

LUL NOMINEE SSL LIMITED

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND/OR SERVICES WITH A VALUE BETWEEN £750k AND £1.5m

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.

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

"Company" means LUL Nominee SSL Limited (No. 6242508) 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.

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

"Contractor's Personnel" means the employees and agents of the Contractor and of the Contractor's sub-contractors or contractors who are involved in the provision of the Goods and/or Services.

"Contract QUENSH Conditions" means all those contract, quality, environmental, health and safety conditions set out in Schedule 6 as may be amended from time to time and contained in the QUENSH Manual as may be amended from time to time.

"Corporate IPRs" means those trade marks, trade names and other IPRs listed in Schedule 3, as may be amended by the Company from time to time by adding to or removing such IPRs from such list.

"Direct Agreement" means an agreement in the form attached as Schedule 2

"Dispute" means a dispute in any way concerning or relating to or arising out of the Contract.

"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.

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“Dispute Resolution Procedure” means the procedure set out in Schedule 1 or any Appendix to Schedule 1.

"Documentation" means the Minimum Records, any aspect of the Contractor's or sub-contractors' operations, costs and expenses, claims, variations and financial arrangements, accounts, operating manuals, maintenance manuals, program listings, data models, flowcharts, logic diagrams, input and output forms, instructions, technical literature (including, without limitation, drawings, designs, blue prints, schematics and plans), equipment and component inventories, source codes, purchase orders, manufacturers' specifications, meeting minutes and details and any other functional specifications, and all other related materials in either eye-readable or electronic form, and complete or partial copies of the foregoing, relating to the Goods and/or the Services.

"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.

“Expiration Date” means the date on which the Contract is due to expire as specified in the Purchase Order or as otherwise notified to the Contractor by the Company.

“FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation.

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

“Holding Company” means any company which from time to time directly or indirectly controls the Contractor where **“control”** is as defined by section 840 of the Income and Corporation Taxes Act 1988.

“Information” means information recorded in any form held by the Company or by the Contractor on behalf of the Company, LUL or any member of the TfL Group.

“Information Request” means a request for any Information under the FOI Legislation.

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"Infrastructure Manager" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

"Intellectual Property Rights" or "IPRs" means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, (including without limitation rights in software and databases) moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

"Lease" means the lease between LUL and the Company in the form set out in Part III of Schedule 1.5 to the SSL Contract with such amendments as LUL and the Company shall agree and unless the context otherwise requires includes any amendment, restatement, variation, modification, suspension, replacement or novation of it and any deed or instrument made supplemental to it (including where applicable any supplemental lease).

"Legislation" means any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Contractor's business and/or the Company's business from time to time in force which are or may become applicable to the Supply.

"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.

"LUL" means London Underground Limited (a wholly owned subsidiary of Transport for London) and its successors in title and assigns acting for itself or, where notified to the Contractor, for any other member of the TfL Group.

"LUL or Company Information" means any information relating to LUL or any other member of the TfL Group or to the Company or their business or operations including, without limitation, all processes, methods and techniques, operational, manufacturing or construction data, business policies, sales and marketing data, formulae, specifications, software specifications or applications, computer systems and any other information in any media used by or the property of LUL or any other member of the TfL Group, or the Company.

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

"Minimum Records" means

- (a) all necessary information for the evaluation of claims or variations, whether or not relating to the Contractor or to any sub-contractors (and whether or not such sub-contractors are affiliated to the Contractor);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);

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- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation files (including documentation covering negotiated settlements);
- (i) schedules on a project by project basis including capital works costs, timetable and progress towards relevant milestone dates;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5000;
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliation's against pricing and project plans, in each case which have not already been provided to the Company; and
- (n) test and commissioning results.

"Operator" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through the SSL Contract or through contractual arrangements in substantially similar terms.

"Parties" means the parties to the Contract and any permitted successors and **"Party"** means whichever of them is indicated by the context of the reference.

"Premises" means the stations, depots and other premises at which any of the Goods are to be delivered or at which any of the Services are to be performed or to which the Contractor will or may seek access in order to facilitate or comply with any of its obligations under the Contract.

"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:

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

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

"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.

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“Safety Breach” means a material breach of any obligation under this Contract caused by the gross incompetence or wilful default of the Contractor or by any sub-contractor (or anyone employed or acting on behalf of the Contractor or any sub-contractor) or any of its agents which has materially affected the safe operation of the Underground Network or endangered the safety of the employees of LUL or the public or any other person.

“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 7.

“SSL 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.

“SSL Network” means that part of the Underground Network for which the Company is responsible under the SSL Contract.

“Standards” shall have the meaning given thereto in the Master Definitions Agreement dated 31 December 2002 between LUL, Infracore JNP Limited, Infracore BCV Limited and the Company.

“Subsidiary” means a subsidiary within the meaning of Section 1159 of the Companies Act 2006, and a subsidiary undertaking within the meaning of Section 1162 of the Companies Act 2006.

“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”**) and successors in title, and any Subsidiary thereof from time to time.

“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”**.

“Underlease” means the underlease from the Company to LUL in the form set out in Part III of Schedule 1.5 of the SSL Contract with such amendments as LUL and the Company may agree and unless the context otherwise requires includes any amendment, restatement, variation or modification of it and any deed or instrument made supplemental to it (including where applicable any supplemental underlease).

“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.

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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.
- 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

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 terms and 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

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:

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- 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.

5.3 The Contractor has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Contract, and the Contract is executed by a duly authorised representative of the Contractor.

5.4 Each warranty above will be construed as a separate warranty and will not be limited or restricted by reference to, or interference from, the terms of any other warranty or any other term of the Contract.

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.

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 Audit, Inspection and Quality Assurance ("QA")**

7.1 The Contractor will, and will procure that its sub-contractors will, maintain a true and correct set of documents and records including personnel and training records pertaining to all activities relating to their performance of or compliance with the Contract and a complete and orderly documentary record of all transactions entered into by the Contractor for the purposes of the Contract including copies of any Documentation generated by or in the possession of the Contractor, all sub-contracts and all such other information reasonably required by the Company or by LUL or specified in the Contract. The Contractor agrees, and will procure that its sub-contractors agree, to maintain and retain the Documentation for a period of not less than eight years (or such other longer period as may be required by law) after completion of performance under the Contract. The Company and LUL or any authorised representative of either of them will have the right to audit any and all such records at any time during performance of the Contract and during the eight year period (or such longer period as may be required by law) following completion of performance under the Contract.

