interface management and assist in the preparation of procurement and management strategies with Network Rail, LUL, the Passenger Services Operator and the Rolling Stock Provider.

4.7 Approvals, assurance, monitoring, and acceptance

The Service Provider may be required to participate in the development of the System Assurance Strategy and shall be required to interface between the Independent Technical Certifier and designers and contractors.

4.8 Implementation of Progressive Assurance

The Service Provider shall implement and manage progressive assurance throughout the planning, management and implementation of the Project. The Service Provider shall work in accordance with the ELLP Systems Assurance Strategy³¹.

The Service Provider shall manage the Contractors to provide Progressive Assurance, including the preparation of the Technical Cases, and shall ensure that all parties co-operate in the provision of Progressive Assurance, including the preparation of the Technical Cases. The Service Provider shall ensure that the Contractors meet all the requirements of Progressive Assurance contained within their contracts.

4.9 Implementation of Systems Engineering

The Service Provider shall employ systems engineering management as a means to control and reduce the integration risk between the different elements of the infrastructure and between the infrastructure and the wider Project.

The Service Provider shall ensure that the Contractors apply systems engineering management to control the integration risk between the elements of the Project.

²⁸ Development Remit: ELM-TEC-225-14-05-0001 Issue 1 February 2005

²⁹ Functional Specification: ELM-TEC-225-04-05-0001 Issue 1

³⁰ Project Design Specification 213-83-04-0063, Issue 3, September 2004

³¹ ELLP Systems Assurance Strategy, ELM-TEC-204-04-05-0002, Issue 1, February 2005

Systems engineering requires an acknowledgement of the interdisciplinary nature of the Project. Therefore the Service Provider shall work with the Contractors, Rolling Stock Supplier, the Passenger Service Operator and the TfL to ensure the provision of acceptance of the overall Project.

4.10 Common Assurance Requirements – Audit Requirements

This section outlines the supporting processes that are not directly part of progressive assurance but are, nonetheless, essential for its success. Accordingly, the Service Provider shall work to TfL's procedures for these common assurance requirements to the satisfaction of the TfL.

TfL will audit the Service Provider for evidence of correct application of his assurance activities at least every six months. The Service Provider shall co-operate with these audits.

The Service Provider shall support TfL's internal audit programme through co-operation with audits and providing members of the audit teams, where appropriate.

In addition the Service Provider shall undertake internal audits of his activities and works.

All audits will be performed in accordance with the ELLP Systems Audit Procedure³².

4.11 Management Systems

The Service Provider shall operate in accordance with TfL's management systems for safety, quality and environment. The Service Provider shall operate in accordance with the ELLP Safety Strategy³³, Quality Management Strategy³⁴ and Environmental Strategy³⁵. As part of an integrated team, the Service Provider shall forward any suggestions for improvement of the safety, quality and environment management systems to TfL.

These management systems include procedures for the following:

- Configuration Management³⁶;
- Standards Management³⁷;
- Requirements Management³⁸;
- Systems Audit³⁹;
- Change Control⁴⁰;

³² ELLP Systems Audit Procedure, 213-39-09-0002, Issue 6A, July 2004

³³ ELLP Safety Strategy, ELM-TEC-214-09-04-0001, Issue 2, January 2005

³⁴ ELLP Quality Management Strategy, ELM-TEC-224-14-05-0001, Issue 1, February 2005

³⁵ ELLP Environmental Strategy, ELM-TEC-211-14-05-0004, Issue 1, February 2005

³⁶ ELLP Configuration Management Procedure, 213-39-09-0029, Issue E, May 2004

³⁷ ELLP Standards Management procedure, 213-39-09-0008, Issue 2, June 2003

³⁸ ELLP Requirements Management procedure, 213-89-30-0001, Draft A, November 2003

³⁹ ELLP Systems Audit Procedure, 213-39-09-0002, Issue 6A, July 2004

⁴⁰ ELLP Change Control Procedure, 213-39-09-0001, Issue 6, February 2004

- Risk Management⁴¹;
- Electronic Data Management⁴²;
- Document Production, Review and Approval⁴³;
- Non-conformance and Improvement Management⁴⁴;

SQE Management System Requirements

If not already certified, the Service Provider shall become certified to ISO 9001:2000⁴⁵ for the scope of the Project within 3 months of execution of the Agreement.

SQE Policy

The Service Provider shall comply with the policy and objectives stated in the ELLP Safety, Quality and Environment Policy Statement⁴⁶.

The Service Provider shall comply with the ELLP Drugs and Alcohol Policy⁴⁷.

Implementation and Operation

Structure and Responsibility

TfL's Safety, Quality and Environmental Manager(s) will have overall responsibility for:

- establishing and managing the implementation of the SQE management system;
- identification and communication to project personnel of legislation and regulations;
- training;
- establishment of a SQE assurance process, specialist procedures, and a process for ensuring SQE requirements are included in method statements;
- inspections, monitoring and auditing; and
- management review process.

The Service Provider shall define additional roles and responsibilities or specialist procedures and reporting that may be required for the successful discharge of his responsibilities. The Service Provider shall work with TfL to produce these procedures.

Operational Control

⁴¹ ELLP Risk Management Procedure, ELM-COM-122-44-05-0001.

⁴² ELLP Electronic Data Management Procedures, 213-39-09-0018, Issue 1, March 2003

⁴³ ELLP Document Production, Review and Approval Procedure, 213-39-09-0022, Issue 3, July 2004

⁴⁴ Non-conformance and Improvement Management Procedure, 213-39-09-0011, Issue 1, May 2003

⁴⁵ ISO 9001:2000, Quality Management Systems – Requirements

⁴⁶ ELLP SQE Policy statement, ELM-SUP-301-29-05-0001, January 2005

The Service Provider shall operate in accordance with TfL's procedures for operational control of the SQE aspects of the team's activities.

Checking and Corrective Action - Audit

In addition to audit and assessment undertaken as part of Progressive Assurance, TfL will audit the Project SQE activities periodically during the course of the Project. The audits will cover:

- management systems for safety, quality and the environment;
- system assurance activities;
- improvement activities, including performance measurement techniques such as benchmarking (Critical Success Factors and KPIs);
- performance against the EFQM Business Excellence Model, where appropriate; and
- the Service Provider's involvement in the above activities.

The Service Provider shall make available and submit to TfL on request any documents and records required for such audits, including the results of the Service Provider's own audits.

The Service Provider shall audit the SQE activities he controls at least every six months.

Management Review

The Service Provider shall contribute to the management review of the ELLP SQE management system at least every six months to ensure its continuing suitability, adequacy and effectiveness. This review will be formally documented by TfL.

4.12 Safety Management

The Service Provider shall identify and manage hazards in accordance with the ELLP Hazard Management Procedure.

In addition the Service Provider shall operate in accordance with the ELLP Safety Strategy⁴⁷, the Yellow Book⁴⁹ and relevant Railway Standards⁵⁰. This requires a co-ordinated approach to safety adopting best practice.

The Service Provider shall respect and work in accordance with the ELLP SQE management system and other Project procedures as described in Schedule 2. The Service Provider shall identify to TfL any further activities and procedures that are required to manage the works successfully.

⁴⁷ ELLP Drugs and Alcohol Policy, ELM-SUP-301-29-04-0001, Issue 04, February 2005

⁴⁸ ELLP Safety Strategy, ELM-TEC-214-09-04-0001, Issue 2, January 2005

⁴⁹ Engineering Safety Management, Yellow Book 3, Fundamentals and Guidance and Application Note 1 - available from: www.yellowbook-rail.org.uk/site/the_yellow_book/the_yellow_book.html

⁵⁰ BS EN 50126, Railway Applications – The specification and demonstration of Reliability, Availability, Maintainability and Safety (RAMS) – available via: bsonline.co.uk

The Service Provider shall be a member of the Project Safety Committee and shall ensure appropriate representation at all meetings.

4.13 Quality management

The Service Provider shall employ improvement measurement techniques to be agreed with TfL, including the use of the European Foundation for Quality Management (EFQM) Business Excellence Model.

The Service Provider shall ensure that the Contractors operate in accordance with the quality management requirements in their contracts.

4.14 Environmental assurance

The Service Provider shall ensure that the Contractors operate in accordance with the environmental requirements in their contracts.

4.15 Planning and consents

The Service Provider shall ensure that neither he nor the Contractors that he manages do anything that might jeopardise the planning conditions, undertakings and assurances referred to in Schedule 2, either those that are already discharged or that are the responsibility of others.

The Service Provider shall respect the agreements, plans and working relationships built up as part of the execution of the Project planning and consents process.

4.16 Testing and commissioning

The Service Provider shall be required to manage and supervise the testing and commissioning of the Project in accordance with the Network Rail and, where required, LUL processes.

The Service Provider shall be responsible for providing to the Infrastructure Works Contractor TfL's resource requirements, in terms of rolling stock and drivers, in connection with Test Running.

4.17 Acceptance

The Service Provider shall manage the process of acceptance. This shall include the demonstration to TfL's complete satisfaction that all the relevant approvals and consents have been obtained and will include the acceptance of the Technical Case.

The Service Provider will be required to demonstrate to the complete satisfaction of HMRI and the London Fire Brigade that the Project is complete and has been designed and built in accordance with all applicable standards and codes of practice.

Thereafter the Service Provider shall be responsible for the management of Trial Operations.

4.18 Value management, value engineering and risk management

The Service Provider shall include within his management plan and method statements his proposals for value management, value engineering and risk management studies and procedures.

Contract Management of this Agreement

4.19 Contract meetings

General

Contract meetings, other than progress meetings, may be called by the Contract Manager at any time with a minimum of 2 days Notice. Meetings with the Service Provider will generally be arranged by the Contract Manager.

Meeting's shall be held at the location designated by the Contract Manager and the Service Provider's tender shall allow for attendance of meetings held at any location as may be designated.

The Service Provider's Representative will confirm, in writing to the Contract Manager in fax, telex or letter form his attendance at, all such meetings together with intended representation.

Unless otherwise specified, meetings will be chaired by the Contract Manager who will delegate responsibility for the preparation of the Minutes.

