

- 8.2. The Company or its authorised representatives shall have the right to reject any such materials and equipment or part(s) thereof which in their opinion fail to meet the Specification and the Contract.
- 8.3. All inspection, tests or analyses of materials and equipment that may be required by the Company's Representative or another authorised representative of the Company shall be undertaken at the Contractor's expense.
- 8.4. The exercise by the Company's Representative or another authorised representative of the Company of its rights under Clauses 8.1 to 8.3 shall not relieve the Contractor from any of its obligations under this Agreement or any Contract.

9. Contract Register

- 9.1. The Contractor shall prepare, submit to the Company and maintain a list of all contracts entered into by the Contractor for the purpose of performing its obligations under this Agreement and any Contract (the "**Contract Register**").
- 9.2. The Contractor shall ensure that:
 - 9.2.1. all documents listed on the Contract Register shall be kept in good order and shall be available for inspection by the Company and the Contractor shall use reasonable endeavours to make available to the Company such items of clarification or substantiation as may reasonably be required by the Company in relation thereto; and
 - 9.2.2. the Contractor and any subcontractor shall provide to the Company within fourteen (14) Working Days of the Company's request, a copy of such part of the documents referred to in the Contract Register which the Company reasonably requires for auditing the Contractor's compliance with this Agreement and any Contract.
- 9.3. The Contractor shall retain all documents referred to in the Contract Register for a period of not less than eight (8) years after the expiry date of the relevant Contract or shall deliver up such records upon earlier expiry of this Agreement. The Company shall have the right to audit any and all such registers and records.

10. Contract Completion

- 10.1. The Company's Representative shall certify the date when in its opinion the Works have been completed in accordance with the following procedure:
 - 10.1.1. where the Contract Completion Criteria are satisfied in respect of the Works under the Contract, the Contractor shall be entitled to submit to the Company's Representative a Contract Completion Certificate for such Works signed by a duly authorised representative of the Contractor certifying that the Contract Completion Criteria have

been satisfied. Following receipt of a Contract Completion Certificate from the Contractor in accordance with this Clause 10.1.1, the Company's Representative shall within ten (10) Working Days of receipt of such Contract Completion Certificate, counter-sign and date that Contract Completion Certificate and Completion shall occur, or refuse to do so under Clause 10.1.2;

10.1.2. the Company's Representative may refuse to sign a Contract Completion Certificate for the Works if it, acting reasonably, believes the Contract Completion Criteria have not been satisfied in full in which case it shall within [twenty (20) Working Days] of such refusal, notify the Contractor in writing setting out which of the Contract Completion Criteria have not been satisfied;

10.1.3. if the Contractor, acting reasonably, disputes any of the reasons set out in the notice issued by the Company's Representative pursuant to Clause 10.1.2, it shall notify the Company of this in writing within [five (5) Working Days] of receipt of such notice and the Parties shall resolve the matter in accordance with Clause 34 (Dispute Resolution);

10.1.4. where the Works have not achieved Completion by the Contract Completion Date, Liquidated Damages shall become payable in accordance with Clause 11.1.

11. Liquidated Damages

11.1. Without limiting any other remedy, the Contractor shall pay or the Company may deduct from the price payable for the Works (or any other amounts due to the Contractor under or pursuant to this Contract) by way of Liquidated Damages:

11.1.1. the amounts stated in or calculated pursuant to the Framework Particulars in respect of failure to complete the Works by the Contract Completion Date or such revised date or dates as may substituted in accordance with Clause 22 or Clause 28; or

11.1.2. such sums as may be identified and calculated in accordance with the Framework Particulars in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof that is caused by a failure of the Contractor to perform the Works or a breach of its obligations under this Contract,

from the commencement of the event, effect, delay or failure in question to the cessation of the event, effect, delay or failure in question (irrespective of the intervention of a termination event).

11.2. The Company shall not be entitled to deduct or the Contractor shall not be liable to pay such Liquidated Damages amounts to the extent that such amounts are due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Contractor) or (ii) a Force Majeure Event or (iii) a Permitted Delay Event.

- 11.3. The Contractor shall not be liable to meet the Company's claim for Liquidated Damages pursuant to Clause 11.1 to the extent that the aggregate of Liquidated Damages accrued in that Accounting Period exceed the sum specified in the Framework Particulars.
- 11.4. The Contractor accepts that the amount of Liquidated Damages under this Agreement and any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Contractor's failure to perform the Works by the Contract Completion Date.
- 11.5. In the event that all or any of the obligations of the Contractor under this Agreement and any Contract to pay Liquidated Damages are held to be unenforceable, the Contractor agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production, loss of savings. The damages payable by the Contractor in accordance with this Clause 11 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Contractor that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.

12. Licences and Consents

- 12.1. The Contractor shall obtain at its own cost all licences, consents, permits, notices and approvals necessary for the performance of the Works (including, without limitation, those required by any Applicable Laws or Standards) except those stated in the Specification as being the responsibility of the Company.
- 12.2. The Contractor shall ensure that the conditions or requirements of licenses and consents and other approvals are complied with by its employees, representatives, agents, subcontractors and suppliers.
- 12.3. Where the Specification states that the Contractor will be required to contribute to the preparation of submissions for licences and consents and other approvals by the Company the Contractor shall afford all necessary assistance to achieve such licences and consents within the timescales stated in the Specification.

