

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