

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES UNDER A PURCHASE ORDER ("THE CONDITIONS")

Document date: 13th January 2015

**TITLE: TLL-00280 JUBILEE LINE – 46PC CONTACTOR UPGRADE (LINE BREAKER)
QTY 1008**

Supplier Reference Quote TLS19081 V9, 6th January 2015

**TUBE LINES LIMITED SUPPLY OF GOODS AND SERVICES UNDER PURCHASE
ORDER VERSION 6.1 REFERS, Purchase Order number: 6242975**

SCOPE, PROGRAMME AND PRICING SCHEDULE

Introduction

The parties are agreed as follows:-

1. The Supplier shall supply goods according to the Scope shown in Schedule 1.
2. The Supplier's commitment will be to start and regularly and diligently progress in accordance with the Programme in Schedule 2.
3. The total amount payable by the Company to the Supplier under the Purchase Order is nine hundred and ninety-eight thousand pounds exactly (£998,000.00). The breakdown of this amount in relation to each activity is set out in the Pricing Schedule.
4. Any advance payment of the Purchase Order made by the Company to the Supplier shall be without prejudice to the Company's rights under the Purchase Order.
5. This document, together with the appended Programme and Pricing Schedule, form part of the Purchase Order.

Appendices

Schedule 1 Scope

Schedule 2 Programme

Schedule 3 Price Schedule

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Schedule 1 - Scope

Upgrade of a quantity of 504 46PC020 Contactors to 46PC022, and upgrade of a quantity of 504 46PC021 Contactors to 46PC023, total 1008 Contactors. This will include the following tasks:

- New Yoke
- New Mag Valve
- Overhaul
- Modified Harness

The scope includes the fitment of a gold snap action micro switch, with the provision of a new design of yoke to enable correct switching under all operating conditions and the fitting of a new version of Magnet Valve, which has a different operating mechanism that is less prone to air leaks. This also requires modification to the contactor loom.

The revised part numbers will be as follows:

46PC020C1 (DTR0000266106) becomes 46PC022A1 (DTR0000324889 New version)

46PC021C1 (DTR0000266107) becomes 46PC023A1 (DTR0000324890 New version)

Warranty: The Supplier shall provide 1 Year warranty against parts supplied and labour carried out, warranty will commence at date of delivery to the Company's depot.

Exclusions

The following exclusions shall apply as part of this work-

- Additional Arising Work (AAW). Any missing or damaged components requiring replacement, repair or overhaul identified during the upgrade that are outside the Scope of Work section 1 of this offer will be classed as Additional Arising Work, Given that there is no scope for delay in the programme it will be assumed that all AAW costs are pre-approved by the Company in order not to restrict the programme. These will be listed and quoted to the Company separately.
- Any additional transport required over and above the one transport offered – See item 7 of scope below.
- The scope does not cover the upgrade of float contactors left at the end of the programme. This will amount to between 16 and 20 of each type. The Supplier will provide a quotation based upon the same cost model if requested by the Company within 6 weeks of the date of the Purchase Order.

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Schedule 2 – Programme

1. The Programme will commence 16 working Weeks from Notice To Proceed (NTP) subject to successful completion of climatic testing and resolution of any issues arising from that climatic testing of a pre-series Contactor product.
2. The NTP shall be the date of the Purchase Order for the goods.
3. The Programme is based upon the upgrade and delivery of 32 Contactors per week (16 of each type), to the Company's nominated depot in London by dedicated transport.
4. NOTE: It may be advisable for the Company to provide 8 available float Contactors (over and above the 32 required by the above bullet point) for upgrade at Preston site at NTP + 12 in order to facilitate industrialisation but primarily to ensure the Company has a float sufficient to support ad hoc failures outside of this programme. The 8 Contactors would be delivered prior to dispatch of the first delivery of 32 Contactors to ensure the Company has available spares at its depot.
5. The Programme start is subject to the availability from the Company of a minimum of 16 of each type of contactor to act as float, these to be available at the Supplier's Preston Site during the 16th week from NTP, these will be overhauled during the 17th week from NTP.
6. Programme adherence is based upon the Company making available 16 off of each of the two types of Contactor (32 total) on a weekly basis. These will be transported to The Supplier for upgrade using daily dedicated transport used to deliver the daily delivery of upgraded Contactors. For clarity, there will be 4 deliveries to the Company per week of 4 of each of the two types of contactor, the Company will need to provide 4 of each of the two types of contactor by return on the same transport used to deliver. (See Bullet Point Below)
7. In the event that the Company cannot make available the float required at the start of the Programme or supply the weekly quantity of 4 lots of 4 of each of the two types of contactor to The Supplier on a daily (Monday to Thursday) basis, The Supplier will endeavour to adhere to the programme however any additional transport of Contactors required will be charged to and accepted by the Company.
8. NOTE – In the event that 46PC Contactors are received for repair (as against upgrade) during the duration of the programme, the Supplier may with Company's permission, be able to upgrade those contactors as part of the programme.
9. Only one transport per week to and from the Company's depot is included in this offer. The additional 3 transports required (or more where necessary and agreed with the Company) will be arranged either by the Supplier and or by the Company to meet the deliveries to the Company in a given week. This offer requires a joint approach to the logistical management of transport and delivery and will be agreed prior to NTP.

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Schedule 3 – Price Schedule

Total Price of the upgrade for all 1008 Contactors is £998,000.00.

The price quoted is payable in Pounds Sterling and is exclusive of VAT and is fixed and firm.

The Supplier shall invoice the Company at date of Purchase Order to the value of £448,640 to allow the advance ordering of materials.

The Contactors will be invoiced based on quantity shipped. A single contactor being priced at £545.00

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EXECUTION PAGE:

IN WITNESS, of which this document has been executed and, on the date set out above,
delivered as a Contract.

SIGNED by Tube Lines Limited, and
delivered when dated:

Signature:

Name: MATILDA JINADU

SIGNED by Alstom Transport UK
Limited and delivered when dated:

Signature:

Name: MARTIN HIGSON

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES UNDER A PURCHASE ORDER ("THE CONDITIONS")

PURCHASE ORDER
NO: 6242975

Supplier:
ALSTOM TRANSPORT LTD
PARTS AND MATERIALS
CHANNEL WAY
PRESTON
United Kingdom

Invoice To
Accounts Payable
P.O. Box 45276
14 Pier Walk
Greater London SE10 1AJ
United Kingdom

Deliver To
See Below for Deliver Address



Transport for London (TfL) has incorporated mandatory safety requirements in all its standard forms of contract with the aim of improving the safety of cyclists. All TfL contractors are required to comply with these requirements (which are available on request) including registering for membership of the Fleet Operator Recognition Scheme (FORS). Information on FORS is available at www.fors2011.co.uk

Order Date : 13-JAN-2015	Buyer : Lisa Puthas	Terms & Conditions/Important Information : Unless otherwise stated on this Purchase Order or in any attachment to it, this Purchase Order is subject to the Tube Lines' Standard Conditions of Contract for the Purchase of Goods and Services under a Purchase Order, in place at the Order Date stated below, a copy of which can be provided upon request.
Order Type : STANDARD	Payment Terms - In Days : 30 Net	
Rev. No : 0	Tender/Quotation Ref : :	
Rev. Date :	Agreement Number : :	
	Contract Number : :	
PO Header Note or Release Header Note (For releases against planned or blanket PO's only) :		
Purchase Order Cancellation Data :		

Line Number	TfL part No.	Supplier Product Code	Item Description	Inspection Category	Delivery Due Date	Quantity	U.O.M.	Unit Price	Extended Line Price
1			Upgrade of Line Contractors on the Jubilee Line Fleet Delivery Address: Jubilee Line Fleet - Main Depot Store Stratford Market Depot Burford Road Stratford, E15 2SP United Kingdom Deliver to: Stockford, Mr. Timothy Keith (Qty = 998000)		16-DEC-2014	998000	Pound Sterling	1	998000.00

Purchase Order Total (excl. VAT) : 998000.00

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TUBE LINES LIMITED

SUPPLY OF GOODS AND SERVICES UNDER PURCHASE ORDER

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES UNDER A PURCHASE ORDER ("THE CONDITIONS")

1 DEFINITIONS AND INTERPRETATION

1.1 In the Conditions the expression:

1.1.1 **"Buyer (T&C Enquiries)"** means the person named on the Purchase Order in relation to commercial queries or any other person notified in writing to the Supplier from time to time;

1.1.2 **"Cessation Plan"** means a plan agreed between the Parties or determined by the Company in accordance with clause 20.1 to give effect to a Declaration of Ineffectiveness.