13. Title

- 13.1. Without prejudice to any rights of rejection the Company may have, property in and title to any Plant and Materials shall pass to the Company upon the earlier of their delivery to the Site and the time when the Company makes payment (partial or otherwise) for them. The Contractor

shall ensure that such Plant and Materials are clearly identified as belonging to the Company and are set aside for the Company.

- 13.2. If requested by the Company, the Contractor shall provide proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under any Contract.

14. Defects

- 14.1. Any defects in the Works (including, without limitation, excessive shrinkages or any failure to comply with the terms of the relevant Contract) which appear within the Defects Liability Period and arising out of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors shall be notified by the Company to the Contractor who shall immediately make good such defects entirely at its own cost unless the Company shall otherwise instruct. The Company shall certify the date when in its opinion the Contractor's obligations under this Clause 14 have been discharged. The Contractor shall carry out any work required under this clause at such time and in such manner as will minimise any disruption to the operation of the Underground Network and/or Site and shall comply with the reasonable requirements of the Company in relation to access for, and the timing and method of execution of any such works.

- 14.2. Acceptance of Works by the Company shall be without prejudice to the Contractor's liability for defective works, which shall expire twelve (12) years following the date of acceptance of the relevant Works.

- 14.3. If the Contractor fails to fulfil its obligations under Clause 14 or if the Company elects in its absolute discretion, the Company may itself or instruct a third party to make good the defect in either which case the Company shall be entitled to recover from the Contractor all costs, expenses, charges, loss and damages reasonably incurred by the Company as a result of such defect and its making good.

15. Safety

- 15.1. The Contractor shall not endanger in any manner the health and safety of, or unreasonably interfere with the proper performance of the duties of, the Company's employees or third parties or otherwise expose the Company to liability under any Applicable Laws and Standards, including (without limitation) the Health and Safety at Work etc. Act 1974, the Transport and Works Act 1992, or any statutory modifications or re-enactments thereof.

- 15.2. The Contractor shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):

- i. the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in Schedule 6 ("QUENSH") as amended from time to time; and
 - ii. the Company's drug and alcohol principles as amended from time to time.
- 15.3. Section 14.1.1 (Alcohol and drugs) of QUENSH shall apply to this Agreement and each Contract as if the term "LU Premises" means any of the Company's property and as if references to "LU" are references to the Company.
- 15.4. The Company may at its discretion carry out on the Contractor's behalf any testing of the Contractor's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Contractor to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Contractor.
- 15.5. Works on and Adjacent to the Railway

The Contractor shall carry out the Works in such a manner as not to endanger or interfere in any way with the Underground Network, railway or any railway operator. The Contractor shall strictly observe all rules and regulations set out or referred to in this Agreement and each Contract and any further instructions, rules and regulations which it may receive from the Company from time to time and the precautions and requirements stated or referred to in the Schedules for the working, protection and return of the railway or for the protection of persons on or adjacent to the Underground Network, railway or railway operations.

16. Construction (Design and Management) Regulations 2015

Where the CDM Regulations apply to the Works and the Company appoints the Contractor to act as the principal contractor and/or principal designer in accordance with the CDM Regulations, the Contractor shall comply with all the duties of a principal contractor and/or principal designer as set out in the CDM Regulations.

17. Environmental Claims

- 17.1. The Contractor shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Contractor's performance, non-performance or part performance of each Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Contractor, its employees, subcontractors or agents.
- 17.2. The Contractor shall notify the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's Site.

17.3. Where the Contractor discovers or suspects that the Site has been contaminated or polluted by another party, the Contractor shall notify the Company of the identity of the other party, where known. The Contractor shall not without the prior written consent of the Company undertake any environmental investigations on Site or commission or undertake any Remediation. The Contractor shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

17.4. In the event that the Contractor commissions an environmental assessment, the Contractor shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

17.5. The Contractor shall provide to the Company:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Works (for the purposes of this Clause 17, the “**authorisations**”);
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

18. Pricing

18.1. The prices for the Works shall be the Contract Price set out in the Order using the rates and prices set out in Schedule 4. The prices for the Works or any Contract Price shall only be changed in accordance with the Contract Variation Procedure.

18.2. The Parties agree that the rates and prices stated in Schedule 4 shall be the maximum rates and prices for each Contract during the term of this Agreement and any Contract.

19. Payment

19.1. The Contractor shall submit an application for payment (a “**Payment Application**”) for the Milestone Payment on completion of the relevant Milestone, to the Company’s Representative at the address stated in the Framework Particulars by the Wednesday of the fourth week of the Accounting Period corresponding to that relevant Milestone.

19.2. Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company to check the Payment Application and set out in reasonable detail a description of the Milestone achieved.