Minutes of meetings shall be drafted (and agreed) and shall identify the party required to take action, and shall be issued within 7 working days of the meeting for acceptance by all parties.

Principals meetings

Principals meetings shall be attended, as a minimum, by the Project Director and Contract Manager on behalf of TfL and the Service Provider's Representative and Head of Delivery Management on behalf of the Service Provider. Principals Meetings shall be held at the Integrated Project Team's project office quarterly following execution of the Agreement. The Contract Manager shall issue the agenda to the Service Provider not later than five days prior to the meeting being held.

4.20 Progress Reports

The Service Provider shall submit four-weekly Progress Reports that include but are not limited to the following:

- Progress review of the Service Provider's activities detailing achievements during the reporting period including progress against the KPIs up the date submission.
- Measurement of the Service Provider's Key Performance Indicators including a summary of delays and any proposals for recovery that may be required by the Contract Manager.
- Service Provider's Programme update showing the critical path of activities and any variances that exist.
- Variations both existing and proposed that may impact on the progress of the Programme Management Services.
- Value of work done by the Service Provider and forecasts of the value of work to completion of the services.

- Service Provider's cost summary including variation costs both agreed and proposed.
- Service Provider's staff matters including any changes to staff that are proposed and a summary of staff records.
- Any other commercial issue.
- Any other progress or management issue.

Copies of the report (number to be determined by the Contract Manager) shall be delivered to the Contract Manager no later than noon on the Thursday of the fourth week (it being recognised that the fourth week may contain progress detail of a forecast nature) or as otherwise agreed by the Contract Manager.

4.21 Communications and correspondence

The Service Provider's communications, correspondence and any associated submissions in connection with the Services shall:

- state the contract number as a principal reference,
- carry a unique reference and a transmittal slip as necessary to accord with document control requirements; and
- bear the following headings:
 - (Contract Name) and Project Title
 - Project No. and reference and a sequential number
 - Subject

Submissions shall state if they have been sent for information, comment, review, acceptance or approval.

The Service Provider shall comply with the required quality control procedures in the production of all documents provided by the Service Provider to the Contract Manager and each such document shall indicate that it is compliant.

The Service Provider's Representative shall respond to any written or verbal request by the Contract Manager within five days or such other time as the Contract Manager may specify.

4.22 Personnel Register

The Service Provider shall maintain a register of personnel on the Service Provider's team from commencement until completion of the Project. The register shall contain details of all the Service Provider's personnel involved assigned to the Project and shall be updated daily or as necessary.

The Register shall contain the following information for each person, as a minimum:-

- (a) Name
- (b) Employer
- (c) Position and Grade

- (d) Any other local site specific Safety/Competency certification (where applicable)
- (e) Track Safety Certificate (NCCA) No. and expiry date (where applicable)
- (f) Qualifications and Licences held (where applicable)
- (g) Medical Certificate of Fitness (where applicable)
- (h) Principal duties under this Agreement.

The register is subject to initial acceptance by the Contract Manager and subsequent acceptance of changes thereto. An up to date copy of the register shall be maintained in the Project Office which shall be available for inspection at any time, by the Contract Manager.

4.23 Resource plan

The Service Provider shall provide a resource plan to accord with each programme for the Services that he provides.

The resource plan shall be a detailed schedule of the resource analysis of the Service Provider's activities detailing all of the staff resources required to complete each activity. The Service Provider's activities shall represent all the activities required to carry out and complete the Services.

The resource plan shall detail each staff member together with contract grades, rates and periods.

The Service Provider shall also present the resource schedule in the form of a bar chart covering the entire duration of the Services, indicating the level of resource fluctuations envisaged.

The Contract Manager may require proposed changes to the Services to be supported by detailed resource projections in the manner described above. The Service Provider shall submit such projections to, in the form and at the times required by the Contract Manager.

4.24 Quality management system

The Service Provider shall operate in accordance with TfL's ELLP Quality Management Strategy⁵¹ and management systems for quality.

4.25 Health and safety

The Service Provider shall operate in accordance with the TfL's Safety Strategy and management systems for safety.

4.26 Submission of deliverables

Electronic files

⁵¹ ELLP Quality Management Strategy, ELM-TEC-224-14-05-0001, Issue 1, February 2005

The Service Provider should note that for any electronic files provided by TfL that TfL accepts no liability for the use the Service Provider makes of them, nor does it warrant that they are suitable for use on the Service Provider's computer system.

It shall be the Service Provider's responsibility to protect its IT systems from any infection that may inadvertently have been allowed on to any electronic data supplied by TfL.

Service Provider issued electronic data

Before issuing any electronic data in any form the Service Provider must check for viruses with up-to-date virus-checking software.

The Service Provider shall ensure that security arrangements pay due regard to the provisions of BS 7799 Code of Practice for Information Security Management and BSI-DISC-PD 008 Code of Practice on the Legal Admissibility and Evidential Weight of Information Stored Electronically.

The Service Provider shall ensure that all information is safeguarded and data properly accessed, that the data can be secured/interpretable for future reference and a clear audit trail is provided, including the date and time events occurred.

4.27 Contract Close Out

Forty two (42) days prior to the scheduled date for handover of the Project, the Service Provider shall review with the Contract Manager the administrative procedures to be adopted for close out and handover. Advice and views will be sought as appropriate from interested parties within TfL concerning particular aspects, including but not limited to:

- Handover of documents - drawings, specifications, operating instructions, manuals, as-builts, CDM File data etc.
- Clear definition of work outstanding, how and when it will be completed, and by whom.
- Clear understanding of financial position: commitment, expenditure to date, expenditure to complete; reconciliation between TfL, the Contract Manager and Service Provider of paid values for all contracts and purchase orders including identification of outstanding invoices and claims.
- Clear definition of warranties, guarantees, etc. for all work, material and equipment, their commencement dates and durations.

Appendix 4A - Staffing Chart and Job Descriptions

The Project Organisation Chart, set out at Appendix 3A, identifies the following eighteen staff positions which TfL believe should be filled for the role of Programme Manager within the Delivery Management Team during the Initial Period following execution of the Agreement⁵²: The Service Provider will have submitted his proposals for the Project Organisation Chart within his tender and this chart will be updated in accordance with the agreement reached with TfL.

Code	Staff Position	Name
5.1	Head Of Delivery Management	
Infrastructure Contract (s)		
5.3.1	Land And Property Access Controller	
5.4	Project Manager Phase 1	
5.5	Utilities Manager	
5.5.1	Utilities Contract Manager	
5.4.3	Contracts Manager Infrastructure and Control Systems	
5.4.2	Delivery Manager Control Systems	
5.4.4	Delivery Manager Infrastructure	
5.4.2.1	Completion Manager Control Systems	
5.4.2.2	Construction Engineer Control Systems	
5.4.2.3	Project Planner Control Systems	
5.4.3.1	Cost Engineer Infrastructure	
5.4.4.1	Construction Engineer Infrastructure Stations	
5.4.4.2	Construction Engineer Infrastructure Civils	
5.4.4.3	Project Planner Infrastructure	
5.4.3.3	Cost Engineer Control Systems	
	Construction Engineer Southern	
	Team Organiser	
RS & PSO Contracts		
5.7	Rolling Stock Contract Manager	
5.9	Passenger Services Operator Contract	

⁵² This staffing chart shall be supplemented / amended as a result of the outcome of the fixed fee negotiations referred to in Schedule 4, paragraph 4.1

Code	Staff Position	Name
	Manager	

Alternative Positions

The positions and staff set out in the table below are as set out in the Service Provider's alternative tender. By including this table in this Agreement TfL intends merely to record the possibility of such further posts and of the Service Provider's involvement with providing such additional Services and/or personnel. By including this table in this Agreement TfL does not agree to accept that these posts will be created nor that the posts will be filled by the Service Provider's personnel or the personnel of his sub-contractors, nor does TfL accept the individuals listed therein. Any such acceptance will be subject to TfL's further written instruction.

Code	Staff Position	Name/Grade
3.3	SQE Manager	
3.3.1	Safety Manager	
3.3.1/3.3.1.2	Safety Engineer (x2)	
3.3.2	Quality Manager	
3.3.3	Environment Manager	
3.4	Assurance Manager	
3.4.1	Assurance Engineer	
3.4.2	Asset Data and Records Assistant	
3.4.3	Configuration Manager	
3.5.4	Planning Manager (Consents)	
3.5.5	Systems Integration Manager	
3.5.5.1	Integration Engineer	
3.6	Operations Manager	
3.6.1	Operations Assistant	
4.3	Programme Controls Manager	
4.3.1	Change Controller	
4.4	Risk Manager	
4.4.1	Risk Analyst	
4.6.1	Contracts Manager	
4.6.2	Cost Controller	
4.6.3	Estimating Manager	

5.6.2.1	Cost Engineer (Enabling)		
5.6.3.1.1	Site Engineer (Enabling)		
5.6.3.1.1	Site Inspector (Enabling)		
5.6.4.1	Site Engineer (Enabling)		
5.6.4.1.1	Site Inspector (Enabling)		

The Service Provider shall update the above Staffing Chart from time to time to reflect personnel changes as appropriate or as required by the Contract Manager.

Mobilisation of personnel by the Service Provider to the roles contained in the tables above, or for any other role as the Contract Manager may from time to time request shall be subject to TfL's written instruction given by the Contract Manager. TfL shall not be liable to pay for any personnel, whether contained in the above list or otherwise, save if such written instruction has been issued.

Personnel may fulfil the roles set out in the Staffing Chart discretely or in combination with others and this may vary as the Service develops provided appropriate competence is demonstrated for each of the roles that the Service Provider is required to fill.

Listed on the following pages are general job descriptions setting out the duties of the staff positions shown above. The Service Provider shall provide and carry out all that is necessary for the completion of the required services irrespective of it being particularly described or referred to in the following duties.

The duties shall include all that is necessary within the scope of the relevant position to deliver the Project in accordance with the Development Remit and shall include, but not be limited to, the areas set out for each post on the following pages:

4A Head of Delivery Management

It is envisaged that the Head of Delivery Management will sit on the Project Delivery Group⁵³.