1.1.3 **"Company"** means Tube Lines Limited, a company incorporated in England (number 3923425) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL and includes its legal successors in title and assigns;

1.1.4 **"Competent Authority"** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against either of the parties in connection with the performance of the Contract;

1.1.5 **"Confidential Information"** means any information given orally or in writing which is a trade or business

secret or method; technical know-how; personal data which relates to a living individual who can be identified from that information; information relating to any crime, breach of statutory duty or criminal investigations; information relating to the protection of prominent persons, national security, counter-terrorism or any other information relating to the provision of police services for any national or international purpose; information relating to the Company's obligations pursuant to sections 118 to 121 of the Railways Act 1993; confidential financial information including but not limited to business plans, taxation information and returns to shareholders; and any other information that a party would reasonably expect to be able to protect by virtue of business confidentiality provisions;

1.1.6 the **"Contract"** means the contract between the Company and the Supplier for the supply of the Goods and provision of the Services which comprises the Conditions, the Purchase Order and any specification, description, drawing or sample of the Goods or other document referred to in the Conditions or the Purchase Order;

1.1.6A **"Contract Information"** means (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices

submitted pursuant to clause 10.2 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount.

1.1.7 **"Declaration of Ineffectiveness"** means a declaration of ineffectiveness in relation to the Contract made by a court of competent jurisdiction in accordance with Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

1.1.7A **"Documentation"** means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the Supplier in the performance of the Contract and whether in paper form or stored electronically.

1.1.8 **"Goods"** means the goods (including any instalment of the goods or any part of them) set out in the Purchase Order;

1.1.9 **"Greater London"** has the meaning ascribed to it in the GLA Act;

1.1.10 **"Greater London Authority Act"** or **"GLA Act"** means the Greater London Authority Act 1999 relating

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to the formation of the Greater London Authority;

1.1.11

"Green Procurement Code" means the programme entitled the "Mayor's Green Procurement Code" launched in 2001 as may be amended;

1.1.12

"Intellectual Property Rights" means any intellectual property rights in any part of the world and shall include but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, trade-marks, service marks, trade and business names and get up, moral rights, domain names, copyright and neighbouring rights, databases, semi-conductors, know how, knowledge, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or not in respect of any technology, technique, concept, idea, style, scheme, formula, system, logo, mark or other matter or thing, existing or conceived, used, developed or produced by any person, together with all applications and rights to apply for registration or protection of such rights, Confidential Information relating to those rights, material embodying those rights and in each case rights of a similar or corresponding character;

1.1.13

"London Living Wage" means the basic hourly wage (before tax, other deduction and any increase for

overtime) as may be revised from time to time by the Mayor or any other relevant Competent Authority;

1.1.14

"Losses" means any expense, liability, loss, claims, fines, penalties, settlements, judgments, damages and costs (including reasonable legal and other professional fees and disbursements) whatsoever;

1.1.15

"LUL" means London Underground Limited, whose registered office is at 55 Broadway, London SW1H 0BD, Registered Company Number 1900907;

1.1.16

"Mayor" means the person from time to time holding the office of Mayor of London as established by the GLA Act;

1.1.17

"Policies" means the policies set out in clause 15.

1.1.18

"Prohibited Act" means:
 (a) offering or agreeing to give to any servant, employee, officer or agent of LUL or of the Company any gift or consideration of any kind as an inducement or reward:
 (i) for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract with LUL or the Company; or
 (ii) for showing or not showing favour or disfavour to any person

in relation to the Contract or any other contract with LUL or the Company; or

(b) entering into the Contract or any other contract with LUL or the Company with which the Commission has been paid or has been agreed to be paid by the Supplier or on its behalf or to its knowledge unless, before the Contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Company; or

(c)

committing an offence:
 (i) under the Bribery Act 2010;
 (ii) under legislation creating offences in respect of fraudulent acts;
 (iii) at common law in respect of fraudulent acts; or
 (iv) in relation to the Contract or any other contract with LUL or the Company; or
 (d) defrauding or attempting to defraud LUL or the Company.
 "Purchase Order" means the Company's purchase order (which is subject to the Conditions) calling for Goods to be supplied and Services to be performed which

1.1.19

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states inter alia the specification, quantity, price, payment method, delivery time, delivery date and invoicing requirements;

1.1.20

"Responsible Procurement Policy" means the policy document entitled the "GLA Group Responsible Procurement Policy" dated March 2008 and updated in January 2008 and as may be amended;

1.1.21

"Safety Breach" means a material breach of any obligation under the Contract caused by the gross incompetence of or wilful default by the Supplier (or anyone employed by or acting on behalf of the Supplier) or any of its agents which has materially affected the safe operation of the LUL network or the safety of LUL's Companies, staff or any other person;

1.1.22

"Services" means the services (or any part of them) set out in the Purchase Order;

1.1.23

Not used

1.1.24

Not used

1.1.25

"Supplier" means the person, firm or company to whom the Purchase Order is addressed and includes any assignee permitted by the Company;

1.1.26

"TfL or Transport for London" means Transport for London, a statutory body set up by the Greater London Authority Act;

1.1.27

"TfL Group" means Transport for London and all of its subsidiaries and their subsidiaries (as defined in

Section 1159 of the Companies Act 2006) from time to time, together with Crossrail Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.

1.1.28

"TfL Supplier Diversity Policy" means the policy document entitled "Supplier Diversity Policy" developed by TfL and issued in November 2006 as may be amended;

1.1.28A **"Transparency Commitment"** means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received.

1.1.29

"Tube Lines Contract" means the service agreement dated 31 December 2002 made between LUL and the Company;

1.1.30

"Working Day" means any day of the week (other than Saturday or Sunday) which is not an English bank holiday, or public holiday

1.2

Headings are inserted for convenience only and shall not affect the construction of the Conditions.

1.3

References to clauses shall be to clauses of the Conditions.

1.4

References to the singular shall be deemed to include the plural and vice versa and references in either

gender shall be deemed to include the other and neuter.

1.5

Subject to clause 31.1, references to a law, statute or regulation or any provision of a statute or regulation shall be construed as a reference to that law, statute, regulation or provision as amended, re-enacted or extended.

1.6

In the event that any inconsistency or ambiguity exists between the documents comprising the Contract it shall be resolved by reference to the following descending order of priority:

1.6.1

the Conditions;

1.6.2

the Purchase Order; and

1.6.3

any specification, description, drawing or sample of the Goods or other document referred to in the Conditions or the Purchase Order.

1.7

Where the Contract requires or permits the Company to review, approve, audit, inspect, test or analyse any aspect of the Supplier's performance of the Contract, such review, approval, audit, inspection, test or analysis shall not relieve the Supplier of any of its obligations under the Contract.

2

ACCEPTANCE OF THE COMPANY'S CONDITIONS AND ENTIRE AGREEMENT

2.1

The terms and conditions of the Contract shall apply to the exclusion of any other terms or conditions contained in any quotation, tender, acknowledgement, acceptance or

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purported acceptance of order or other document of the Supplier.

2.2 The Contract together with the Programme and Price Schedule attached constitutes the whole agreement and understanding between the parties relating to its subject matter, and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

2.3 The Supplier acknowledges that it has not been induced to enter into the Contract by (and has not relied upon) any representation or warranty other than those contained in the Contract. The Supplier agrees that it shall have no remedy in respect of such representations or warranties other than a claim for breach of contract except in the case of fraud.

2.4 For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Goods and Services waives, limits or amends in any way any warranties, liabilities or responsibilities of the Supplier under this Contract.

