

LUL NOMINEE BCV LIMITED

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND/OR SERVICES (SHORT FORM)

1. Definitions

In these Conditions the expression:

"Act" means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

"BCV Contract" means the amended and restated PPP Contract dated 4 April 2003 entered into by LUL and the Company for the provision of infrastructure services.

"Business Day" means any day from Monday to Friday inclusive, except public holidays in England.

"Company" means LUL Nominee BCV Limited (No. 6221959) and its successors and assigns.

"Contract" means the contract between the Company and the Contractor for the supply of the Goods and/or the Services which comprises these Conditions of Contract, the Purchase Order, where appropriate any Delivery Request Form and any specification, description, drawing or sample of the Goods or Services or other document referred to in the Purchase Order or any subsequent Delivery Request Form.

"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 14 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.

"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.

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

"Delivery Request Form" means the Company's official printed document on which the Company requests the Supplies specified on such form to be provided under the terms of a Purchase Order which the Company has expressed to be a Framework Agreement.

"Employer's Representative" means the representative of the Company named on the Purchase Order in relation to commercial queries, or any other person notified in writing by the Company to the Contractor from time to time.

"Framework Agreement" means a Purchase Order which is expressed to be a Framework Agreement between the Company and the Contractor covering

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a period during which the Contractor undertakes to provide Supplies upon receipt of one or more Delivery Request Form(s) or at times specified in, or in accordance with, the Purchase Order.

"**GLA Act**" means the Greater London Authority Act 1999.

"**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 Company to the Contractor from time to time.

"**Goods**" means the goods (if any) specified in the Purchase Order and includes any equipment, plant, materials or assets to be supplied by the Contractor as part of any Services to be performed under the Contract.

"**Greater London**" means that term as it is used in the GLA Act.

"**Intellectual Property Rights**" means any patent, patent application, know how, trade mark or name, service mark, registered design, applications for any of the foregoing, know how, design right, copyright or other similar industrial or commercial right in any country.

"**Legislation**" means a reference to any enactment, directive, law, standard or code including any orders in Council, orders, rules, regulations, instruments, schemes, warrants, bylaws, directives, or codes of practice issued pursuant thereto.

"**London Living Wage**" means the basic hourly wage of [£8.30] (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws; or regulations are directly enforceable against the Company.

"**Losses**" means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever and howsoever arising.

"**LUL**" means London Underground Limited (No. 1900907) and its successors in title and assigns.

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

"**Purchase Order**" means the Company's order form (which is subject to these Conditions of Contract) setting out details for the Supply such as the specification, quantity, price, delivery time, place, date and invoicing requirements which may be expressed either:

- (i) in the form of a Framework Agreement; or
- (ii) as a single order.

"**Price**" means the price of the Goods and/or Services stated in the Purchase Order.

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"**QUENSH Manual**" means the manual issued by LUL and containing the Contract QUENSH Conditions as amended from time to time.

"**Responsible Procurement Principles**" mean the seven principles of responsible procurement more particularly described in the GLA Responsible Procurement Policy and as may be further described in the Specification.

"**Services**" means the services and/or works (if any) specified in the Purchase Order.

"**Specialist Tooling**" means all jigs, tools, fixtures, moulds, patterns and/or equipment which are supplied or paid for by the Company or developed at the Company's expense.

"**Specification**" means the specification set out within Schedule 2.

"**Supply**" means to supply the Goods and/or to perform the Services and the term "**Supplies**" shall be construed accordingly.

"**TfL Group**" means Transport for London ("**TfL**"), a statutory body set up by the GLA Act and any of its subsidiaries and their subsidiaries. The Company is a member of the TfL Group.

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

"**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**".

"**Value Added Tax**" or "**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

- 2.1 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, and any term importing gender includes any gender.
- 2.2 Any term importing the singular number includes the plural number and vice versa.
- 2.3 Clause headings are for convenience only and do not form part of or affect the interpretation of these Conditions of Contract.
- 2.4 Unless noted to the contrary, any reference to any clause is a reference to that clause in these Conditions of Contract.

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- 2.5 Any reference to the Contract or any other document includes a reference to the Contract or such other document as amended, novated, supplemented, varied or restated from time to time.
- 2.6 A reference to any provision of a statute or regulation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.7 Where the Act applies to this Contract a period of time stated in days is a period calculated in accordance with Section 116 of the Act.