The Head of Delivery Management shall be accountable for:

- the performance and leadership of the Delivery Management Team, Rolling Stock and Passenger Services Operator Contract Managers and shall have overall management responsibility to successfully achieve the required deliverables.
- ensuring full collaboration with the Integrated Project Team.
- all safety, quality and environmental management issues, including compliance with audit requirements, for the Delivery Management Team.
- all aspects of Delivery Management Team's integration and co-location requirements with Integrated Project Team.
- the establishment of all Project procedures necessary for the prompt delivery of the Project and the compliance with all requirements. He shall ensure that all Delivery Team staff comply with the procedures and that all other Integrated Project Team members are aware and correctly supervised for complying with the procedures.
- all specialist systems used direct by the Delivery Management Team.
- the achievement of milestones, targets and other deliverables identified within the Project Plan⁵⁴.
- the administration of contract damages and contra-charges.

The Head of Delivery Management shall:

- review and confirm scope of the Delivery Team provision to the Integrated Project Team.
- monitor and report on all safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts.
- review scope and implications of stakeholder agreements on Programme Management Services and works and services contracts.
- receive, review, monitor and report on the Enabling Works, Network Rail Works and LUL Works contracts performance and progress.
- provide liaison and interface management at a senior level within the Integrated Project Team and to all contract teams and appropriate third parties.
- provide advice on general public relations issues and associated impact on methods of working, security, programme and related issues.
- provide advice on whole life cost implications of selected design solutions and maintenance strategies.

⁵³ ELLP Project Delivery Group (PDG) Governance Structure:ELM-SUP-306-05-0002_01

- provide advice on access and possessions requirements for the successful delivery of the project.
- provide advice and proposals on all aspects of maintenance requirements and initial operations for the project.
- advise on the initial trial and test running procedures for the project including proposals for training regimes, accommodation and management.
- provide specialist advice on delivery and any other project issues to complement the Integrated Project Team.
- contribute towards the management of all cost, design progress, works progress, programme, risk management, value management and other issues related with the project.
- monitor and report on delay and disruption events and propose recovery strategies.
- propose, negotiate and review any incentive conditions for contract and design and works contracts to achieve good value for the project.

⁵⁴ Project Plan: 213-71-02-0001 Issue 3.5 4th May 2004

4A.2 Land and Property Access Controller

The Land and Property Access Controller shall be:

- Accountable for the timely arrangement of all site access, including liaison between the delivery team and TfL Group Property.
- Accountable and responsible for the organisation and management of all site access points as defined in the TWA.
- Accountable for the timely arrangement of access to LUL and Network Rail property.
- Accountable for the timely arrangement of access to the Selhurst Depot for trial operations and to New Cross Gate stabling areas for all purposes including construction works, maintenance of rolling stock, train crew and maintenance contractors.
- Accountable for the timely arrangement of access to the LUL and Network Rail networks including access to track, control centres and associated areas.
- Accountable for responding to all actions required by the TfL Land and Property Manager.

4A.3 Project Manager Phase 1

In his area of accountability the Project Manager Phase 1 shall be:

- Accountable for the establishment of procedures to ensure the timely delivery of the Infrastructure and Control Systems works and accountable for compliance with all other project procedures.
- Accountable for providing leadership to the Delivery Management teams for the Infrastructure and Control Systems works.
- Accountable for appropriate liaison and interface management of the Infrastructure and Control Systems contracts with all other works streams and third parties.
- Responsible for advising on procurement issues and providing procurement support to the Commercial group.
- Accountable for the timely production and validation of construction methods and for the correct application of procedures for appropriate certification of methods in accordance with programme requirements, including Network Rail contract requirements, safety and LUL QUENSH requirements on the Contractors.
- Accountable for the achievement of good value for money and managing the value engineering process for the Infrastructure and Control Systems works.
- Responsible for the proper instruction, valuation and authorisation of contract change.
- Accountable for the management of budgetary change control.
- Accountable for the management of project contingency.
- Accountable for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management matters that are necessary for the proper execution of the works and services contracts and provide all necessary information to the Safety, Quality and Environmental Manager
- Accountable for the satisfactory acceptance of the Infrastructure and Control Systems works into use at completion, including the proper delivery of safety and operational documentation by the Contractors.
- Accountable for establishing a hand-back process for the Infrastructure and Control Systems works and for managing the hand-back of the works in accordance with programme requirements.
- Accountable for the timely agreement of all costs, variations and accounts to enable proper completion of the financial aspects of the Infrastructure and Control Systems contracts.
- Accountable for the establishment and maintenance of all works, variation, authorisation, certification and accounts records and archives for the Infrastructure and Control Systems contracts.

- Accountable for the administration of contract damages and contra-charges.

4A.4 Utilities Manager

In his area of accountability the Utilities Manager shall be:

- Accountable for the establishment of procedures to ensure the timely delivery of the Utilities works and accountable for compliance with all other project procedures.
- Accountable for appropriate liaison and interface management of the Utilities contracts with all other works streams and third parties.
- Accountable for liaison with all Utilities to ensure proper authorisation, effect diversions and associated works and enable timely commencement and completion of works.
- Accountable for the timely production and validation of construction methods and for the correct application of procedures for appropriate certification of methods in accordance with programme requirements including Network Rail contract requirements, safety and LUL QUENSH requirements on the Contractors.
- Accountable for the achievement of good value for money and managing the value engineering process for the Utilities works.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts and provide all necessary information to the Safety, Quality and Environmental Manager.
- Responsible for the proper instruction, valuation and authorisation of contract change.
- Accountable for liaison on the satisfactory acceptance of the Utilities works into use at completion.
- Accountable for establishing a process for the Utilities works for managing the hand-back of the works in accordance with programme requirements.
- Accountable for the timely agreement of all costs, variations and accounts to enable proper completion of the financial aspects of the Utilities contracts.
- Accountable for the establishment and maintenance of all works, variation, authorisation, certification and accounts records and archives for the Utilities contracts.

4A.5 Utilities Contract Manager

In his area of accountability the Utilities Contract Manager shall be:

- Accountable for compliance with project procedures.
- Responsible for liaison with the project, between Utilities contracts and with other third parties.
- Responsible for administering the Utilities contracts.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts and provide all necessary information to the Safety, Quality and Environmental Manager.
- Accountable for the validation and monitoring of resource plans.
- Responsible for the validation and checking of entitlement for interim applications for payment for Utilities works.
- Responsible for the production of cashflow forecasts as required by the Integrated Project Team.
- Accountable for the management of budgetary change control.
- Accountable for the management of project contingency.
- Accountable for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Responsible for instructing and authorising contract change and for the production of associated evaluations of cost and time.
- Responsible for ensuring the timely acceptance of the works into use at completion including safety and operational documentation.
- Responsible for managing the handback process.
- Accountable for the timely assessment of all costs, variations and accounts to enable proper completion of the financial aspects of the Utilities contracts.
- Responsible for the establishment and maintenance of all works, variation, authorisation, certification and accounts records and archives for the Utilities contracts.
- Responsible for the administration of contract damages and contra-charges.

4A.6 Rolling Stock Contract Manager

In his area of accountability the Rolling Stock Contract Manager shall be:

- Accountable for compliance with project procedures.
- Responsible for liaison with the project, between the Rolling Stock provider, Passenger Service Operator and other works contracts and with other third parties.
- Responsible for administering the Rolling Stock lease and maintain contract.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts.
- Accountable for the validation and monitoring of resource plans.
- Responsible for the validation and checking of entitlement for interim applications for payment for Rolling Stock lease and maintain works and services.
- Responsible for the production of cashflow forecasts as required by the Integrated Project Team.
- Accountable for the management of budgetary change control.
- Accountable for the management of project contingency.
- Accountable for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Responsible for instructing and authorising contract change and for the production of associated evaluations of cost and time.
- Responsible for ensuring the timely acceptance of the works and services into use at completion including safety and operational documentation.
- Responsible for managing the Rolling Stock aspects of the trial and test running process and any associated handback requirements.
- Accountable for the timely assessment of all costs, variations and accounts to enable proper completion of the financial aspects of the Rolling Stock contract.
- Responsible for the establishment and maintenance of all services, works, variation, authorisation, certification and accounts records and archives for the Rolling Stock lease and maintain contract.
- Responsible for the administration of contract damages and contra-charges.

4A.7 Passenger Services Operator Contract Manager

In his area of accountability the Passenger Operator Contract Manager shall be:

- Accountable for compliance with project procedures.
- Responsible for liaison with the project, between the Passenger Service Operator, Rolling Stock provider and other works contracts and with other third parties.
- Responsible for administering the Passenger Service Operator contract up to the completion of project requirements.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts .
- Responsible for the validation and checking of entitlement for interim applications for payment for the Passenger Service Operator works and services.
- Accountable for the validation and monitoring of resource plans.
- Responsible for the production of cashflow forecasts as required by the Integrated Project Team.
- Accountable for the management of budgetary change control.
- Accountable for the management of project contingency.
- Accountable for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Responsible for instructing and authorising contract change and for the production of associated evaluations of cost and time.
- Responsible for ensuring the timely acceptance of the works and services into use as required by the project including appropriate documentation.
- Responsible for managing the trial and test running process and any associated handback requirements.
- Accountable for the timely assessment of all costs, variations and accounts to enable proper completion of the financial aspects of the Passenger Service Operator contract.
- Responsible for the establishment and maintenance of all services, works, variation, authorisation, certification and accounts records and archives for the Passenger Service Operator contract.
- Responsible for the administration of contract damages and contra-charges.

