

any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Services). The Supplier shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Supplier shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the parties.

17.12

A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Supplier shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Supplier if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Supplier shall comply with any request by the Company that a particular person should not become a member of Key Personnel.

17.13

The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Supplier, such consent not to be unreasonably withheld or delayed.

17.14

Staff Travel Facilities

18 London Living Wage

18.1

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

- (a) 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;
- (b) provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;
- (c) 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 London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;

(d) co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and

(e) procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 18 and the provisions of this Clause 18 are included in any subcontract (of any tier).

18.2 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 18.

19 Responsible Procurement

19.1 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 the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities. .

19.2 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 to comply with, the Responsible Procurement Policy.

19.3 The Supplier acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of goods and services in an ethical manner (the "Ethical Sourcing Policy") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy and the Supplier shall and shall procure that all of its subcontractors shall comply with such Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

19.4 The Supplier acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

19.5 The Supplier shall not be entitled to any addition to the Contract Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

19.6 The Supplier shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 19 and the provisions of this Clause 19 are included in any subcontract (of any tier).

19.7 The Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 19.

20 Failure to Perform

20.1 If the Supplier has not performed the Services in accordance with the terms of the Contract, without prejudice to any other rights the Company shall have under the Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.

20.2 Without limiting any other remedy, if the Supplier fails to comply with the requirements of Clause 20.1, the Company shall be entitled to perform or procure the performance of the Services or part thereof itself or from a third party. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 20.2 is recoverable by the Company from the Supplier and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Supplier under the Contract.

20.3 For the purposes of Clause 20.2 the Supplier hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Supplier or used by the Supplier in connection with the Contract as may be required by the Company to exercise its rights under Clause 20.2 and the Supplier shall provide all such co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 20.2.

21 Intellectual Property Rights

21.1 Existing Contracts

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

21.2 Vesting of Intellectual Property Rights created under this Contract

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

21.3 Ownership of the Supplier's Intellectual Property Rights

Contract for the Supply of Services LUL

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

21.4

Company's Licence to use the Supplier's Intellectual Property Rights

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

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

21.5

Provision of Supporting Documentation and Other Materials

The Supplier shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Supplier, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 21.2, 21.3 and 21.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

21.6 *Company's Rights of Retention*

Not used.

21.7 *Company's Rights to the Software*

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

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

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

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

- (a) The Supplier shall indemnify and hold harmless the Company and any member of the Tfl Group against any actions, claims, losses, demands, costs, charges or expenses that arise from, or are incurred by reason of, any infringement or alleged infringement of any Intellectual Property Rights belonging to any subcontractor (of any tier) or other third party and against all costs and damages of any kind which the Company may incur in connection with any actual or threatened proceedings before any court or arbitrator or any other dispute resolution forum. If required by the Company the Supplier shall conduct negotiations with any subcontractor (of any tier) or other third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company.
- (b) In the event of a claim of infringement of any Intellectual Property Rights the Supplier shall use all reasonable endeavours to make such alterations or adjustment to the method of providing the Services as may be necessary to ensure that the use and the provision of the Services continues in spite of such claim.

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

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

21.11

Company's Intellectual Property Rights

The Supplier is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to the Company.

22

Termination and Suspension

22.1

The Company may terminate the Contract immediately by notice in writing to the Supplier if:

- (a) the Supplier commits a breach of the Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Supplier and the Company, of the Company serving notice on the Supplier requiring such remedy;
- (b) the Supplier or anyone employed by or acting on behalf of the Supplier (whether or not acting independently of the Supplier when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) any limit on the Supplier's liability to pay Liquidated Damages is reached or exceeded; or
- (d) the Supplier enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Supplier under the Contract) or is deemed unable to pay its debts as they fall due *[in accordance with] [within the meaning of] Section 123(1) of the Insolvency Act 1986*, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same *[or any similar or analogous procedure or step is taken in any jurisdiction]*; or
- (e) a breach of the Supplier's obligations under Clause 43 or
- (f) *the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 9.*

22.2

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

- (a) to terminate the Contract at any time by giving notice of not less than thirty (30) days to the Supplier in writing; or
- (b) at any time to require the Supplier to suspend provision of the Services by giving notice in writing (a "**Suspension Notice**") to the Supplier.