3. **Acceptance of Company's Conditions of Contract**

- 3.1 The Contractor shall be deemed to have accepted all the terms and conditions of the 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 other document or previous contract relating to a Supply provided under the Contract).

4. **Agreement to Supply**

- 4.1 The Contractor shall supply the Goods and/or the Services in accordance with the Specification and the Company shall pay the Contractor in accordance with the Contract. The Contractor shall not depart from any aspect of such Contract unless prior approval to do so has been obtained in writing from the Employer's Representative.

5. **Warranties**

- 5.1 The Contractor warrants to the Company that the Goods:
- a. will be of satisfactory quality and fit for the purpose;
 - b. will be free from defects in design, material and workmanship;
 - c. will correspond with any relevant specification or sample; and
 - d. will comply with all Legislation applicable to the Goods.
- 5.2 The Contractor warrants to the Company that the Services:
- a. will be performed by appropriately qualified and trained personnel, with all due skill, care and diligence and to such a high standard of quality as it is reasonable for the Company to expect in all the circumstances; and
 - b. will comply with all Legislation relating to the supply of the Services.

6. **Assignment and Sub-Letting**

- 6.1 The Contractor shall not without the prior written consent of the Company assign or sub-let the Contract or any part thereof.

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6.2 The Company may assign the benefit of the Contract to any person (including LUL) at any time without prior notice to or consent of the Contractor.

7. **Records and Quality Assurance ("QA")**

7.1 The Contractor shall, and shall procure that its subcontractors 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 this Contract and all transactions related thereto. The Contractor agrees, and shall procure that its sub-contractors agree, to maintain and retain all such records for a period of not less than 8 years after completion of performance under this Contract. The Company and LUL or any authorised representative of either of them shall have the right to audit any and all such records at any time during performance of the Contract, and during the 3 year period following completion of the performance of this Contract.

7.2 Without prejudice to clause 31.1, the Contractor shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Contractor necessary to satisfy the Contract requirements. To the above ends the Contractor shall comply with the requirements of BS EN ISO 9000, 9001 as appropriate to the Supplies or equivalent quality management system and standards approved by the Company.

7.3 The Contractor shall permit the Company's authorised representatives access and facilities (as required and when notified) for the purpose of systems and product quality audits.

8. **Inspection and Test**

8.1 The Contractor shall give the Company's authorised representatives access at all reasonable times to the Contractor's premises and permit such representatives to inspect and examine the Goods to be supplied during the manufacture thereof and the material and any equipment to be used in their manufacture. If part or the whole of the Goods are manufactured or assembled on other premises, the Contractor shall obtain for the Company permission and access to inspect and examine on the same basis as if the Goods were manufactured or assembled on the Contractor's premises.

8.2 Such representatives shall have the right to reject any Goods or part(s) thereof which in their opinion fail to meet the Specification contained in the Contract.

8.3 All inspection, tests or analyses of material that may be required by the Company shall be undertaken at the Contractor's expense.

8.4 The exercise by the Company of its rights under clauses 8.1 to 8.3 shall not relieve the Contractor from any of its obligations under the Contract.

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9. **Specialist Tooling**

- 9.1 The Contractor 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. In addition the Contractor shall be responsible for adequate insurance for full replacement value of all Specialist Tooling against loss, damage or destruction.
- 9.2 Whilst such Specialist Tooling is on the Contractor's premises the Contractor shall clearly label it as the Company's property.
- 9.3 All Specialist Tooling shall remain the Company's property. The Contractor may not at any time move Specialist Tooling from its premises or dispose of Specialist Tooling belonging to the Company without written approval from the Employer's Representative.
- 9.4 The Company shall have the option to purchase any Specialist Tooling which is not the Company's property as mentioned in the above clauses at a fair price less any sum already paid by the Company towards the cost of Specialist Tooling.
- 9.5 The Contractor may not use any such Specialist Tooling for the production, manufacture or design of any materials other than those contracted for.

10. **Safe Operation of London Underground Network**

- 10.1 The Contractor shall not, and shall procure that its sub-contractors shall not do or omit to do or prevent any act which may materially affect the safe operation of the London Underground network or endanger the safety of the employees of LUL or the public or any other person.