4A.8 Delivery Manager Control Systems

4A.9 Delivery Manager Infrastructure - (replace "Control Systems" with "Infrastructure" in the following where appropriate)

In his area of accountability the Delivery Manager Control Systems (or Infrastructure as appropriate)_shall be:

- Accountable for administering the Control Systems works contract(s) in accordance with procedures to ensure the timely delivery of the Control Systems works and accountable for compliance with all other project procedures.
- Accountable for the timely production of reports in accordance with project procedures.
- Responsible for all appropriate liaison and interface management of the Control Systems works contract(s) with all other works streams and third parties.
- Accountable for providing advice on the packaging of the Control Systems works contract(s) and the related design and procurement programmes.
- Accountable for the timely production and validation of construction methods and for the correct application of procedures for appropriate certification of methods in accordance with programme requirements including Network Rail contract requirements, safety and LUL QUENSH requirements on the Contractors.
- Accountable for the achievement of good value for money and managing the value engineering process for the Infrastructure and Control Systems works.
- Accountable for monitoring and reporting on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts and provide all necessary information to the Safety, Quality and Environmental Manager.
- Responsible for the proper instruction, valuation and authorisation of contract change.
- Accountable for the satisfactory acceptance of the Control Systems works into use at completion, including the proper delivery of safety and operational documentation.
- Accountable for establishing a transfer into operation and maintenance process for the Infrastructure and Control Systems works and for managing the transfer into operation and maintenance of the works in accordance with programme requirements.
- Accountable for the timely agreement of all costs, variations and accounts to enable proper completion of the financial aspects of the Control Systems works contract(s).
- Accountable for the establishment and maintenance of all works, variation, authorisation, certification and accounts records and archives for the Infrastructure and Control Systems contracts.

4A.10 Contracts Manager

In his area of accountability the Contracts Manager shall be:

- Accountable for compliance with project procedures.
- Accountable for the timely production of reports in accordance with project procedures.
- Responsible for liaison with the project, other works contracts and with other third parties.
- Responsible for advising on procurement issues and providing procurement support to the Commercial group.
- Accountable for providing cost advice on value engineering issues.
- Responsible for administering the Infrastructure and Control Systems works contract(s).
- Accountable for the validation and checking of entitlement for interim applications for payment for Infrastructure and Control Systems works contract(s).
- Accountable for the validation and monitoring of resource plans.
- Accountable for the production of cashflow forecasts as required by the Integrated Project Team.
- Accountable for the management of budgetary change control.
- Accountable for the management of project contingency.
- Accountable for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Responsible for instructing and authorising contract change and for the production of associated evaluations of cost and time.
- Accountable for ensuring the timely acceptance of the works and services into use at completion including safety and operational documentation.
- Accountable for managing any transfer into operation and maintenance requirements.
- Accountable for the timely assessment of all costs, variations and accounts to enable proper completion of the financial aspects of the works contract(s).
- Accountable for the establishment and maintenance of all services, works, variation, authorisation, certification and accounts records and archives for the contracts.
- Accountable for the validation and monitoring of resource plans.
- Responsible for the administration of contract damages and contra-charges.

4A.11 Completion Manager Control Systems

In his area of accountability the Completion Manager Control Systems shall be:

- Accountable for compliance with project procedures.
- Responsible for liaison with the project, other works and services contracts and with other third parties.
- Responsible for reporting on completion issues direct to the Delivery Manager (Control Systems).
- Accountable and responsible for managing all infrastructure / services interfaces for completion purposes.
- Accountable and responsible for managing the timely acceptance of infrastructure / route completion and transfer requirements.

4A.12 Construction Engineer Control Systems

4A.13 Construction Engineer Infrastructure Stations

4A.14 Construction Engineer Infrastructure Civils

(replace “Control Systems” with “Infrastructure Stations” or “Infrastructure Civils” in the following where appropriate)

In his area of accountability the Construction Engineer Control Systems (or Infrastructure Stations or Infrastructure Systems as appropriate) shall be:

- Accountable for compliance with project procedures.
- Responsible for reporting on construction engineering issues direct to the Delivery Manager (Control Systems).
- Accountable and responsible for the validation and approval of method statements in conjunction with the Engineering Manager and Safety, Quality and Environmental Manager
- Shall monitor and report on all health and safety, quality and environmental management issues that are necessary for the proper execution of the works and services contracts and provide all necessary information to the Safety, Quality and Environmental Manager.
- Responsible for the validation and checking of construction engineering progress for entitlement for interim applications for payment for Control Systems works contract(s).
- Accountable for managing the site inspection teams. Site inspections to inspect quality of works on behalf of Head of Engineering.

4A.15 Project Planner Control Systems

4A.16 Project Planner Infrastructure - (replace “Control Systems” with “Infrastructure” in the following where appropriate)

In his area of accountability the Project Planner Control Systems (or Infrastructure as appropriate) shall be:

- Responsible for compliance with project procedures.
- Responsible for liaison with the project, other works and services contracts and with other third parties.
- Responsible for providing advice on the programme and planning issues related to the procurement and packaging of works.
- Responsible for providing programme and planning advice on value engineering issues.
- Responsible for reporting on programme and planning progress and associated issues direct to the Delivery Manager Control Systems.
- Responsible for the evaluation of programme and planning implications of contract change.
- Responsible for undertaking all planning work and reporting as required by the Project Procedures and the Integrated Project Team for inclusion in the Project programme

4A.17 Cost Engineer Control Systems

4A.18 Cost Engineer Infrastructure - (replace "Control Systems" with "Infrastructure" in the following where appropriate)

In his area of accountability the Cost Engineer Control Systems (or Infrastructure as appropriate) working with the Projects central commercial team shall be:

- Responsible for compliance with project procedures.
- Responsible for reporting on cost issues direct to the Contract Manager and Delivery Manager Control Systems.
- Responsible for the checking of entitlement and production of interim applications for payment for Control Systems works contract(s).
- Responsible for the validation and monitoring of resource plans.
- Responsible for providing cost advice on value engineering issues.
- Responsible for the valuation of contract change.
- Responsible for the production of cashflow forecasts as required by the Integrated Project Team.
- Responsible for the management of budgetary change control.
- Responsible for the management of project contingency.
- Responsible for the administration of incentivisation arrangements including measurement of KPIs and making recommendations for payment.
- Responsible for the timely assessment of all costs, variations and accounts to enable proper completion of the financial aspects of the Control Systems works contract(s).
- Responsible for the establishment and maintenance of all works, variation, authorisation, certification and accounts records and archives for the Control Systems works contract(s).
- Responsible for the administration of contract damages and contra-charges.

SCHEDULE 5
Fee and Payment





5

5.1 Time Charging

Unless otherwise agreed between TfL and the Service Provider, the fee shall be determined by reference to the time spent by the Service Provider personnel in the performance of the Services and the time charge rates set out below:

<i>Role/Discipline</i>	<i>Name/ Grade</i>	<i>Grade</i>	<i>Day rate £</i>
Head Of Delivery Management		1	
Land And Property Access Controller		4	
Project Manager Phase 1		2	
Utilities Manager		5	
Utilities Contract Manager		5	
Contracts Manager Infrastructure and Control Systems		3	
Delivery Manager Control Systems		3	
Delivery Manager Infrastructure		2	
Completion Manager Control Systems		4	
Construction Engineer Control Systems		4	
Project Planner Control Systems		5	
Cost Engineer Infrastructure		4	
Construction Engineer Infrastructure Stations		4	
Construction Engineer		4	

Infrastructure Civils			
Project Planner Infrastructure		4	
Cost Engineer Control Systems		4	
Construction Engineer Southern		4	
Team Organiser		7	
Rolling Stock Contract Manager		4	
Passenger Services Operator Contract Manager		3	
Grade Rates for Personnel			
The following rates shall be utilised for key appointments under the Contract			
US Programme Manager Grade 1 Typical Education, Qualifications And Experience: <ul style="list-style-type: none"> • 20+ years experience including programme management experience on large transit projects or equivalent. • Graduate/Professional Technical Qualification including Membership of Professional Association(s). • Overall responsibility for programme and for supervision, control and development of subordinate personnel. • Significant management responsibility and direction within the consultancy environment including client liaison, specialist skills or experience 			
US Delivery Manager/Project Controls Manager Grade 2 <ul style="list-style-type: none"> • 20+ years experience including delivery management experience on large transit projects or equivalent. • Graduate/Professional Technical Qualification including Membership of Professional Association(s). • Overall responsibility for infrastructure and rail systems delivery and for supervision, control and development of subordinate personnel. • Significant management responsibility and direction within the consultancy environment including client liaison, specialist skills or experience 			

<p>UK Director/Programme Manager/US Contracts Manager Grade 3</p> <p>Typical Education, Qualifications And Experience:</p> <ul style="list-style-type: none"> • 20+ years experience including control systems delivery experience on large transit projects or equivalent. • Graduate/Professional Technical Qualification including Membership of Professional Association(s). • Overall responsibility for programme and for supervision, control and development of subordinate personnel. • Significant management responsibility and direction within the consultancy environment including client liaison, specialist skills or experience 	
<p>UK Delivery Manager/Senior Engineer/Senior Consultant Grade 4</p> <p>Typical Educations / Qualifications and Experience:</p> <ul style="list-style-type: none"> • MBA/Graduate/Professional qualification • 3-6 years consulting experience, plus 5-10 years work experience <u>or</u> extensive work experience. • 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. Permanent employee 	
<p>Utilities Manager/Consultant Grade 5</p> <p>Typical Educations / Qualifications and Experience:</p> <ul style="list-style-type: none"> • Degree with 2-3 years business experience or graduate professional with 1-3 years consultancy experience, <u>or</u> alternative work experience as deemed appropriate. • Responsibility for project(s) and for supervision, control and development of Junior Personnel 	
<p>Junior Consultant Grade 6</p> <p>Educations / Qualifications and Experience:</p> <ul style="list-style-type: none"> • Graduate with 1-5 years experience. • Occasional supervision of Junior Personnel. 	