19.3. The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company receives the Payment Application.

19.4. The Company shall assess and verify the Payment Application in a timely manner and shall notify the Contractor in writing not later than five (5) days after the date of receiving the Payment Application of:

(a) the amount (if any) the Company considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and

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

a Contract Payment Approval Form ("**CPAF**"). It is immaterial for the purposes of this Clause 19.4 that the amounts referred to in Clauses 19.4(a) or 19.4(b) may be zero. A notification given under this Clause 19.4 shall constitute a payment notice for the purposes of section 110A of the HGCRA. Where the Company fails to comply with its obligations under the Clause 19.4 and there is an undue delay in considering and verifying the Contractor's Payment Application, the CPAF shall be regarded as issued for the purposes of Clause 19.6 after a reasonable time has passed.

19.5. The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application except if the Contractor fails to issue a VAT invoice in accordance with the timescales set out in Clause 19.7 (and such failure is not due to any failure by the Company to comply with its obligations under Clause 19.4), then the final date for payment shall be extended by the additional number of days taken by the Contractor to issue the VAT invoice.

19.6. Subject to Clauses 19.7, 19.8 and 19.9, the Company shall pay the Contractor the sum referred to in the Company's Representative's CPAF pursuant to Clause 19.4 (the "**Notified Sum**") on or before the final date for payment.

19.7. Within six (6) days of receipt by the Contractor of the CPAF, the Contractor shall issue a corresponding VAT invoice for the amount of the relevant CPAF and attach one (1) copy of the CPAF to the said invoice and send the invoice to the Company's Representative at the address stated in the Framework Particulars. The Contractor shall ensure that such VAT invoice:

19.7.1. is dated and issued no earlier than the date when the CPAF was issued; and

19.7.2. clearly states the purchase order number.

If the Contractor's VAT invoice does not comply with the requirements of this Clause 19.7 then the Company shall be under no obligation to pay the same. The final date for payment of each VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.

19.8. If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Contractor in writing not later than one (1) day (the "**Prescribed Period**") prior to the final date for payment of the relevant VAT invoice of:

(a) the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or

(b) if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this Clause 19.8 that the amounts referred to in Clause 19.8(a) or Clause 19.8(b) may be zero. Where a notice is given under this Clause 19.8, the Company's obligation to pay the Notified Sum under Clause 19.6 applies only in respect of the sum specified pursuant to this Clause 19.8.

19.9. Notwithstanding Clauses 19.6 and 19.8, if the Contractor is subject to an event set out in Clause 26.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment of the relevant VAT invoice.

19.10. The Contract Price shall be fixed and inclusive of all expenses and disbursements and shall only be changed in accordance with the Contract Variation Procedure.

19.11. The Contract Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

19.12. In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the Company and the Contractor:

(a) any sum of money is recoverable from or payable by the Contractor; or

(b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the TfL Group

then the same may be set-off against and/or deducted and/or withheld from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any Contract.

19.13. Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Contract Price and any associated Variation Order and, unless the Company directs otherwise, be in the format set out in Appendix 1 of Schedule 4. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.

19.14. Failure on the part of the Contractor to submit a Payment Application in accordance with Clause 19.13 may lead to delays in processing the Payment Application and subsequent payment of invoices. Any loss or additional expenses incurred by the Contractor in the correction or re-submission of a Payment Application or invoice shall be at the Contractor's own expense.

19.15. All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.

19.16. No payments made by the Company hereunder, including final payment under any Contract, shall prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company:

- (a) any amount in respect of which there exists a bona fide dispute; and
- (b) any amount that on the basis of the Company's bona fide estimate the Company considers due to it from the Contractor. Such estimates shall be binding on the Contractor unless and until varied by agreement between the Parties or any award, order or judgement.

19.17. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or

will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of this Agreement and any Contract or otherwise.

20. Contractor Performance

20.1. On the date that the Company receives the first Payment Application and every four (4) weeks after that date, the Company will assess the Contractor's performance under this Agreement and each Contract in accordance with Schedule 12.

20.2. The Company shall have the right to:

- (a) abate the Contractor for failure to meet the key performance indicators stated in Schedule 12; and
- (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Contractor in its performance of this Agreement and any Contract or any failure by the Contractor to meet the performance standards set out in Schedule 12.

21. Bonds, Warranties and Guarantees

21.1. Where stated in the Framework Particulars, the Contractor shall at its own expense provide within seven (7) days of the Framework Commencement Date:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Contractor (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

21.2. The Contractor shall ensure that any bond required under Clause 21.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Contract Price (or such other amount as may be stated in the Framework Particulars) at all times until the expiry of the Defects Liability Period; and
- (b) is renewed every twelve (12) months until the expiry of the Defects Liability Period.

21.3. If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 21.1 and 21.2 then the Contractor shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

21.4. If requested by the Company, the Contractor shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 21.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

21.5. If any performance bond and/or parent company guarantee required by any Contract is not procured by the Contractor and delivered to the Company in accordance with Clause 21.1, one quarter of the aggregate of the Contract Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Contractor until such documents have been delivered.