22.3

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

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

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

22.4

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

22.5

Not used.

22.6

In the event that the Contract is suspended in accordance with Clause 22.2(b), the Supplier shall:

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

22.7

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

Supplier shall be entitled to approach the Company with a request for a variation, in accordance with the Contract Variation Procedure.

22.8 In the event that the parties are unable to agree upon the variation requested under Clause 22.7, then a Dispute shall be deemed to have arisen and the matter shall be referred for resolution in accordance with Clause 37.

22.9 Termination of the Contract for whatever reason shall not affect the accrued rights of the parties arising in any way out of the Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

22.10 If anyone employed by the Supplier, acting independently of the Supplier, commits a Safety Breach or Prohibited Act, then the Company may require the Supplier to exclude that individual from the Services with immediate effect and that individual may only resume the performance of the Services at the Company's absolute discretion.

23 Co-operation in Handover

23.1 The Supplier shall provide at no cost such reasonable assistance to the Company and to any third party nominated by the Company as the Company may require during the last six (6) months of the Contract and in the three (3) months after the Completion Date (or, in the case of earlier termination for any reason, the period of three (3) months from the effective Contract termination date) to facilitate the engagement of a successor supplier and/or the resumption by the Company of the performance of the Services and in such a manner so as not to unduly disrupt or hinder the Company's business.

23.2 Without prejudice to the generality of Clause 23.1 above, the Supplier shall on or prior to the Completion Date transfer to the Company such Documentation relating to the Services or full copies thereof as the Company may request.

24 Indemnity and Insurance

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

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and any other property belonging to the Company or for which it is responsible);

- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Supplier, its employees, agents or subcontractors; and
- (d) arising under the Company's contracts with third parties.

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

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

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

24.4 The Company may withhold from any sum due or which may become due to the Supplier any sum due to the Company as a result of the operation of Clause 24.1 provided that an appropriate notice to withhold payment has been served by the Company on the Supplier.

24.5 Other than in respect of the Losses (i) described in Clauses 24.1(a) and 24.1(d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with the Contract. Each party respectively undertakes not to sue the other party, Tfl or any member of the Tfl Group in respect of Consequential Loss.

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

- (a) maintain at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969 and any statutory orders made under such Act or any amendment or re-enactment thereof;
- (b) maintain at its own cost an adequate level of public liability insurance in respect of the Supplier's liability for death or injury to any person and loss of or damage to property and being not less than £5,000,000 (five million pounds) per occurrence;
- (c) maintain at its own cost an adequate level of professional indemnity insurance commensurate with the risk and, where appropriate, being not less than £2,000,000 (two million pounds) per occurrence and in the aggregate per annum.

- (d) ensure that the foregoing insurance policy or policies shall be or are effected with a reputable insurer. Such insurance shall be on terms approved by the Company (such

approval not to be unreasonably withheld or delayed) and shall be maintained in force for a period not less than [twelve (12)] years after the completion of the Services;

- (e) ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the contract which they are contracted to fulfil; and
- (f) produce within seven (7) days of any reasonable request by the Company and in any event before the commencement of any of the Services under the Contract satisfactory evidence in the form of a broker's letter or similar confirming the existence of insurance in accordance with the terms of this Clause 24.

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

24.8 If the Supplier fails to maintain the insurance policies as provided in this Clause 24, the Company may effect and keep in force any such insurance and pay such premium or premiums at commercially competitive rates as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or which become due to the Supplier or recover the same as a debt due from the Supplier.

24.9 Not used.

25 Force Majeure and Permitted Delay Events

25.1 Force Majeure

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

25.2 *Permitted Delay Events*

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Supplier shall give notice to the Company's