Senior Administrator Grade 7		
Typical Educations / Qualifications and Experience: <ul style="list-style-type: none"> • 2 Years Project Experience • Good educational qualifications to “O” level or equivalent standard. • An aptitude for using computer based systems and techniques. • Recognised qualification in keyboard associated skills and office management techniques. • Familiar with computer packages, in particular Word, Microsoft Office Project Manager, Excel and PowerPoint. • Excellent organisation skills and communication skills 		
Alternative Positions		
The following rates shall be utilised where the Service Provider is instructed to provide additional personnel, for key roles within the organisation as detailed in their alternative tender proposal		
Staff Position	Name/	Grade
SQE Manager		5
Safety Manager		6
Safety Engineer (x2)		6
Quality Manager		5
Environment Manager		6
Assurance Manager		5
Assurance Engineer		5
Asset Data and Records Assistant		6
Configuration Manager		4
Planning Manager (Consents)		5
Systems Integration Manager		4
Integration Engineer		4
Operations Manager		5
Operations Assistant		5
Programme Controls Manager		2

Change Controller		6	
Risk Manager		4	
Risk Analyst		6	
Contracts Manager		3	
Cost Controller		4	
Estimating Manager		4	
Cost Engineer (Enabling)		4	
Site Engineer (Enabling)		6	
Site Inspector (Enabling)		6	
Site Engineer (Enabling)		5	
Site Inspector (Enabling)		5	
Non Core Disciplines			
<p>The following rates are for typical disciplines that TfL may require the Service Provider to supply under this Agreement. Where a discipline is required that is not listed below, the parties shall utilise the following rates as a basis for agreeing a pro rata rate for such new discipline.</p>			
Discipline		Consultant Rate per day £	Senior Consultant Rate per day £
Design Manager			
Communications/power engineer			
Permanent Way engineer			
Signalling engineer			
Rolling stock engineer			
Mechanical and electrical engineer			
Safety manager			
Civil/structural engineer			
Environment manager			
Senior technician			

Technician		
Site inspector		
Administrator		

The Day Rate shall be pro-rated as follows:

- Up to two hours – no charge
- From two to six hours – half a day
- Above six hours – one day.

Rates are based on a 228 day per annum recovery.

These rates uplifted every 12 months on the anniversary of the date of the Agreement commencing on the second anniversary. i.e. the rates shall be fixed for the first 2 years of the contract. The basis used shall be the Retail Price Index excluding Mortgage Interest Payments (RPIX), as published by the Office of National Statistics, reference RP 07 or its successor. The base date for the calculation shall be May 2005. *The uplift percentage applied to the rates shall be* [REDACTED]

The Service Provider shall be entitled to payment only in respect of the time spent by those persons occupying one or more of the roles set out in the Staffing Chart and approved by TfL. The costs of support staff (i.e. staff employed by the Service Provider who provide assistance to the Service Provider's key personnel and who are neither required to fulfil a specific role identified on the Staffing Chart nor accepted by the Contract Manager) will be deemed to be included in the rates and will not be separately reimbursed.

The man-day rates shall apply to any day worked, including Saturdays, Sundays and Public holidays, and all the hours required to deliver the Project. Additional payments including overtime are not expected and will not be paid unless specifically authorised in advance and in writing by the Contract Manager.

Where during the currency of this Agreement any personnel are regraded within the Service Providers grading structure the parties shall agree in advance whether and to what extent this should be reflected in a change in rate. In any event an increase due to grade change will not be automatic and the Service Provider agrees to inform in advance TfL of its proposals in this respect. TfL agree to review such re grading on a case by case basis recognising the reasonable requirements of career progression of individuals and the Service Providers business.

Where the Service Provider is required to provide additional sub contract personnel to those detailed in the above list, such personnel shall be reimbursed based on an agreed day rate plus [REDACTED] to cover the Service Providers overheads, management and profit on such individuals. The above referenced percentage is not applicable to any "sole traders" which TfL may require the Service Provider to take over.

5.2 Fixed Fee

Not later than five months after the date of this Agreement, the Service Provider shall prepare and submit to TfL a proposal for a fixed fee and Performance Bonus structure that shall include the following:

- a comprehensive statement of the resources that the Service Provider has determined, in consultation with TfL, to be necessary for the continued performance of the Services so as to enable the successful completion of the Project, showing roles and responsibilities of Service Provider's personnel (with names and curricula vitae where possible) proposed to be assigned to the Project and the Delivery Management Team;
- a programme of fixed four-weekly payments for the remaining duration of the Agreement or a proposal for the linking of the payment to milestone achievement;
- the programme and assumptions (if any) upon which such fixed payments are based, and the criteria that would trigger an adjustment to the fixed fee;
- any revisions that may be required to the scope of Services described in Schedule 4 (The Services) to accommodate such fixed fee structure including, if appropriate, a separately defined portion of the Services to be covered by the fixed fees;
- such details as may be necessary to enable the implementation of the Performance Bonus regime set out in Appendices 5A and 5B.

TfL and the Service Provider shall discuss and negotiate the fixed fee and Performance Bonus proposal and use all reasonable efforts to agree without delay an amendment to this Agreement to accommodate a fixed fee structure. If, within 4 weeks of the Service Provider's submission of the fixed fee and Performance Bonus proposal TfL and the Service Provider have not reached agreement on any such amendment, TfL may (a) terminate this Agreement forthwith, in which case the provisions of Clauses 19.4 - 19.6 shall apply; (b) require the Service Provider to continue the performance of the Services under this Agreement on the basis of time charging arrangements described in Clause 5.1 above, with or without the application of a regime for the payment of a Performance Bonus, subject to such variations to the scope of Services as TfL may wish to instruct pursuant to Clause 4.2, and subject to TfL's right to request the Service Provider to make a further fixed fee and Performance Bonus proposal pursuant to this paragraph 5.2 .

The Service Provider shall provide and carry out everything necessary for the completion of the Services, whether or not it is specifically described or referred to in the Agreement, within the Fee, which shall accordingly be deemed to be fully inclusive.

5.3 Expenses

Except as provided herein, the Fee shall be inclusive of all expenses and disbursements.

The Service Provider shall be entitled to reimbursement of travel and accommodation expenses, in accordance with TfL's expense policy, incurred by the Service Provider's personnel whilst travelling outside the area of the Greater London

Authority for the purpose of the performance of the Services as expressly authorised in advance by the Contract Manager.

Where non-core personnel whose home office is neither in Greater London Area, or Godalming, are provided the following will apply;

Normal travel expenses will be payable provided such expenses are within the TfL guidelines. Where such personnel are required to make frequent, or extended duration visits the parties may agree to a per diem rate to cover all travel and incidental expenditure associated with being away from their normal place of work. Where a per diem rate is utilised payment will be made for each Business Day worked, to a maximum of five within any one week, at the agreed rate irrespective of the actual cost incurred.

Where such personnel are required to stay over night accommodation will be reimbursed in accordance with TfL's rules. Where such visits are of a frequent or extended duration a per night rate for each night away from home, to a maximum of four nights in any one-week will be agreed and be payable irrespective of the actual cost incurred. Payment of the nightly rate will be in addition to the per diem rate. Payment in excess of four nights per week will only be made in exceptional circumstances where project needs require the person to stay additional nights and in so doing the individual incurs additional expense. The rate will be deemed to include all additional costs associated with being away from home and no other incidental expenditure will be chargeable.

In the event that personnel are required to work away from home for extended periods, which for the purposes of this clause shall be a minimum of one calendar month, the Service Provider and Contracts Manager may in appropriate circumstances agree a living away allowance for such personnel, provided always that such allowance is payable to the individual.

In agreeing to such allowances TfL will not pay additional overhead and profit on such allowances other than any direct costs (e.g. National Insurance and the like) that the Service Provider may incur in paying the allowance to the person concerned.

VAT shall, where chargeable, be paid on the Fee and all other sums payable under this Agreement subject to receipt by TfL of a valid VAT invoice.

5.4 Invoicing

The Service Provider shall invoice TfL in respect of the Fee four-weekly in arrears.

Invoices shall be submitted to:

TfL Accounts Payable
24th floor Empress State Building
PO Box 50626
56 Lithe Road
London SW6 1YS

Invoices shall:

- State the Contract Reference Number, TfL Account Details, purchase order number, the Service Provider's name and address, and a brief description of the Services provided;
- be clear, concise, accurate, and adequately descriptive to avoid delays in processing and subsequent payment;
- contain the following information:
 - a summary of the current invoice and previous invoice, including the Service Provider's gross invoices to the agreed date of the invoice, the previous total of invoices, achieved bonus payments as separately agreed with the Contract Manager, and expenses as previously agreed with the Contract Manager;
 - an analysis of the time properly recorded on timesheets by all personnel engaged in performing the Services, together with details of any expenses incurred which are to the account of TfL. The Service Provider shall present the recorded time and expenses against discrete activities clearly identifying any time recorded against Change Orders awarded on the Agreement;
 - a cash flow indicating each anticipated, future payment to the Service Provider from the current application for payment through to completion of the Services;
 - a listing of achieved and anticipated measures of key performance indicators (KPIs) indicating performance attributable to any bonus payments. Achieved measures of KPIs (which will be developed by agreement with the Service Provider) shall be as agreed with the Contract Manager prior to the Service Provider's submission of the application for payment; and
 - such supporting information, including summary or detailed timesheets, as TfL may from time to time request.

In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these as a separate item on the invoices. VAT shall also be shown separately.

Any loss or additional expenses incurred by the Service Provider in the correction or re-submission of an invoice shall be at the Service Provider's expense.

If TfL does not think the instalment of the Fee has been calculated correctly or if the invoice contains any other error or inadequacy, TfL will notify the Service Provider and TfL and the Service Provider shall work together to resolve the error or inadequacy. The Service Provider shall submit a revised invoice and credit note and, if approved by TfL, payment shall be made within 30 days of receipt of the revised invoice.

Payments shall be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that TfL may choose from time to time.

5.5 Cost Reporting

Within twenty eight (28) days of the date of the Agreement, the Service Provider shall prepare and issue to the Contract Manager a Cost Forecast Statement for his services which summarises the cash flow liability for the duration of the Contract. This shall be prepared to include mobilisation payments (if any), progress or milestone payments, guarantee and performance retentions and cover the period from the date of the Agreement to final payment, in accord with the payment terms of the Agreement.

The Service Provider shall update and resubmit this Cost Forecast Statement from time to time as requested by the Contract Manager.

5.6 Due date for payment

The due date for payment of each instalment of the Fee shall be the date on which a proper invoice is received by TfL in respect of it. For the avoidance of doubt if an instalment invoicing date is defined by reference to a period of time (as opposed to a date) or a particular stage of work, the instalment may not be invoiced until the last day of such period or until completion of that stage of work unless the contrary is clearly stated elsewhere in this Agreement.

5.7 Final date for payment

The final date for payment of each instalment shall be 30 days after the due date for each such instalment. Invoices submitted prematurely or which are not valid VAT invoices shall not be proper invoices and the Service Provider shall resubmit them in the proper form at the proper time.