21.6. If required by the Company, the Contractor shall procure that the terms of any Subcontract require the Subcontractor, within seven (7) days of a written request by the Company to the Subcontractor, to enter into:

- (a) a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Contractor shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company;
- (b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the Subcontractor's obligations under any collateral warranty required under this Clause 21.6.

21.7. If any warranty (including any accompanying parent company guarantee) required under Clause 21.6 is not delivered to the Company in accordance with Clause 21.6 one quarter of the aggregate of the Contract Price relative to the Works provided by the relevant Subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

22. Variation

22.1. The Company may, at any time during the term of any Contract, instruct or authorise (as the case may be) a Variation in accordance with the Contract Variation Procedure in which case the relevant parts of the Contract shall be amended accordingly.

22.2. Any other variation to the terms of this Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

23. Transfer Regulations

23.1. For the purposes of this Clause 23:

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

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

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

“Subsequent Relevant Employee” means a person employed or engaged by the Contractor or relevant subcontractors from time to time in respect of any part of the Works who would transfer to a Replacement Employer by virtue of the Transfer Regulations.

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

“Transferring Employees” means those employees of or those engaged by the Current Services Provider who transfer or have the right to transfer to the Contractor under the Transfer Regulations; and

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

23.2. The Contractor shall comply and procure that its subcontractors comply with any obligations which may arise out of a transfer to the Company or another person under the Transfer Regulations upon expiry of the Term or earlier termination of this Agreement.

23.3. At any time during the last twelve (12) months of this Agreement and/or during any period of notice terminating this Agreement, the Company may require the Contractor to provide, within a specified period of being requested, to the Company (or to any other person or persons nominated by the Company) such information as is reasonably required by the Company or such other persons relevant to the potential liabilities of the Company or any other person arising under the Transfer Regulations including but not limited to information on the following:

- (a) the names of employees (of the Contractor or its subcontractors) engaged in providing the Works, their salaries and other conditions of employment, ages and length of service;

- (b) the method of organisation of the employees (of the Contractor and its subcontractors) engaged in providing the Works and documentary evidence relating to such organisation;
- (c) the proposals for informing and consulting with affected employees;
- (d) details of collective agreements and union recognition agreements; and
- (e) any other employee liability information within the meaning of the Transfer Regulations, and will in addition provide copies to the Company upon request of any communication with any potential or intended new consultant or the Contractor's employees or their representatives relating to the effect on such employees of the expiry or termination of this Agreement.

23.4. The Contractor shall provide the Company upon request with the name and address of a person within its organisation to whom all queries and requests for information under this Clause 23 may be addressed. The Contractor will if required by the Company warrant that any information provided under Clause 23 is accurate, complete and not misleading, including any information supplied in relation to its subcontractors.

23.5. The Contractor shall not and shall procure that its subcontractors shall not in the eleven (11) months prior to the expiry of the Term or termination of this Agreement (or where notice of termination is given of less than six (6) months, during any such period of notice) without the Company's consent:

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

23.6. The Contractor shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Contractor, its servants or agents in connection with or arising from or incurred by reason of the employment of the

Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, of failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Contractor, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Works.

23.7. The Contractor shall indemnify the Company and all Replacement Employers against all Relevant Claims and Liabilities arising from or related to:

- (a) any claim by a Subsequent Relevant Employee in respect of any default, failure or omission (or alleged default, failure or omission) by any person whatsoever concerning or arising from employment before a Subsequent Transfer Date in respect of which the Company or the Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations; and
- (b) any claim by any former or existing employee of the Contractor or relevant subcontractor (other than a Subsequent Relevant Employee) in respect of which the Company or a Replacement Employer incurs liability cost or expense by reason of the operation (or alleged operation) of the Transfer Regulations.
- (c) In this Clause 23.7 "Relevant Claims and Liabilities" include those incurred by the Company by reason of any contract term between the Company and a Replacement Employer provided always that in relation to Relevant Claims and Liabilities which the Company may incur to a Replacement Employer, the Contractor shall not be required to indemnify the Company or the Relevant Employer for more than or with a greater scope than it would if such Relevant Claims and Liabilities were made against or incurred by the Company in providing an indemnity under this paragraph.

23.8. The provisions of this Clause 23 are without prejudice to the Transfer Regulations. For the avoidance of doubt, any remedies available to the Company for any breach by the Contractor of any provision of this Clause 23 shall be in addition to and not in substitution for any remedies available to the Company under any provision of the Transfer Regulations.

24. Intellectual Property Rights

24.1. Existing Contracts

This Agreement and each Contract 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.

24.2. 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, this Agreement and each Contract shall vest in the Company. The Contractor shall procure that each of its subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Company.

24.3. Ownership of the Contractor's Intellectual Property Rights

Without prejudice to Clause 24.2, all Intellectual Property Rights owned by the Contractor or its subcontractors (of any tier) or other third party and which are not assigned to, or vested in, the Company pursuant to Clause 24.2 shall remain or be vested in the Contractor, its subcontractors (of any tier) or other third party (as the case may be).

