

**PURCHASE ORDER LUL  
CONDITIONS OF CONTRACT**

**1. Definitions**

In these conditions of contract (“**Conditions of Contract**”), unless the context indicates otherwise, the expression:

- 1.1. “**Act**” means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;
- 1.2. “**Applicable Laws**” means, depending on the context, all or any laws, statutes, proclamations, recommendations, codes of practice, by-laws, directives, Regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation (including any declarations of conformity) retained or modified by or under the EUWA, at any time or from time to time in force in the whole or any part of the United Kingdom and which are or may become applicable to the Contract, any agreement or document referred to in the Contract, or for the supply of the Goods and/or performance of the Services;
- 1.3. “**CCSL**” means the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Purchaser from time to time;
- 1.4. “**Cessation Plan**” means a plan agreed between the parties or determined by the Purchaser pursuant to Clause 19.4 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event;
- 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 Purchaser’s obligations pursuant to sections 118 to 121 of the Railways Act 1993; confidential financial information including, without limitation, business plans, taxation information and returns to shareholders; and any other information that a business would reasonably expect to be able to protect by virtue of business confidentiality provisions;
- 1.6. “**Contract**” means the contract between the Purchaser and the Supplier for the [supply of the Goods and/or performance of the Services] which comprises these Conditions of Contract, the Purchase Order and any specification, description, drawing or sample of the Goods and/or Services or other document referred to in the Conditions of Contract or the Purchase Order;
- 1.7. “**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 13 which shall consist of the Supplier’s name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;
- 1.8. “**Contract QUENSH Conditions**” means all those contract, quality, environmental, health and safety conditions in force from time to time and contained in the QUENSH Manual as may be amended from time to time;
- 1.9. “**Data Protection Legislation**” means:

- (a) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
  - (b) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
  - (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003.
- 1.10. **“Declaration of Ineffectiveness”** means a declaration of ineffectiveness made by a court of competent jurisdiction pursuant to Regulation 113(2)(a) or Regulation 118(3) of the Utilities Contracts Regulations 2016 or Regulation 98 of the Public Contracts Regulations 2015;
- 1.11. **“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;
- 1.12. [**“Electronic Invoicing Platform”** means the Purchaser’s invoicing platform for the submission and receipt of electronic invoices.]
- 1.13. [**“Electronic Procure-to-Pay (eP2P) Vendor Handbook”** means the handbook setting out the system, format, file requirements and steps for registering to use and using the Electronic Invoicing Platform as updated from time to time, a copy of which can be downloaded from the following link – <https://tfl.gov.uk/corporate/publications-and-reports/procurement-information#on-this-page-5>.]
- 1.14. **“EUWA”** means the European Union (Withdrawal) Act 2018;
- 1.15. **“Existing Contracts”** means any and all contracts, whether current, expired or terminated, pursuant to which goods and/or services have been supplied and/or provided by the Supplier (in the capacity of supplier or subcontractor) to the Purchaser and/or any other member of the TfL Group.
- 1.16. **“GLA Act”** means the Greater London Authority Act 1999;
- 1.17. **“GLA Responsible Procurement Policy”** means the ‘GLA Group Responsible Procurement Policy’ dated March 2006 and updated in January 2008 located at <http://www.london.gov.uk/rp/resources/publications/index.jsp> as may be further updated, amended or replaced from time to time and such guidance relating to the implementation of such policy as may be notified by the Purchaser to the Supplier from time to time;
- 1.18. **“Goods”** means the goods (if any) or any part thereof specified in the Purchase Order and includes any Specialist Tooling, equipment, plant, materials or assets to be supplied by the Supplier including as part of any Services to be performed under the Contract (and in each case including any replaced or repaired Goods supplied in accordance with Clause 15);
- 1.19. **“Greater London”** means that term as it is used in the GLA Act;
- 1.20. **“Infrastructure Manager”** has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.
- 1.21. **“Intellectual Property Rights”** means any intellectual property rights in any part of the world and includes but is not limited to all rights to, and interests in, any patents (including supplementary protection certificates), designs, utility models, 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.

- 1.22. **“London Living Wage”** the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk));
- 1.23. **“Losses”** means any expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever and howsoever arising;
- 1.24. **“LUL”** means London Underground Limited (company registered number: 1900907) and its successors in title and assigns;
- 1.25. **“Mayor”** means the person from time to time holding the office of Mayor of London as established by the GLA Act;
- 1.26. **“Operator”** means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway or a person who secures the provision of such services through appropriate contractual arrangements;
- 1.27. [**“PDF Invoice”** means an invoice in PDF (portable document format) format.]
- 1.28. **“Personal Data”** has the meaning given to it in the Data Protection Legislation;
- 1.29. **“Price”** means the price of the Goods and/or Services stated in the Purchase Order;
- 1.30. **“Processing”** or **“processing”** has the meaning given to it in the Data Protection Legislation;
- 1.31. **“Public Procurement Termination Event”** means:
  - (a) The Contract has been subject to any substantial modification which would require a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 or Regulation 88(8) of the Utilities Contracts Regulations 2016; or
  - (b) If the Purchaser determines that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations contained under the EU Treaties as retained by the EUWA and applicable procurement regulations;
- 1.32. **“Purchase Order”** means the Purchaser's order form (which is subject to these Conditions of Contract) setting out details for the supply of the Goods and/or performance of the Services such as the specification, quantity, price, delivery time, place, date and invoicing requirements;
- 1.33. **“Purchaser”** means the member of the TfL Group named in the relevant Purchase Order and its successors in title and assigns;
- 1.34. **“QUENSH Manual”** means the manual issued by LUL and containing the Contract QUENSH Conditions as amended from time to time;
- 1.35. **“Regulations”** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.36. **“Services”** means the services and/or works (if any) specified in the Purchase Order;

- 1.37. **“Specialist Tooling”** means all jigs, tools, fixtures, moulds, patterns and/or equipment which are supplied or paid for by the Purchaser or developed at the Purchaser’s expense including any replacements thereof in accordance with the Contract;
- 1.38. **“Standards”** means the Category 1 and 2 Standards and Draft Category 1 and 2 Standards and such European, British and International Standards and associated Codes of Practice required by London Underground Limited for the Supplier to supply the Goods and/or perform the Services in accordance with good industry practice. A full set of current Standards is available for the Supplier’s use on-line at the LU Standards e-library or as notified to the Supplier;
- 1.39. **“Supplier”** means the person, firm or company to whom the Purchase Order is addressed and includes any assignee permitted by the Purchaser in accordance with Clause 33.1;
- 1.40. **“TfL Group”** means Transport for London (“TfL”), a statutory body set up by the GLA Act and any of its subsidiaries and their subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to “any member of the TfL Group” shall refer to TfL or such subsidiary. The Purchaser is a member of the TfL Group;
- 1.41. **“Transparency Commitment”** means TfL’s commitment (applying to TfL, the Purchaser and the rest of the TfL Group) to publish contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL’s own published transparency commitments;
- 1.42. **“Underground Network”** means the stations and depots (wherever situate), assets, systems, track, and other buildings which are used in the maintenance and provision of the underground service known as “London Underground”; and
- 1.43. **“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