5.8 Payment notification

TfL will give written notice to the Service Provider not later than 5 working days after the date on which every payment of sums payable under this Agreement becomes due from TfL to the Service Provider under this Agreement, or would have become due if:

- the Service Provider had carried out its obligations under this Agreement; and
- no set off or abatement was permitted by reference to any sum claimed to be due under any contracts with the Service Provider,

specifying the amount (if any) of the payment made or proposed to be made and the basis on which the amount has been calculated.

5.9 Withholding notification

TfL will give written notice to the Service Provider not later than 1 day prior to the final date for payment of any sums payable under this Agreement specifying any amount proposed to be withheld and the ground or grounds for withholding such amount.

5.10 Vat and Statutory Tax Deduction Scheme

Additional Requirements

The Service Provider, in addition to complying with any requirement contained in the Conditions of Contract shall comply with the following with respect to any request or claim for payment:

- provide further information as may reasonably be required in relation to any request or claim.
- from time to time provide TfL with such information as the Contract Manager may require to complete tax returns.

Rendering of Assistance

If any dispute, difference or question arises between either TfL or the Service Provider and the Commissioners of Customs and Excise in relation to any tax chargeable, or alleged to be chargeable, in connection with the Agreement or the Services, TfL and the Service Provider shall render to one another such support and assistance as may be necessary to resolve the dispute, difference or question.

Reimbursement or Indemnification

Where, under the Contract, one party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first party shall also reimburse any tax paid by the other which forms part of the payment made or cost incurred, to the extent that such tax is not available for credit under Sections 24, 25 and 26 of the Value Added Tax Act 1994.

5.11 Project Bonus and Performance Bonus

The Service Provider shall be entitled to payment of a Project Bonus upon successful completion of the Project, all as more particularly described in Appendix 5C to this Schedule 5.

If so agreed by the Parties, in addition to the Project Bonus and as part of or in lieu of the agreement of a fixed fee arrangement pursuant to paragraph 5.2 above, the Service Provider shall be entitled to payment of a Performance Bonus at half-yearly intervals in accordance with the provisions of Appendices 5A and 5B to this Schedule 5.

The Service Provider hereby acknowledges that the Service Provider's entitlement to the payment of any such bonus payments is entirely contingent upon the successful satisfaction of the criteria therefor described below, and the Service Provider hereby irrevocably waives any right it might otherwise have to claim damages in respect of any such bonus payment if any act or omission of TfL, any person for whom TfL is responsible (including any such act or omission which constitutes breach of this Agreement) or any other contributor to the delivery of the Project causes or contributes to such bonus criteria not being satisfied or the amount of such bonus being reduced.

Notwithstanding the above, TfL undertakes not to exercise its right to terminate this Agreement at will for the primary purpose of reducing the amount of any bonus that might otherwise have been paid to the Service Provider.

Appendix 5A to Schedule 5: Performance Bonus

5A.1 The Performance Bonus Scheme - Objectives

The objectives of the Performance Bonus Scheme are as follows:

- (a) To support the achievement of high and continuously improving levels of performance of the services provided by the Service Provider.
- (b) To develop and strengthen the relationship between the Parties and the personnel engaged in the performance of the Services.
- (c) To ensure that the Service Provider is always working to clearly expressed and up-to-date objectives and priorities.
- (d) To concentrate the attention of the Service Provider on delivering the important objectives.
- (e) To establish quantitative or qualitative targets to be achieved and to provide verifiable measurement/assessment of actual achievements.
- (f) To provide the basis for regular sharing and communication of objectives and targets with all personnel engaged in the performance of the Services.
- (g) To provide regular feedback on performance and to use the feedback to stimulate improved performance.
- (h) To provide data capable of audit for the computation of the Performance Bonus payable to the Service Provider.

5A.2 Guiding Principles

There are a number of guiding principles for the operation of the Performance Bonus Scheme that should be followed to maximise its success. In particular, the Performance Bonus Scheme should:

- (a) always be operated as a central part of the overall management process;
- (b) be simple to understand and operate;
- (c) be operated and owned by the participants;
- (d) be sufficiently flexible to accommodate controlled change;
- (e) be applied with an appropriate degree of rigour; and
- (f) be seen by both parties as equitable and designed to reward exceptional performance.

5A.3 Components of Performance Bonus

The Performance Bonus will be calculated by reference to a Base Bonus and a performance related adjustment, which will result in a change in the total amount of Base Bonus to give the amount of Performance Bonus actually payable, depending upon performance.

5A.4 Base Bonus

The Base Bonus will be derived by applying the Bonus Percentage [REDACTED] to the aggregate base fees payable on a time charge basis / fixed fee basis, excluding expenses, for the relevant half-year period.

5A.5 Performance Bonus

At the end of the sixth and final Payment Periods in any year the Performance Bonus will be calculated and paid.

The percentage to be applied to the Base Bonus to determine the Performance Bonus actually payable will be computed on the basis of actual performance in any measurement period (the preceding six or seven Payment Periods - as the case may be) against Key Performance Indicator ("KPI") targets that will be defined and agreed in advance.

5A.6 Key Performance Indicators

A core set of Key Performance Indicator targets for the Service Provider called Project Key Performance Indicators are set out in Clause 5B.3 below and will operate for the whole life of the Project from the completion of the Initial Period. These may be supplemented by the addition of "half-year" specific Key Performance Indicators if both Parties consider this of benefit. These will be identified and agreed shortly before the commencement of the "half-year" concerned. The operation of the Key Performance Indicators system will be in accordance with Appendix 5B.

5A.7 Measurement of Performance

The measurement of performance will be based upon a points system. There will be two Key Performance Indicator types:

- the first type will be targeted absolute objectives which if achieved will score ten points and if not achieved will score zero points;
- the second type will be a scale to allow better performance to be recognised and a degree of under performance to be accepted and modestly rewarded. The maximum points in the second type will be 10 with a minimum of zero.

The Parties may agree to vary the scoring method for KPIs at any time. If the Parties fail to agree, the matter shall be referred to ELL Project Board for final resolution.

5A.8 The Link between Performance and the Performance Bonus

The link between Key Performance Indicators and the Performance Bonus will be established so that, if a score of 10 is achieved in respect of every KPI of the first type and every KPI of the second type, it will result in a Performance Bonus of [REDACTED] of the Base Bonus. The minimum Performance Bonus will be zero.

5A.9 Non-Operation of Key Performance Indicators

In certain limited situations the Contract Manager and the Service Provider's Representative may agree to suspend the application of KPIs and targets. In this situation the Service Provider shall be entitled to receive [REDACTED] of the Base Bonus for the work and period of time to which the suspension applies but no further Performance Bonus shall be available. If the Contract Manager and the Service Provider's Representative fail to agree, the matter shall be referred to the ELL Project Board for final resolution.

Appendix 5B to Schedule 5: Performance Bonus Scheme

5B.1 Scheme Outline

- (g) The Performance Scheme will operate on a half-yearly cycle. Commencing at the end of the Initial Period.
- (h) Additional Key Performance Indicators (if it is decided they are required), associated targets and measures will be established prior to the commencement of each half-year cycle for the forthcoming period.
- (i) Following the completion of the half-year, actual performance will be measured and/or assessed. The achieved performance, compared with that targeted, will provide the data that supports the calculation of the Performance Bonus.
- (j) Actual performance will be formally reviewed immediately following the end of the half year period and, through analysis of successes and failures, the opportunities for improving performance will be identified and implementation plans to achieve improvements will be established.

5B.2 Operation of the Performance Bonus Scheme

- (a) The operation of the Scheme shall be the responsibility of the Contract Manager and the Service Provider's Representative.
- (b) There are 3 stages in the operation of the Scheme as follows:
 - Stage 1 - identifying any specific supplementary Key Performance Indicators and targets for the period.
 - Stage 2 - carrying out the Services in the period.
 - Stage 3 - measuring and/or assessing performance, providing data for fee computation, reviewing performance and identifying improvement action.
- (c) KPIs and Targets will normally fall into one of three categories:
 - (i) Specific Quantified Outcome Targets, which entail the achievement of an absolute "hard" target during the period
 - (ii) Ranged Quantified Outcome Targets, which entail the achievement of "hard" targets within an identified range of acceptable performance.
 - (iii) Qualitative Targets, which entail the achievement of "soft" targets within an acceptable range of performance. These "soft" targets are the enablers of "hard" performance.
- (d) The Performance Bonus shall be split equally across all the Key Performance Indicators for the period.

5B.3 Stage 1

The Project Key Performance Indicators shall be:

- (a) Programme - The achievement of all deliverables within the agreed Project Level 1 programme applicable at the commencement of the period. This shall be a specific quantified target.

- (b) Cash Flow - The achievement of the cash flow to within 5% of the agreed cash flow forecast for the Project for each payment period of the KPI period. This shall be a specific quantified target.
- (c) Safety 50% on the achievement of the TfL target, on a rolling 12 months basis, of no more than 0.59 RIDDOR reportable accidents per 100,000 hours worked. This will commence once 100,000 hours have been worked from contract commencement. The RIDDOR figures shall be calculated including all people working on the Project and shall include fatalities and major injuries, 50% on there being an improving trend from the preceding period. This shall be 100% until 100,000 hours have been worked. This shall be a specific quantified target.
- (d) Stakeholder Review – A review by the stakeholders of the performance of the Service Provider. This shall be a Qualitative target.

5.B.4 Stage 2

During the course of the management of the Project both the Contract Manager and the Service Provider's Representative will be expected to monitor progress against the KPIs and targets and to identify any that, due to changes in requirements or priorities, are no longer appropriate and to make appropriate changes to the KPIs and/or targets. The process of regular review should also identify where objectives are unlikely to be met and enable remedial action to be identified and taken.