24.4. Company's Licence to use the Contractor's Intellectual Property Rights

The Company shall have and the Contractor 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 24.3 for the purposes of:

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

24.5. Provision of Supporting Documentation and Other Materials

The Contractor shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Contractor, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Contractor's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Contractor'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 24.2, 24.3 and 24.4 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 (3) 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.

24.6. Company's Rights of Retention

If the Contractor has not complied with its obligations under Clause 24.5(a), the Company shall be entitled to retain one quarter of the sums that would otherwise be due to the Contractor under each Contract until the Contractor has complied with its obligations under Clause 24.5(a).

24.7. Company's Rights to the Software

If the Contractor or any of its subcontractors providing software for incorporation into or operation of the Works stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 26.1(d) (including their equivalent in any jurisdiction to which the Contractor 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 this Agreement and each Contract then the Contractor, 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.

24.8. 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 24.5 above and anything in which the Intellectual Property Rights referred to in Clauses 24.2, 24.3 and 24.4 subsist for the purposes of inviting tenders or of procuring works the same as or similar to the Works for the carrying out of any activities in connection with the licence under Clause 24.4 subject always to the Company's requirements for tenderers to treat the same in the strictest confidence.

24.9. Contractor's Indemnity against Third Party Intellectual Property Rights Infringement

- (a) The Contractor 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 Contractor 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 Contractor shall use all reasonable endeavours to make such alterations or adjustment to the Works as may be necessary to ensure that the use and provision of the Works continues in spite of such claim.

24.10. 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 Contractor in connection with this 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 Contractor 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.

24.11. Contractor's Licence to the Company's Intellectual Property Rights

The Company hereby grants the Contractor a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the Company (including for the avoidance of doubt the Corporate IPRs as such term is defined in Clause 24.12) which are required by the Contractor for the purposes of providing the Works. Such licence is granted for the duration of this Agreement solely to enable the Contractor to comply with its obligations under this Agreement and is conditional upon the Contractor using such Intellectual Property Rights in accordance with Applicable Laws and Standards and such other quality standards as the Company may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the Company may be used in conjunction with any other trade marks without the prior written consent of the Company.

24.12. Corporate IPRs

24.12.1. The Contractor shall use and shall procure that its subcontractors and suppliers shall use the trade marks, trade names and other Intellectual Property Rights as amended by the Company from time to time (the "**Corporate IPRs**") in compliance with any relevant Company standards from time to time in force.

24.12.2. The Contractor shall not use and shall procure that its subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trade marks, trade names and other Intellectual Property Rights without the Company's prior written consent.

24.12.3. On written request from the Company, the Contractor shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company reasonably determines that any use of the

Corporate IPRs falls below the quality standards notified to it in accordance with Clause 24.12.1, the Company shall give the Contractor written notice of that fact and the Contractor shall correct the use so as to comply with such quality standards taking into account the Company's instructions.

25. Failure to Supply the Works

25.1. Without prejudice to its rights under Clause 26 if: (i) the Contractor fails to perform the Works in accordance with the Contract; or (ii) an emergency exists, then the Company may require the Contractor to remedy such failure in the case of (i) by giving the Contractor at least seven (7) days' notice in writing and in the case of (ii) no prior notice need be given. If the Contractor fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the performance of the Works or part thereof itself or from a third party or permit a third party to perform the Works or part thereof. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 25 is in the case of an event of the type referred to in (i) recoverable by the Company from the Contractor and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Contractor under the Contract.

25.2. For the purposes of this Clause 25 the Contractor hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Contractor or used by the Contractor in connection with the Contract as may be required by the Company to exercise its rights under Clause 25 and the Contractor shall provide all co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 25.

26. Termination and Suspension

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

- (a) the Contractor commits a breach of this 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 Contractor and the Company, of the Company serving notice on the Contractor requiring such remedy;
- (b) the Contractor or anyone employed by or acting on behalf of the Contractor (whether or not acting independently of the Contractor when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) the Contractor commits a persistent breach of Clause 35.2 and/or Clause 35.3;

- (d) the Contractor 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 Contractor under this Agreement and each Contract) or is deemed unable to pay its debts as they fall due *in accordance with* 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
- (e) any limit on the Contractor's liability to pay Liquidated Damages is reached or exceeded;
- (f) the Contractor breaches its obligations under Clause 37;
- (g) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12 (Contractor Performance); or
- (h) the Contractor has, at the Framework Commencement Date or Contract Commencement Date (as the case may be), been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2015.

26.2. Without prejudice to Clause 26.1, the Company shall have the right:

- (a) to terminate this 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 Contractor in writing; or
- (b) at any time to require the Contractor to suspend the provision of the Works by giving notice in writing (a "**Suspension Notice**") to the Contractor.

26.3. In the event that the Company terminates this Agreement and/or any Contract for any reason under Clause 26.1, the Contractor shall, without prejudice to any other rights or remedies which the Company may have under this Agreement and such Contract or under general law at the Company's option:

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

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

26.4. In the event that this Agreement and/or any Contract is terminated, the liability of the Company shall be limited to payment to the Contractor for those Works provided in accordance with this Agreement and/or Contract(s) up until the date of such termination.