3 AGREEMENT TO SUPPLY

3.1 The Supplier shall supply the quantities of the Goods and shall perform the Services which the Company orders and the Company

shall pay the Supplier for such Goods and Services, subject to the terms of the Contract.

3.2 The Supplier shall not depart from any aspect of the Contract and no variation to the Contract shall be binding unless agreed in writing by the parties and prior written agreement has been obtained from the Buyer (T&C Enquiries).

3.3 The Supplier warrants to the Company that the Goods

3.3.1 will be of satisfactory quality;

3.3.2 will be free from defects in design, material and workmanship;

3.3.3 will correspond with any relevant specification or sample;

3.3.4 will comply with any applicable law and regulations (including but not limited to any law and regulations applicable to LUL and the LUL network); and

3.3.5 shall be supplied with any relevant documentation in the English language required for the Company to use the Goods as contemplated by the Contract and all such documentation shall be clear, accurate, easy to use and up to date.

3.4 The Supplier warrants to the Company that the Services shall be performed:

3.4.1 by appropriately qualified and trained personnel exercising reasonable skill and care;

3.4.2 in accordance with the Specification and any applicable law and regulations (including but not limited

to any law and regulations applicable to LUL or the LUL network); and

3.4.3 to such standard of quality as it is reasonable for the Company to expect in all the circumstances.

3.5 The Supplier warrants to the Company that:

3.5.1 it has and at all material times shall have the right to supply the Goods, provide the Services and to fulfil its obligations under the Contract;

3.5.2 it shall comply with the requirements of the BS EN ISO 9000 series of standards as appropriate to the supply of the Goods and provision of the Services or equivalent quality management systems and standards approved in writing by the Company;

3.5.3 the supply to and use of the Goods by the Company and the provision of the Services shall not infringe the Intellectual Property Rights of any third party; and

3.5.4 it shall observe all limits of time set out in the Contract.

3.6 The Supplier shall act in accordance with any health and safety regulations and requirements stated in the Purchase Order, including (but not limited to):

3.6.1 the provisions of the LUL category one standard number 2-05104-432, Contract QUENSH Conditions that are indicated as being applicable to the Contract ("QUENSH") as amended from time to time; and

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3.6.2 the Company's drug and alcohol principles as amended from time to time.

3.7 Section 20.1.1 (Alcohol and drugs) of QUENSH shall apply to the Contract as if the term "LU Premises" means any of LUL's and/or the Company's property where the Services are carried out and as if references to "LU" are references to the Company.

3.8 The Company may at its discretion carry out on the Supplier's behalf any testing of the Supplier's employees, contractors or agents for drugs or alcohol which the Contract requires the Supplier to carry out. The reasonable cost to the Company of carrying out the testing shall be paid by the Supplier.

3.9 The specification, quantity, price, delivery time, delivery place, delivery date and invoicing requirements of the Goods and the specification, price, place and time of performance of the Services to be provided shall, subject to these Conditions, be as specified in the Purchase Order or as agreed in writing by the Buyer (T&C Enquiries).

3.10 The Supplier shall collect promptly and free of charge any of the Goods which do not comply with the requirements of the Contract. This clause shall not prejudice any other rights of the Company under the Contract.

4 ASSIGNMENT, SUBCONTRACTING AND LUL STEP-IN RIGHTS

4.1 The Supplier shall not without the prior written consent of the Company assign, transfer or subcontract the Contract or any part of the Contract. Subcontracting the Contract or any part of the Contract shall not relieve the Supplier of any of its obligations under the Contract.

4.2 The Company may in its sole discretion assign, transfer or subcontract the Contract or any part of the Contract to any person at any time without the consent of the Supplier, provided the Company has given prior written notice to the Supplier.

5 RECORDS AND AUDIT

5.1 The Supplier shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of the Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (b) subcontract files (including proposals of successful and unsuccessful bidders, bids and rebids etc.);
- (c) correspondence;

- (d) variation and claims files (including documentation covering negotiated settlements);
- (e) commitments (agreements and leases) greater than £5,000; and
- (f) detailed inspection records.

5.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records for a period of not less than eight years after completion of performance under the Contract. In the absence of specific instructions as to the method of storage, the Supplier shall maintain his records in an orderly and logical fashion.

5.3 The Company and its authorised representatives and, to the extent to which LUL is entitled to do so under the Tube Lines Contract, LUL, its authorised representatives and any party legally authorised to inspect any part of the LUL network shall have the right to inspect and audit any of the records referred to in clause 5.1 at any time during the period referred to in clause 5.2.

5.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

5.4.1 granting or procuring the grant of access to any premises used in performance of the Contract,

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- whether the Supplier's own premises or otherwise;
- 5.4.2 granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under the Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- 5.4.3 making any contracts and other documents and records required to be maintained under the Contract available for inspection;
- 5.4.4 providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company and/or, to the extent which LUL is entitled to such copies under the Tube Lines Contract, LUL's auditor and/or granting copying facilities to the Company and/or, to the extent which LUL is entitled to do so under the Tube Lines Contract, LUL's auditor for the purposes of making such copies; and
- 5.4.5 complying with the Company's and/or, to the extent which LUL is entitled to do so under the Tube Lines Contract, LUL's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract.

6 INSPECTION AND TEST

- 6.1 The Supplier shall give the Company's authorised representatives access at all reasonable times to the Supplier's premises and permit such representatives to inspect, test and analyse the Goods to be supplied during the manufacture, processing or storage thereof and the material and any equipment to be used in their manufacture.
- 6.2 If part or the whole of the Goods are being manufactured on other premises the Supplier shall obtain for the Company permission to inspect, test and analyse the Goods as if the Goods were being manufactured on the Supplier's premises.
- 6.3 The Supplier shall provide the Company with all facilities reasonably required for inspection and testing.
- 6.4 The Company's authorised representatives shall have the right, at any time, to reject any Goods or part of the Goods which in their opinion fail to meet the specification contained in the Contract.
- 6.5 All inspection, tests and analyses of material that may be required by the Company shall be undertaken at the Supplier's expense.
- 6.6 The provisions of this clause 6 shall not release the Supplier from or vary any of its obligations or liability under the Contract.

7 RESPONSIBILITY FOR GOODS AND INSURANCE

- 7.1 Property in and title to any Goods shall pass to the Company upon the earlier of payment for such Goods or delivery of such Goods to the Company at the place specified in the Purchase Order without prejudice to any rights of rejection the Company may have.
- 7.2 Notwithstanding clause 7.1, the Supplier shall be responsible for and insure against the loss, destruction and damage of Goods completely or partially manufactured, Goods in transit and all materials acquired by or delivered to the Supplier in connection with the Contract whether or not the property of the Supplier or the Company, for their full replacement value and until such time as the Goods are delivered to the Company in accordance with the Contract.
- 7.3 The Supplier shall label the Goods "Property of Tube Lines Limited" where title has passed to the Company prior to delivery and shall ensure that the Goods are identifiable as belonging to the Company. The Supplier shall not mortgage, pledge or create a security interest in the Goods in favour of any third party.
- 8 INDEMNITY AND INSURANCE**
- 8.1 Subject to clause 8.4, the Supplier shall be responsible for and shall

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indemnify the Company, its employees and agents from and against all Losses arising out of any claim or cause of action:

- (a) in respect of sickness, disease, death or injury to any person;
- (b) in respect of loss of or damage to any property (including property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of the Supplier's performance, non performance or part performance of the Contract;
- (d) arising out of or in the course of or by reason of any act, negligence, breach of contract, breach of statutory duty, error, omission or default by the Supplier, and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

8.2 The Supplier's indemnity under clause 8.1 and all other indemnities under the Contract shall remain in force for the duration of the Contract and for the period of 12 years after the later of the following dates: (i) the delivery date for the Goods specified in the Purchase Order or (ii) the date on which performance of the Services has been completed (and in the event of termination, 12

years after the earlier termination of the Contract).

8.3 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 8.1.