5.B.5 Stage 3

- (i) Immediately following the end of the period the actual performance should be measured. In the case of "hard" KPIs and targets, a report of achievement against the Key Performance Indicators will be made by the Service Provider's representative and submitted to the Contract Manager for agreement. Assessments of performance against "soft" targets will be made separately by the Service Provider's Representative and by the Contract Manager. Both should take into account the views of colleagues involved in the Project and affected stakeholders. Where input is required from external parties, a single report form shall be agreed by both parties and issued by the Contract Manager. The Parties will then meet and agree their assessments and resolve any measurement disagreements.
- (ii) It will be open to the parties to agree an appropriate procedure for resolving disputes in measurements or assessments but the final level for referring a dispute for resolution prior to formal adjudication shall be a reference to the ELL Project Board.
- (iii) The Contract Manager and the Service Provider's Representative shall jointly convene a Key Performance Review meeting not more than 14 days following the end of the period. The meeting shall be attended by appropriate members of TfL and the Service Provider team. The objective of the meeting will be to note and review the performance in the preceding period and to identify how improvements in performance can be achieved in subsequent periods. Successes should be recognised and shortfalls in performance analysed so that continuous improvements can be achieved.
- (iv) The information arising from the formal Key Performance Reviews will be used to inform the process of updating the Project Plan and establishing any supplementary

KPIs and targets for future periods (if necessary) as well as influencing current Service Provider activity.

- (v) If a performance review indicates performance below the relevant Key Performance Indicators the Service Provider must propose the performance improvement/recovery actions which it intends to take.

5.B.6 Conversion of achieved Performance into the Performance Bonus

- (a) Performance will be calculated by expressing the total achieved scores in respect of the KPIs as a percentage of the maximum possible score as described above.
- (b) The half-yearly Performance Bonus will be calculated using the following formula:

$$PB = \frac{BB * PS}{100}$$

Where:

PB = Performance Bonus

BB = Base Bonus for the Half-year

PS = Percentages score for KPIs and Targets for the half-year

5.B.7 Correction of Errors

- (a) The measurements and assessments for the half-year period once agreed and approved by the Contract Manager and the Service Provider's Representative will be final scores. These will be subject only to an agreed correction at the end of an Annual Period where they can be demonstrated by either TfL or the Service Provider's Representative, to the satisfaction of the other to have contained errors or incorrect judgements.
- (b) If either TfL or the Service Provider's Representative considers that a correction needs to be made, as set out in paragraphs (a) above, but the other Party does not agree, the matter shall be referred to the Project Director, who will act as a mediator and endeavour to assist in reaching agreement. If no agreement is reached any Party may refer the matter to a meeting of the ELL Project Board or to adjudication.

Appendix 5C to Schedule 5: Project Bonus

5C.1 Project Bonus Components

The Project Bonus shall be calculated by apportioning an element of the total underrun to the Project's budget of £914.5m to the Service Provider. This being the amount available to fund the Project.

This Project budget of £914.5m may be varied if TfL either increase or decrease the scope of the Project. The revised Project budget arising from such a change will be the basis for the Project Bonus calculation.

5C.2 Project Bonus Calculation

The Project Bonus shall be derived and paid as follows:

- (a) the proportion to be allocated to the Service Provider shall be ■■■ of the total savings accruing to TfL.
- (b) the savings shall be calculated after the application of:
 - (i) all other incentive and target sharing arrangements with other stakeholders and contractors;
 - (ii) resolution of all claims, relating to the Project;
- (c) upon acceptance of delivery of the Project by TfL as meeting the Development Remit; and
- (d) after the public opening.

**SCHEDULE 6
Authority for Variation**

Service Providers Name Address Post Code		Contract Reference No.	
		Variation No.	
		Date	

Pursuant to Clause 4 (Variations) of the Agreement, authority is given for the scope of the Services and the Fee to be varied as detailed below. The duplicate copy of this form shall be signed by or on behalf of the Service Provider and returned to the Contract Manager as an acceptance by the Service Provider of the variation shown below.

Details of Variation	Amount (£)
Fee adjustment required to take account of this variation	
Total	

For Transport for London		
Date		Name and Title

Acceptance by the Service Provider		
Date		Name and Title

SCHEDULE 7

Deed of Novation

This Deed is made the _____ day of _____

BETWEEN:

- (3) **Transport for London**, a statutory corporation established under the Greater London Authority Act 1999, ("**TfL**"); and
- (4) [_____], a company registered in England and Wales (Company Registration Number [_____]) whose registered office is at [_____] ("**the Service Provider**"); and
- (5) [_____] a company registered in England and Wales (Company Registration Number [_____]) whose registered office is at [_____] ("**the New Company**"); and

WHEREAS:

- (C) TfL has entered into an agreement dated [_____] Contract Reference Number [_____] with the Service Provider for the provision of Services ("the Agreement").
- (D) TfL wishes to transfer its benefit and burden (or part of it) under the Agreement to the New Company.
- (E) The Service Provider and the New Company have agreed to such transfer upon the terms and conditions of this Deed.

IT IS AGREED AS FOLLOWS:

- 1 In this Deed:
 - 1.1 "Transfer Date" means [_____];
 - 1.2 "Transfer Part" means all that part of the undertaking of TfL that consists of [describe part of undertaking that the New Company will be taking responsibility for].
- 2 With effect from the Transfer Date (and only in so far as the Agreement relates to the Transferred Part):
 - 2.1 the New Company undertakes to perform the obligations of TfL under the Agreement and be bound by its terms in every way as if the New Company is and had been named at all times as a party to the Agreement in lieu of TfL;
 - 2.2 the Service Provider releases and discharges TfL from all demands and claims whatsoever in respect of the Agreement and accepts the liability of the New Company in relation to the Agreement in lieu of the liability of TfL and agrees to be bound by the terms of the Agreement in every way as if the New Company were and had been party to the Agreement at all times in lieu of TfL;
 - 2.3 for the avoidance of doubt, it is expressly agreed that:

2.3.1 any and all rights, claims, counter-claims, demands and other remedies of the Service Provider against TfL accrued under or in connection with the Agreement prior to the date of this Deed are exercisable and enforceable by the Service Provider against the New Company; and

2.3.2 any and all rights, claims, counter-claims, demands and other remedies of TfL against the Service Provider accrued under or in connection with the Agreement prior to the date of this Deed are exercisable by the New Company against the Service Provider;

2.4 TfL transfers its rights and obligations under the Agreement to the New Company.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by)
Transport for London) Director
acting by a Director and the)
Secretary or two Directors)
Director/Secretary

Executed as a Deed by)
[]⁵⁵) Director
acting by a Director and the)
Secretary or two Directors)
Director/Secretary

Executed as a Deed by)
[]⁵⁶) Director
acting by a Director and the)
Secretary or two Directors)
Director/Secretary

⁵⁵ Insert name of Service Provider

⁵⁶ Insert name of New Company

SCHEDULE 8
Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: Transport for London
Windsor House
42-50 Victoria Street
London
SW1H 0TL
England

Date:

Dear Sir/Madam

We, [*insert name of Guarantor*] ("**the Guarantor**"), understand that you have agreed to enter into Contract No [*insert contract number*] ("**the Agreement**") with [*insert name of Service Provider*] ("**the Service Provider**") in respect of [*briefly describe nature of contract*] on the condition that the obligations of the Service Provider under the Agreement be guaranteed by a Guarantor.

We are [*recite the relationship of the Guarantor to the Service Provider*], and we warrant to you that this description of our relationship with/to the Service Provider is true and accurate.

IN CONSIDERATION of the foregoing and of the payment of five pounds (£5) by you to us (receipt of which we hereby acknowledge) WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee the proper and punctual performance by the Service Provider of all its obligations, undertakings and responsibilities under the Agreement and we shall forthwith make good any default thereunder on the part of the Service Provider and we shall pay or be responsible for the payment by the Service Provider 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 Agreement in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Service Provider.
- (b) This Guarantee shall be a continuing guarantee and shall remain in full force and effect until all obligations to be performed or observed by the Service Provider under or arising out of the Agreement have been duly and completely performed and observed and the Service Provider shall have ceased to be under any actual or contingent liability to you thereunder.
- (c) 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.
- (d) You shall be entitled to enforce this Guarantee without taking any proceedings or exhausting any right or remedy against the Service Provider or any other person or taking any action to enforce any other security, bond or guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Agreement if we had been named as the Service Provider in the Agreement.

2. Our obligations hereunder shall remain in full force and effect and shall not be affected or discharged by:
 - (a) any alteration or variation to the terms of the Agreement made by agreement between you and the Service Provider;
 - (b) any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Agreement;
 - (c) any time being given to the Service Provider or any other indulgence or concession to the Service Provider or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Agreement;
 - (d) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Service Provider under the Agreement;
 - (e) the release or waiver of any such bond, security or guarantee;
 - (f) any amalgamation or reconstruction or dissolution including liquidation of the Service Provider;
 - (g) the liquidation, administration, receivership or insolvency of the Service Provider;
 - (h) any legal limitation, disability or incapacity relating to the Service Provider (whether or not known to you);
 - (i) any invalidity in, irregularity affecting or unenforceability of the obligations of the Service Provider under the Agreement; or
 - (j) the termination of the Agreement.
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 of a surety which we may have 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 Service Provider in competition with you for any sums or liabilities owing or incurred to us by the Service Provider in respect of any such payment by or recovery from us to take or hold any security from the Service Provider in respect of any liability of us hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
4. This Guarantee is irrevocable.
5. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts except that you have the right in your absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated.
6. (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.)

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 two Directors) Director/Secretary

SCHEDULE 9

Form of Collateral Warranty

.....20[]

(1) [STAKEHOLDER BENEFICIARY]

and

(2) [SERVICE PROVIDER]

[and]

[(3) TRANSPORT FOR LONDON]

**FORM OF DEED OF COLLATERAL
WARRANTY**

relating to the Programme Manager
for the East London Line Project

Herbert Smith

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1.10.1 Words importing the singular include the plural and vice versa and words importing one gender include both other genders.