26.5. Following a termination in accordance with Clause 26.1 (but not a termination in accordance with Clause 26.2(a)) the Contractor 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 26.3(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 Works under this Agreement and the relevant Contract by the Contractor ("**Excess Costs**"), such Excess Costs.

26.6. In the event that this Agreement and/or any Contract is suspended in accordance with Clause 26.2(b), the Contractor shall:

- (a) issue to the Company an application for payment in respect of those Works provided to the Company in accordance with this 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 Works until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").

26.7. Termination of this Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the Parties arising in any way out of this Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

27. Survival

27.1. The provisions of Clauses 2.2, 2.4, 2.5, 2.6, 2.7, 2.11, 2.15.5 (Contractor's Primary Obligations), 7 (Records and Audit), 13 (Title), 14 (Defects), 17 (Environmental Claims), 19.12 (Set-off), 23.6, 23.7 (Transfer Regulations), 24 (Intellectual Property Rights), 26 (Termination), 27 (Survival), 29 (Indemnity), 30 (Insurance), 31 (Confidentiality), 32 (Freedom of Information), 33 (Data Transparency), 34 (Dispute Resolution), 35 (Corrupt Gifts and Payments of Commission), 38 (Notices), 39 (Entire Agreement), 41 (Free Issue Materials), 42 (No Waiver), 43 (Severance), 46 (Contracts (Rights of Third Parties) Act 1999), 48 (Governing Law and Jurisdiction), 49.3 (Partnerships and Joint Ventures), 50 (Responsible Procurement), 53.1

(Declaration of Ineffectiveness), 53.5 (Data Protection) and 55 (Access) will survive the termination or expiry of this Agreement and each Contract and continue in full force and effect, along with any other clauses, appendices or Schedules of this Agreement and each Contract necessary to give effect to them. In addition, any other provision of this Agreement and each Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

28. Force Majeure and Permitted Delay Events

28.1. Force Majeure

Neither party shall be in breach of its obligations under this Agreement or any Contract if there is any total or partial failure of performance by it of its duties and obligations under this Agreement or any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under this Agreement or any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the relevant Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Contractor to perform its obligations under the relevant Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Contractor.

28.2. Permitted Delay Events

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Contractor shall give notice to the Company's Representative of the same and any claim for an extension of time to the Contract Completion Date, within five (5) days after the cause of any delay has arisen.
- (b) For the purposes of this Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
 - (i) any act of prevention, omission, default, neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
 - (ii) any variation of this Agreement or any Contract under Clause 22; or
 - (iii) any denial of access under Clause 55; or

- (iv) the suspension of this Agreement or any Contract in accordance with Clause 26 (other than where the suspension is necessary by reason of default of the Contractor).
- (c) Where any delay in achieving the Contract Completion Date arises, the Contractor shall be entitled to an extension to such Contract Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Contractor's ability to perform the Works by the Contract Completion Date and provided that the Contractor:
 - (i) notifies the Company of the Permitted Delay Event in accordance with Clause 28.2(a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
 - (ii) provides the Company with reasonable access to the Contractor's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
 - (iii) uses its reasonable endeavours to mitigate the delay to the Contract Completion Date; and
 - (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Agreement or any Contract by the Contractor, its subcontractors or employees.

29. Indemnity

29.1. The Contractor shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Contractor under this Agreement and each Contract:

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and/or the Sites and any other property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and

(d) arising under the Company's contracts with third parties,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

29.2. The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 29.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

29.3. The Contractor's indemnity under Clause 29.1 and all other indemnities under this Agreement and each Contract shall remain in force for the duration of this Agreement and each Contract and for the period of twelve (12) years after the Contract Completion Certificate or earlier termination of each Contract.

29.4. The Company may withhold from any sum due or which may become due to the Contractor any sum due to the Company as a result of the operation of Clause 29.1.

29.5. Other than in respect of the Losses (i) described in Clauses 29.1(a) and (d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with this Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

29.6. The Contractor's total liability to the Company for all matters arising under or in connection with this Agreement and any Contract, other than the excluded matters, is limited to the amount specified in the Framework Particulars and applies in contract, tort and otherwise to the extent allowed under the law of this Agreement and each Contract. The excluded matters are amounts payable by the Contractor as stated in the Contract for:

29.6.1. Excepted Liabilities;

29.6.2. loss of or damage to the Company's property;

29.6.3. any Losses against which the Company is indemnified under Clause 23 (*Transfer Regulations*);

29.6.4. any Losses against which the Company is indemnified under Clause 24.9 (*Intellectual Property Rights*).

30. Insurance

30.1. The insurance requirements under this Agreement and any Contract shall not relieve the Contractor from or limit any of its other obligations and liabilities under this Agreement and any Contract.