7.2 The Company and/or LUL or any authorised representative of either of them or of a third party authorised by either the Company or LUL may from time to time and without prior warning undertake any inspection of the Goods and shall have the right to audit any or check any and all information and any and all documents and records regarding any matter related to the Contractor's or any sub-contractor's performance of or compliance with the Contract including without limitation any aspect of the Contractor's or sub-contractor's operations costs and expenses sub-contracts claims related to variations and financial arrangements. The Company may in its absolute discretion but will not be obliged to inform the Contractor of the objective of the audit prior to its commencement.

7.3 The Contractor will, and will ensure that any sub-contractor will, promptly provide all reasonable co-operation in relation to any inspection, audit or check including:

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- 7.3.1 granting access to any premises, equipment, (including all computer hardware, software and databases) plant machinery or systems used (whether exclusively or non exclusively) in the Contractor's and/or any sub-contractor's performance of the Contract, or where such premises, equipment plant, machinery or systems are not the Contractor's own, using reasonable endeavours to procure such access;
 - 7.3.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit;
 - 7.3.3 making any contracts, other documents and records referred to in clause 7.1 above (whether exclusively or non exclusively) available for inspection;
 - 7.3.4 providing a reasonable number of copies of any contracts, other documents or records referred to in clause 7.1 above required by the auditor and/or granting copying facilities to the auditor for the purposes of making such copies;
 - 7.3.5 providing such auditors with such office space, telephones, reasonable facilities and interviews with personnel engaged in the Contractor's performance of or compliance with the Contract at each site as are reasonably required to enable such auditors to perform each audit properly in accordance with this clause;
 - 7.3.6 permitting such auditors to bring personal computers on to sites; and
 - 7.3.7 complying with LUL's and the Company's reasonable requests for access to senior personnel engaged in the performance of the Contract.
- 7.4 Any audit referred to in this clause shall be conducted on an open book basis. The Contractor shall undertake any obligations and exercise any rights which relate to the performance of the Contract on an open book basis.
- 7.5 Without prejudice to clause 33.1, 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.
- 7.6 The Contractor shall comply with all of its obligations under the Data Protection Act 1998 ("**DPA**") and if processing personal data shall only carry out such processing for the purposes of providing the Goods or Services in accordance with the Contract. For the purposes of this clause 7.6, the words "processing" and "personal data" shall have the meaning attributed to such words in the DPA.

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

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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 The Contractor will (at its own expense) upon request by the Company prove to the Company's entire satisfaction that the goods, materials and workmanship comply with the standards required by the Contract.
- 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.

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. **QUENSH**

- 10.1 The Contractor shall, and (where appropriate) procure that its subcontractors shall, comply with the latest version of the Company's Contract QUENSH Conditions in accordance with any QUENSH menu provided by the Company to the Contractor throughout the duration of the Contract.

11. **Responsibility for Goods and Insurance**

- 11.1 The Contractor shall be responsible for and insure all Goods (whether partially or completely manufactured or assembled) and all materials acquired by or delivered to the Contractor for the purposes of performing its obligations under the Contract (whether or not the property of the Contractor or the Company) against loss, destruction and damage for their full re-instatement value until such time as the Goods are delivered to the Company and/or the Services are completed.

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12. Indemnity and Insurance

- 12.1 The Contractor shall be responsible for and shall indemnify and keep indemnified the Company, its employees and agents from and against all expense liability loss and claims whatsoever in respect of death of or injury to any person, loss of or damage to property (including property belonging to the Company or for which it is responsible) and any other loss damage cost or expense which may arise out of or in consequence of the performance or breach of the Contract or of the presence of the Contractor, its employees, agents or sub-contractors on the Company's premises whether such death injury loss damage cost or expense be caused by negligence or otherwise.
- 12.2 Without prejudice to its liability to indemnify and keep indemnified the Company under clause 12.1 or any other provision of the Contract, the Contractor will arrange and maintain throughout the duration of the Contract (unless otherwise stated):-
- 12.2.1 Employer's liability insurance in respect of the Contractor's liability for any person in the Contractor's employment in the sum of not less than £10 million per incident or such other minimum level as may from time to time be required by law;
- 12.2.2 Public and Product liability insurance in respect of the Contractor's liability in the sum of not less than £10 million per occurrence with financial loss extension and shall be endorsed to provide that no act or omission on the part of the Contractor shall prejudice the Company's rights under such policy as principal; and
- 12.2.3 Professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the Services but not less than £2 million in the aggregate per annum for the duration of the Contract and for six (6) years after expiry or termination of the Contract.

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). The Goods shall be packed and labelled in an appropriate manner in accordance with the terms of the Contract and the Purchase Order and in accordance with any statutory requirements and shall be accompanied by any manuals, drawings, instructions or other information the Company has requested or requires to use the Goods.
- 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

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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 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;
 - 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

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- 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 Supply (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 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, PO Box 45276, 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 Contract. Failure to provide all information required in accordance with this clause may result in a delay to the 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 as set by 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

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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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**"). The CPAF shall be the Company's notice of payment and shall specify 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 Liquidated Damages

14A.1 The Contractor will pay and/or the Company may deduct from the Price by way of liquidated damages:-

14A.1.1 such sums as may be identified and calculated in accordance with Schedule 4 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the Contractor to perform its obligations under the Contract;

14A.1.2 if delivery of the Goods and/or performance of the Services shall not have been achieved by the date(s) agreed, specified in the Purchase Order or, where an extension of time has been agreed, the revised

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date for delivery, the Contractor shall pay to the Company as liquidated damages for each day of delay, after the date for delivery or the revised date for delivery, as applicable, such sums as may be identified and calculated in accordance with Schedule 4. Such payment shall be in full and final settlement of the Contractor's liability for any loss or damage incurred by the Company up to the end of the period in which liquidated damages are payable under this clause in respect of such delay; and

- 14A.1.3 if delivery of the Goods and/or performance of the Services shall not have been achieved by the end of the period in which liquidated damages are payable under clause 14A.1.2 the Company shall be entitled to claim any remedy available to it for loss or damage incurred by it after the end of that period;

from the commencement of the event, effect, delay or failure in question to the cessation of the event, effect, delay or failure in question (irrespective of the intervention of a termination event) except to the extent that any failure referred to in any part of clause 14A.1 is the direct result of any default or neglect of the Company.