8.4 The Supplier's indemnities given in accordance with clause 8.1 shall be limited to the extent that any Losses are the result of the negligence of the Company or its employees, or agents.

8.4A The Supplier's total liability to the Company (and to any other member of the TFL Group) for all matters arising under or in connection with the Contract, other than the excluded matters, is limited to one hundred percent (100%) of the amount received by the Supplier from the Company under this Contract and applies in contract, tort and otherwise to the extent allowed under the law of the Contract. The excluded matters are amounts payable by the Supplier as stated in the Contract for:

- loss of or damage to the Company's property subject to clause 8.4B,
- death or bodily injury;
- Losses caused by fraudulent acts or acts or a criminal nature;
- Losses caused by the Supplier committing a Prohibited Act or Safety Breach.

- Losses against which the Supplier is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance) ("Insured Losses"), which shall be subject to the limitation set out in Clause 8.4B ; or
- any Losses against which the Company is indemnified under Clause 13.7 (Intellectual Property Rights).

8.4B The Supplier's total liability to the Company (and to any other member of the TFL Group) for all matters arising under or in connection with the Contract for Insured Losses or loss of or damage to the property of the Company (and any other member of TFL Group) shall be five million pounds (£5,000,000.00) per event.

8.4C Neither party shall have any liability to the other party (and the Supplier shall have no liability to any other member of the TFL Group) for any loss of use, loss of production, loss of profit, loss of business, loss of contracts, loss of revenues or loss of anticipated savings, any increase in operating costs or any other financial or economic loss or any indirect or consequential losses arising from its performance of, or its failure to perform, the Contract (save where such losses are

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recoverable under any insurances the Supplier is required to procure pursuant to this Contract) whether suffered by either party or any third party.

8.5 Without prejudice to its obligations to indemnify the Company under the Contract, the Supplier shall take out and maintain in effect the following insurance on terms approved by the Company (such approval not to be unreasonably withheld):

8.5.1 insurance against liability for death of or bodily injury to a person (not an employee of the Supplier) and for loss of or damage to property caused by any activity in connection with the Contract ("public liability insurance"); the minimum amount of cover for any one event shall be £5,000,000 with cross liability so that the insurance applies to the parties separately; and

8.5.2 insurance against liability for death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with the Contract ("employer's liability insurance"); the minimum amount of cover shall be not less than the amount required by the applicable law.

8.5.3 insurance against liability for death or for bodily injury to a person (not an employee of the Supplier) and for loss of or damage to property caused by any defect in any goods or products worked on, refurbished

or supplied in connection with the Contract ("product liability insurance"); the minimum amount of cover for any one event shall be £5,000,000, with cross liability so that the insurance applies to the parties separately;

8.6 The insurance shall extend to indemnify the Company as principal and shall be maintained for the duration of the Contract unless otherwise specified.

8.7 The Supplier shall submit evidence of insurance cover to the Company for approval on request and at the renewal dates of the insurance as necessary to prove that the Supplier's ongoing insurance obligations are met for the period required by the Conditions.

8.8 The parties shall comply with the terms and conditions of the insurance.

8.9 The Company may insure against a risk which the Contract requires the Supplier to insure if the Supplier does not submit the evidence of insurance cover to the Company as required. The cost of this insurance to the Company including any deductibles or excesses shall be paid by the Supplier.

8.10 The insurance shall include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.

8.11 The Supplier shall not compromise or waive any claim arising out of the

Contract which the Supplier may have under the insurance without the prior written consent of the Company.

8.12 The insurance requirements under the Conditions do not relieve the Supplier from any of its obligations and liabilities under the Contract.

9 DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

9.1 The Goods shall be supplied at the Supplier's cost at the place, on the date or dates and within the times stated in the Purchase Order.

9.2 The time of the supply shall be of the essence of the Contract.

9.3 On delivery the Company shall not be deemed to have accepted the Goods (whether or not an advice note, referred to in clause 10, is signed) until the Company has had a reasonable opportunity to examine the Goods or, if later, within a reasonable time after any latent defect in the Goods has become apparent in accordance with clause 11.1. The Company shall have the right to reject any Goods or part of the Goods which in its opinion fail to meet the specification or are otherwise not in accordance with the Contract.

9.4 The Supplier shall collect promptly and free of charge any of the Goods which do not comply with the requirements of the Contract. This clause shall not prejudice any other

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rights of the Company under the Contract.

9.5 The Company may reject the whole of the Goods if an excess or shortfall in the quantity requested in the Purchase Order occurs notwithstanding the fact that the excess or shortfall may be slight.

9.6 The Supplier and the Company agree that where there is a breach of a condition or warranty (whether express or implied) by the Supplier the Company's remedies are not to be limited in any way notwithstanding the fact that the breach of condition may be slight.

9.7 Where the Goods are supplied by weight all containers, cases or packaging shall be deducted from the gross weight and only the net weight of the Goods supplied shall be invoiced and paid for. No charge shall be made for any containers, cases or packaging. If the Supplier desires the return of any containers, cases or packaging the advice note shall be clearly marked to that effect whereupon the Company, without incurring any legal liability, shall make such return at the Supplier's expense and risk.

9.8 The Services shall be performed at the location stated in the Purchase Order and at the time or times and on the date or dates stated in the Purchase Order.

9.9 The time of the performance of the Services shall be of the essence of the Contract.

9.10 Without limiting any other remedy, if the Services are not performed in accordance with the Contract then the Company shall be entitled to require the Supplier to re-perform the Services in accordance with the Contract at no extra cost.

10 ADVICE NOTES, INVOICES AND PAYMENT

10.1 An advice note bearing all information required by the Company including the Purchase Order number and a description of the Goods (including part numbers, if any) and Services performed under the Contract shall be delivered by the Supplier accompanying the Goods and a duplicate shall be posted to the place of delivery at the time of dispatch. An authorised representative of the Company shall sign one copy of the advice note to confirm that delivery has taken place for the purposes of processing the invoice referred to in clause 10.2.

10.2 An invoice bearing all information required by the Company including the Purchase Order number, delivery address and a brief description of the Goods (including part numbers, if any) and Services performed under the Contract shall be sent by the Supplier to the address for invoices contained in the Purchase Order after the delivery and acceptance of the

Goods. Any invoice shall be accompanied by an advice note signed by an authorised representative of the Company as proof that delivery has taken place.

10.3 The Supplier shall comply with the Company's payment procedures and requirements. The Company shall pay for the Goods and Services in accordance with the Purchase Order less any sums due from the Supplier to the Company pursuant to any provision of the Contract (including clause 22) or otherwise.

10.4 Accounts will be paid within 30 days of receipt of an invoice that complies with the provisions of clause 10.2 or, if later, after acceptance of the Goods by the Company. The Supplier shall provide the Company with its bank account details. Payments shall be made by direct bank to bank transfer (using the Bank Automated Clearance System) or such other method that the Company may choose from time to time.

10.5 If either party fails to pay to the other any amount payable in connection with the Contract on or before the due date for payment, interest shall accrue on the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at 2% above the base rate from time to time of the Bank of England. Any interest accruing

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under this Clause 10.510.5 shall be immediately payable by the paying party on demand.

11 DEFECTS

11.1 The Supplier shall replace free of charge to the Company any Goods or any part of the Goods which is found within a period of twelve months (or other period stated in the Purchase Order) after the date of delivery to be defective. The Company shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them after any latent defect in the Goods has become apparent. Defective Goods shall be returned at the Supplier's expense and risk.

11.3 The Supplier shall as required re-perform free of charge to the Company its obligations with regard to any Goods supplied where, in the Company's reasonable opinion, the Supplier has failed to meet the standards set out in clause 3.