1.10.2 Where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations.

2. WARRANTIES

2.1 **In consideration of the sum of Ten Pounds paid by the Stakeholder to the Consultant receipt of which is hereby acknowledged the Consultant warrants to the Stakeholder that the Consultant has complied and shall continue to comply with all its obligations under the Appointment. Without prejudice to the foregoing, the Consultant further warrants to the Stakeholder that:**

2.2 **the Consultant has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional consultant who has held itself out as competent to perform the Services and who is to perform or has performed the Services having due regard to the size, scope, nature and complexity of the Project; and**

2.3 **the Consultant has not and shall not recommend or select for use in the construction of the Project any goods or materials which are stated in the Appointment to be prohibited or which are generally known at the time of specification to be deleterious to health and safety or the durability of the Project in the particular circumstances in which they are used or which are otherwise not in accordance with British Standards, Codes of Practice or good building practice or techniques;**

2.4 **provided that in the event of any breach of this Clause 2:**

(a) (subject to Clause 10) the Consultant shall be entitled in any action or proceedings by the Stakeholder to rely on any express limitation in the Appointment and (subject as aforesaid) to raise the equivalent rights in defence of liability (except set-off and counterclaims) as it would have had if the Stakeholder had been named as the joint employer with TfL under the Appointment;

(b) the Consultant's liability under this Deed for any breach or breaches of this Clause 2 shall be limited to that proportion of the Stakeholder's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same and on the basis that the Contractor and the Other Consultants shall be deemed to have provided contractual undertakings to the Stakeholder in respect of the performance of their respective services in connection with the Project and shall be deemed to have paid to the Stakeholder such proportion (if any) of the Stakeholder's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility under such undertakings; **PROVIDED THAT** if this Clause 2 shall be found to be ineffective, inoperable or unenforceable for any reason it shall be severed and deemed to be deleted from this Deed and the remaining provisions of this Deed shall continue to have full force and effect;

- (c) no action or proceedings for any breach of this Clause 2 shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the whole of the Project as certified under the Contract; and
- (d) the obligations and liabilities of the Consultant under this Clause 2 shall not be released or diminished by any enquiry or inspection into any matter which may be made or carried out by or on behalf of the Stakeholder or by the appointment of (or failure to appoint) any person, firm or company by the Stakeholder to make or carry out any enquiry or inspection and whether or not any independent liability of such person, firm or company to the Stakeholder arises in connection therewith.

3. COPYRIGHT LICENCE

- 3.1 **The Consultant as beneficial owner and with full title guarantee hereby grants (or shall procure that the beneficial owner who can grant the same with full title guarantee shall grant) to the Stakeholder a royalty free, irrevocable and non-exclusive licence or licences to use and copy the Documents for any purposes connected with the Project and completed Project, including (without limitation) the execution, completion, repair, maintenance, modification, extension, mortgaging, advertisement, reinstatement, letting and sale thereof. Such licence or licences shall carry the right to grant sub-licences and shall be transferable to third parties. The Consultant shall have no liability for any use of the Documents which is not permitted by this Clause 2.**
- 3.2 **The Consultant irrevocably waives, and shall procure that each of its sub-contractors or suppliers irrevocably waive, any rights he may have under Chapter IV (Moral Rights) Part 1 of the Copyright Design and Patents Act 1988 in relation to any Documents and the Consultant shall obtain a written waiver from his employees, and from the respective employees of each of its sub-contractors or suppliers, of any such rights which they may have.**
- 3.3 **The Consultant shall provide the Stakeholder with copies of the Documents as the Stakeholder may request from time to time, provided that the Stakeholder shall be responsible for the Consultant's reasonable copying charges.**

4. INSURANCE

- 4.1 **Without prejudice to its obligations under this Deed or otherwise at law, the Consultant shall from the date hereof until the expiry of 12 years from the date of the [practical completion] of the whole of the Project as certified under the Contract, maintain professional indemnity insurance sufficient to cover the Consultant's obligations and liabilities under or in connection with this Deed with a limit of indemnity of not less than £[] for each and every claim, provided such insurance continues to be available generally in the insurance market at commercially reasonable rates. The Consultant shall as and when it is reasonably required so to do by the Stakeholder make available for inspection by the Stakeholder documentary evidence that such insurance is being maintained properly. The Consultant shall immediately inform the Stakeholder if such insurance ceases to be maintained and/or available in the insurance market at commercially reasonable rates. The Consultant shall immediately upon receipt thereof notify each such insurer or underwriter of its professional indemnity insurance of any claim made against it under this Deed.**

5. ASSIGNMENT

5.1 The benefit of this Deed and the rights arising hereunder (whether or not accrued) shall be assignable on two occasions without the Consultant's prior written consent. Thereafter no further assignment is permitted without the Consultant's prior written consent (such consent not to be unreasonably withheld or delayed).

6. INSTRUCTIONS

6.1 The Stakeholder has no authority to issue any direction or instruction to the Consultant in relation to the performance of its obligations under the Appointment [unless and until the Stakeholder has given notice under Clauses 8.1 or 8.2.

7. STAKEHOLDER'S LIABILITY FOR SUMS DUE

7.1 The Stakeholder has no liability to the Consultant in respect of sums due under the Appointment unless and until the Stakeholder has given notice under Clauses 8.1 or 8.2.

8. OPTION FOR STAKEHOLDER TO STEP IN

8.1 The Consultant agrees that in the event of the termination of the Agreement by the Stakeholder the Consultant will, if so required by written notice given by the Stakeholder, and subject to Clause 8.3, accept the instructions of the Stakeholder or its appointee to the exclusion of TfL in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment, and upon the Stakeholder's request the Consultant will enter into an agreement for the novation of the Appointment by TfL to the Stakeholder or its appointee, such agreement to be in terms reasonably required by the Stakeholder (but subject always to Clause 8.3).

8.2 The Consultant further agrees that it will not without first giving the Stakeholder not less than 21 days' prior written notice exercise any right it may have to terminate the Appointment (or its employment thereunder) or to treat the same as having been repudiated by TfL or to discontinue the performance of any duties and/or obligations to be performed by the Consultant pursuant thereto. Such right to terminate the Appointment or treat the same as having been repudiated or discontinue performance shall cease if within such period of notice, and subject to Clause 8.3, the Stakeholder shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Stakeholder or its appointee to the exclusion of TfL in respect of the carrying out and completion of the Project upon the terms and conditions of the Appointment, and upon the Stakeholder's request the Consultant shall enter into an agreement for the novation of the Appointment by TfL to the Stakeholder or its appointee, such agreement to be in terms reasonably required by the Stakeholder (but subject always to Clause 8.3).

8.3 It shall be a condition of any notice given or any new agreement proposed by the Stakeholder under Clauses 8.1 or 8.2 that the Stakeholder or its appointee accepts liability for payment of the sums properly due to the Consultant under the Appointment (including any sums outstanding at the date of such notice) and for the performance of TfL's obligations under the Appointment. Upon the issue of any notice by the Stakeholder under Clauses 8.1 or 8.2 the Appointment shall continue in full force and effect as if no right of determination or to treat the same as repudiated or to discontinue performance on the part of the Consultant had arisen and the Consultant shall be liable to the Stakeholder or its appointee in lieu of its liability to TfL. If any notice given by the Stakeholder under Clauses 8.1 or 8.2 requires the Consultant to accept the instructions of the Stakeholder's appointee and/or to novate the Appointment to such appointee,

the Stakeholder shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Stakeholder's appointee.

- 8.4 TfL has agreed to be a party to this Deed for the purposes of acknowledging that the Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by Clauses 8.1 and 8.2. TfL acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Stakeholder under Clause 8.1 as conclusive evidence for the purposes of this Deed of the termination of the Agreement by the Stakeholder.**

9. NOTICES

- 9.1 All notices required to be delivered by this Deed shall be in writing and shall only be duly given if delivered by hand or sent by prepaid recorded delivery to the registered office or principal place of business of the intended recipient or to the relevant facsimile number which, for the Consultant is [], [and] the Stakeholder is [] [and for TfL is []], or to such other address or facsimile number as a party may have notified in writing to the other parties to this Deed. In the case of such notices the same shall be deemed to have been received:**

9.2 at the time of delivery in the case of delivery by hand;

9.3 forty eight hours after being posted in the case of registered post; and

9.4 upon completion of the transmission in the case of a facsimile transmission.

10. GOVERNING LAW AND JURISDICTION

- 10.1 This Deed shall be governed by English law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.**

10.2 Notwithstanding the proviso to Clause 2, if and insofar as the Appointment leaves any matter or thing to the decision or opinion of any person (including the resolution of any dispute under the Appointment by adjudication proceedings), the same (including any decision of the adjudicator under such proceedings and whether or not such decision is to be final and binding on the parties to the Appointment) shall not prevent the Courts, in determining the rights and liabilities of the parties hereunder, from making any finding necessary to establish that such decision or opinion was correctly made or expressed on the facts found by the Courts or to establish what or what other decision should have been made or expressed and giving effect thereto as if no decision or opinion had been made or expressed.

10.3 The parties hereby agree that if and to the extent that the Courts do not have the powers conferred upon them by Clause 10.2 the dispute or difference shall be referred to arbitration in accordance with the Rule of London Court of International Arbitration to:

10.3.1 a Judge sitting in the Technology and Construction Court as arbitrator; or

10.3.2 (where such Judge is prevented from accepting such reference for any reason) a person to be agreed by the parties as arbitrator or, upon failure so to agree within 14 days of a written request made by either party to agree to such a person, a person to be appointed as arbitrator on request made by either party by the President or a Vice-President or a Vice-President (or his duly appointed deputy for such purpose) for the time being of the Chartered Institute of Arbitrators.

10.4 and the person so appointed as arbitrator shall exercise the powers referred to in Clause 10.2 for the purpose of resolving the dispute or difference in question, and the date of commencement of the arbitration shall be deemed to be the date of commencement of the litigation proceedings.

11. EXCLUSION OF THIRD PARTY RIGHTS

11.1 Each party confirms that no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

IN WITNESS WHEREOF the parties have executed these presents as a deed the day and year first before written.

EXECUTED as a **DEED** and delivered (but not)
until the date hereof) by [the Stakeholder] by)
the affixing of its Common Seal in)
the presence of the following officers who)
have each signed their names:)

Director

Director/Secretary

EXECUTED as a **DEED** and delivered (but not)
until the date hereof) by [the Consultant] by)
the affixing of its Common Seal in)
the presence of the following officers who)
have each signed their names:)

Director

Director/Secretary

[EXECUTED as a **DEED** and delivered (but not)
until the date hereof) by [TfL] by)
the affixing of its Common Seal in)
the presence of the following officers who)
have each signed their names:)

Director

Director/Secretary]