30.2. The Contractor shall ensure that the following policy or policies shall, at its own cost, be effected with a reputable insurer for the duration of this Agreement and (in respect of Clause 30.2ii) for a period of not less than twelve (12) years after expiry or termination of this Agreement or any Contract, whichever is the later. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed):

- i. employer's liability insurance in respect of the Contractor's liability for any person in the Contractor's employment in the sum of not less than ten million pounds (£10,000,000) per incident or such other minimum level as may from time to time be required by law;
- ii. professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the services being provided under this Agreement and any Contract but not less than two million pounds (£2,000,000) in the aggregate per annum or such other sum as may be specified in the Order;
- iii. insurance against loss, destruction, theft or damage to tools plant equipment, temporary buildings (including contents therein) belonging to or the responsibility of the Contractor; and
- iv. insurance of all materials acquired by or delivered to the Contractor for the purposes of performing its obligations under this Agreement or any Contract (whether or not the property of the Contractor or of the Company) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the Company and/or the Works are completed.

(together the "**Contractor's Insurances**").

30.3. The Company shall effect the following insurances for each Contract:

30.3.1. construction all risks insurance against loss of or damage to the Works at the Site (as provided for in the policy terms and conditions) in an amount sufficient to cover the full reinstatement value of the Works; and

30.3.2. public liability insurance in respect of sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property during the period of insurance arising out of or in connection with the Works at the Site in an amount not less than £25,000,000 per occurrence (or such other sum as may be specified in the Contract),

(together, the "**Company's Insurances**").

- 30.4. The Company's Insurances shall be in effect for the duration of the Works at the Site and shall be in the joint names of the Company and the Contractor and any other contractors or subcontractors of any tier engaged in carrying out the Works on the Site.
- 30.5. The Company shall provide a copy of the Company's Insurances policies to the Contractor prior to the commencement of each Contract.
- 30.6. The Contractor shall provide satisfactory evidence to the Company prior to the Framework Commencement Date and within one (1) month of renewal or when requested by the Company that the Contractor's Insurances have been effected and are in full force and effect and if so required produce the insurance policies for inspection and receipts for payment of the current premiums.
- 30.7. The Contractor shall notify the Company immediately of its inability to obtain any of the Contractor's Insurances, the cancellation of any of the Contractor's Insurances, or its inability to renew any of the Contractor's Insurances.
- 30.8. If the Contractor fails to maintain the insurance policies as provided in this Clause 30, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Contractor or recover the same as a debt due from the Contractor.
- 30.9. The Contractor must comply with the terms and conditions of the insurances and all reasonable requirements of the Company's and the Contractor's insurers, including (without limitation), in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Contractor must bear the cost of all exclusions and limitations under the Company's Insurances and the Contractor's Insurances.
- 30.10. The Contractor shall comply and shall ensure that its subcontractors comply with the requirements of the Company's claims handling procedures and the Contractor shall not compromise, settle or waive any claim which the Contractor may have under the Company's Insurances without the prior written consent of the Company.

31. Confidentiality

- 31.1. The Contractor undertakes to keep confidential and not to disclose to any third party (without the prior written consent of the Company) any Confidential Information supplied by the Company to the Contractor and shall use such information only for the purpose of the performance of his obligations under this Agreement and each Contract.
- 31.2. On the Company's request, the Contractor shall, so far as is reasonably possible:

- (a) transfer onto hard copies or other media in industry standard format and programming languages and deliver to the Company any Confidential Information in its possession or control supplied by the Company to the Contractor;
- (b) return to the Company all copies (whether hard copy or other media) of such Confidential Information; and
- (c) destroy, erase or otherwise expunge from its records, systems, databases or other forms of archive all such Confidential Information save to the extent that information needs to be retained for statutory purposes or tax purposes.

31.3. The Contractor shall ensure that all his subcontractors, suppliers, employees and agents perform his obligations in Clauses 31.1 and 31.2 as if they were the Contractor, and the Contractor shall be responsible to the Company for any act or omission by his subcontractors, suppliers, employees and agents in breach of such obligations.

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

31.5. The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, publish any material relating to the Company, the Company's Representative, this Agreement, any Contract or the Works without the prior written consent of the Company.

31.6. The Contractor shall not (and shall procure that its employees, agents, subcontractors and suppliers shall not), either alone or jointly with others, make any press, television, radio or other media announcement or give any interview in connection with this Agreement, any Contract or the Works without the prior written consent of the Company to such announcement or interview and its content.

31.7. The provisions of Clauses 31.1 to 31.6 shall not apply:

- (a) to any information which is already in the public domain at the time of its disclosure other than by breach of this Agreement or any Contract; or
- (b) to any information which is required to be disclosed to the extent required by any applicable law, the regulations of any recognised stock exchange, any taxation authorities or by order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

31.8. The Contractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 31 by the Contractor and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this Clause 31.

32. Freedom of Information

32.1. For the purposes of this Clause 32:

"FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Information" means information recorded in any form held by the Company or by the Contractor on behalf of the Company; and

"Information Request" means a request for any Information under the FOI Legislation.

32.2. The Contractor acknowledges that the Company:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

32.3. Without prejudice to the generality of Clause 32.2 the Contractor shall and shall procure that its subcontractors (if any) shall:

- (a) transfer to the Company's Representative (or such other person as may be notified by the Company to the Contractor) each Information Request relevant to this Agreement or any Contract, the provision of Works or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Request; and
- (b) in relation to Information held by the Contractor on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Working Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.

32.4. The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

33. Data Transparency

33.1. The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 31 and Clause 32, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.

33.2. The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Company may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 33.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

34. Dispute Resolution

34.1. Any question, dispute, difference or claim (a "**Dispute**") shall be resolved in accordance with this Clause 34.

34.2. The Parties shall use their reasonable endeavours to resolve any Dispute by a meeting between a suitably qualified and duly authorised representative of the Company and a suitably qualified and duly authorised representative of the Contractor (together the "**Nominated Representatives**") which shall be convened to discuss such Dispute within fourteen (14) days of notification in writing by one Party to the other of a matter in dispute.

34.3. If the Dispute has not been resolved within twenty-eight (28) days after the date of a meeting between the Nominated Representatives in accordance with Clause 34.2 (or if no such meeting was convened within twenty-eight (28) days after the date on which notification was served by one Party on the other), the Dispute shall be referred as soon as practicable to the Company's Contracts and Procurement Manager and the Contractor's Managing Director or in the absence or unavailability of these personnel, persons of similar status deputised to resolve disputes on behalf of their respective companies.

34.4. If the Dispute has not been resolved within twenty-one (21) days of it being referred to the Company's Contracts and Procurement Manager and the Contractor's Managing Director or their deputies in accordance with Clause 34.3 either Party may refer the matter for resolution in accordance with the provisions of Clause 34.6.

34.5. Clauses 34.1 to 34.4 are subject to either party's rights (if any) under the HGCR to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the Company's Adjudication Rules. For the purposes of this Clause 34, "**Adjudication Rules**" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

34.6. If a Dispute is not resolved in accordance with Clauses 34.1 to 34.4, either Party may serve notice referring any Dispute arising out of, under or in connection with this Agreement or any Contract to adjudication to be settled in accordance with the Adjudication Rules.

35. Corrupt Gifts and Payments of Commission

35.1. The Contractor undertakes that it shall not and procures that its subcontractors and agents shall not enter into or offer to enter into any business arrangement with any servant, employee, officer or agent of the Company other than as a representative of the Company without the Company's prior written approval.

35.2. The Contractor undertakes that it shall not, and shall procure that its subcontractors and agents shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.

35.3. The Company shall have the right to audit any and all such records necessary to confirm compliance with this Clause 35 at any time during the duration of this Agreement and each Contract and during the twelve (12) year period following expiry or termination of this Agreement and each Contract.

36. Assignment, Novation and Subcontracting

36.1. The Contractor shall not assign, novate, transfer or sub-contract any of its rights or obligations under this Agreement or any Contract or any part thereof without the prior written consent of the Company.

36.2. The subcontracting of all or any part of the Works to a Subcontractor shall not relieve the Contractor of its obligations to perform the Works under this Agreement or any Contract. The Contractor shall remain responsible for the acts, defaults, omissions and negligence of any Subcontractor or assignee and for the employees, directors, agents and representatives of the Contractor, its Subcontractors or assignees as if they were the acts, defaults, omissions or negligence of the Contractor.

36.3. The Company may novate, assign, transfer or sub-contract this Agreement and/or any Contract (or any part thereof) to any person at any time without the consent of the Contractor, provided the Company has given prior written notice to the Contractor.

36.4. Within seven (7) days of any written request by the Company to the Contractor, the Contractor shall execute a deed of novation in the form set out in Schedule 7.

36.5. Subject to the Company's prior written consent pursuant to Clause 36.1, where the Contractor subcontracts any or all of the Works, the Contractor shall include in each Subcontract (and procure that its subcontractors include in each of their subcontracts) payment terms substantially similar to those set out in Clause 19 (*Payment*).

36.6. On or before the Contract Commencement Date (as the case may be), the Contractor shall notify the Company in writing of the name, contact details and details of the legal representatives of any Subcontractor, to the extent such information has not already been provided by the Contractor to the Company. The Contractor shall also immediately provide to the Company in writing the name, contact details and details of the legal representatives of each new Subcontractor which the Contractor subsequently involves in the Works after the Contract Commencement Date.

36.7. The Company reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Company's exercise of its right under this Clause 36.7, the Company may request that the information provided by the Contractor under Clause 36.7 shall be accompanied by one or more European Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Company:

36.7.1. shall require that the Contractor replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and

36.7.2. may require that the Contractor replace any Subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

36.8. The Contractor shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a Subcontractor pursuant to Clauses 36.7.1 or 36.7.2.

36.9. The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 36.7.1 or 36.7.2.

37. Change of Control

The Contractor shall not without the prior written consent of the Company implement any change of ownership of the Contractor where such change relates to fifty per cent (50%) or more of the issued share capital of the Contractor.