- 14A.2 The Contractor acknowledges that:

14A.2.1 under the SSL Contract, the Company is obliged to repair and maintain the infrastructure of the SSL Network; and

14A.2.2 any failure by the Contractor to perform the Services or any breach by the Contractor of its obligations under the Contract may result in the Company incurring losses under the SSL Contract.

- 14A.3 The provisions of this clause 14A will not prevent the Company from exercising any of its other rights under the Contract.

14A.4 All sums payable by the Contractor to the Company pursuant to this clause 14A will be paid as liquidated damages and not as penalties and the Parties acknowledge that such sums are a genuine attempt to pre-estimate loss which will be suffered by the Company in the event of any such failures in performance or breach of the Contract.

14B. **London Living Wage**

14B.1 The Contractor shall comply with the obligations set out in Schedule 5.

14C. **Data Transparency**

14C.1 The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding clauses 19 and 19A, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.

14C.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 FOI Legislation. The Company may in its absolute discretion consult with the Contractor regarding any redactions to the

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Contract Information to be published pursuant to Clause 14C.1. The Company shall make the final decision regarding publication and/or redaction of the Contract Information.

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.

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 5.2 a 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; or
- 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

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any termination of the Contract shall be without prejudice to rights and remedies of either Party which accrued prior to termination.

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

18. Intellectual Property

- 18.1 The Contractor hereby assigns with full title guarantee to the Company and to LUL all Intellectual Property Rights in all Documentation specifically prepared or developed or created by or on behalf of the Contractor in the performance of the Contract. The Contractor shall provide the Company with copies of anything in the Contractor's possession or control relating to such Intellectual Property Rights. To the extent that such Intellectual Property Rights cannot be so assigned, the Contractor hereby grants the Company and to LUL an unlimited and irrevocable, non-exclusive, royalty free licence (with a right for LUL and the Company to grant a like sub-licence thereof) to copy and use anything so provided free of charge.

- 18.2 Without prejudice to clause 18.1, all Intellectual Property Rights developed or owned by the Contractor, its employees, sub-contractors (of any tier) or agents and used by the Contractor in the performance of the Contract, whether acquired or developed or created prior to or during the performance of the Contract will remain or be vested in the Contractor, provided that the Company and LUL shall have and the Contractor hereby grants to the Company and LUL a worldwide, royalty-free, perpetual, irrevocable, non-exclusive licence to use the same for all purposes, including (without limitation) for the purposes of :-

18.2.1 understanding the Goods;

18.2.2 operating, maintaining, repairing, modifying, re-figuring, correcting and replacing the Goods;

18.2.3 extending, interfacing with, integrating with, connecting into and adjusting the Goods;

18.2.4 enabling the Company to carry out the operation, maintenance, repair, renewal and enhancement of the SSL Network;

18.2.5 continuing any element of the Services; and

18.2.6 enabling LUL to perform its function and duties as Infrastructure Manager and Operator of the Underground Network and/or for the purposes of performing obligations or exercising its rights under the SSL Contract or Lease or Underlease,

and the Company and LUL may sub-licence such rights to any third party for the purposes set out above. Such licence shall include the right to grant sub-licences and the right for the Company and LUL to modify anything in which the Intellectual Property Rights subsist and the right to modify the Standards (to the extent that the Company does not already have such right).

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- 18.3 The Contractor shall provide the Company with copies of any Documentation in the Contractor's possession or control which is referred to or relied upon by the Contractor in using and is required in any way for the use of the Intellectual Property Rights licensed to the Company, LUL and any third party in accordance with clause 18.2 above.
- 18.4 Intellectual Property Rights in all Documentation and in all other material and items supplied by the Company to the Contractor in connection with the Contract shall remain vested in the Company or the person owning such rights at the time the Documentation, material or items were supplied. Any Intellectual Property Rights created during the performance of the Contract in the Standards shall vest unconditionally in the Company. The Contractor shall, if so requested, at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Company the rights referred to in this clause.
- 18.5 The Contractor shall ensure that any Intellectual Property Rights which belong to a third party and which are licensed to the Contractor among other things for the purposes of its performance of the Contract or otherwise utilised by the Contractor for those purposes by agreement with the owner of such rights will be licensed or used on such terms that permit the Company and LUL to use such rights for the purposes set out in clause 18.2 above and to assign such rights to any nominee or successor and to sub-license such rights to any third party for the same purposes. This provision shall not apply to proprietary or standard software under the value of £5,000 which may be purchased and replaced by the Company without the specific consent of the third party owner of such software provided that on the Expiration Date or earlier termination of the Contract the Contractor provides to the Company all the data stored in such software relevant to the Goods or the Services in a format agreed with the Company.
- 18.6 All sums required to be paid to third parties in respect of the use of any Intellectual Property Rights connected with the performance of the Contractor's obligations under the Contract shall be paid by the Contractor.
- 18.7 The Company hereby grants the Contractor a non-exclusive, non-transferable licence to use all the Intellectual Property Rights owned or capable of being so licensed by the Company which are required by the Contractor for the purposes of performing the Services. Any such licence is granted for the duration of the Contract solely to enable the Contractor to comply with its obligations under the Contract and is conditional upon the Contractor using such Intellectual Property Rights in accordance with the Standards, the Contract QUENSH Conditions and such other quality standards as the Company and/or LUL may from time to time notify. No Intellectual Property Rights owned or capable of being so licensed by the Company may be used in conjunction with any other trade marks without the prior written consent of the Company and/or LUL.
- 18.8 The Contractor shall indemnify and hold harmless the Company and LUL both jointly and severally 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 third party and against all costs and damages of any kind which the Company and LUL both jointly and severally may incur in connection with any actual or threatened proceedings before any court or arbitrator. If required by the Company and/or LUL the Contractor shall conduct negotiations with any third party and/or a defence in relation to any action, claim or demand referred to herein on behalf of the Company and/or LUL.