11. **Responsibility for Goods and Insurance**

- 11.1 The Contractor shall be responsible for and insure against the loss, destruction and damage of Goods completely or partially manufactured and for all materials acquired by or delivered to the Contractor in connection with the Contract whether or not the property of the Contractor or the Company and until such time as the Goods are delivered to and accepted by the Company and/or the Services are completed.

12. **Indemnity and Insurance**

- 12.1 Subject to clause 12.2, the Contractor is responsible for and shall indemnify, keep indemnified and hold harmless the Company and the other members of the TfL Group (including their respective employees, sub-contractors and agents) ("**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 Contractor (or any of its employees, agents or sub-contractors) (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 Contractor (or any of its employees or sub-contractors).

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- 12.2 The Contractor is not responsible for and shall not indemnify the Company 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 Company and/or any other member of the TfL Group including by any of their respective employees or agents.
- 12.3 Without prejudice to its obligations in clauses 12.1 and 12.2 above the Contractor 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 public liability 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.
- 12.4 The sum of £5,000,000 (five million pounds) in clause 12.3 above shall be reduced to £2,000,000 (two million pounds) where the sums payable to the Contractor under this Purchase Order do not exceed £50,000 and that the Goods and/or Services are not directly connected with the provision of infrastructure services under the BCV Contract.
- 12.5 The Contractor shall provide to the Company upon reasonable notice evidence that the policies of insurance referred to in clause 12.3 (including statutory insurances) are in force.

13. **Delivery**

- 13.1 The Supply shall be made at the Contractor's cost at the place, on the date or dates and within the times stated in the Purchase Order or the Delivery Request Form (as the case may be).
- 13.2 On delivery the Company shall not be deemed to accept the Goods (whether or not an advice note is signed) until the Company has had a reasonable opportunity to examine the Goods. The Company shall have the right to reject any Goods or part thereof which in its opinion fails to comply with the Contract.
- 13.3 The Company may reject the whole of the Goods if an excess or shortfall in the quantity requested in the Purchase Order occurs notwithstanding the fact that the excess or shortfall may be slight.
- 13.4 The Contractor and the Company agree that where there is a breach of a condition or warranty (whether express or implied) by the Contractor the Company's remedies are not to be limited in any way notwithstanding the fact that the breach of condition or warranty may be slight.
- 13.5 Any times, dates or periods specified in the Purchase Order may be extended or altered by agreement in writing by the parties.
- 13.6 Full and unencumbered legal and beneficial title and property in the Goods supplied under the Contract will vest in the Company without prejudice to any rights of rejection which the Company may have upon the earlier of: (i) delivery at the address specified in the Purchase Order or the Delivery Request Form; and (ii) the time when the Company pays for them. Property in

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Goods will only re-vest in the Contractor to the extent that any are surplus to the requirements of the Contract. The Contractor will not and will ensure that its sub-contractor or any other person will not have a lien, charge or encumbrance on or over any such Goods which are vested in the Company under this clause 13.6 for any sum due to the Contractor or its sub-contractors or other persons and the Contractor will take all reasonable steps as may be necessary to ensure that the title of the Company and the exclusion of any such lien charge or encumbrance are brought to the notice of sub-contractors and other persons dealing with any such Goods. The Company will not be liable to the Contractor in respect of any loss or damage to Goods that vest in the Company under this clause 13.6.

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

13.8 The Price, unless otherwise stated, shall be:

- a. exclusive of any applicable Value Added Tax (which shall be payable by the Company subject to the receipt of a valid VAT invoice) and any other duties, imposts or levies; and
- b. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address stated on the Purchase Order; and
- c. inclusive of all other costs and charges whatsoever in relation to the provision of the Services and/or supply of the Goods.

13.9 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.

13.10 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume purchase which the Contractor receives, whether or not shown in the Contractor's terms and conditions of sale.

14. **Advice Notes, Invoices and Payment**

14.1 An advice note bearing all information required by the Company (where previously notified in writing by the Company) including the Purchase Order or Contract number, cost centre number or numbers, any Delivery Request Form number and a description of the Goods (including part numbers if any) shall be delivered by the Contractor with the Goods and/or prior to the commencement of the Services and a duplicate shall be posted to the place of delivery at the time of dispatch of the Goods or at commencement of delivery of the Services.

