

Company shall specify under Clause 19.3) or the date falling three (3) days after the receipt by the Supplier of the Rejection Notice.

18.2 The Supplier shall, without further act, pass title to the Goods, with full title guarantee to the Company, upon the Order Delivery Date.

## **19 Inspection of the Goods**

19.1 Following delivery by the Supplier to the Company of the Goods the Company shall inspect the Goods.

19.2 If, following the inspection referred to in Clause 19.1, the Goods do not comply with the terms of the relevant Contract, including but not limited to, conforming to the Specification and being fit for the purpose for which they are intended, without prejudice to any rights or remedies the Company may have against the Supplier, whether under the relevant Contract or otherwise, the Company may by notice in writing (the "**Rejection Notice**") to the Supplier reject all or any part of the Goods (the "**Rejected Goods**").

19.3 The Rejection Notice shall specify the reason for the rejection of the Rejected Goods. Within seven (7) days of receipt of the Rejection Notice, the Supplier shall remove such Rejected Goods at its risk and expense from the Delivery Address or such other address as the Company shall specify in the Rejection Notice and shall at the Company's option:

- (a) replace such Rejected Goods with Goods which conform in all respects with the relevant Contract within five (5) Working Days; or
- (b) if an application for payment has been submitted or payment made for the Rejected Goods, issue a credit note in respect of that application or refund the payment (as applicable); and

19.4 The Company's rights and remedies under this Clause 19 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the relevant Contract by the Sale of Goods Act 1979.

19.5 If the Supplier fails to promptly replace Rejected Goods in accordance with Clause 19.3(a), the Company may, without affecting its rights under Clause obtain substitute goods from a third party supplier, or have the Rejected Goods repaired by a third party, and the Supplier shall promptly reimburse the Company for the costs it incurs in doing so.

19.6 The Goods shall conform in all respects with any sample approved by the Company and in the absence of a sample; all the Goods provided shall be within the normal limits of industrial quality.

## **20 Warranty**

20.1 Without prejudice to any rights or remedies the Company may have against the Supplier whether under each Contract or otherwise, the Supplier shall without delay, upon a request by the Company to do so, replace or (at the Company's option) repair all Goods in which a Defect has occurred or is likely to occur in the reasonable opinion of the Company, provided that such request is made during the Warranty Period. Any replacement Goods shall comply in all respects with the terms of the relevant Contract and shall conform to the Specification and shall be fit for the purpose for which they are intended.

20.2 For the avoidance of doubt, where Goods are replaced or repaired in accordance with this Clause 20, such repaired Goods or replacement Goods shall be re-delivered to the Company in accordance with the terms of the relevant Contract and the provisions of Clauses 11, 18 and 19 shall apply to such re-delivered Goods. The Warranty Period for these purposes shall commence on the date that the Supplier delivers the Goods in accordance with Clause 11 or, where applicable, re-delivers the Goods in accordance with this Clause 20.

20.3 The Supplier shall use all reasonable endeavours to procure for the Company the benefit of such warranties and other rights as are conferred on the Supplier in relation to Defects in such part or parts of the Goods which are not manufactured by the Supplier.

## **21 Intellectual Property Rights**

### *21.1 Existing Contracts*

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

### *21.2 Vesting of Intellectual Property Rights created under this Agreement or any Contract*

All Intellectual Property Rights created wholly or mainly in connection with the performance of, or in order to perform, the Agreement and each Contract shall vest in the Company. The Supplier shall procure that each of its subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Company.

### 21.3 *Ownership of the Supplier's Intellectual Property Rights*

Without prejudice to Clause 21.2, all Intellectual Property Rights owned by the Supplier or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 21.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

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

The Company shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 21.3 for the purposes of:

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

### 21.5 *Provision of Supporting Documentation and Other Materials*

The Supplier shall:

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

use and copying of, the Intellectual Property Rights referred to in Clauses 21.2, 21.3 and 21.4 above; and

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

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

If the Supplier has not complied with its obligations under Clause 21.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under each Contract until the Supplier has complied with its obligations under Clause 21.5(a).

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

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Goods and/or as part of the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 22.1 (including their equivalent in any jurisdiction to which the Supplier or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Agreement and each Contract then the Supplier, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

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

For the avoidance of doubt, the Company shall be entitled to use and copy the materials, items and Documentation referred to in Clause 21.5 above and anything in which the Intellectual Property Rights referred to in Clauses 21.2, 21.3 and 21.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods and/or Services for the carrying out of any activities in connection with the licence under Clause 21.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

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

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the TfL Group against any actions, claims, losses, demands, costs, charges or expenses that

arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.

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

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

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

*[Company's Intellectual Property Rights The Supplier is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.]*

## **22 Termination and Suspension**

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

- (a) the Supplier commits a breach of the Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;

- (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded;
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Agreement and each Contract) or is deemed unable to pay its debts as they fall due [*in accordance with*] [*within the meaning of*] Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same [*or any similar or analogous procedure or step is taken in any jurisdiction*];
- (e) a breach of the Supplier's obligations under Clause 50 [*or*
- (f) *the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 9 Supplier performance.*

22.2 Without prejudice to Clause 22.1, the Company shall have the right:

- (a) to terminate the Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend the provision of the Goods and/or Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

22.3 In the event that the Company terminates the Agreement and/or any Contract for any reason under this Clause 22, the Supplier shall, without prejudice to any other rights or remedies which the Company may have under the Agreement and such Contract or under general law at the Company's option law, at the Company's option:

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

- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Supplier or any of its subcontractors have possession.

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

22.4 In the event that the Agreement and/or any Contract is terminated, the liability of the Company shall be limited to payment to the Supplier for those Goods and Services provided in accordance with the Agreement and such Contract up until the date of such termination.

22.5 Following a termination in accordance with Clause 22.1 (but not a termination in accordance with Clause 22.2(a)) the Supplier shall be liable to the Company for

- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
- (b) where the Company exercises its rights under Clause 22.3(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Goods and Services under the Agreement and the relevant Contract by the Supplier ("**Excess Costs**"), such Excess Costs.

22.6 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 22.2(b), the Supplier shall:

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

22.7 In the event that the Agreement and/or any Contract is suspended in accordance with Clause 22.2(b), and such suspension continues for a period of twenty-eight (28) days, the Supplier shall be entitled to request that the Company serve a Notice to Proceed. In the event that no Notice to Proceed is issued by the Company within a further fourteen (14) days from such request of the Supplier, the Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.