

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

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

#### **14. Defects**

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

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

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

#### **15. Safety**

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

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

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

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

## **16. Construction (Design and Management) Regulations 2015**

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

## **17. Environmental Claims**

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

- 17.3. Where the Contractor discovers or suspects that the Site has been contaminated or polluted by another party, the Contractor shall notify the Company of the identity of the other party, where known. The Contractor shall not without the prior written consent of the Company undertake any environmental investigations on Site or commission or undertake any Remediation. The Contractor shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.
- 17.4. In the event that the Contractor commissions an environmental assessment, the Contractor shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.
- 17.5. The Contractor shall provide to the Company:
- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Works (for the purposes of this Clause 17, the "**authorisations**");
  - (b) copies of any amendments to the authorisations;
  - (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
  - (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

## **18. Pricing**

- 18.1. The prices for the Works shall be the Contract Price set out in the Order using the rates and prices set out in Schedule 4. The prices for the Works or any Contract Price shall only be changed in accordance with the Contract Variation Procedure.
- 18.2. The Parties agree that the rates and prices stated in **Error! Reference source not found.** shall be the maximum rates and prices for each Contract during the term of this Agreement and any Contract.

## **19. Payment**

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

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

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

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

- (a) the amount (if any) the Company considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
- (b) the basis on which the amount was calculated,

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

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

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

19.7. Within six (6) days of receipt by the Contractor of the CPAF, the Contractor shall issue a corresponding VAT invoice for the amount of the relevant CPAF and attach one (1) copy of the CPAF to the said invoice and send the invoice to the Company's Representative at the

address stated in the Framework Particulars. The Contractor shall ensure that such VAT invoice:

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

19.7.2. clearly states the purchase order number.

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

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

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

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

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

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

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

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

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

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

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

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

- 19.13. Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Contract Price and any associated Variation Order and, unless the Company directs otherwise, be in the format set out in Appendix 1 of Schedule 4. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.
- 19.14. Failure on the part of the Contractor to submit a Payment Application in accordance with Clause 19.13 may lead to delays in processing the Payment Application and subsequent payment of invoices. Any loss or additional expenses incurred by the Contractor in the correction or re-submission of a Payment Application or invoice shall be at the Contractor's own expense.
- 19.15. All sums payable to the Company by the Contractor under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Contractor is compelled by law to make any deduction or withholding, the Contractor shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 19.16. No payments made by the Company hereunder, including final payment under any Contract, shall prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company:
  - (a) any amount in respect of which there exists a bona fide dispute; and
  - (b) any amount that on the basis of the Company's bona fide estimate the Company considers due to it from the Contractor. Such estimates shall be binding on the Contractor unless and until varied by agreement between the Parties or any award, order or judgement.

19.17. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of this Agreement and any Contract or otherwise.

## **20. Contractor Performance**

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

20.2. The Company shall have the right to:

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

## **21. Bonds, Warranties and Guarantees**

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

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

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

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

21.3. If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 21.1 and 21.2 then the Contractor shall replace such bond and/or

parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

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

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

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

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

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

## **22. Variation**

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

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

## **23. Transfer Regulations**



23.1. For the purposes of this Clause 23:

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

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

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

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

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

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

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

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

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

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

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

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

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

23.6. The Contractor shall indemnify the Company against all Relevant Claims and Liabilities arising from or incurred by reason of any act or omission of the Contractor, its servants or agents in connection with or arising from or incurred by reason of the employment of the Transferring Employees, including but not limited to any claim against the Company or any other person for damages for breach of contract, or for compensation for unfair or wrongful dismissal or redundancy, of failure to inform or consult Transferring Employees, or in respect of death or personal injury, breach of statutory duty or any other claim in tort by a Transferring Employee, or by a person who would be a Transferring Employee but for any act or omission (including dismissal or constructive dismissal) of the Contractor, arising from the operation (or alleged operation) of the Transfer Regulations in relation to the Works.

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

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

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

## **24. Intellectual Property Rights**

24.1. Existing Contracts

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

#### 24.2. Vesting of Intellectual Property Rights created under this Agreement or any Contract

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

#### 24.3. Ownership of the Contractor's Intellectual Property Rights

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

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

The Company shall have and the Contractor hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Company a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-licence such rights to any third party) to use and copy the Intellectual Property Rights referred to in Clause 24.3 for the purposes of:

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

#### 24.5. Provision of Supporting Documentation and Other Materials

The Contractor shall:

- (a) promptly, and in any event by no later than such date as the Company may notify to the Contractor, provide at no charge to the Company, copies of any materials and items (including, without limitation, Documentation) in the Contractor's or subcontractor's (of any tier) or other third party's possession or control (or which ought reasonably to be in the Contractor's or subcontractor's (of any tier) or other third party's possession or control) which are referred to or relied upon in using and copying, or required in any way for the use and copying of, the Intellectual Property Rights referred to in Clauses 24.2, 24.3 and 24.4 above; and
- (b) keep copies of such materials, items and Documentation in a secure place where they will not deteriorate and undertake regular (and in any event not less than every three (3) months) integrity testing of the same and provide written evidence of such testing to the Company at regular intervals and in any event upon the Company's request.

#### 24.6. Company's Rights of Retention

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

#### 24.7. Company's Rights to the Software

If the Contractor or any of its subcontractors providing software for incorporation into or operation of the Works stops trading, is subject to an insolvency event equivalent to any of those events set out in Clause 26.1(d) (including their equivalent in any jurisdiction to which the Contractor or any of its subcontractors is subject), makes known its intention to withdraw support of that software or fails to support that software in accordance with the terms of this Agreement and each Contract then the Contractor, at no charge to the Company, shall use its best endeavours to transfer or procure the transfer to the Company of all Intellectual Property Rights in that software.

#### 24.8. Company's Rights in relation to Other Procurement Activities

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

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

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

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

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

#### 24.10. Ownership of the Company's Intellectual Property Rights

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

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

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

#### 24.12. Corporate IPRs

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

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

24.12.3. On written request from the Company, the Contractor shall supply copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the Company reasonably determines that any use of the Corporate IPRs falls below the quality standards notified to it in accordance with Clause 24.12.1, the Company shall give the Contractor written notice of that fact and the Contractor shall correct the use so as to comply with such quality standards taking into account the Company's instructions.

## **25. Failure to Supply the Works**

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

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

## **26. Termination and Suspension**

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

- (a) the Contractor commits a breach of this Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or