11.4 Nothing in this clause 11 shall prejudice any rights which the Company may have including rights of rejection.

12 TERMINATION OF CONTRACT

12.1 The Company may by notice in writing to the Supplier terminate the Contract with immediate effect if:

12.1.1 the Supplier shall fail at any time to perform the Contract in a material respect with due diligence and expedition;

12.1.2 the Supplier breaches the Contract or the Purchase Order in any other material way;

12.1.3 any of the following or its equivalent occurs in respect of the Supplier (including its equivalent in any jurisdiction to which the Supplier is subject):

- (a) if the Supplier is an individual and:
 - (i) a petition for bankruptcy is presented against him;
 - (ii) is or is likely to become unable to pay his debts as they fall due;
 - (iii) had a receiver appointed over any of his assets;
 - (iv) is taking any steps towards making a proposal to his creditors under Part VIII of the Insolvency Act 1986 or otherwise towards entering into a composition or arrangement with his creditors;
 - (v) a distress, execution or other legal process is levied against his assets and not discharged or paid out in full within three days; or
 - (vi) ceases or threatens to cease to carry on all or a substantial part of his

business or operations or sells, transfers or otherwise disposes of the whole or a substantial part of his assets.

- (b) if the Supplier is a company and:
 - (i) a petition is presented, a meeting convened or an effective resolution passed (otherwise than with the other party's prior written consent as part of a solvent reconstruction or amalgamation) for its winding-up;
 - (ii) had a provisional liquidator appointed to it;
 - (iii) a distress, execution or other legal process is levied against its assets and not discharged or paid out in full within three days;
 - (iv) an application is made for an administration order or there is a purported appointment of, or the filing at court of, or issue of any notice of intention to appoint, an administrator in relation to it;
 - (v) possession is taken of, or a receiver, sequestrator or similar

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- officer is appointed in respect of the whole or any part of its assets or undertaking;
- (vi) its directors make a proposal that it enter into a voluntary arrangement (within the meaning of section 1 of the Insolvency Act 1986) or take any steps to obtain a moratorium under section 1A of that Act or it takes or is subject to any proceedings under the law for the readjustment, rescheduling or deferment of all or any of its debts, or proposes or enters into any general assignment or composition with or for the benefit of its creditors;
- (vii) it suspends or threatens to suspend payment of its debts as they fall due or is unable to pay its debts, whether within the meaning of section 123 of the Insolvency Act 1986 or otherwise;
- or
- (viii) it ceases or threatens to cease to carry on all or a substantial part of its business or operations
- or sells, transfers or otherwise disposes of the whole or a substantial part of its undertaking or assets either by a single transaction or by a number of transactions.
- (c) if the Supplier is a partnership and:
- (i) a petition is presented for the winding up of the partnership or any corporate partner or a meeting is convened or an effective resolution passed for the winding-up of any corporate partner;
- (ii) has had a provisional liquidator appointed to it;
- (iii) a distress, execution or other legal process is levied against any of the assets of the partnership and not discharged or paid out in full within three days;
- (iv) an application is made for an administration order or there is a purported appointment of, or the filing at court or issue of any notice of intention to appoint, an administrator in relation to the partnership or any corporate partner;
- (v) possession is taken of, or a receiver, sequestrator or similar officer is appointed in respect of the whole or any part of the assets or undertaking of the partnership or any corporate partner;
- (vi) the partnership or any partner takes any steps towards entering into a composition or arrangement with its or his creditors including without limitation a voluntary arrangement within the meaning of Part 1 of the Insolvency Act 1986 (as applied to partnerships) or in the case of an individual partner an individual voluntary arrangement under Part VIII of that Act;
- (vii) a bankruptcy petition is presented against any individual partner;
- (viii) the partnership or any partner suspends or threatens to suspend payment of its or his debts or is unable to pay its or his debts as they fall due; or
- (ix) the partnership or any partner disposes of the whole or a substantial

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part of its or his undertaking or assets or the partnership ceases or threatens to cease to carry on all or a substantial part of its business or operation.

12.1.4 the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act.

12.2 Upon a termination by the Company in accordance with clause 12.1:

12.2.1 the Company shall be at liberty to enter into any agreement with such other persons, companies or firms as the Company may think fit in respect of the supply of Goods and performance of the Services and, where the termination is due to a default of the Supplier, the Company shall be entitled to recover from the Supplier all direct costs and damages incurred by the Company as a result of the termination of the Contract; and

12.2.2 where the termination is due to a default by the Company, the Company shall pay any Supplier breakage costs being losses that have been or will be reasonably and properly incurred by the Supplier as a direct result of the termination of this Contract to the extent that:

- (i) the losses are incurred in respect of the provision of the Goods

or Services, including any materials or goods ordered or sub-contracts placed that cannot be cancelled without such losses being incurred and any expenditure incurred in anticipation of the provision of services or the completion of works in the future; and

- (ii) the Supplier has each used its reasonable endeavours to mitigate the losses.

12.3 The rights to terminate the Contract shall be without prejudice to any other right or remedy of the Company in respect of the breach or breaches concerned, if any, or any other breach or other cause of action accrued at the date of termination.

12.4 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 supply of Goods and/or the performance of the Services with immediate effect and that individual may only resume the supply of the Goods and/or the performance of the Services at the Company's absolute discretion.

13 INTELLECTUAL PROPERTY

13.1 Intellectual Property Rights owned by the Supplier at the date of the Contract shall continue to vest in and remain the sole property of the Supplier. Intellectual Property Rights owned by the Company at the date of Contract shall continue to vest in and remain the sole property of the Company.

13.2 Not used.

13.3 Without prejudice to any other rights which each party may have against the other, if, notwithstanding clause 13.1, a party acquires any proprietary rights in or to any Intellectual Property Rights referred to in clause 13.1 as belonging to the other party, that party shall, at its expense, immediately take all necessary steps to assign or procure the assignment of such proprietary rights (including the waiver of moral rights) to the other party, or to its nominee, and to deliver to the other party, or to its nominee, such materials as it may reasonably require in this regard.

13.4 All royalties or other sums payable to any third party in respect of the use of any Intellectual Property Rights necessary for the performance of the Contract shall be paid by the Supplier.

13.5 The Supplier shall grant to the Company and to LUL and shall procure that its subcontractors and suppliers grant to the Company and LUL a perpetual, irrevocable,

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transferable, royalty-free, exclusive licence (with rights to transfer, assign and license on the same terms) to use and copy all Intellectual Property Rights owned, controlled or used by the Supplier in connection with the Contract.

13.5A The Supplier agrees to provide to the Company immediate access to all Documentation in whatever form requested by the Company at any time but at the latest on termination or expiry of the Contract.

13.6 The Company shall grant to the Supplier a royalty free, non-exclusive licence (without a right to assign or license save in respect of a licence to any subcontractor for the purposes of the Contract) to use in the United Kingdom all Intellectual Property Rights it owns and has the rights to license, for the sole purpose of performing its obligations under the Contract. In the case of Intellectual Property Rights which are licensed to the Company and which the Company has the right to license, any licences granted under this clause 13.6 shall be granted subject to all the terms, conditions, restrictions and limitations contained in the licence to the Company.

13.7 The Supplier shall indemnify the Company from and against all Losses arising from or incurred by reason of any infringement or alleged infringement of any

Intellectual Property Rights arising out of the performance of the Contract including (but not limited to) any claim that the Goods infringe, or their importation, use or resale, infringes the Intellectual Property Rights of any other person. If the Supplier or any subcontractor or supplier providing software for incorporation into or operation of the Goods stops trading, is subject to an insolvency event equivalent to any of those events set out in clause 12.1.3 including their equivalent in any jurisdiction to which the Supplier, any subcontractor or supplier is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of the Contract then the Supplier, at no charge to the Company, shall:

13.8.1 in the case of its own software, use its best endeavours to transfer to the Company all Intellectual Property Rights in that software; and

13.8.2 in the case of software owned by its subcontractors, use its reasonable endeavours to procure the transfer to the Company and LUL of a perpetual, irrevocable, transferable, royalty-free, exclusive licence (with rights to transfer, assign and licence on the same terms) to use and copy the Intellectual Property Rights in that software.

13.8

13.9 The Supplier shall use and shall procure that its subcontractors and suppliers shall use the trade marks, trade names and other Intellectual Property Rights notified to it by the Company from time to time (the "Corporate IPRs") in compliance with any relevant LUL standards from time to time in force.