## **2. Interpretation**

In these Conditions of Contract the following shall apply:

- 2.1. clause headings are for convenience only and do not form part of or affect the interpretation of these Conditions of Contract;
- 2.2. unless noted to the contrary, any reference to any Clause is a reference to that Clause in these Conditions of Contract;
- 2.3. any reference to “person”, “firm” or “company” includes any individual, company, unincorporated association or body (including a partnership or joint venture) or other entity whether or not having separate legal personality;
- 2.4. any term importing the singular number includes the plural number and vice versa;
- 2.5. a reference to any statute or regulation or provision thereof shall be construed as a reference to that statute, regulation or provision as amended, re-enacted or extended at the relevant time; and
- 2.6. where the Act applies to these Conditions of Contract or to the Contract of which these Conditions of Contract form part, a period of time stated in days is a period calculated in accordance with section 116 of the Act.

## **3. Acceptance of Purchaser's Conditions of Contract**

- 3.1. The Supplier shall be deemed to have accepted all the Conditions of Contract to the exclusion of any other terms or conditions including any terms or conditions contained in any quotation, tender, acknowledgement or acceptance of order or any other document of the Supplier 48 hours after issue of the Purchase Order or delivery of the Goods and/or performance of the Services, whichever is the sooner.

#### **4. Agreement to Supply the Goods and/or Perform the Services**

- 4.1. The Supplier shall supply the Goods and/or perform the Services and the Purchaser shall pay the Supplier in accordance with the Contract. The Supplier shall not depart from any aspect of the Contract without the prior written consent of the Purchaser.

#### **5. Safe Operation of the Underground Network**

- 5.1. Without prejudice to any other provisions of the Contract, in supplying the Goods and/or performing the Services, the Supplier shall, and shall procure that its subcontractors (if any) shall, at all times:
- a) not do or omit to do or prevent any act which may affect the safe operation of the Underground Network or endanger the safety of the employees of any member of the TfL Group, the public or any other person; and
  - b) whilst on the Purchaser's premises or any premises for which the Purchaser is responsible, comply with any requirements and/or instructions given by an authorised representative of the Purchaser in connection with the supply of the Goods and/or performance of the Services under the Contract including a request for the Supplier, or any of its employees, agents or subcontractors to leave the premises immediately.

#### **6. Supply of Goods and/or Performance of the Services**

- 6.1. The Supplier shall ensure and warrants to the Purchaser that the Goods will:
- a) be of satisfactory quality (within the meaning of the Sales of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser, expressly or by implication, and in this respect the Purchaser relies on the Supplier's skill and judgment;
  - b) without prejudice to any other warranty, including manufacturer or product warranty, offered by the Supplier and the Purchaser's right to rely on the same, be free from defects in design, materials and workmanship and remain so for 12 months or such other period after delivery in accordance with Clause 11 as stated in the Purchase Order;
  - c) conform in all respects with any relevant specification, description, drawing and/or sample which forms part of the Contract; and
  - d) comply with all Standards and all Applicable Laws from time to time in force relating to the supply of the Goods including, without limitation, in relation to their manufacture, labelling, packaging, storage, handling and delivery.
- 6.2. The Supplier shall ensure and warrants to the Purchaser that the Services will:
- a) be performed by appropriately qualified, trained and experienced personnel exercising the highest standard of care, skill, diligence and expedition in accordance with best practice in the Supplier's industry, profession or trade;
  - b) be performed in accordance with the Contract and conform in all respects with any relevant specification, description or drawings which forms part of the Contract and that any deliverables to be produced by the Supplier in respect of the Services will be fit for any purpose expressly or impliedly made known to the Supplier by the Purchaser; and
  - c) comply with all Standards and all Applicable Laws from time to time in force relating to the performance of the Services.
- 6.3. The Supplier warrants to the Purchaser that it has the right to grant to the Purchaser and any member of the TfL Group all licences (including without limitation, all rights to sub-license) of all and any Intellectual Property Rights as contemplated by this Contract.

- 6.4. If the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016 apply to this Contract, the Supplier warrants to the Purchaser that, as at the date of this Contract, it has not been in any of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016.
- 6.5. It is the Supplier's responsibility to ensure that it receives from the Purchaser the Standards applicable to the supply of the Goods and/or performance of the Services including, where relevant, the Contract QUENSH Conditions which govern safety for places of work on or around the Underground Network. If the Supplier has not received the Standards or, where relevant, has not been provided with the Contract QUENSH Conditions it shall immediately notify the Purchaser in writing.

## **7. Inspection and Test**

- 7.1. The Supplier shall give the Purchaser's authorised representatives access at all reasonable times to the Supplier's premises and permit such representatives to inspect and test the Goods during their manufacture and the materials and any equipment to be used in their manufacture. If all or any part of the Goods are manufactured or assembled on other premises, the Supplier shall obtain for the Purchaser's authorised representatives permission and access to inspect and test the Goods on the same basis as if they were manufactured or assembled on the Supplier's premises.
- 7.2. The Purchaser's authorised representatives shall have the right to reject all or any part of the Goods which in their opinion fail to comply with the Contract.
- 7.3. All inspections and tests that may be required by the Purchaser in accordance with this Clause 7 shall be undertaken at the Supplier's expense.
- 7.4. The exercise by the Purchaser of its rights under Clauses 7.1 to 7.3 shall not relieve the Supplier from any of its obligations under the Contract.

## **8. Specialist Tooling**

- 8.1. The Supplier shall be responsible for maintaining Specialist Tooling in good condition and fit for use, and save in respect of fair wear and tear shall immediately replace at its own cost any such items which are lost, damaged or destroyed.
- 8.2. All Specialist Tooling shall remain the Purchaser's property and whilst such Specialist Tooling is on the Supplier's premises the Supplier shall clearly label it as the Purchaser's property. The Supplier shall not at any time move Specialist Tooling from its premises or dispose of Specialist Tooling without the prior written consent of the Purchaser.
- 8.3. The Supplier shall not use any Specialist Tooling for the production, manufacture or design of any materials other than those contracted for by the Purchaser.
- 8.4. The Purchaser shall have the option to purchase any tooling of a specialist nature used by the Supplier in the manufacture of the Goods and/or performance of the Services which is not the Purchaser's property at a fair market price less any sum already paid by the Purchaser towards the cost of such tooling.

## **9. [Construction (Design and Management) Regulations 2015**

- 9.1. To the extent that the Construction (Design and Management) Regulations 2015 ("**CDM Regulations**") apply to the Contract, the Purchaser reserves the right to appoint the Supplier to act as principal contractor and principal designer pursuant to Regulation 5(1) of the CDM Regulations.
- 9.2. Where the Supplier accepts such appointments, the Supplier agrees to carry out all obligations imposed by the CDM Regulations.]

## 10. Responsibility for Goods and Insurance

- 10.1. The Supplier shall be responsible for and shall at its sole cost arrange and maintain insurance against damage to or loss of Goods completely or partially manufactured 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 Purchaser until such time as the Goods are delivered to and accepted by the Purchaser and/or the Services are completed. The insurance to be maintained in accordance with this Clause 10.1 shall be for the full replacement value of such Goods and materials.

## 11. Delivery of Goods and/or Performance of Services

- 11.1. The Supplier shall deliver the Goods and/or perform the Services at its cost at the place, on the date or dates and within the times stated in the Purchase Order.
- 11.2. Where the Goods are supplied by weight all packing material shall be deducted from the gross weight and only the net weight of the Goods delivered shall be invoiced by the Supplier and paid for by the Purchaser. If the Supplier requires the return of any packaging material it shall state this on the delivery note to be provided in accordance with Clause 11.3 and the Purchaser, without incurring any legal liability, shall return such packaging material at the Supplier's expense and risk.
- 11.3. The Supplier shall provide a detailed delivery note stating the Purchase Order number, a description of the Goods (including part numbers and specialist storage instructions (if any)) and/or the Services, and any other information notified in writing to the Supplier by the Purchaser. The Supplier shall deliver a copy of the delivery note with the Goods or at the commencement of the Services (as applicable) and post a duplicate to the place of delivery or performance at the time of dispatch or prior to the commencement of the Services (as applicable).
- 11.4. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the place stated in the Purchase Order. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Purchaser with regard to, the unloading of the Goods.
- 11.5. On delivery the Purchaser shall not be deemed to accept the Goods (whether or not a delivery note is signed) until the Purchaser has had a reasonable opportunity to inspect and/or test the Goods.
- 11.6. The risk of damage to, or loss of, the Goods shall pass to the Purchaser upon delivery of the Goods at the place stated in the Purchase Order.
- 11.7. Without prejudice to any rights of rejection the Purchaser may have, property in and title to the Goods shall pass to the Purchaser upon the earlier of their delivery at the place stated in the Purchase Order and the time when the Purchaser pays for them.

## 12. Work Related Road Risk

- 12.1 For the purposes of **Clauses 12.2 to 12.10** (inclusive) of this Contract, the following expressions shall have the following meanings:

**“Approved Progressive Driver Training”**

an ongoing programme of Drivers' training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment (including on-road experience from a cyclist's perspective), which is required to be completed at least once every 5 years;

**“Car-derived Van”**

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;

**“Category N2 HGV”**

a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms

	but not exceeding 12,000 kilograms;
<b>“Category N3 HGV”</b>	a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms
<b>“CLOCS Standard”</b>	means the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: <a href="http://www.clocs.org.uk">www.clocs.org.uk</a>
<b>“Collision Report”</b>	a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
<b>“Delivery and Servicing Vehicle”</b>	a HGV, a Van or a Car-derived Van;
<b>“Direct Vision Standard” or “DVS”</b>	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: <a href="http://www.tfl.gov.uk">www.tfl.gov.uk</a>
<b>“Driver”</b>	any employee of the Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while providing the Goods and/or Services;
<b>“DVLA”</b>	Driver and Vehicle Licensing Agency;
<b>“Equivalent Scheme”</b>	has the meaning given to it in Clause 12.2.1;
<b>“FORS”</b>	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating commercial vehicles including vans, HGV, coaches and powered two wheelers. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
<b>“FORS Standard”</b>	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Gold Accreditation”</b>	the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>

“HGV”	a vehicle with a MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Silver Accreditation”	the minimum level of accreditation within the FORS Standard acceptable for the contract schedule, the requirements of which are more particularly described at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
“Van”	a vehicle with a MAM not exceeding 3,500 kilograms; and
“WRRR Self-Certification Report”	has the meaning given to it in Clause 12.8.

### Fleet Operator Recognition Scheme Accreditation

- 12.2 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and/or Services, it shall within 90 days of the date of the Contract:
- 12.2.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Purchaser, is an acceptable substitute to FORS (the “**Equivalent Scheme**”); and
- 12.2.2 (unless already accredited) have attained the standard of Silver Accreditation (or higher) or the equivalent within the Equivalent Scheme and shall maintain the standard of Silver Accreditation (or equivalent standard within the Equivalent Scheme) by way of an annual independent audit in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Equivalent Scheme. Alternatively, where the Supplier has attained Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

### Safety Features on HGVs

- 12.3 The Supplier shall ensure that every HGV, which it uses to provide the Goods and/or Services, shall be fitted with safety features consistent with the FORS Silver Accreditation.

### Construction Logistics and Community Safety (CLOCS)

- 12.4 Where applicable, for contracts for works exceeding a value of £1m:
- 12.4.1 the Supplier shall comply with the CLOCS Standard
- 12.4.2 the Supplier shall ensure that the conditions at all sites and locations where:
- 12.4.2.1 the Services are being delivered, or
- 12.4.2.2 in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N3 HGV being used in the provision of the Goods and/or Services.

### Direct Vision Standard (DVS)

- 12.5 Where applicable for Contracts exceeding a value of £1m where the duration will exceed 12 months and a significant amount of the work will be conducted within the GLA boundaries:

- 12.5.1 the Supplier shall comply with the DVS Schedule attached to this Contract; and
- 12.5.2 the Supplier shall ensure that:
  - 12.5.2.1 all Category N3 HGVs used in the provision of the Goods and/or Services achieve a minimum of a one (1) star Direct Vision Standard rating;
  - 12.5.2.2 from and including 26 October 2023 all Category N3 HGVs used in the provision of the Goods and/or Services achieve a minimum of three (3) star Direct Vision Standard rating.

### **Driver Training**

- 12.6 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and/or Services the Supplier shall ensure that each of its Drivers attend Approved Progressive Driver Training throughout the duration of the Contract.

### **Collision Reporting**

- 12.7 Where the Supplier operates Delivery and Servicing Vehicles to deliver the Contract, the Supplier shall:
  - 12.7.1 within 15 days from the date of this Contract, provide to the Purchaser a Collision Report. The Supplier shall provide to the Purchaser an updated Collision Report within five working days of a written request from the Purchaser at any time.

### **Self Certification of Compliance**

- 12.8 Where the Supplier operates Delivery and Servicing Vehicles to provide the Goods and/or Services, within 90 days of the date of this Contract, the Supplier shall provide a written report to the Authority detailing its compliance with Clauses 12.2, 12.3, 12.4, 12.5, 12.6 and 12.7 (as applicable) of this Contract (the “**WRRR Self-Certification Report**”). The Supplier shall provide updates of the WRRR Self-Certification Report to the Purchaser on each six (6) month anniversary of its submission of the initial WRRR Self-Certification Report.

### **Obligations of the Supplier regarding subcontractors**

- 12.9 The Supplier shall ensure that those of its sub-contractors who operate Category N2 HGVs, Category N3 HGVs, Vans and/or Car-derived Vans to provide the Goods and/or Services shall comply with the corresponding provisions of this Contract:
  - 12.9.1 Clause 12.2, 12.6, 12.7. 12.8; and
  - 12.9.2 for Category N2 LHGVs – Clauses 12.3; and
  - 12.9.3 for Category N3 HGVs – Clauses 12.3, and, where applicable 12.4, 12.5;as if those sub-contractors were a party to this Contract.

### **Failure to Comply**

- 12.10 Without limiting the effect of any other clause of this Contract relating to termination, if the Supplier fails to comply with Clauses 12.2, 12.3 (where applicable), 12.4 (where applicable), 12.5 (where applicable), 12.6, 12.7, 12.8 and 12.9:
  - 12.10.1 the Supplier has committed a material breach of this Contract; and

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

### 13. Invoices and Payment

- 13.1. An invoice for the Price stating the Purchase Order number, cost centre number(s), supplier code, delivery address, a brief description of the Goods (including part numbers (if any)) and/or Services, and any other information notified in writing to the Supplier by the Purchaser shall be sent by the Supplier to the address for invoices stated in the Purchaser Order after the delivery of Goods and/or performance of the Services. The Supplier *[shall/may]* submit any invoice as *[a PDF Invoice by email to the email address stated in the Purchase Order.] [an electronic invoice via the Electronic Invoicing Platform and in compliance with the Electronic Procure to Pay (eP2P) Vendor Handbook.] [an invoice via the electronic contract management system used by the parties for managing the Contract.] [an electronic invoice that complies with the relevant European Standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870 as retained by the EUWA and amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.] [The Supplier shall ensure that each PDF Invoice has a unique file reference and be a separate PDF file.]*
- 13.2. Subject to Clause 13.4, the Purchaser shall assess and verify each invoice in a timely manner and, if the invoice is approved the Purchaser shall pay the Price within 30 days of the date of receipt of the invoice (the “**Final Date for Payment**”). The Purchaser’s obligation to pay the Supplier shall be conditional upon the Supplier notifying the Purchaser in writing of its bank account details. The Purchaser shall make payments by Bank Transfer (Bank Automated Clearance System (BACS)) or such other method as it may notify from time to time. The Purchaser shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in assessing and verifying it.
- 13.3. If the Purchaser fails to pay any amount properly due and payable by it under the Contract by the Final Date for Payment the Supplier shall be entitled to simple interest on any outstanding amount at the rate of 5% per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the Final Date for Payment until the date of actual payment. This Clause 13.3 shall not apply to payments that the Purchaser disputes in good faith.
- 13.4. This Clause 13.4 shall apply where Part II of the Act applies:
- 13.4.1. Not less than 14 days before the final day of each of the Purchaser’s accounting periods as notified to the Supplier by the Purchaser from time to time, the Supplier shall submit to the address for invoices stated in the Purchase Order an Application for Payment (“**AFP**”) in respect of any delivery of Goods and/or performance of Services in the preceding accounting period and for which an AFP has not already been submitted. The AFP shall contain the information required in accordance with Clause 13.1 and state the sum that the Supplier considers will become due to him on the payment due date in accordance with Clause 13.4.3 below and the basis on which that sum is calculated.
- 13.4.2. Not later than five days after each payment due date the Purchaser shall issue a Contract Payment Approval Form (“**CPAF**”) to the Supplier. The CPAF shall be the Purchaser’s notice of payment and shall specify the amount due at the payment due date (“**Notified Sum**”) and the basis on which that sum is calculated. Not later than five days after receipt of the CPAF, the Supplier shall deliver an invoice for the sum certified in the CPAF. The Supplier shall issue a corrected invoice, where required, within five days of receipt of any Pay Less Notice in accordance with Clause 13.4.5 below.
- 13.4.3. The date on which each payment becomes due shall be the later of:
- (i) the final day of the relevant accounting period; and
  - (ii) 14 days after the date of receipt by the Purchaser of the Supplier’s AFP.

The final date for payment is 28 days after the date on which payment becomes due.

- 13.4.4. If a CPAF is not issued by the Purchaser in accordance with Clause 13.4.2, the sum to be paid by the Purchaser is, subject to Clause 13.4.5, the sum stated as due in the Supplier's AFP in accordance with Clause 13.4.1.
- 13.4.5. If the Purchaser intends to pay less than the notified sum, it shall issue a notice to the Supplier ("**Pay Less Notice**") not later than one day before the final date for payment, stating the amount considered to be due and the basis on which that sum is calculated. The Purchaser shall not withhold payment of an amount due under the Contract unless it has notified its intention to pay less than the Notified Sum as required by the Contract.
- 13.4.6. If the Supplier's employment is terminated under Clause 18.1.3 because the Supplier has become insolvent the Purchaser need not pay any sum due to the Supplier either: (i) where the Supplier becomes insolvent prior to the prescribed period before the final date for payment, provided that the Purchaser issues a Pay Less Notice notifying the Purchaser's intention not to pay such sum, or (ii) in any event, if the Supplier becomes insolvent after the prescribed period before the final date for payment.
- 13.5. Save with the prior written consent of the Purchaser, the Price shall be:
- 13.5.1. exclusive of any applicable VAT which shall be identified as a separate item on all invoices, AFPs and CPAFs;
- 13.5.2. inclusive of all expenses and disbursements including, without limitation, the costs incurred in delivery of the Goods to the delivery address stated on the Purchase Order; and
- 13.5.3. fixed for the duration of the Contract and no variation in the Price nor extra charges shall be made whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise.
- 13.6. Notwithstanding Clause 13.5, the Purchaser shall be entitled to any discount for prompt payment, bulk purchase or volume purchase which the Supplier receives.
- 13.7. Any payment made by the Purchaser hereunder including the final payment under the Contract shall not prevent the Purchaser from recovering any amount overpaid or wrongfully paid however such payments may have arisen including, without limitation, those paid to the Supplier by mistake of law or of fact. The Purchaser shall be entitled to withhold from any sums due or which may become due to the Supplier from the Purchaser (i) any amount in respect of which there exists a bone fide dispute; and (ii) any amount which on the basis of the Purchaser's bona fide estimate the Purchaser considers due to it from the Supplier. Such estimates shall be binding upon the Supplier until agreement between the Purchaser and the Supplier or any award order or judgement whichever shall be earlier.

#### **14. London Living Wage**

- 14.1. For the purposes of this Clause 14, "Sub-contractor" means a sub-contractor (of any tier) of the Supplier.
- 14.2. The Supplier acknowledges and agrees that the Mayor pursuant to section 155 of the GLA Act has directed that members of the TfL Group ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Purchaser's estate in the circumstances set out in Clause 14.3.1.
- 14.3. Without prejudice to any other provision of this Contract, the Supplier shall:
- 14.3.1. ensure that its employees and procure that the employees of its Sub-contractors engaged in the provision of the Goods and/or Services or performance of this Contract:

14.3.1.1. for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and

14.3.1.2. on the Purchaser's estate including (without limitation) premises and land owned or occupied by the Purchaser,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

14.3.2. ensure that none of:

14.3.2.1. its employees; nor

14.3.2.2. the employees of its Sub-contractors,

engaged in the provision of the Goods and/or Services or performance of this Contract be paid less than the amount to which they are entitled in their respective contracts of employment;

14.3.3. provide to the Purchaser such information concerning the London Living Wage as the Purchaser or its nominees may reasonably require from time to time, including (without limitation):

14.3.3.1. all information necessary for the Purchaser to confirm that the Supplier is complying with its obligations under Clause 14; and

14.3.3.2. reasonable evidence that Clause 14 has been implemented;

14.3.4. disseminate on behalf of the Purchaser to:

14.3.4.1. its employees; and

14.3.4.2. the employees of its Sub-contractors,

engaged in the provision of the Goods and/or Services or performance of this Contract such perception questionnaires as the Purchaser may reasonably require from time to time and promptly collate and return to the Purchaser responses to such questionnaires; and

14.3.5. cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):

14.3.5.1. allowing the CCSL to contact and meet with the Supplier's employees and any trade unions representing the Supplier's employees;

14.3.5.2. procuring that the Supplier's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and any trade unions representing the Sub-contractors' employees,

in order to establish that the obligations in Clause 14.3.1 have been complied with.

14.4. For the avoidance of doubt the Supplier shall:

14.4.1. implement the annual increase in the rate of the London Living Wage; and

14.4.2. procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

14.5. The Purchaser reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Supplier's staff and the staff of its Sub-contractors.

14.6. Without limiting the Purchaser's rights under any other termination provision in this Contract, the Supplier shall remedy any breach of the provisions of this Clause 14 within four (4) weeks' notice of the same from the Purchaser (the "**Notice Period**"). If the Supplier remains in breach of the provisions of this Clause 14 following the Notice Period, the Purchaser may by written notice to the Supplier immediately terminate this Contract.

## **15. Purchaser's Remedies**

15.1. The time of delivery of the Goods and/or performance of the Services is of the essence of the Contract.

15.2. If the Supplier has delivered Goods that do not comply with the undertakings in Clause 6.1, then, whether or not the Purchaser has accepted the Goods and without limiting its other rights or remedies, the Purchaser may by notice in writing:

15.2.1. reject all or part of the Goods and return them to the Supplier at the Supplier's risk and expense;

15.2.2. terminate the Contract with immediate effect;

15.2.3. require the Supplier to promptly replace or (at the Purchaser's option) repair, free of charge, the rejected Goods, or provide a full refund of the Price of the rejected Goods;

15.2.4. recover from the Supplier any costs incurred by the Purchaser in obtaining substitute goods from a third party; and/or

15.2.5. claim damages for any Losses incurred by the Purchaser arising from the Supplier's failure to supply Goods in accordance with the Contract.

15.3. If the Supplier has not performed the Services in accordance with the undertakings in Clause 6.2, then, without limiting its other rights or remedies, the Purchaser may by notice in writing 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 in accordance with the Contract at no extra cost within the time period that the Purchaser shall specify.

15.4. These Conditions of Contract shall extend to any replaced or repaired goods and/or any substituted or remedial services supplied by the Supplier.

15.5. The Supplier and the Purchaser agree that where there is a breach of a condition or warranty (whether express or implied) by the Supplier the Purchaser's rights or remedies are not to be limited in any way irrespective of the nature or extent of the breach.

15.6. The Purchaser's rights and remedies under this Contract are in addition to its rights and remedies implied by statute and common law.

## **16. Intellectual Property**

### *16.1. 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.

### *16.2. 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, this Contract shall vest in the Purchaser. The Supplier shall procure that each of its

subcontractors (of any tier) or other third party shall assign such Intellectual Property Rights to the Purchaser.

16.3. *Ownership of the Supplier's Intellectual Property Rights*

Without prejudice to clause 16.2, 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 Purchaser pursuant to clause 16.2 shall remain or be vested in the Supplier, its subcontractors (of any tier) or other third party (as the case may be).

16.4. *Purchaser's Licence to use the Supplier's Intellectual Property Rights*

The Purchaser shall have and the Supplier hereby grants and procures that its subcontractors (of any tier) or other third party grant, to the Purchaser a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence (with the right to sub-license such rights to any third party) to use and copy the Intellectual Property Rights referred to in clause 16.3 for the purposes of:-

16.4.1 understanding the Goods and/or the Services;

16.4.2 operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting, replacing, re-procuring and retendering the Goods and/or the Services;

16.4.3 extending, interfacing with, integrating with, connecting into and adjusting the Goods and/or the Services;

16.4.4 enabling the Purchaser to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;

16.4.5 executing and completing the provision of the Goods and/or the performance of the Services; and

16.4.6 enabling the Purchaser to perform its function and duties as Infrastructure Manager and Operator of the Underground Network.

16.5. *Provision of Supporting Documentation and Other Materials*

The Supplier shall:

16.5.1 promptly, and in any event by no later than such date as the Purchaser may notify to the Supplier, provide at no charge to the Purchaser, copies of any materials and items (including, without limitation, Documentation) in the Supplier's or subcontractors (of any tier) or other third party's possession or control (or which ought reasonably to be in the Supplier's or subcontractors (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 16.2, 16.3 and 16.4 above; and

16.5.2 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 months) integrity testing of the same and provide written evidence of such testing to the Purchaser at regular intervals and in any event upon the Purchaser's request.

16.6. *Purchaser's Rights of Retention*

If the Supplier has not complied with its obligations under clause 16.5.1, the Purchaser shall be entitled to retain one quarter of the sums that would otherwise be due to the Supplier under this Contract until the Supplier has complied with its obligations under clause 16.5.1.

16.7. *Purchaser's Rights to the Software*

If the Supplier or any of its subcontractors providing software for incorporation into or operation of the Goods and/or the Services stops trading, is subject to an insolvency event equivalent to any of those events set out in clause 18.1 (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 Purchaser, shall use its best endeavours to transfer or procure the transfer to the Purchaser of all Intellectual Property Rights in that software.

16.8. *Purchaser's Rights in relation to Other Procurement Activities*

For the avoidance of doubt, the Purchaser shall be entitled to use and copy the materials, items and Documentation referred to in clause 16.5 above and anything in which the Intellectual Property Rights referred to in clauses 16.2, 16.3 and 16.4 subsist for the purposes of inviting tenders or of procuring goods and/or services the same as or similar to the Goods and/or the Services for the carrying out of any activities in connection with the licence under clause 16.4 subject always to the Purchaser's requirements for tenderers to treat the same in the strictest confidence.

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

16.9.1 The Supplier shall indemnify and hold harmless the Purchaser 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 Purchaser 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 Purchaser 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 Purchaser.

16.9.2 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 Goods and/or to the method of providing the Services as may be necessary to ensure that the use and provision of the Goods and the provision of the Services continues in spite of such claim.

16.10. *Ownership of the Purchaser's Intellectual Property Rights*

Intellectual Property Rights in all documentation and in all other material and items supplied by the Purchaser to the Supplier in connection with the Contract shall remain vested in the Purchaser 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 Purchaser the rights referred to in this clause.

16.11. *Purchaser's Intellectual Property Rights*

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

**17. Indemnity and Insurance**

17.1. Subject to Clause 17.2, the Supplier shall be responsible for and shall indemnify, keep indemnified and hold harmless the Purchaser and the other members of the TfL Group (including their respective employees, agents and subcontractors) (the "**Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of the Contract by the Supplier (or any of its employees, agents or subcontractors), including in each case any non-performance or delay in performance of the Contract, or any breach of statutory duty, misrepresentation or misstatement by the Supplier (or any of its employees, agents or subcontractors).

17.2. The Supplier shall not be responsible for and shall not indemnify the Purchaser for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations

under the Contract by the Purchaser and/or any other member of the TfL Group including by any of their respective employees or agents.

17.3. Without prejudice to its obligations in Clauses 17.1 and 17.2 the Supplier shall comply with all statutory obligations to maintain insurance and shall at its sole cost arrange and maintain with a reputable insurer or insurers authorised to underwrite such risk in the United Kingdom:

17.3.1. public liability insurance and products liability insurance which in each case provides indemnity of not less than £5,000,000 (five million pounds) for any one incident or series of incidents arising out of any one event in respect of liability for death of or injury to any person and loss of or damage to property, such insurance to contain an "indemnity to principals" provision; and

17.3.2. professional indemnity insurance which provides indemnity of not less than £2,000,000 (two million pounds) for each and every claim in respect of design or other professional services for which the Supplier (or its employees, agents or subcontractors) is responsible. Any such professional indemnity insurance shall be renewed for a period of 6 years (or such other period as the Purchaser may stipulate) following the expiry or earlier termination of the Contract.

17.4. The Supplier shall provide to the Purchaser upon reasonable notice evidence that the policies of insurance referred to in Clause 17.3 (including all statutory insurances) are in force.

## **18. Termination of Contract**

18.1. Without prejudice to its other rights or remedies, the Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier:

18.1.1. breaches the Contract which in the case of a breach capable of remedy has not been remedied within seven days, or such other period as may be specified by the Purchaser, of the Purchaser serving notice on the Supplier requiring such remedy;

18.1.2. 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 or 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, monitor, 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 the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or

18.1.3. becomes insolvent as defined in section 113 of the Act; or

18.1.4. the Supplier has at the date of this Contract, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with those Regulations or Regulation 80(2) of the Utilities Contracts Regulations 2016 (without prejudice to the Purchaser's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or by Regulation 89(3) of the Utilities Contracts Regulations 2016); or

18.1.5. the Supplier fails to comply in the provision of the Goods and Services with legal obligations in the fields of environmental, social or labour law.

18.2. Without prejudice to Clause 18.1, the Purchaser may at any time give 30 days' notice in writing to the Supplier terminating the Contract.

- 18.3. Without prejudice to the Purchaser's right to terminate the Contract under Clauses 18.1 and 18.2 or at common law the Purchaser may terminate the Contract at any time following a Declaration of Ineffectiveness or a Public Procurement Termination Event in accordance with the provisions of Clause 19.
- 18.4. If the Contract is terminated the liability of the Purchaser shall be limited to payment to the Supplier for those Goods and/or Services provided in accordance with the Contract up until the date of such termination.
- 18.5. On termination of the Contract for any reason the accrued rights and remedies of the parties shall not be affected, including, without limitation, the right to recover damages against the other party. All provisions which expressly or by implication are intended to survive the termination of the Contract shall remain in full force and effect.
- 18.6. In the event that the Purchaser terminates the Contract for any reason under this Clause 18, Clause 19 or otherwise, the Supplier shall, without prejudice to any other rights or remedies which the Purchaser may have under the Contract or under general law, permit the Purchaser, at the Purchaser's option, to enter the Supplier's premises and take possession of any equipment or goods which are the property of the Purchaser (including, without limitation, Specialist Tooling).

**19. Declaration of Ineffectiveness and Public Procurement Termination Event**

- 19.1. Without prejudice to the Purchaser's right to terminate the Contract under Clause 18 or at common law, the Purchaser may terminate the Contract at any time in accordance with the provisions of this Clause 19 in the event that:
  - 19.1.1. there is a Declaration of Ineffectiveness; or
  - 19.1.2. there is a Public Procurement Termination Event (without prejudice to the Purchaser's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or by Regulation 89(3) of the Utilities Contracts Regulations 2016).
- 19.2. In the event that a court makes a Declaration of Ineffectiveness or if there is a Public Procurement Termination Event, the Purchaser shall notify the Supplier. The parties agree that the provisions of this Clause 19 shall apply as from the date of receipt by the Supplier of the notification of a Declaration of Ineffectiveness or a Public Procurement Termination Event. Where there is any conflict or discrepancy between the provisions of Clause 18 and this Clause 19 or the Cessation Plan, the provisions of this Clause 19 and the Cessation Plan shall prevail.
- 19.3. The Declaration of Ineffectiveness or the Public Procurement Termination Event 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 or Public Procurement Termination Event.
- 19.4. As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness or the Public Procurement Termination Event, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Purchaser shall determine an appropriate Cessation Plan with the object of achieving:
  - 19.4.1. an orderly and efficient cessation of the supply of the Goods and/or performance of the Services or (at the Purchaser's request) a transition of the same to the Purchaser or such other entity as the Purchaser may specify;
  - 19.4.2. minimal disruption or inconvenience to the Purchaser or to public passenger transport services or facilities; and
  - 19.4.3. giving effect to the terms of the Declaration of Ineffectiveness or Public Procurement Termination Event.
- 19.5. Upon agreement, or determination by the Purchaser, of the Cessation Plan the parties shall comply with their respective obligations under the Cessation Plan.

19.6. If the Contract is terminated in accordance with this Clause 19 the liability of the Purchaser shall be limited to:

19.6.1. payment to the Supplier for those Goods and/or Services provided in accordance with the Contract up until the date of such termination and the Purchaser shall not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of such termination; and

19.6.2. paying the Supplier's reasonable costs in assisting the Purchaser 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 Purchaser.

## **20. Records and Quality Assurance ("QA")**

20.1. The Supplier shall, and shall procure that its subcontractors (if any) shall, maintain a true and correct set of documents and records including personnel and training records pertaining to all activities relating to their performance of the Contract and all transactions related thereto. The Supplier agrees, and shall procure that its subcontractors (if any) agree, to maintain and retain all such records for a period of not less than six years after completion of performance or earlier termination of the Contract. The Purchaser and its authorised representatives, which shall include any member of the TfL Group, shall have the right to audit any and all such records at any time during performance of the Contract, and during the six year period following the completion of performance or earlier termination of the Contract.

20.2. The Supplier shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy the requirements of the Contract. The Supplier shall comply with the requirements of BS EN ISO 9000, 9001 to the extent applicable to the supply of the Goods and/or performance of the Services or equivalent quality management system and standards approved in writing by the Purchaser.

20.3. The Supplier shall permit the Purchaser and its authorised representatives access and facilities (as required and when notified) for the purpose of undertaking any audits in accordance with Clause 20.1.

## **21. Confidentiality**

21.1. The Supplier undertakes to keep confidential and not disclose to any third party without the prior written consent of the Purchaser any Confidential Information supplied by the Purchaser to the Supplier which is not already in the public domain.

21.2. The Supplier shall notify the Purchaser promptly if the Supplier becomes aware of any breach of confidence by the Supplier or its employees, agents or subcontractors (if any) and shall give the Purchaser all assistance the Purchaser reasonably requires in connection with any proceedings the Purchaser brings, or other steps the Purchaser takes for such breach of confidence.

## **22. Data Protection and Cyber Security**

22.1. The Supplier shall comply with all of its obligations under the Data Protection Legislation. The Supplier shall follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre (or equivalent or replacement guidance or requirements in place from time to time).

## **23. Freedom of Information**

23.1. The Purchaser may disclose any information provided by the Supplier to the Purchaser if such information is requested by a third party under the provisions of the Freedom of Information Act 2000 or under the Environmental Information Regulations 2004 (each of which in this Clause 23 is an "Information Request").

23.2. The Supplier shall, and shall procure that each of its subcontractors (if any) shall, (i) transfer to the Purchaser each Information Request it receives within three days of receiving it; and (ii) within six days of a request to that effect from the Purchaser to the Supplier, provide the Purchaser with details and/or copies of all information held by the Supplier on behalf of the Purchaser or any member of the TfL Group.

#### **24. Data Transparency**

24.1. The Supplier acknowledges that the Purchaser is subject to the Transparency Commitment and accordingly, notwithstanding Clauses 21 or 23, the Supplier hereby gives its consent for the Purchaser to publish the Contract Information. The Purchaser may in its absolute discretion redact all or part of the Contract Information prior to its publication.

#### **25. Advertising**

25.1. The Supplier shall not announce or publicise that it supplies the Goods to and/or performs the Services for the Purchaser without the prior written consent of the Purchaser.

#### **26. Responsible Procurement**

26.1. The Supplier shall have due regard to the responsible procurement principles described in the GLA Responsible Procurement Policy in performance of its obligations under the Contract.

#### **27. Equality, Diversity and Modern Slavery**

27.1. The Supplier, at no additional cost to the Purchaser:

27.1.1 shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

27.1.2 acknowledges that the Purchaser is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “**Relevant Protected Characteristic**”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Purchaser where possible in satisfying this duty;

27.1.3 acknowledges that the Purchaser is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

- (i) promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- (ii) eliminate unlawful discrimination; and
- (iii) promote good relations between persons of different racial groups, religious beliefs and sexual orientation.

27.2. The Supplier shall ensure that its staff, and those of its subcontractors who are engaged in the performance of the Contract comply with the Purchaser’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 Purchaser at any time on request.

27.3. Where applicable to the Supplier, the Supplier shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.

#### **28. Conflict of Interest**

- 28.1. The Supplier hereby confirms 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 supply of the Goods, performance of the Services or any member of the TfL Group and agrees that it shall not act for any person, firm or company where there is or is reasonably likely to be such a conflict of interest, save to the extent fully disclosed to and with the prior written consent of the Purchaser.
- 28.2. The Supplier shall notify the Purchaser in writing immediately on becoming aware of any actual or potential conflict of interest and shall do whatever is necessary to manage such conflict to the Purchaser's satisfaction and where the Purchaser is not so satisfied (in its absolute discretion) the Purchaser shall be entitled to terminate the Contract.

## **29. Corrupt Gifts and Payment of Commission**

- 29.1. The Supplier shall not, and shall procure that its subcontractors (if any) shall not, pay any commission or fees or grant any rebates to any employee, officer or agent of the Purchaser or any member of the TfL Group nor favour employees, officers or agents of the Purchaser 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 Purchaser or any member of the TfL Group other than as a representative thereof, without the prior written consent of the Purchaser or the relevant member of the TfL Group (as the case may be).
- 29.2. The Purchaser and its authorised representatives, which shall include any member of the TfL Group, shall have the right to audit any and all such records necessary to confirm compliance with Clause 29.1 at any time during performance of the Contract and during the six year period following the completion of performance or earlier termination of the Contract. The Purchaser shall be entitled to terminate the Contract if the Supplier: (i) breaches Clause 29.1; or (ii) breaches any provision having similar effect to Clause 29.1 in any other contract between either the Purchaser and the Supplier or the Supplier and any other member of the TfL Group.

## **30. Criminal Records**

- 30.1. In supplying the Goods and/or performing the Services the Supplier shall not, and shall procure that its subcontractors (if any) shall not, engage any servant, employee, officer, consultant or agent who has any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security. The Purchaser and its authorised representatives, which shall include any member of the TfL Group, shall have the right to audit any and all such records necessary to confirm compliance with this Clause 30.1 at any time during performance of the Contract and during the six year period following the completion of performance or earlier termination of the Contract.

## **31. Waiver**

- 31.1. No failure or delay on the part of either party in exercising any right or remedy under the Contract shall constitute a waiver of that or any other right or remedy nor restrict its further exercise and no single or partial exercise of such right or remedy shall restrict the further exercise of that or any right or remedy.

## **32. Severance**

- 32.1. If a court or other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

## **33. Assignment and Subcontracting**

- 33.1. The Supplier shall not assign, transfer, charge, subcontract or deal in any manner with all or any of its rights or obligations under the Contract without the prior written consent of the Purchaser.
- 33.2. The Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or

all of its obligations under the Contract to any other member of the TfL Group or any third party or agent.

33.3. Clauses 33.4 to 33.9 shall apply where the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016 apply to the Contract.

33.4. For the purpose of Clauses 33.4 to 33.9:

“**Subcontract**” means a contract between the Supplier and a Subcontractor; and

“**Subcontractor**” means a subcontractor to the Supplier, being a counterparty of a contract with the Supplier involved in the supply of goods, facilities or services necessary for or related to the provision of the Goods and/or Services (or any part of them).

33.5. Subject to the Purchaser’s prior written consent pursuant to Clause 33.1, where the Supplier subcontracts any or all of the Goods and/or Services, the Supplier shall include in each Subcontract (and procure that its Subcontractors (and any of their subcontractors of any tier) include in each of their subcontracts of any tier):

33.5.1. payment terms substantially similar to those set out in Clause 13.

33.5.2. terms entitling the Supplier or (in respect of a subcontract below the first tier) the payer under the relevant subcontract to terminate that subcontract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law.

33.6. On or before the date of the Contract, the Supplier shall notify the Purchaser in writing of the name, contact details and details of the legal representatives of any Subcontractor, to the extent that such information has not already been provided by the Supplier to the Purchaser. The Supplier shall also immediately provide to the Purchaser in writing the name, contact details and details of the legal representatives of each new Subcontractor which the Supplier subsequently involves in the Goods and/or Services after the date of the Contract.

33.7. The Purchaser reserves the right to verify whether there are any grounds for excluding any Subcontractor under Regulation 57 of the Public Contracts Regulations 2015. Where necessary for the purpose of the Purchaser’s exercise of its right under this Clause 33.7, the Purchaser may request that the information provided by the Supplier under Clause 33.7 shall be accompanied by one or more Single Procurement Document(s) (within the meaning of Regulation 59 of the Public Contracts Regulations 2015) in respect of the relevant Subcontractor(s). Further, the Purchaser:

33.7.1. shall require that the Supplier shall replace any Subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015; and

33.7.2. may require that the Supplier replace any Subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion under Regulation 57 of the Public Contracts Regulations 2015.

33.8. The Supplier shall promptly notify the Purchaser of any circumstances from time to time that might give rise to a right of the Purchaser to require replacement of a subcontractor pursuant to Clauses 33.7.1 or 33.7.2.

33.9. The Purchaser shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 33.7.1 or 33.7.2.

#### **34. Third Party Rights**

34.1. Any person who is not a party to the Contract shall not have any benefit from or any rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, provided that nothing shall

prevent any member of the TfL Group from enforcing any rights granted for its benefit under the Contract.

- 34.2. Notwithstanding Clause 34.1 the parties shall be entitled to vary or rescind the Contract without the consent of any or all members of the TfL Group.

### **35. Dispute Resolution**

- 35.1. Any question, dispute, difference or claim under or in connection with the Contract (a “**Dispute**”) shall be resolved in accordance with this Clause 35.
- 35.2. The parties shall use their reasonable endeavours to resolve any Dispute by a meeting between an authorised representative of the Purchaser and a duly authorised representative of the Supplier (together “**Nominated Representatives**”) which shall be convened to discuss such Dispute within 14 days of written notification by one party to the other of a matter in dispute.
- 35.3. If the Dispute has not been resolved within 28 days after the date of the meeting between the Nominated Representatives in accordance with Clause 35.2 (or if no such meeting was convened within 28 days after the date on which notification was served), the Dispute shall be referred as soon as possible to [*the Purchaser’s Contracts and Procurement Manager and the Supplier’s Managing Director*] or, in the absence or unavailability of these personnel, persons of similar status deputed to resolve disputes on behalf of their respective companies.
- 35.4. If the Dispute has not been resolved within 21 days of it being referred to [*the Purchaser’s Contracts and Procurement Manager and the Supplier’s Managing Director*] or their deputies in accordance with Clause 35.3 either party may refer the matter for resolution in accordance with the provisions of Clause 38.
- 35.5. Clauses 35.1 to 35.4 are subject to the Supplier’s rights (if any) under the Act to refer a Dispute to adjudication at any time. Any such adjudication shall be in accordance with the most recent edition of the LUL Adjudication Rules on the date of the notice referring to adjudication. Reference in the LUL Adjudication Rules to “London Underground Limited” includes LUL Nominee BCV Limited and / or LUL Nominee SSL Limited (as the case may be).

### **36. CompeteFor**

- 36.1. Without prejudice to Clause 33 the Supplier will, on a non-exclusive basis, use the CompeteFor electronic brokerage service (or such alternative web-based tool as the Purchaser may direct from time to time) (“**CompeteFor**”) to make available to other suppliers all appropriate opportunities, arising in connection with the Contract, to supply goods, works and services to the Supplier.
- 36.2. The Supplier will use all reasonable endeavours to ensure that its sub-contractors (for the purposes of this clause, the “**Supplier’s Sub-contractors**”) use CompeteFor, on a non-exclusive basis, to make available to other sub-contractors all appropriate opportunities, arising in connection with the Contract, to supply goods, works and services to the Supplier’s Sub-contractors.
- 36.3. The Supplier will monitor (and maintain a record of) the number, type and value of opportunities, arising in connection with the Contract, made available to other suppliers via CompeteFor, whether by the Supplier or the Supplier’s Sub-contractors, as required by this Clause 36, and will report this information on a quarterly basis by way of email to the Purchaser.

### **37. Entire Agreement and Variations**

- 37.1. The Contract constitutes the complete and entire agreement between the Purchaser and the Supplier and supersedes all other oral and/or written communications and representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not contained in the Contract.
- 37.2. No amendment or modification of the Contract shall be effective unless it is in writing and signed by the parties (or their duly authorised representatives).

**38. Governing Law and Jurisdiction**

- 38.1. The Contract and any non-contractual obligations connected with the Contract shall be governed by and interpreted in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 38.2. Without prejudice to Clause 35 (Dispute Resolution), the courts of England and Wales will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract.
- 38.3. Either party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 38.4. Subject to Clause 38.3, each party waives any objection to, and submits to, the jurisdiction of the Courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of England and Wales or any other jurisdiction.