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- 18.9 In the event of a claim of infringement of any Intellectual Property Rights the Contractor shall use all reasonable endeavours to make such alterations or adjustment to the 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.
- 18.10 The Contractor acknowledges the Company's ownership of Intellectual Property Rights which may subsist in the Company's data and the Contractor shall not delete or remove any copyright notices contained within or relating to such data.
- 18.11 The Contractor and the Company shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Company's data and to prevent any corruption or loss of such data.

USE THE FOLLOWING SUB-CLAUSES IF CONTRACTOR IS ALLOWED TO, OR MUST USE CORPORATE IPRS

- 18.12 The Contractor is permitted to use Corporate IPRs during the duration of the Contract for such purposes and to the extent necessary to provide the Services, provided that:
- 18.12.1 the Corporate IPRs shall only be used in compliance with any relevant Standards; and
 - 18.12.2 the Contractor shall not use the Corporate IPRs in combination with any other trade marks without the prior written consent of LUL; and
 - 18.12.3 within five Business Days of a written request from the Company, the Contractor shall provide the Company with copies or details of items on or in relation to which it uses the Corporate IPRs. If in the opinion of the Company, such use falls below any of the relevant Standards notified to the Contractor under clause 18.12.1 above, then the Contractor shall accordingly correct its use of the Corporate IPRs so as to comply with such Standards taking into account the Company's instructions.
- 18.13 Where the Contractor wears or uses any of the following items then the Contractor must use on such items the New Johnston Typeface and the Roundel in the form in which they form part of the Corporate IPRs and in accordance with clause 18.12 above on:
- (i) Clothing – general uniforms;
 - (ii) Clothing – special incidents;
 - (iii) Engineering and emergency response Rolling Stock and road vehicles;
 - (iv) Temporary site signs and work hoardings;
 - (v) Train and station signs and notices; and
 - (vi) Trains.

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OR USE THE FOLLOWING CLAUSE IN ALL OTHER CIRCUMSTANCES I.E INSTEAD OF CLAUSES 18.12 AND 18.13 ABOVE IF THE CONTRACTOR IS NOT ALLOWED TO USE CORPORATE IPRs

18.12 The Contractor is not permitted to use any Corporate IPRs.

19. Confidentiality

19.1 The Contractor acknowledges that:

19.1.1 it may receive or obtain LUL or Company Information;

19.1.2 it may prepare or create LUL or Company Information; and

19.1.3 LUL or Company Information is of a proprietary and confidential nature.

19.2 The Contractor shall not and shall ensure that its sub-contractors shall not:

19.2.1 use LUL or Company Information for any purposes whatsoever other than for the purpose of the provision of the Goods and/or the performance of the Services (and in particular shall not use LUL or Company Information to the detriment of LUL or the Company);

19.2.2 disclose LUL or Company Information to any third party (save as may be required by law or by order of a Court of competent jurisdiction and provided that prior to such disclosure the Contractor shall consult with the Company as to the proposed form of such disclosure) without the prior written consent of the Company except that the Contractor shall be entitled to the extent strictly necessary to disclose LUL or Company Information:

(a) to such of the Contractor's Personnel who need to know the LUL or Company Information for the provision of the Goods or the performance of the Services provided that the Contractor shall be responsible for any breach of its obligations hereunder occasioned by any act or omission of such Contractor's Personnel; and

(b) to any governmental or regulatory agency or authority whose decisions, instructions or rulings may properly be enforced against a party to the Contract;

19.2.3 without the prior written consent of the Company (except where provided in clause 19.2.2) disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the LUL or Company Information or relating to the Contract.

19.3 The Contractor shall:

19.3.1 receive and/or maintain the LUL or Company Information in strictest confidence;

19.3.2 inform each of the persons referred to in clause 19.2 above to whom LUL or Company Information is disclosed of the restrictions contained herein as to use and disclosure of the LUL or Company Information and shall use its best endeavours to ensure that each of them shall observe such restrictions;

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19.3.3 on the request of the Company (made at any time) deliver to the Company all documents and other materials in its possession, custody or control (or the relevant parts thereof) that bear or incorporate all or any part of the LUL or Company Information.

19.4 The obligations set out in clauses 19.2 and 19.3 will not apply to any LUL or Company Information which:

19.4.1 the Contractor can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Contractor by the Company; or

19.4.2 is hereafter lawfully disclosed to the Contractor without any obligation of confidence, by a third party who has not derived it directly or indirectly from the Company; or

19.4.3 is or becomes generally available to the public in any printed publication in general circulation through no act or default on the part of the Contractor.

19.5 The Contractor acknowledges that damages would not be an adequate remedy for any breach of this Clause by the Contractor and that (without prejudice to all other remedies to which the Company may be entitled as a matter of law) the Company shall be entitled to any form of equitable relief to enforce the provisions of this clause.

19.6 The Contractor shall not without the prior written consent of the Company (or where appropriate, LUL) advertise or announce that it is providing the Goods and/or performing the Services for the Company or LUL.

19.7 In relation to that part of LUL or Company Information which includes information relating to LUL, the Contractor hereby agrees to be bound by clause 48.2 of the SSL Contract in all respects as if it were a party thereto.

19.8 At the Company's request and in any event upon the termination or expiry of the Contract, the Contractor shall promptly deliver to the Company or destroy as the Company may direct all documents and other materials in the possession, custody or control of the Contractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the LUL or Company Information and if instructed by the Company in writing, remove all electronically held LUL or Company Information, including the purging of all disk-based LUL or Company Information and the reformatting of all disks.

19.9 The Company may disclose pursuant to clause 19A any information disclosed by the Contractor to the Company.

19A. **Freedom of Information**

19A.1 The Contractor acknowledges that the Company:

19A.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Company, LUL or any member of the TfL Group to enable the Company to comply with its obligations under the FOI Legislation; and

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19A.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor and, subject to the provisions of this Clause 19A, may ultimately at its discretion disclose such Information.