13.10 The Supplier shall not use and shall procure that its subcontractors and suppliers shall not use the Corporate IPRs in combination with any other trade marks without the Company's and LUL's prior written consent.

LONDON LIVING WAGE

14.1 The Supplier shall, to the extent the Contract is for the provision of Services to be undertaken within Greater London or on the LUL network:

14.1.1 ensure that none of its employees engaged in the provision of Services under the Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

14.1.2 provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;

14.1.3 disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the

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London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires; 14.1.4 co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and 14.1.5 procure that any subcontractor (of any tier) is required to comply with the provisions of this clause 14 and the provisions of this clause 14.1 are included in any subcontract (of any tier).

14.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, who shall not give such consent without LUL approval, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of clauses 14 and 15.

15 RESPONSIBLE PROCUREMENT 15.1 The Supplier and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including LUL) to do all things reasonably necessary to comply with the Responsible Procurement Policy in its procurement activities, and the TfL Supplier Diversity Policy and the Green Procurement Code and that LUL is under a duty to comply with

that direction and that the Company is similarly under a duty to comply with the Tube Lines Contract. 15.2 The Supplier shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company and LUL to comply with, the Responsible Procurement Policy, TfL Supplier Diversity Policy and the Green Procurement Code. 15.3 The Supplier acknowledges and agrees that the Company is required to develop the following policies (the "Policies") which shall, in each case, reflect and be consistent with the relevant principles of the Responsible Procurement Policy, the TfL Supplier Diversity Policy and the Green Procurement Code:

15.3.1 a policy relating to the promotion of diversity in the Company's and the Supplier's supply chain which reflects and is consistent with the principles of the TfL Supplier Diversity Policy (the "Supplier Diversity Policy"); 15.3.2 a policy relating to the promotion of fair employment practices and ensuring minimum standards for employees which shall expressly describe the manner by which the Company and the Supplier shall comply with its requirement to pay and ensure that its subcontractors pay the London Living Wage (the

"Fair Employment Practices Policy"); 15.3.3 a policy relating to the promotion of environmental sustainability which shall reflect and be consistent with the principles of the Green Procurement Code (the "Environmental Sustainability Policy"); 15.3.4 a policy relating to the promotion of community benefits (the "Community Benefits Policy"); 15.3.5 a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "Ethical Sourcing Policy"); 15.3.6 a policy relating to the meeting of strategic labour needs including the provision of training opportunities (the "Strategic Labour Needs and Training Policy"); and 15.3.7 a policy relating to the promotion of the welfare of the workforce (the "Workforce Welfare Policy"), and the Supplier shall and shall procure that all of its subcontractors shall comply with such Policies (once approved by LUL) to the extent they do not conflict with the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code.

15.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement

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Code (and any adjustment or amendment to the Policies as a result of such amendment or adjustment to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).

15.5 The Supplier shall be entitled to additional payment in the event of any additional costs which it reasonably and properly incurs as the result of any changes from time to time to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code (and any change to the Policies as a result of such change to the Responsible Procurement Policy, the TfL Supplier Diversity Policy and/or the Green Procurement Code).

CONFIDENTIALITY

16 The Supplier 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 Supplier and shall use such information only for the purpose of the performance of its obligations under the Contract.

16.2 On the Company's request, the Supplier shall, so far as is reasonably possible:

16.2.1 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 Supplier;

16.2.2 return to the Company all copies (whether hard copy or other media) of such Confidential Information; and

16.2.3 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.

16.3 The Supplier shall ensure that all its subcontractors, suppliers, employees and agents perform its obligations in clauses 16.1 and 16.2 as if they were the Supplier, and the Supplier shall be responsible to the Company for any act or omission by its subcontractors, suppliers, employees and agents in breach of such obligations.

16.4 The Supplier shall notify the Company promptly if the Supplier 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 employee or agent for such breach of confidence.

16.5 The provisions of clause 16 shall not apply:

16.5.1 to any information which is already in the public domain at the time of its disclosure other than by breach of the Contract; or

16.5.2 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.

ADVERTISING

17 The Supplier shall not without the written consent of the Company announce or publicise that it supplies the Company.

CORRUPT GIFTS AND PAYMENTS OF COMMISSION

18 The Supplier undertakes that it shall not and shall procure that its subcontractors and suppliers 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.

18.2 The Supplier undertakes that it shall not, and shall use reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or

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18.3 cause the Company to commit any equivalent act.
The Company shall have the right to audit any and all records necessary to confirm compliance with this clause 18 at any time during performance of the Contract and during the twelve year period following completion of performance.

19 **FREEDOM OF INFORMATION**
For the purposes of this clause 19:
19.1.1 "FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

19.1.2 "Information" means information recorded in any form held by the Company or by the Supplier on behalf of the Company; and
19.1.3 "Information Request" means a request for any Information under the FOI Legislation.

19.2 The Supplier acknowledges that the Company:

19.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the

19.2.2 Company to comply with its obligations under the FOI Legislation; and
may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier.

19.3 Without prejudice to the generality of clause 19.2 the Supplier shall and shall procure that its subcontractors (if any) shall:

19.3.1 transfer to the Company (or such other person as may be notified by the Company to the Supplier) each Information Request relevant to the Contract, the Services 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

19.3.2 in relation to Information held by the Supplier 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.

19.3.3 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 Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

19A DATA TRANSPARENCY

19A.1 The Supplier acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding clause 16 and clause 19, the Supplier hereby gives its consent for the Company to publish the Contract Information to the general public.

19A.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 Supplier regarding any redactions to the Contract Information to be published pursuant to clause 19A.1. The Company shall make the final decision regarding

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publication and/or redaction of the Contract Information.

20 TRANSPORT FOR LONDON GROUP

20.1 Declaration of Ineffectiveness

20.1.1 Without prejudice to the Company's right to terminate the employment of the Supplier under clause 12.1 or at common law, the Company may terminate the Supplier's employment at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 20.1.

20.1.2 In the event that any court makes a Declaration of Ineffectiveness, the Company shall notify the Supplier. The parties agree that the provisions of this clause 20.1 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clause 12.1 and this clause 20.1 or the Cessation Plan, the provisions of this clause 20.1 and the Cessation Plan prevail.

20.1.3 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or which shall accrue to either party prior to or after such Declaration of Ineffectiveness.

20.1.4 As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in

good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:

(a) an orderly and efficient cessation of the Services or (at the Company's request) a transition of the Services to the Company or such other entity as the Company may specify; and

(b) minimal disruption or inconvenience to the Company or to public passenger transport services or facilities, in accordance with the provisions of this clause 20.1 and to give effect to the terms of the Declaration of Ineffectiveness.

20.1.5 Upon agreement, or determination by the Company, of the Cessation Plan the Parties shall comply with their respective obligations under the Cessation Plan.

20.1.6 The Company shall pay the Supplier's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or charges agreed as part of the Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Supplier for any loss of profit, revenue goodwill or loss of opportunity as a result of the early

termination of the Supplier's employment in accordance with this clause 20.1.

20.2 Crime and Disorder Act 1998

The Supplier acknowledges that Transport for London is under a duty under Section 17 of the Crime and Disorder Act 1998 to:

20.2.1 have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;

20.2.2 where appropriate, identify actions to reduce levels of crime and disorder; and

20.2.3 without prejudice to any other obligation imposed on the Company, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Contract, the Supplier shall assist and co-operate with the Company and relevant members of the TfL Group and shall use reasonable endeavours to procure that its subcontractors assist and co-operate, with the Company and relevant members of the TfL Group to enable TfL to satisfy its duty.

20.3 The Company's business

The Supplier acknowledges that it:

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- 20.3.1 has sufficient information about the Company, the Services and the requirement for the Goods;
- 20.3.2 is aware of the Company's processes and business;
- 20.3.3 has made all appropriate and necessary enquiries to enable it to carry out the Services and supply the Goods in accordance with the Contract;
- 20.3.4 is aware of the purposes for which the Services and Goods are required; and
- 20.3.5 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by it of any fact relating to the Services and/or the Goods.