14.2 An invoice for the Price bearing all information required by the Company (where previously notified in writing by the Company) including the Purchase

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Order or Contract number, cost centre number or numbers, any Delivery Request Form number, supplier code, delivery address and a brief description of the Goods and/or Services (including part numbers, if any) shall be sent by the Contractor to FSC Accounts Payable, 14 Pier Walk, London, SE10 1AJ after the delivery of Goods and/or performance of the Services. Each invoice shall only quote one valid Purchase Order or Contract number but may quote more than one cost centre number where applicable. All queries relating to Purchase Orders shall be made in writing to the Company procurement agent responsible for and managing the Purchase Order. Failure to provide all information required in accordance with this clause may result in a delay to payment of an invoice or part thereof.

- 14.3 Subject to clauses 14.1, 14.2 and 14.5, the Company shall pay the Price within 30 days of the date of receipt of invoice (the “**Date for Payment**”) PROVIDED THAT the Company’s obligation to the Contractor shall be conditional upon the Contractor providing the Company with their bank account details. Payments shall be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that the Company may choose from time to time.
- 14.4 The Company will make all payments to the Contractor by the final date for payment in accordance with this clause 14 save in the case of any payments in respect of which there is a bona fide dispute between the parties. If subject to the foregoing, the Company fails to pay any undisputed sum due under this Purchase Order by the Date for Payment the Contractor will be entitled to interest on any outstanding amounts at the simple interest rate of 5% per annum above the base rate of the Bank of England as amended from time to time from the final date for payment until the actual date of payment.
- 14.5 This clause 14.5 shall apply to any part of the Supply to which the Act applies¹:
- a. Not less than fourteen days before the final day of each accounting period for the Company, the Contractor shall submit an Application for Payment (“**AFP**”) in respect of any Supply that has taken place in the preceding accounting period and for which an AFP has not already been submitted. The AFP shall state the sum that the Contractor considers will become due to him at the relevant payment due date in accordance with sub-paragraph (c) below and the basis on which that sum is calculated.
 - b. Not later than five days after each payment due date the Company will issue a Contract Payment Approval Form (“**CPAF**”) to the Contractor. The CPAF shall be the Company’s notice of payment and shall specify

¹ The Act applies to contracts (other than PFI contracts) for

- construction-related works
- construction-related services (including design and surveys)
- construction-related labour
- installation of goods to buildings fixed or structures fixed to the land
- maintenance of buildings or structures fixed to the land

These payment provisions will need to be included for such contracts unless it is stated in the contract that the duration of the work is to be less than 45 days or the parties agree that the duration of the work is estimated to be less than 45 days.

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the amount due at the payment due date (the notified sum) and the basis on which that sum is calculated.. Not later than five days after receipt of the CPAF, the Contractor shall deliver an invoice for the sum certified in the CPAF. The Contractor shall issue a corrected invoice, where required, within five days of receipt of any Pay Less Notice in accordance with sub-paragraph (e) below.

- c. The date on which each payment becomes due shall be the later of:
 - (i) the final day of the relevant accounting period; and
 - (ii) fourteen days after the date of receipt by the Company of the Contractor's AFP.
The final date for payment is twenty eight days after the date on which payment becomes due.
- d. If a CPAF is not issued by the Company in accordance with sub-paragraph (b), the sum to be paid by the Company is, subject to sub-paragraph (e), the sum stated as due in the Contractor's AFP in accordance with sub-paragraph (a).
- e. If either party intends to pay less than the notified sum, it shall issue a notice to the other party ("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. A party 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 this Contract..
- f. if the Contractor's employment is terminated under clause 17.1(d) because the Contractor has become insolvent the Company need not pay any sum due to the Contractor other than any amount due to him under or pursuant to clause 17 either: (i) where the Contractor becomes insolvent prior to the prescribed period before the final date for payment, provided that the Company issues a Pay Less Notice notifying the Company's intention not to pay such sum, or (ii) in any event, if the Contractor becomes insolvent after the prescribed period before the final date for payment.

14A. **London Living Wage**

14A.1 The Contractor shall comply with the obligations set out in Schedule 1.

15. **Costs**

15.1 Each party shall bear its own costs relating to negotiation, preparation, execution and implementation by it of this Contract and of each document referred to in it.