19A.2 Without prejudice to the generality of Clause 19A.1, the Contractor shall and shall procure that its sub-contractors (if any) shall:

19A.2.1 transfer to the Company each Information Request relevant to this Contract, the Services and/or the Goods, the Company, LUL or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and

19A.2.2 in relation to Information held on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Company (or such other period as the Company may reasonably specify) and in such forms as the Company may reasonably specify.

19A.3 The Company (as may be directed by LUL or a member of the TfL Group) shall be responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.

19B **Responsible Procurement**

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

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,

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where the Company is not so satisfied (in its absolute discretion), the Company shall be entitled to terminate the Contract.

21. **Corrupt Gifts and Safety**

21.1 The Contractor warrants that it and its sub-contractors and suppliers and its and their respective employees and agents have not committed, and shall not commit, any of the following acts:

21.1.1 offering or agreeing to give to any servant, employee, officer or agent of the Company or of LUL or the TfL Group any gift or consideration of any kind as an inducement or reward:-

21.1.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contract or arrangement with the Company or LUL or of any other contract between LUL and a third party; or

21.1.1.2 for showing or not showing favour or disfavour to any person in relation to the SSL Contract, the Contract or any other such contract; or

21.1.2 entering into the Contract or any other such contract in connection with which commission has been paid or agreed to be paid or rebates granted or agreed to be granted by it or on its behalf or to its knowledge unless before the Contract is made, particulars of any such commission or rebate and of any agreement or document for the payment thereof have been disclosed in writing to the Company or LUL; or

21.1.3 a Safety Breach.

21.2 The Contractor warrants that it and its sub-contractors and suppliers and its and their respective employees and agents have not committed, and shall not commit, any offence under legislation creating offences in respect of fraudulent acts including The Prevention of Corruption Acts 1889-1916 or at Common Law in respect of fraudulent acts relating to the Contract or the SSL Contract or any other contract with the Company or LUL or defraud or make any attempt to defraud the Company or LUL.

21.3 The Company and/or LUL shall have the right in accordance with the audit rights set out in the Contract to audit and inspect the records of the Contractor and its sub-contractors and suppliers and its and their respective employees and agents in order to confirm and monitor compliance with this clause 21 at any time during the performance of the Contract and thereafter until three years after the expiry of the SSL Contract or disposal of the interest of the Company in the SSL Contract to LUL or to a third party.

21.4 If requested by the Company, the Contractor shall terminate the employment of any of the Contractor's Personnel who is in breach of the provisions of this clause 21. The Contractor shall include a provision in each of its sub-contracts entitling it to terminate the employment of the sub-contractor's employees in such circumstances.

21.5 If the Contractor or any sub-contractor or anyone employed by either of them, or acting on behalf of either of the Contractor or of any sub-contractor whether or not

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acting independently commits an act prohibited by this clause 21, the Company may in its absolute discretion require the removal from the Contract and/or the Premises of any relevant person, and the Contractor shall promptly comply with, or procure compliance with, such requirement or, if so requested by LUL, the Company will terminate the Contract by giving to the Contractor not less than fourteen days' notice in writing.

21.6 The Contractor specifically acknowledges that any breach by it of any of the provisions of clause 21.1 shall entitle LUL to serve a mandatory sale notice on the Company pursuant to the SSL Contract, the effect of which shall, inter alia, oblige the Company to dispose of its business.

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 arising out of or attributable to the Contract or any other contract with the Contractor may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company (a) any amount in respect of which there exists a bona fide dispute, and (b) any amount 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.

[PART A-TO BE EXERCISED IN KEY SUB-CONTRACTS ONLY]

24. DIRECT AGREEMENT WITH LONDON UNDERGROUND LIMITED (LUL)

24.1 In the case of any Contract with a value in excess of £1 million the Contractor shall deliver to the Company on the signature of any such Contract a Direct Agreement duly executed by the Contractor in the form set out in Schedule 2.

OR

[PART B-TO BE EXERCISED IN NON KEY SUB-CONTRACTS ONLY]

24. LUL Step-In Rights under SSL Contract

24.1 The Contractor acknowledges that if the Company fails to comply with its obligations and duties to LUL under the SSL Contract then LUL may issue a notice ("**Step-in-Notice**") to the Contractor advising the Contractor that it will, from the date specified

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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 SSL 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 of 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 SSL Contract.
- 24.5 The Contractor acknowledges and accepts that if LUL serves notice on the Contractor that LUL has exercised its right under the SSL 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 - 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. **Safety Rules and Compliance with Laws**

- 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. The Contractor shall promptly notify the Company if the Contractor is required to make any change to the Goods and/or Services for the purposes of complying with its obligations under this clause 26.1.
- 26.2 The Contractor acknowledges LUL's statutory duty and the Company's contractual duty to provide a safe and efficient public transport service and will at all times during the Contract have regard to those duties and the Contractor will not in the performance of the Contract in any manner endanger the safety of or interfere with the convenience or operation of the Underground Network or the public and will minimise any disruption to the same.
- 26.3 The Company reserves the right to refuse to admit to any premises of the Company or LUL and/or the SSL Network any of the Contractor's personnel who fail to comply with any of the requirements policies, Standards and/or regulations referred to in clauses 26 and 33.

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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 [or pursuant to any Direct Agreement referred to in clause 24].

28. **Survival**

28.1 The provisions of clauses 6, 7, 14C, 17, 18, 19, 19A, 21, 22, 25, 26, 27, 28, 29 and 31 will survive the termination or Expiration Date of the Contract and continue in full force and effect, along with any other clauses or Schedules of the Contract necessary to give effect to them. In addition, any other provision of the Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination or Expiration Date of the Contract will survive such termination or Expiration Date as aforesaid.

29. **Legal Construction and Dispute Resolution**

29.1 The Contract shall be governed by and interpreted according to the laws of England & Wales and, subject to clause 29.2 below, the Parties submit to the exclusive jurisdiction of the Courts of England & Wales.

29.2 The Parties shall resolve any Dispute in accordance with the Dispute Resolution Procedure. To the extent that the Housing Grants, Construction and Regeneration Act 1996 applies to a Supply under the Contract, either Party may refer any Dispute to adjudication in accordance with the procedure set out in Part B of Schedule 1 and any Appendix to Schedule 1. In all other cases, Part A of Schedule 1 shall apply.