20.4 Best value

The Supplier acknowledges that TFL is a best value authority for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Supplier shall assist the Company to discharge TFL's duty where possible, and in doing so, shall carry out any review of the Services or the Goods reasonably requested by the Company from time to time. The Supplier shall negotiate in good faith (acting reasonably) with the Company

any changes to the Contract in order for the Company to achieve best value.

20.5 Data Protection

20.5.1 The Supplier shall comply with all of its obligations under the Data Protection Act 1998 and if processing personal data (as such terms are defined in section 1(1) of that Act) on behalf of the Company ("Company Personal Data"), the Supplier shall only carry out such processing in order to carry out the Services and supply the Goods and at all times in accordance with any instructions from the Company.

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

20.5.3 The Company shall remain solely responsible for determining the purposes and manner in which Company Personal Data is to be processed. The Supplier shall not share any Company Personal Data with any subcontractor or third party unless there is a written agreement

20.5.4 in place which requires the subcontractor or third party to: only process Company Personal Data in accordance with the Company's instructions to the Supplier; and

20.5.5 comply with the same data protection requirements that the Supplier is required to comply with under the Contract.

20.6 Conflict of Interest

20.6.1 The Supplier acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the carrying out of the Services or the supply of the Goods or with any member of the TFL Group, save to the extent fully disclosed to and approved in writing by the Company.

20.6.2 The Supplier shall undertake ongoing and regular checks for any conflict of interest throughout the duration of the Contract and in any event not less than once in every six (6) months and shall notify the Company in writing immediately on becoming aware of any actual or potential conflict of interest with the carrying out of the Services or the supply of the Goods under the Contract or with any member of the TFL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the Services and/or supplying the Goods from the matter in

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question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied (in its absolute discretion) it shall be entitled to terminate the Contract.

20.7 Corrupt Gifts, Fraud and the Payment of Commission

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

20.7.2 If any fraudulent activity comes to the attention of the Supplier in relation to the Contract the Supplier shall immediately notify the Company by the most expeditious means available. The Supplier shall co-operate with the Company in the investigation of any fraudulent activity and shall implement any changes in procedure or working practices employed under the Contract as may be necessary to ensure that the likelihood or

opportunity for a recurrence of such fraud is minimised. The Supplier shall ensure that no fraudulent activity is committed by the Supplier, its agents, employees or subcontractors.

20.7.3

The Supplier undertakes that it shall not and procures that its subcontractors and suppliers 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.

20.7.4

The Supplier undertakes that it shall not, and shall use reasonable endeavours to procure that its subcontractors and suppliers shall not commit any Prohibited Acts or cause the Company to commit any equivalent act.

20.7.5

The Company shall have the right to audit any and all such records necessary to confirm compliance with this clause 20.7 at any time during the duration of the Contract and during the twelve (12) year period following expiry or termination of the Contract. Breach of this clause 20.7 shall entitle the Company to terminate the Contract and any other contracts between the Supplier and the TfL Group immediately.

20.7.6

In the event of any breach of this clause 20.7 by the Supplier the Company shall be entitled to

recover any loss liability or damage incurred or suffered as a result of the breach of this clause 20.7 by the Supplier.

20.8 Not used.

20.9 Equality and Diversity

20.9.1 Without limiting the generality of any other provision of the Contract, the Supplier:

- (a) shall not unlawfully discriminate;
- (b) shall procure that its personnel do not unlawfully discriminate; and
- (c) shall use reasonable endeavours to procure that its subcontractors do not unlawfully discriminate when providing the Services,

within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976 (including the Race Relations (Amendment) Act 2000), the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005), the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Equality Act 2006, and any other relevant enactments in force from time to time in relation to discrimination in employment.

20.9.2

The Supplier acknowledges that the Company is under a duty under Section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote

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equality of opportunity and good relations between persons of different racial groups. In the performance of the Contract, the Supplier shall assist and co-operate and shall use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible in satisfying this duty.

20.9.3 The Supplier acknowledges that the TfL Group are under a duty by virtue of the Mayor's direction under Section 155 of the GLA Act (in respect of the Greater London Authority's duty under Section 404(2) of the GLA Act) to have due regard to the need to:

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

and in the performance of the Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist and co-operate with the Company where possible to enable the Company to satisfy this duty.

20.9.4 The Supplier shall ensure that its staff, and those of its subcontractors

who are engaged in the performance of the Contract comply with the Company's policies in relation to equal opportunities and diversity, workplace harassment and drugs and alcohol as may be updated from time to time. Copies of these policies are available from the Company at any time on request.

20.9.5 The Supplier acknowledges that the Company is under a duty under Section 49A of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) to have due regard to the need to:

- (a) eliminate discrimination that is unlawful under the Disability Discrimination Acts;
- (b) eliminate harassment of disabled persons related to their disabilities and promote equality of opportunity between disabled persons and other persons;
- (c) take steps to take account of disabled persons' disabilities (even when that involves treating disabled persons more favourably than other persons); and
- (d) promote positive attitudes towards disabled persons and encourage participation by disabled persons in public life,

and in the performance of the Contract, the Supplier shall assist and co-operate and use reasonable endeavours to procure that its subcontractors assist

and co-operate, with the Company where possible to enable the Company to satisfy this duty.

20.10 **Cycling Safety**
20.10.1 For the purposes of this clause 20.10:

"Approved Driver Training" means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at www.fors-online.org.uk.

"Bronze Accreditation" means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk.

"Car-derived Vans" means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment.

"Class VI Mirror" means a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC.

"Close Proximity Sensor" means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which

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alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged.

"Collision Report" means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities.

"Driver" means any employee of the Supplier (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while delivering the Services.

"DVLA" means the Driver and Vehicle Licensing Agency.

"FORS" means the Fleet Operator Recognition Scheme, which is an accredited membership scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members to improve their compliance with relevant laws and their environmental, social and economic performance.

"FORS Standard" means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk.

"Freight Vehicle" means a Lorry, a Van or a Car-derived Van.

"Fresnel Lens" means a clear thin plastic lens that is pressed fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot.

"Gold Accreditation" means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk.

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

"MAM" means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road.

"Side Guards" means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986.

"Silver Accreditation" means the intermediate level of accreditation within the FORS Standard the requirements of which are more particularly described at: www.fors-online.org.uk.

"Van" means a vehicle with a MAM not exceeding 3,500 kilograms.

20.10.2 **Fleet Operator Recognition Scheme Membership**
Where the Supplier operates Freight Vehicles, it shall within ninety (90) days of executing the Contract:

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

(b) (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

20.10.3 The Supplier shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

20.10.4 The Supplier shall ensure that those of its subcontractors who operate Freight Vehicles shall comply with clauses 20.10.2 and 20.10.3 as if

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- they applied directly to the subcontractor.
- 20.10.5 Safety Equipment on Vehicles**
The Supplier shall ensure that every Lorry, which it uses to provide the Services, shall:
- (a) have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Company that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - (b) have a close proximity warning system fitted comprising:
 - a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Operator has obtained the Company's approval to use the Fresnel Lens, which approval the Company may withhold in its unfettered discretion; and
 - a Close Proximity Sensor;
 - (c) have a Class VI Mirror; and
 - (d) bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- 20.10.6 Driver Licence Checks**
The Supplier shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Company within the last twelve (12) months:
- (a) 0 – 3 points on the driving licence – annual checks;
 - (b) 4 – 8 points on the driving licence – six (6) monthly checks;
 - (c) 9 – 11 points on the driving licence – quarterly checks; or
 - (d) 12 or more points on the driving licence – monthly checks.
- 20.10.7 Driver Training**
The Supplier shall ensure that each of its Drivers who has not undertaken:
- (a) Approved Driver Training (or training, which in the reasonable opinion of the Company is an acceptable substitute) in the last three (3) years, undertakes Approved Driver Training within sixty (60) days of the commencement of this Contract; and
- (b) a FORS e-learning safety module in the last twelve (12) months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Company, is an acceptable substitute).
- 20.10.8 Collision Reporting**
Within fifteen (15) days of the commencement of this Contract, the Supplier shall provide to the Company a Collision Report. The Supplier shall provide to the Company an updated Collision Report on a quarterly basis and within five (5) Working Days of a written request from the Company.
- 20.10.9 FORS Reports**
Within thirty (30) days of it achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Supplier shall provide a written report to the Company at fors@tfl.gov.uk detailing its compliance with clauses 20.10.5, 20.10.6 and 20.10.7 of this Contract (the "Safety, Licensing and Training Report"). The Supplier shall provide updates of the Safety, Licensing and Training Report to the Company at fors@tfl.gov.uk on each three (3) month anniversary of its submission of the initial Safety, Licensing and Training Report.