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16. Defects

- 16.1 The Contractor shall replace or re-execute free of charge to the Company any Goods or any part thereof which is found within a period of twelve months (or other period stated in the Purchase Order) after the date of Supply to be defective.
- 16.2 Defective Goods shall be returned at the Contractor's expense and risk.
- 16.3 The Contractor shall as required re-perform free of charge to the Company any Services or any part thereof which in the Company's reasonable opinion fails to meet the requirements of all due skill, care and diligence as set out in clause 5.2a of these conditions.
- 16.4 Nothing in this clause shall prejudice any rights which the Company may have including rights of rejection.

17. Termination of Contract

- 17.1 The Company may by notice in writing to the Contractor terminate the Contract forthwith if the Contractor:
- a. fails at any time to perform the Contract with due diligence and expedition; or
 - b. breaches the Contract in any other way; or
 - c. enters into any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) an application is made for the appointment of an administrator to the Contractor or an administrator is appointed to the Contractor or it goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - d. becomes insolvent as defined in Section 113 of the Act;
 - e. an encumbrancer takes possession of, or a receiver, administrative receiver, custodian, sequestrator, administrator or similar officer is appointed over any assets of the Contractor.
- 17.2 Without prejudice to the Company's rights to terminate under clause 17.1, the Company may at any time give 60 days' notice in writing to the Contractor terminating the Contract.
- 17.3 On termination of the Contract, the Company will not be liable to the Contractor for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of, or in connection with, such termination. Otherwise, any termination of the Contract shall be without prejudice to rights and remedies of either party which accrued prior to termination.
- 17.4 Upon such termination, the Company shall be at liberty to enter into any agreement with such other persons, companies or firms as the Company may think fit in respect of the Supply and the Company shall be entitled to recover

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from the Contractor all costs and damages incurred by the Company in consequence of the termination of the Contract.

18. Intellectual Property

- 18.1 All royalties or other sums payable or required to be paid to any third party in respect of the use of any Intellectual Property Rights necessary for the performance of the Contract shall be paid by the Contractor.
- 18.2 The Contractor indemnifies the Company from and against all claims, and expenses arising from or incurred by the Company by reason of any infringement or alleged infringement of any Intellectual Property Rights belonging to any third party.
- 18.3 All Intellectual Property Rights which may exist in any documents, drawings, items, designs, processes software, source codes and/or databases whether provided by the Company or its agents to the Contractor or developed by the Contractor or any of its servants or sub-contractors, whether in conjunction with the Company's staff or not, in performance of the Contract shall vest in the Company.
- 18.4 The Contractor is not entitled to use in any manner whatsoever any Intellectual Property Rights belonging to LUL or to the Company.

19. Confidentiality and Freedom of Information

- 19.1 Without the prior written consent of the Company, the Contractor shall not disclose any information not already in the public domain relating to the Company to a third party. Such information includes but is not limited to any trade or business secret or other confidential information supplied by the Company to the Contractor.
- 19.2 The Company may disclose any information disclosed by the Contractor to the Company if such information is requested by a third party under the provisions of the Freedom of Information Act 2000 ("**FOIA**") or under the Environmental Information Regulations 2004 ("**EIR**") (each of which in this clause 19 is an "**Information Request**") unless such information can be successfully claimed by the Company to be exempt from disclosure in accordance with the FOIA or EIR.
- 19.3 The Contractor shall, and shall procure that its sub-contractors (if any) shall:
 - a. transfer to the Company each Information Request it or they receives within 2 Business Days of receiving it; and
 - b. within 5 Business Days of a request to that effect from the Company to the Contractor, provide the Company with details and/or copies of all information held by the Contractor on behalf of the Company or of LUL or of any member of the TfL Group.

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19A. **Responsible Procurement**

19A.1 The Contractor shall at all times have regard to the Responsible Procurement Principles in performance of its obligations under this Contract.

19B. **Data Transparency**

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

19B.2 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOIA and/or EIR referred to in clause 19. The Company may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to Clause 19B.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

20. **Advertising**

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

20A. **Conflict of Interest**

20A.1 The Contractor acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Supply or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Contractor.

20A.2 The Contractor undertakes ongoing and regular conflict of interest checks throughout the duration of the Contract and in any event not less than once in every six months and notifies the Company in writing immediately on becoming aware of any actual or potential conflict of interest with Supply or any member of the TfL Group and works with the Company to do whatever is necessary (including the separation of staff working and/or data relating to the Supply from the matter in question) to manage such conflict to the Company's satisfaction and provided that, where the Company is not so satisfied (in its absolute discretion), the Company shall be entitled to terminate the Contract.