30. **Entire Agreement**

30.1 The Contract constitutes the complete and entire agreement between the Company and the Contractor and supersedes all other oral and/or written communications, documents 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.

30.2 Nothing in this clause 30 shall exclude any liability for fraudulent misrepresentation.

31. **Severability**

31.1 If any provision of the Contract becomes or is declared illegal, invalid or unenforceable, in whole or in part, for any reason whatsoever by any competent tribunal or authority, such provision or part thereof will be divisible from the Contract and shall be deemed to be deleted from the Contract in so far as the continued operation of the Contract is concerned provided always that if such deletion substantially affects or alters the commercial basis of the Contract, the Parties will negotiate in good faith to amend and modify the provisions and terms of the Contract as may be necessary or desirable in the circumstances.

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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:

32. Period

32.1 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.

33. Attendance at the Company's Premises

33.1 Whilst present on the premises of the Company or LUL and/or the SSL Network the Contractor will ensure that the Contractor's Personnel observe at all times all rules and safety requirements applicable to the premises and/or the Premises notified to the Contractor by the Company or any instructions given by the Company in providing the Goods and/or performing the Services.

33.2 In addition to the general requirements of clauses 26.1 and 33.1 the Contractor will comply and will ensure the compliance of its sub-contractor with all health and safety law applicable to providing the Goods and/or performing the Services and with the provisions of the Contract QUENSH Conditions as set out in Schedule 6 and as amended from time to time and will enable and assist the Company to comply with all relevant health and safety law applicable to the Company.

33.3 The Contractor:

- a. shall promptly notify the Contractor's Personnel and the Company of any health and safety hazards that may exist or may arise in connection with providing the Goods and/or performing the Services.
- b. undertakes to procure that all of the Contractor's Personnel comply with all of the Company's and LUL policies and Standards that are relevant to providing the Goods and/or performing the Services, and those relating to safety, security business ethics, drugs and alcohol and any other on site regulations specified by the Company or LUL for all Contractor's Personnel working at the Premises or accessing the Company or LUL computer systems. The Company shall (but without prejudice to the foregoing undertakings) provide the Contractor with copies of such policies Standards and regulations on request.

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

34. Delivery Request Forms

34.1 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.

34.2 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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35. Framework Duration

- 35.1 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.
- 35.2 Notwithstanding the expiry of a 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.
- 35.3 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

NB. Use either Part A or Part B in accordance with clause 29.2. Delete as applicable.

PART A - DISPUTE RESOLUTION PROCEDURE

- 1.1 The Company and the Contractor shall use all reasonable endeavours to negotiate in good faith and settle any Dispute.
- 1.2 If the Dispute is not settled through discussion between the Employer's Representative and a representative of the Contractor within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 1.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 1.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 1.5 Where a Dispute is referred to mediation under paragraph 1.3 above, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 1.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 1.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with clause 29.1.
- 1.8 For the avoidance of doubt, the Contractor shall continue to provide the Supply in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Schedule 1.
- 1.9 Neither Party shall be prevented from, or delayed in seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Schedule 1 and this Schedule 1 shall not apply in respect of any circumstances where such remedies are sought.

OR

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PART B - DISPUTE RESOLUTION PROCEDURE

1. In this Part B:

“**Adjudicator**” means an independent person appointed to act as an adjudicator in accordance with paragraph 1.2.

“**Notice of Adjudication**” means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with paragraph 1.1. The Notice of Adjudication includes: (i) the nature and a brief description of the Dispute; (ii) details of where and when the Dispute arose; and (iii) the nature of the redress which is sought.

“**Nominating Authority**” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

1.1 Either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this Part B by giving a Notice of Adjudication to the other parties to the Dispute.

1.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator. In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party shall request the Nominating Authority to select a person to act as the Adjudicator. The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

1.3 Any person requested or selected to act as the Adjudicator in accordance with paragraph 1.2:

1.3.1 shall be a natural person acting in his personal capacity; and

1.3.2 shall not be an employee of any of the parties to the Dispute and shall declare any interest, financial or otherwise, in any matter relating to the Dispute

1.4 The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator’s remuneration shall not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with paragraph 1.2.

1.5 Where the Adjudicator has been selected in accordance with paragraph 1.2 the referring party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 1.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

1.6 The Referral Notice shall include:

1.6.1 the facts relied upon by the referring party in support of its claim(s);

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- 1.6.2 a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
- 1.6.3 a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- 1.6.4 shall be accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.
- 1.7 If a matter disputed by the Contractor under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the Contractor may, with the consent of the Company, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- 1.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 1.11, or if that period is extended in accordance with paragraph 1.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 1.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 1.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- 1.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- 1.9 The referring party shall send copies of the Referral Notice and the documents referred to in paragraph 1.6 to the other Party at the same time as he sends them to the Adjudicator.
- 1.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- 1.11 The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in paragraph 1.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- 1.12 The Adjudicator may extend the period of 28 days referred to in paragraph 1.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- 1.13 The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of

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a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 1.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator shall be due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.

1.14 The Adjudicator:

- 1.14.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- 1.14.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- 1.14.3 shall reach his decision in accordance with the law of the contract;
- 1.14.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute; and
- 1.14.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

1.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- 1.15.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- 1.15.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- 1.15.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 1.15.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute; and
- 1.15.5 inspect any part of the Underground Network.

1.16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.

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- 1.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- 1.18 Notice of the Adjudicator's decision (stating that it is given under Part B) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- 1.19 The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Part B.
- 1.20 In any case where the Adjudicator is appointed as a replacement pursuant to paragraph 1.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- 1.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 1.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 1.22 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 1.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- 1.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.

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- 1.25 If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.

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SCHEDULE 2

DIRECT AGREEMENT

THIS AGREEMENT is made as a deed on [_____] between

- (1) **LONDON UNDERGROUND LIMITED** (company registration number 01900907) whose registered office is at 55 Broadway, London, SW1H 0BD (*LUL*);
- (2) **LUL NOMINEE SSL LIMITED** (company registration number 6242508) whose registered office is at Windsor House, 42-50, Victoria Street, London SW1H 0TL (*SSL*); and
- (3) **[SUB-CONTRACTOR]** [company registration number _____] whose registered office is at [_____] (the *Sub-Contractor*).