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20.10.10

Obligations of the Supplier regarding subcontractors

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

(a) For Lorries – clauses 20.10.5, 20.10.6, 20.10.7 and 20.10.8; and

(b) For Vans – clauses 20.10.5(a), 20.10.6, 20.10.7 and 20.10.8.

20.10.11

Failure to Comply with Freight-related Obligations

Without limiting the effect of clause 12, if the Supplier fails to comply with clauses 20.10.2, 20.10.3, 20.10.4, 20.10.5, 20.10.6, 20.10.7, 20.10.8, 20.10.9 and 20.10.10:

(a) the Supplier has committed a material breach of this Contract; and

(b) the Company may refuse the Supplier, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Company for any purpose (including but not limited to deliveries).

21

FORCE MAJEURE

21.1

A force majeure event means any of the following (or any circumstances

arising as a consequence of any of the following) if and only to the extent that such event or circumstances is or are not caused by, and their effects are beyond the reasonable control of, a party affected by such an event or circumstances and which have an adverse effect on the party affected by such an event or circumstances and such party's ability to perform its obligations under the Contract and is not an event or are not circumstances (i) whose effect the party affected by such an event or circumstances is otherwise required to avoid or provide against (other than by way of insurance) under the Contract or (ii) which the party affected by such an event or circumstances could reasonably have avoided or provided against ("Force Majeure Event"):

21.1.1

war, invasions, acts of foreign enemies, hostilities (whether war be declared or undeclared), civil war, rebellion, revolutions, insurrection, military or usurped power, confiscation or requisition by or under the order of any government or public or local authority;

21.1.2

civil unrest;

21.1.3

any act of terrorism or a specific threat of terrorism which results in the partial or total, temporary or long term closure of the LUL network;

21.1.4

lightning, earthquake or, subject to

21.1.5

fire;

21.1.6

flooding, other than flooding caused by rising water table or by weather conditions (including extraordinary storm);

21.1.7

tunnel collapse;

21.1.8

compliance with the provisions of sections 118 to 121 of the Railways Act 1993;

21.1.9

nuclear, chemical or biological contamination including ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

21.1.10

the discovery of fossils, antiquities or other material which in each case is required to be exhumed or unexploded bombs

21.1.11

strikes, lock-outs or other industrial action being in each case industry wide.

21.2

If either party is prevented from, hindered or delayed in performing any of its obligations under the Contract by a Force Majeure Event then neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or failure to perform, any of its obligations under the Contract and time for performance of that obligation shall be extended accordingly. If any additional costs are incurred by either party as a direct result of a

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- Force Majeure Event taking place then such costs shall be borne by the party which has incurred them.
- 21.3** The affected party shall promptly notify the other party of the event(s) causing the delay or failure referred to in this clause 21 and shall estimate the period for which their effects will continue. The affected party shall use reasonable endeavours to mitigate the effects and to resume full performance.
- 21.4** If the event(s) causing the delay or failure referred to in this clause 21 continues for more than 26 weeks either party may terminate the Contract by giving not less than 28 days notice in writing.
- 22 RIGHT TO WITHHOLD/RECOVER PAYMENT**
- 22.1** Any payment made by the Company under the Contract including the final payment under the Contract shall not 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 Supplier by mistake of law or of fact.
- 22.2** The Company shall be entitled to set off against or withhold from any sums due or which may become due to the Supplier from the Company any amount owed to the Company by the Supplier provided that the Company gives the Supplier
- notice in writing of its intention to withhold payment.
- 23 STATUTORY REQUIREMENTS**
- 23.1** The Supplier shall and warrants that it shall in the performance of the Contract ensure compliance in all respects with any Act of Parliament, statutory instrument, order, self-governing industry regulations and best practice guidelines or any other regulation or byelaw from time to time in force which is or may become applicable during the period the Contract is in force.
- 24 WAIVER**
- 24.1** Failure or delay by either party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by such party of such provision or of any subsequent breach or default, or in any way affect the validity of the Contract or any part of the Contract.
- 25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 25.1** Subject to:
- (a) not used;
 - (b) LUL's rights in accordance with clauses 5.3 and 5.4; and
 - (c) LUL's rights in accordance with clauses 13.5 and 13.10,
- no person except any member of the TfL Group may enforce the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not
- affect any other right or remedy of a third party arising at law.
- 25.2** Notwithstanding LUL's rights referred to in clause 25.1, the Company and the Supplier may agree to vary or rescind the Contract without the consent of any third party.
- 26 DISPUTE RESOLUTION**
- 26.1** Any question, dispute, difference or claim (a "Dispute") shall be resolved in accordance with this clause 26
- 26.2** The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between an authorised representative of the Company and a duly authorised representative of the Supplier (together the "Nominated Representatives") which shall be convened to discuss such Dispute within 14 days of notification in writing by one party to the other of a matter in dispute.
- 26.3** If the Dispute has not been resolved within 28 days after the date of a meeting between the Nominated Representatives in accordance with clause 26.2 (or if no such meeting was convened within 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

Supplier'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.

26.4 If the Dispute has not been resolved within 21 days of it being referred to the Company's Contracts and Procurement Manager and the Supplier's Managing Director or their deputies in accordance with clause 26.3 either party may refer the matter for resolution in accordance with the provisions of clause 27.

26.5 Clauses 26.1 to 26.4 are subject to the Supplier's rights (if any) under the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 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 26.5, "Adjudication Rules" means the most recent edition of the Company's adjudication rules on the date of the notice referring adjudication.

27 LEGAL CONSTRUCTION

27.1 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and interpreted

according to the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

28 SEVERABILITY OF PROVISIONS

28.1 If any provision of the Contract is held to be illegal, invalid or unenforceable in whole or in part, the Contract shall continue to be valid as to its other provisions and the remainder of the affected provision.

29 NOTICES

29.1 Any notice or other communication to be given under the Contract shall be in writing and shall be deemed to have been duly given if delivered by hand, by registered post or by facsimile to a party at the addresses set out in the Purchase Order (or such other address as a party may from time to time designate in writing).

29.2 Any such notices or other communication shall be deemed to have been received by the addressee two Working Days following the date of dispatch if sent by registered post or on the next Working Day if delivered by hand or sent by facsimile.

30 NATURE OF AGREEMENT

30.1 Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.

31 CHANGE IN LAW

31.1 The Supplier shall be entitled to any reasonably and properly incurred costs that it incurs in the performance of this Contract as a direct result of any change in an applicable law or regulation or in the Company's drug and alcohol principles or in QUENSH provided that:

- (a) the Supplier uses its reasonable endeavours to mitigate such costs; and
- (b) before incurring any costs, the Supplier has notified the Company of the estimated costs that it forecasts it will incur and the Company has agreed that the Supplier should comply with the change and incur the associated costs.

32 SURVIVAL

32.1 The provisions of Clauses 2.2 (Entire Agreement), 5 (Records and Audit), 8 (Indemnity and Insurance), 11 (Defects), 13 (Intellectual Property Rights), 16 (Confidentiality), 17 (Advertising), 18.3 (Corrupt Gifts and Payments of Commission), 19A (Data Transparency), 19 (Freedom of Information), 22.2 (Set-Off), 25 (Contract (Rights of Third Parties) Act 1999), 27 (Legal Construction), 28 (Severability of Provisions) and 32 (Survival), will survive the termination or expiry of this Contract

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and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this 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.