21. **Corrupt Gifts and Payment of Commission**

21.1 The Contractor shall not, and shall procure that its sub-contractors shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Company nor favour employees, officers or agents of the Company with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Company other than as a representative of the Contractor, without the Company's written approval. The Company shall have the right to audit any and all such records necessary to confirm compliance with this clause at any time during performance of the Contract and during the 3 year period

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following completion of performance. Breach of this clause shall entitle the Company to terminate the Contract and other contracts between the Contractor and the Company forthwith.

22. Right to Withhold/Recover Payment

22.1 Any payment made by the Company hereunder including the final payment under the Contract shall not prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company (a) any amount in respect of which there exists a bone fide dispute; and (b) any amount which on the basis of the Company's bona fide estimate the Company considers due to it from the Contractor. Such estimates shall be binding upon the Contractor until agreement between the Company and the Contractor or any award order or judgement whichever shall be earlier.

23. Construction (Design and Management) Regulations 2007

23.1 To the extent that the Construction (Design and Management) Regulations 2007 ("**CDM Regulations**") applies to any Supply, the Company appoints the Contractor to act as the "CDM co-ordinator" and the "principal contractor" pursuant to Regulation 14(1) of the CDM Regulations, and the Contractor accepts such appointment and agrees to carry out all obligations imposed by those Regulations.

24. LUL Step-In Rights under BCV Contract

24.1 The Contractor acknowledges that if the Company fails to comply with its obligations and duties to LUL under the BCV Contract then LUL may issue a notice ("**Step-in-Notice**") to the Contractor advising the Contractor that it will, from the date specified in the Step-in-Notice, exercise its rights to step-in. The Contractor accepts such Step-in-Notice as conclusive proof of LUL's entitlement to step-in.

24.2 The Contractor acknowledges and accepts that from the date specified in any Step-In Notice served on him by LUL to the relevant date specified in any step-out-notice served by LUL under the BCV Contract, that it will comply with the instructions of LUL or its appointee in respect of the Supply, and all amounts due and payable to the Contractor or which may become due to the Contractor under the Contract (and which have not been discharged by the Company or any other person) will be paid directly to the Contractor by LUL or its appointee without retention or set off in respect of any prior breach of the Contract.

24.3 Notwithstanding clause 24.2 above the Company shall remain liable to the Contractor for all amounts due and payable to the Contractor under the Contract and for performance all the Company's obligations under the Contract.

24.4 The Contractor shall co-operate with LUL or its appointee, and shall provide LUL or its appointee with reasonable access to information and shall not hinder or prevent LUL from exercising its step-in rights under the BCV Contract.

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24.5 The Contractor acknowledges and accepts that if LUL serves notice on the Contractor that LUL has exercised its right under the BCV Contract to give a step-out notice to the Company, the Contractor shall if so required by such notice from the relevant date specified in the notice comply with the instructions of the Company with respect to providing the Services in accordance with the Contract.

24.6 The Contractor and the Company shall not be in breach of the Contract when complying with the obligations imposed by clauses 24.1 to 24.5 above.

25. **Waiver**

25.1 Failure or delay by either party at any time to enforce any of the provisions of this Contract shall not be construed as a waiver by such party of such provision or in any way affect the validity of this Contract or any part thereof.

26. **Statutory Requirements**

26.1 The Contractor shall in the performance of this Contract ensure compliance with all Legislation from time to time in force which is or may become applicable during the period this Contract is in force.

27. **Third Party Rights**

27.1 Any person who is not a party to this Contract shall not have any benefit from or any rights under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, provided that nothing shall prevent LUL from enforcing any rights granted for its benefit under this Contract.

28. **Legal Construction and Dispute Resolution**

28.1 The Contract shall be governed by and interpreted according to the laws of England & Wales and, subject to clause 28.2 below and save to the extent that a party is entitled to refer a dispute to an adjudicator pursuant to the Act, the parties submit to the exclusive jurisdiction of the Courts of England & Wales.

28.2 Subject to clause 28.1 the Company and the Contractor shall use all reasonable endeavours to settle any dispute by good faith negotiation, or failing that by escalation to senior management, or failing that by reference to the model dispute resolution procedures of the Centre for Effective Dispute Resolution in London (CEDR).

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29. Entire Agreement

- 29.1 The Contract constitutes the complete and entire agreement between the Company and the Contractor 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. No amendments or modifications of the Contract shall be valid unless made in to writing by duly authorised representatives of the parties.
- 29.2 Nothing in this clause 29 shall exclude any liability for fraudulent misrepresentation.

NOTE: In the event of the Contract covering Services to be carried out by the Contractor on the Company's premises the following additional clauses shall apply:

30. Period

- 30.1 The Services shall be carried out on the dates or within the time stated on the Purchase Order or Delivery Request Form as the case may be.

31. Attendance at the Company's Premises

- 31.1 The Contractor shall, and (where appropriate) procure that its sub-contractors shall, comply with all operating procedures, rules and regulations, Company and LUL policies as amended from time to time notified to the Contractor by the Company, including the Contract QUENSH Conditions in accordance with any QUENSH menu provided by the Company to the Contractor.
- 31.2 The Contractor, its employees or agents whilst on the premises of the Company in connection with the Contract shall in all respects conform to and comply with any requirements and/or instructions given by an authorised representative of the Company in connection with carrying out the Services under this Contract including a request for the Contractor, or any of its employees or agents to leave the premises immediately.

NOTE: Where the Contract is expressed in the Purchase Order to be a Framework Agreement the following additional clauses shall apply.

32. Delivery Request Forms

- 32.1 Where the Company has issued already to the Contractor a Purchase Order which is expressed to be a Framework Agreement the Company may from time to time send to the Contractor Delivery Request Forms calling for such Supplies as the Company may require for the time being and stating when and where such Supplies should be made or performed. The Company shall not be bound by any order or request for a Supply or any variation thereof unless issued on one of the Company's official Delivery Request Forms by the Employer's Representative.
- 32.2 Any Delivery Request Forms from the Company to the Contractor shall be subject to and governed by these conditions of Contract.

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33. Framework Duration

- 33.1 Unless otherwise stated and subject to clause 17, the duration of the Framework Agreement will be for a period of [twelve] months from the date of the Purchase Order and shall thereafter continue subject to three months notice in writing of termination by either party up to a maximum period of twenty four months when the Contract will automatically expire.
- 33.2 Notwithstanding the expiry of the Framework Agreement as above, if the Company continues to send Delivery Request Forms to the Contractor under the Framework Agreement any Supplies made by the Contractor shall be subject to and governed by these Conditions of Contract. If there are then no dealings between the parties under the Framework Agreement for a period of eighteen consecutive months, the Framework Agreement will be deemed to have expired on the last day of such period.
- 33.3 Any expiry of the Contract shall be without prejudice to rights and remedies of either party which accrued prior to expiry.

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SCHEDULE 1

LONDON LIVING WAGE

- 1.1 The Contractor acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the Company) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.
- 1.2 Without prejudice to the generality of paragraph 1.1, the Contractor shall and shall procure that its sub-contractors (if any) shall:
 - 1.2.1 ensure that none of its employees engaged in the performance of the supply of the Goods and/or the Services in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 1.2.2 ensure that none of its employees engaged in the performance of the supply of the Goods and/or the Services is paid less than the amount to which they are entitled in their respective contracts of employment; and
 - 1.2.3 co-operate and provide all reasonable assistance to the Company and any member of the TfL Group in monitoring the effect of the London Living Wage.
- 1.3 Where the London Living Wage is increased by an amount in excess of RPIX, the Company shall indemnify the Contractor from and against costs which the Contractor can demonstrate to the Company's reasonable satisfaction have actually been incurred by it in complying with paragraph 1.1 above as a direct consequence of such increase, in an amount equal to the amount of such excess (before tax, other deductions and any increase for overtime).
- 1.4 The Contractor shall, so far as reasonably practicable, mitigate any increase in the amount payable to its employees as a direct result of the increase in London Living Wage. The Company's liability to indemnify the Contractor as provided for in paragraph 1.3 shall be reduced proportionately to the extent that the Contractor has failed to mitigate such increases. Save for paragraph 1.3, the Contractor shall not be entitled to make any claim in respect of any increases in the London Living Wage.
- 1.5 Any failure by the Contractor to comply with provisions of this Schedule 1 shall be treated as a material breach entitling the Company to terminate the Contract in accordance with clause 17.1(b).
- 1.6 In this Schedule, "**RPIX**" means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree.

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SCHEDULE 2

SPECIFICATION

[Insert Specification]