WHEREAS

- (A) By a contract dated 1 April 2000 as amended and restated (the *PPP Contract*) LUL has engaged SSL to provide certain services and SSL has agreed to provide such services to LUL on the terms, and subject to the conditions, set out in the PPP Contract.
- (B) LUL and SSL have agreed under the PPP Contract that SSL shall not enter into, be a party to, or be a beneficiary under, any Key Sub-Contract unless LUL, or its nominee, enters into a Direct Agreement in respect of that Key Sub-Contract.
- (C) SSL under a contract of even date herewith (the *Sub-Contract*) has engaged the Sub-Contractor to [*describe nature of sub contract supply, services or works*] (the *Services*) which is a Key Sub-Contract.
- (D) LUL has the right to exercise Step-in Rights under the PPP Contract to remedy certain matters.
- (E) LUL requires the assurance of direct and enforceable obligations and restrictions appearing herein.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement words and expressions defined in the PPP Contract shall, except where the context otherwise requires, have the meaning assigned to them in the PPP Contract.

Step-in Rights

- 2.1 The Sub-Contractor agrees that, in the event of LUL exercising its Step-in Rights, it will, if so required by notice in writing given by LUL and copied by LUL to SSL, accept the instructions of LUL or its appointee in respect of the performance of the Services upon the terms and conditions of the Sub-Contract.
- 2.2 The parties agree that, as between LUL, SSL and the Sub-Contractor, any written notice given by LUL in accordance with this clause 2 shall be conclusive proof of LUL's entitlement to exercise its rights under this clause 2, of SSL's agreement that the Sub-Contractor is entitled to accept instructions given by LUL (provided that this shall not prevent SSL from being entitled as between SSL and LUL to challenge the validity of LUL's exercise of its Step-in Rights) and of the Sub-Contractor's obligation to accept instructions of LUL as provided in LUL's notice.

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- 2.3 The Sub-Contractor further agrees that LUL shall not, subject to clause 5.1(b), by such notice given by LUL in accordance with this clause 2, accept liability for payment of any amounts payable to the Sub-Contractor and/or performance of SSL's obligations under the Sub-Contract.
- 2.4 SSL acknowledges and has agreed to be a party to this Agreement so that:
- (a) the Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it pursuant to this clause 2; and
 - (b) subject to clause 5.1(b) SSL shall at all times remain liable for payment of all amounts payable to the Sub-Contractor under the Sub-Contract and for performance of SSL's obligations under the Sub-Contract, notwithstanding the service by LUL of such notice and compliance by the Sub-Contractor with the obligations imposed on it by this clause 2.
3. Without prejudice to clause 37.12 (*Use by LUL of SSL/Third Party IPRs*) of the PPP Contract, the Sub-Contractor agrees that it shall not exercise any IPRs which it owns so as to prevent or hinder LUL, or any third party appointed by LUL under clause 23.1 (*LUL Step-in Rights*) of the PPP Contract, from exercising its Step-in Rights.
- 4.1 The Sub-Contractor agrees that it will not without first giving LUL not less than twenty eight (28) days prior written notice (which must be copied by the Sub-Contractor to SSL) exercise any right it may have to terminate the Sub-Contract or treat the Sub-Contract as having been repudiated by SSL or to discontinue the performance of any obligations, warranties or covenants to be performed by the Sub-Contractor pursuant thereto.
- 4.2 The Sub-Contractor's right to terminate the Sub-Contract or to treat the Sub-Contract as having been repudiated by SSL or to discontinue the performance of any obligations, warranties or covenants to be performed by the Sub-Contractor under the Sub-Contract shall cease if within the period of notice set out in clause 4.1 LUL shall give notice in writing to the Sub-Contractor (which must be copied by LUL to SSL) requiring the Sub-Contractor to accept the instructions of LUL or its appointee in respect of the carrying out and completion of the Services upon the terms and conditions of clause 5.
- 5.1 Subject to clause 5.2, following service of a notice from LUL under clause 4.2:
- (a) the Sub-Contractor shall (to the exclusion of SSL) thereafter only accept the instructions of LUL or its appointee (as the case may be) and LUL or such appointee shall have the rights and obligations of SSL under the Sub-Contract including any obligations or liabilities which may have been owed to the Sub-Contractor by SSL and which remain to be performed or satisfied;
 - (b) all amounts due and payable to the Sub-Contractor or which may subsequently become due to the Sub-Contractor under the Sub-Contract without right of retention or set-off in respect of any prior breach of the Sub-Contract (and which have not been discharged by SSL or any other person) shall be paid by LUL or LUL shall procure that they shall be paid by its appointee (as the case may be); and
 - (c) the Sub-Contractor shall continue to perform the Services subject to the terms of the Sub-Contract.
- 5.2 The parties agree that in the event of LUL exercising its right to give a Step-out Notice to SSL, the Sub-Contractor shall, from the relevant date specified in the Step-out Notice

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accept the instructions of SSL in respect of the performance of the Services upon the terms and conditions of the Sub-Contract.

- 5.3 The parties agree that if the Sub-Contractor confirms, in a manner reasonably satisfactory to LUL, that it no longer wishes to terminate the Sub-Contract or to treat the Sub-Contract as being repudiated by SSL or to discontinue performance of any obligations, warranties or covenants to be performed by the Sub-Contractor pursuant thereto then from the date of such confirmation and provided LUL confirms (not to be unreasonably withheld or delayed) it is reasonably satisfied that its intervention is no longer required for the future stability of the contractual relationship, the Sub-Contractor shall accept the instructions of SSL in respect of the performance of the services under the terms and conditions of the Sub-Contract.

Asset Designation

- 6.1 LUL may in accordance with the GLA Act at any time following the date of this Agreement designate the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract, including to the extent that property and rights are designed, manufactured, engineered, supplied, installed, tested, commissioned, delivered, or otherwise offered for service under the Sub-Contract, those property and rights, as Key System Assets and those shall constitute key system assets for the purposes of section 216 of the GLA Act. LUL may also in accordance with the PPP Contract at any time following the date of this Agreement designate the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract as a Primary Asset. The parties agree and understand that if LUL so designates in accordance with the GLA Act and/or the PPP Contract, the Sub-Contract and/or the property, rights and liabilities under the Sub-Contract, that the ability of SSL and/or the Sub-Contractor to deal with the Sub-Contract and/or property, rights and liabilities under the Sub-Contract is restricted in accordance with the GLA Act and/or the PPP Contract subject to any consent (including any conditions attaching thereto) as LUL may at any time notify to the Sub-Contractor in relation to the Sub-Contract and/or any property, rights and liabilities under the Sub-Contract so designated.
- 6.2 LUL may at any time following the designation of the property, rights and liabilities under the Sub-Contract and/or Sub-Contract under clause 6.1 as Primary Assets and/or Key System Assets, de-designate any such property, rights and liabilities and/or Sub-Contract in accordance with the PPP Contract and/or the GLA Act so that they are no longer Primary Assets and/or Key System Assets.
- 6.3 In the event of LUL exercising its rights under clauses 6.1 and 6.2 it shall notify the Sub-Contractor and SSL as soon as reasonably possible of such designation or the cessation thereof and the date that such designation or cessation thereof shall take effect.

Governing Law and Disputes

- 7.1 This Agreement shall be governed by, and construed in accordance with, English law. Subject to the terms of this clause 7, the parties hereto agree that the Courts of England are to have exclusive jurisdiction to settle any Dispute and for such purposes irrevocably submit to the jurisdiction of the Courts of England.
- 7.2 The parties irrevocably agree that a judgment or order of any court referred to in this clause in connection with a Dispute is conclusive and may be enforced against them in any other court which has jurisdiction to enforce the relevant judgment or order.

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7.3 Any party shall have the right to refer any dispute or difference under this Agreement to adjudication under the procedure set out in Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 amended as follows:

(a) the words “or substantially the same” in the first line of paragraph 9(2) shall be deleted;

(b) delete “and” at the end of line 2 of 13(g)

replace the “.” at the end of 13(h) with “, and”

add a further sub-paragraph 13(i) as follows:

“and shall, at the request of either party, hold a hearing at which the parties may present oral submissions and argument and call and cross-examine witnesses of fact and expert witnesses.”;

(c) add a further paragraph 23(3) as follows:

“in the event that a payment is made by one party to the other party pursuant to a decision of the adjudicator and such decision is reversed or varied in subsequent litigation, the parties agree that interest shall be payable at the Applicable Rate from the date of payment on any principal sum ordered to be repaid by the Courts”; and

(d) amend paragraph 24 as follows:

(i) in paragraph 24(a) delete the words “in sub-section (2)”; and

(ii) add a new paragraph 24(e):

“In Section 42(4) replace the word “order” in lines 2 and 3 with the word “decision”.

7.4 If the parties are unable to agree on a person who shall act as adjudicator of a Dispute that arises hereunder, then the President of London Court of International Arbitration shall, upon the request of the party referring the dispute or difference to adjudication, select a person to act as adjudicator.

7.5 In the event that any term, condition or provision contained in this Agreement shall be held to be contrary, inconsistent or non-compliant with the requirements of sub-sections (1) to (4) of Section 108 of the Housing Grants, Construction and Regeneration Act 1996, such term, condition or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining terms, conditions and provisions. The parties agree to negotiate an equitable adjustment in such invalid or unenforceable term, condition or provision of this Agreement in order to give effect to the underlying purposes of this Agreement.

Notices

8. Any notice affecting this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it at, or sending it by fax, special delivery, pre-paid recorded delivery or registered post to the address and for the attention of the relevant party. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

(a) in the case of fax, the business day after the despatch;

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- (b) in the case of special delivery, recorded delivery or registered post, two (2) business days from the date of posting.

Such notices shall in the case of LUL be addressed to:

London Underground Limited
55 Broadway
London SW1H 0BD

and in the case of SSL be addressed to:

LUL Nominee SSL Limited
Templar House
81-87 High Holborn
London WC1V 6NU

and in the case of the Sub-Contractor be addressed to:

[]

or such person or address as the relevant party may from time to time notify in writing to the others.

Termination

9. This Agreement shall terminate or expire on the date of termination or expiration of the Sub-Contract.

Rights of Third Parties

10. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

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EXECUTED AS A DEED BY the parties and delivered on the date of this Agreement.

THE COMMON SEAL of)

LONDON UNDERGROUND LIMITED)

was affixed to this deed in the presence of:)

.....

Authorised Signatory

THE COMMON SEAL of)

LUL NOMINEE SSL LIMITED)

was affixed to this deed in the presence of:)

.....

Authorised Signatory

THE COMMON SEAL of)

[SUB-CONTRACTOR])

was affixed to this deed in the presence of:)

.....

Authorised Signatory

.....

Authorised Signatory

LUL NOMINEE SSL LIMITED

SCHEDULE 3

CORPORATE IPRs

1. The Roundel (examples of which are given in Annex 1 to Schedule 1.8 to the SSL Contract) including the following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1321443	BLANK ROUNDEL	39
UK	1094664	ROUNDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDEL	16
UK	2236110	UNDERGROUND & ROUNDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDEL	25
UK	1321442	UNDERGROUND ROUNDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDEL	14 16 18 25 32
CTM	299206	ROUNDEL DEVICE	16 25 28 39
CTM	814004	ROUNDEL DEVICE & UNDERGROUND	18 25 42

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the ***New Johnston Typeface***) (examples of which are attached in Annex 2 to Schedule 1.8 to the SSL Contract).
3. The Underground map attached in Annex 3 to Schedule 1.8 to the SSL Contract.
4. The following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39

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Country	Registration/ Application	Trademark	Class
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

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SCHEDULE 4

LIQUIDATED DAMAGES

[Insert details of liquidated damages ensuring they are a genuine pre-estimate of the losses that will be incurred]

The sums to be paid in accordance with Clause 14A.1.2 shall be [] pounds (£) per hour/day/week* up to a maximum of [] (£).

* Delete as appropriate

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SCHEDULE 5

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;
 - 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 5 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 6

CONTRACT QUALITY ENVIRONMENTAL SAFETY AND HEALTH (QUENSH) CONDITIONS

[Insert document(s) as applicable]

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SCHEDULE 7 SPECIFICATION

[Insert Specification]