

- 22.8 In the event that the parties are unable to agree upon the variation requested under Clause 22.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 44.
- 22.9 Termination of the Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.
- 22.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the provision of the Goods and Services with immediate effect and that individual may only resume the provision of the Goods and Services at the Company's absolute discretion.

## **23 Cooperation in Handover**

- 23.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and in the three (3) months after the expiry of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the supply of the Goods and Services and in such a manner so as not to unduly disrupt or hinder the Company's business.
- 23.2 Without prejudice to the generality of Clause 23.1 above, the Supplier shall on or prior to the expiry of the Term transfer to the Company such Documentation relating to the Goods or full copies thereof as the Company may request.

## **24 Indemnity and Insurance**

- 24.1 The Supplier 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 Supplier under the 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 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 Supplier, 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.

24.2 The Supplier shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 24.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

24.3 The Supplier's indemnity under Clause 24.1 and all other indemnities under the Agreement and each Contract shall remain in force for the duration of the Agreement and each Contract and for the period of [twelve (12)] years after the Order Delivery Date and/or Order Completion Date or earlier termination of the Agreement and each Contract.

24.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 24.1.

24.5 Other than in respect of the Losses (i) described in Clauses 24.1(a) and 24.1(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 the 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.

24.6 Without prejudice to the obligation to indemnify the Company set out in Clause 24.1, the Supplier undertakes to:

(a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;

(b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;

- (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence;
- (d) maintain at its own cost an adequate level of "goods in transit" insurance commensurate with the risk and, where appropriate, being not less than [ ] per occurrence, in respect of the Supplier's liability for theft, loss or damage to property and Goods while in transit from one place to another or being stored during a journey;
- (e) maintain at its own cost product liability insurance in respect of the Supplier's liability for death or injury to any person, or loss or damage to any property arising out of its performance of any Contract in an amount not less than [ ], for any one occurrence;
- (f) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than [twelve (12)] years after the delivery of the Goods and completion of the Services (whichever is the later);
- (g) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (h) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of the Services or the provision of any of the Goods by the Supplier under any Contract satisfactory evidence in the form of a broker's letter or similar, confirming the existence of insurance in accordance with the terms of this Clause 24.6.

24.7 The Supplier's liabilities under each Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 24.6.

24.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 24, 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 Supplier or recover the same as a debt due from the Supplier.

24.9 Not used.

## **25 Environmental Claims**

- 25.1 *The Supplier shall indemnify the Company against Losses and Remediation costs in respect of any Environmental Claims which may arise out of or by reason of the Supplier's performance, non-performance or part performance of each Contract to the extent that such Losses and Remediation costs are due to any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, its employees, subcontractors or agents.*
- 25.2 *The Supplier shall notify the Company's Representative and the Company as soon as it becomes aware that any Remediation is or will become necessary on any part of the Company's site.*
- 25.3 *Where the Supplier discovers or suspects that the site has been contaminated or polluted by another party, the Supplier shall notify the Company's Representative and the Company of the identity of the other party, where known. The Supplier shall not without the prior written consent of the Company undertake any environmental investigations on site or commission or undertake any Remediation. The Supplier shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.*
- 25.4 *In the event that the Supplier commissions an environmental assessment, the Supplier shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.*
- 25.5 *The Supplier shall provide to the Company's Representative:*
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Goods and Services (for the purposes of this Clause 25.5, the "authorisations");*
  - (b) copies of any amendments to the authorisations;*
  - (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and*
  - (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.]*

## **26 Co-operation in Handover**

- 26.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Agreement and any Contract, and in the three (3) months after the expiration of the Term (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Agreement termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the provision of the Goods and Services and in such a manner so as not to unduly disrupt or hinder the Company's business
- 26.2 Without prejudice to the generality of Clause 26.1 above, the Supplier shall on or prior to the end of the effective Agreement termination date transfer to the Company such Documentation relating to the Goods and Services or full copies thereof as the Company may request.

## **27 Force Majeure and Permitted Delay events**

### *Force Majeure*

- 27.1 Neither party shall be in breach of its obligations under any Contract if there is any total or partial failure of performance by it of its duties and obligations under any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under the 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 Supplier to perform its obligations under the relevant Contract, the Company shall have the right to terminate the relevant Contract immediately upon giving written notice of such termination to the Supplier.

### *Permitted Delay Events*

- 27.2 If delay is caused or either Party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's Representative of the same and any claim for an extension of time to the Delivery Date, within seven (7) days after the cause of any delay has arisen.

27.3 For the purposes of this Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":

- (a) any act of prevention, omission, default or neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
- (b) any variation of the Agreement or any Contract under Clause 9; or
- (c) the suspension of this Agreement or any Contract in accordance with Clause 22 (other than where the suspension is necessary by reason of default by the Supplier).

27.4 Where any delay in achieving the Expected Order Delivery Date and/or Order Completion Date arises, the Supplier shall be entitled to an extension to such Expected Order Delivery Date and/or Order 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 Supplier's ability to provide the Goods by the Expected Order Delivery Date and/or Order Completion Date and provided that the Supplier:

- (a) notifies the Company of the Permitted Delay Event in accordance with Clause 27.2 and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
- (b) provides the Company with reasonable access to the Supplier's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
- (c) uses its reasonable endeavours to mitigate the delay to the relevant Delivery Date; and
- (d) 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 Contract by the Supplier, its subcontractors and/or employees.

## **28 Safety**

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

- 28.2 The Supplier shall act in accordance with the health and safety regulations and requirements stated in the Specification, including (but not limited to):
- (a) the provisions of the Company's Contract QUENSH Conditions that are indicated as being applicable to any Contract in the QUENSH menu set out in the Specification ("QUENSH") as amended from time to time; and
  - (b) the Company's drug and alcohol principles as amended from time to time.
- 28.3 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to the Agreement and each Contract as if the term "LU Premises" means any of the Company's property and/or where the Services are carried out and as if references to "LU" are references to the Company.
- 28.4 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, subcontractors or agents for drugs or alcohol which each Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

## **29 Construction (Design and Management) Regulations 2015**

- 29.1 To the extent that the Construction (Design and Management) Regulations 2015 (the "CDM Regulations") apply to the Agreement and each Contract, the Company reserves the right to appoint the Supplier to act as principal contractor and principal designer pursuant to Regulation 5(1) of the CDM Regulations.
- 29.2 The Supplier accepts such appointments, and agrees to carry out all associated obligations imposed by the CDM Regulations.

## **30 Independent Supplier**

- 30.1 The Supplier is an independent supplier and is not and shall not hold itself out as, and shall procure that none of the Supplier's employees or subcontractors or their employees hold themselves out as, an agent of the Company. All personnel used by the Supplier in the performance of its obligations under each Contract shall be employees of the Supplier, or any subcontractor or agent of the Supplier.

## **31 Supplier Personnel**

- 31.1 For the purposes of this Clause 31: