

## **GENERAL MATERIAL PURCHASING CONDITIONS**

These General Material Purchasing Conditions are for incorporation into a Purchase Order for the procurement of goods or materials.

### **ACTIONS**

- 1.0 The Client, the Purchaser and the Supplier shall act as stated in the Main Contract and in a spirit of mutual trust and co-operation.

### **DEFINITIONS**

- 1.1 "Client" means Crossrail Limited of 25 Canada Square, London E14 5LQ and as named as the Client in the Main Client & Purchaser 610 Contract.
- 1.2 "Purchaser" means the company named in the Order.
- 1.3 "Supplier" means the company or person named in the Order, who has agreed to supply the Goods or any other Company or person acting on behalf of the Supplier
- 1.4 "Order" means the order to which these General Purchasing Conditions apply, issued by the Purchaser to the Supplier instructing the Supplier to supply the Goods.
- 1.5 "Supply Contract" means the agreement between the Purchaser and the Supplier comprising the Order and these General Purchasing Conditions.
- 1.6 "Goods" means the goods and services, materials, equipment and such other things that are to be supplied by the Supplier to the Purchaser as generally described in the Order, or which may reasonably be inferred from the Order as being included in the Supply Contract.
- 1.7 "Price" means any fixed price unit rate for the supply of the Goods, entered in the Order. This is a re-measurable contract where the unit rate of the product will not vary for an increased or decreased quantity.
- 1.8 "Schedule of Rates" means any rates entered in or referred to in the Order.
- 1.9 "Contract Date" is the date of execution by the Parties of this contract.
- 1.10 "Contract Works" means the work to be carried out by the Purchaser under the Contract, into which the Goods will be incorporated, referred to in the Order.
- 1.11 "Site or Working Area" means the place or places where the Goods are to be installed or used, as stated in the Order. The Working area for this Order is Plumstead, London, UK.
- 1.12 "Purchaser's Representative" means any representative of the Purchaser whose name may be notified from time to time by the Purchaser to the Supplier, having full authority to act on behalf of the Purchaser.

- 1.13 “Specification” means the specification for the Goods including the packing and transport thereof and unloading if applicable, whether prepared by the Client, the Purchaser or the Supplier or any of them.
- 1.14 “Programme” means the Programme for the supply of Goods, whether incorporated in the Order or otherwise notified by the Purchaser to the Supplier.
- 1.15 “Design Basis” means such drawings or other information incorporated in the Order or as may be notified by the Purchaser to the Supplier from time to time.
- 1.16 “Place of Delivery” means the Site or Working Area or such other place or places where the Goods are to be delivered as may be notified to the Supplier by the Purchaser’s Representative.
- 1.17 Reference in these General Purchasing Conditions to the defects correction period means the defects correction period specified in the Contract.
- 1.18 A defect is
- a part of the Goods which is not in accordance with the Specification or the Design Basis
  - a part of the Goods designed by the Supplier which is not in accordance with this contract or the Applicable Law
- 1.19 “Main Contract” is the contractual agreement in place between Alstom, TSO & Costain Joint Venture and Crossrail Limited.

## 2. **PURCHASER’S REPRESENTATIVE ORDER OF PRECEDENCE**

- 2.1 In case of ambiguity or discrepancy between any of the documents incorporated in the Supply Contract such ambiguity or discrepancy shall be resolved by giving effect first to the Order and these General Purchasing Conditions.

## 3. **PURCHASER’S REPRESENTATIVE**

- 3.1 The Purchaser’s Representative shall carry out such duties as are specified in the Supply Contract or as may be necessary for the carrying out of the Supply Contract.
- 3.2 The Purchaser’s Representative may order variations to the Supply Contract and any variation shall be confirmed in writing in order to be valid and binding.
- 3.3 The Purchaser’s Representative may give such instructions to the Supplier as the Purchaser’s Representative deems necessary and shall be confirmed in writing in order to be valid and binding.

## 4. **ASSIGNMENT AND SUB-CONTRACTING**

- 4.1 The Supplier shall not assign the benefit of the Supply Contract.
- 4.2 The Supplier shall not sub-let all or any part of the Supply Contract without the written consent of the Purchaser’s Representative.

**5. BASIS OF OFFER AND PRICE**

- 5.1 The Supplier acknowledges that the details of the Contract (other than the Purchaser's prices) were made available to the Supplier, and the Supplier has or is deemed to have full knowledge of the Contract except for the Purchaser's prices.
- 5.2 The Supplier shall be deemed to have examined the Site and to have satisfied himself as to the Contract Works and the circumstances affecting the Contract Works, and the manner by which the Goods are to be incorporated therein including without limitation any safety regulations applicable thereto.
- 5.3 The Supplier's Price and rates in the Schedule of Rates shall remain fixed throughout the period of the Order.

**6. SUPPLIER'S OBLIGATIONS**

- 6.1 The Supplier shall design (if applicable), manufacture, test and deliver where applicable the Goods to the place of delivery in accordance with the Programme.
- 6.2 The Goods shall be manufactured in the manner set out in the Specification and in accordance with good practice or in accordance with such British & European Standards or industry standards as may be applicable.
- 6.3 The Goods shall be manufactured, finished, packed and delivered where applicable to the Site or place of delivery to the reasonable satisfaction of the Purchaser's Representative and in accordance with such reasonable instructions as he may give.
- 6.4 The Supplier shall comply with the requirements set out in the Specification relating to the packing and marking of the Goods. Where there are no such requirements, the Supplier shall pack the Goods (unless it is expressly indicated otherwise in the Order that packing is not required) so as to avoid damage during transfer to the Site or place of delivery, and shall if required, mark the Goods both on the exterior of the packing (unless packing is not required) and on the Goods themselves so that the Goods are readily identifiable. Markings on both the exterior and on the Goods shall include the Purchaser's order number.
- 6.5 Each consignment of Goods shall be accompanied by a packing list or delivery note which identifies clearly the Goods contained in each consignment and which states the Purchaser's Order Number.
- 6.6 The Supplier shall test the Goods during or following manufacture in accordance with the requirements of the Specification and applicable industry standard. The Supplier shall give the Purchaser adequate notice of when such testing is to be carried out. The Supplier shall test or witness testing of the Goods following installation thereof if required to do so by the Purchaser's Representative, and such testing or witnessing shall be deemed to be included in the Price or the Schedule of Rates.
- 6.7 Any failure by the Purchaser to witness testing or any approval by the Purchaser of the Goods or any tests shall not constitute acceptance of the Goods or relieve the Supplier of any liability under the Supply Contract.

- 6.8 All Goods supplied by the Supplier shall be fit for the purpose as intended as indicated by the Order or as may reasonably be inferred therefrom.
- 6.9 In providing the Goods, the Supplier shall comply with all legislation, instruments, rules or orders made under any Act of Parliament and any regulation or any regulation or bye-law of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any jurisdiction with regard the Goods and without prejudice to the generality of this clause undertakes to carry out and fulfil all its duties in accordance with health and safety legislation at the place of manufacturing.
- 6.10 In performing the obligation under the supply Contract, the Supplier shall conform to all Governmental laws, regulations, or codes, local or national applicable to the country through which the goods are to be transported. The Supplier shall pay the costs of any compliance.

## 7. **DESIGNS AND DRAWINGS**

- 7.1 If applicable, using the Design Basis, the Supplier shall prepare such further designs and drawings as are necessary to enable the Goods to be manufactured in accordance with the Supply Contract and to the reasonable requirements of the Purchaser's Representative.
- 7.2 If applicable, all further designs and drawings shall be submitted to the Purchaser's Representative for his consent, which shall be obtained by the Supplier before manufacture is commenced.
- 7.3 If applicable, where the Supplier is responsible for the Design of the Goods, the Supplier shall effect and maintain Professional Indemnity insurance. The minimum Professional Indemnity Insurance cover effected by the Supplier shall be £10 million (each and every occurrence) and shall be maintained in full force for a period of 12 years from the delivery of the Goods.

## 8. **INSTALLATION, OPERATION AND MAINTENANCE INSTRUCTIONS**

- 8.1 In cases where the Goods are not to be installed in the Contract Works by the Supplier, the Supplier shall provide timeously such installation instructions as may be necessary to enable the Purchaser or his sub-contractors to install the Goods in the Contract Works.

The Supplier shall provide timeously such operation and maintenance instructions as may be necessary to enable the Purchaser, the Client, or the Purchaser's sub-contractors to operate and maintain the Goods.

- 8.2 It is expressly agreed that if the Supplier is to supply operation and maintenance instructions as part of its obligations the Supplier shall not be entitled to the release of any payments where it is specifically stated in the order that the said payments are dependent upon the receipt by the Purchaser of acceptable operation and maintenance instructions.

## 9. **NOT USED**

## 10. INSPECTION AND TESTING OF GOODS BEFORE DELIVERY

- 10.1 The Purchaser's Representative shall be entitled at all reasonable times to inspect examine and test the Goods during manufacture or at any other time before delivery. In case the Goods are not on the Supplier's premises the Supplier shall make whatever arrangements are necessary to enable the Purchaser's Representative to inspect, examine and test the Goods.

## 11. DELIVERY

- 11.1 The Supplier shall deliver the Goods in accordance with time periods and/or dates stated in the Order.
- 11.2 The Supplier shall manufacture the Goods so that they are ready for delivery at the time or times indicated on the Programme or at the time or times indicated in the Order or at such other time or times as the Purchaser's Representative may notify the Supplier in writing. In case of conflict between the Programme and the Order, the Order shall prevail.
- 11.3 The Supplier shall deliver the Goods to the Site or to the Place or places of delivery or to such other place or places as the Purchaser's Representative may notify the Supplier in writing. The Purchaser shall be responsible for offloading the Goods.
- 11.4 If for any reason the Supplier suffers delay to the manufacture of the Goods by reason of a fault of the Purchaser, the Purchaser's Representative shall extend the time or times for delivery of the Goods by such period or periods as may be appropriate in the circumstances.
- 11.5 If the Supplier fails to manufacture or deliver the Goods by the time or times required by the Supply Contract (or the extended time or times) the Supplier shall reimburse the Purchaser such losses as may be suffered by the Purchaser as a result, such as but not limited to liquidated damages, loss and expense of the Purchaser and claims from other suppliers and sub- contractors employed by the Purchaser in connection with the Contract Works.
- 11.6 Vehicle Safety Specification – from 1st October 2013, all vehicles rated greater than 3.5te, attending or going the Purchaser's site geographically located within the M25, which are operated / used by the Supplier or its designated transportation / logistics supply chain, that do not comply with the Logistics Pack specification / standard (Appendix C) specification / standard will be denied access to such project.
- The Supplier shall be liable for and indemnify the Purchaser against any expense, liability, loss, claim or proceedings howsoever arising in respect of such denied access. The Purchaser shall have no liability whatsoever to the Supplier (or its designated transportation / logistics supply chain) arising from such denied access.
- 11.7 Fleet Operators Recognition Scheme (FORS) **Membership** – before 1st October 2013, all transportation operators acting on behalf of the Supplier must be registered with FORS and then within 3 months must achieve the bronze standard of accreditation. Thereafter, any vehicle not adorned with an official FORS decal and carrying evidence of bronze status will be denied access to our projects.

The Supplier shall be liable for and indemnify the Purchaser against any expense, liability, loss, claim or proceedings howsoever arising in respect of such denied access.

The Purchaser shall have no liability whatsoever to the Supplier (or its designated transportation / logistics supply chain) arising from such denied access.

Information on FORS registration and accreditation can be accessed via the FORS website [www.fors-online.org.uk](http://www.fors-online.org.uk).

- 11.8 With regard to the Supplier's compliance with these clauses 11.6 to 11.8, the Purchaser reserves the right to audit (at any time during normal working hours) the Supplier's records and processes in relation to transportation upon giving reasonable prior notice to the Supplier.

## 12. VARIATIONS

- 12.1 The Purchaser or the Purchaser's Representative may by a written instruction to the Supplier order a change or alteration to the quantity, quality, type or amount of the Goods (hereinafter „a Variation“).

- 12.2 As soon as possible after receiving such instruction but not later than 5 working days the Supplier shall notify the Purchaser's Representative if in the Supplier's opinion the Variation will involve an addition or deduction to the Price or a change to the Schedule of Rates or a change to the time or times for delivery of the Goods.

The Supplier will also notify to the Purchaser within than 5 working days the lead in times for manufacture and delivery to site of similar Goods to the original Order.

- 12.3 The amount to be added to or deducted from the Price by reason of such Variation shall, if not the subject of a quotation from the Supplier which has been accepted by the Purchaser, be agreed by the Purchaser's Representative and the Supplier by reference to the rates, if any, specified in the Price or by reference to the Price, if applicable. Failing agreement the value of the Variation shall be determined by the Purchaser's Representative on such basis as is fair and reasonable. Where the Supplier does not agree with the determination made by the Purchaser the Supplier shall be entitled to refer the matter to dispute resolution in accordance with clause 20.

- 12.4 Where the Variation involves a change to the Schedule of Rates the applicable rate shall be agreed by the Purchaser's Representative and the Supplier by reference to the Schedule of Rates or failing agreement shall be determined by the Purchaser's Representative on such basis as is fair and reasonable. Where the Supplier does not agree with the determination made by the Purchaser the Supplier shall be entitled to refer the matter to dispute resolution in accordance with clause 20.

- 12.5 In case the Supplier is instructed to proceed with the Variation before the value thereof has been determined the Supplier shall keep contemporary records of the cost of making the variation including the materials purchased and the time expended thereon. Such records shall be made available for inspection by the Purchaser's Representative as and when he requires at all reasonable times.



### 13. DEFECTS CORRECTION

- 13.1 The defects date is **X** months after final delivery of the all Goods to the Working Area. The defect correction period for the replacement of any defective Goods is **X weeks**. The Supplier shall make good by repair or replacement any defect or damage to the Goods which may appear during the defects correction period, following instructions issued in writing to the Supplier by the Purchaser or the Purchaser's Representative. The Supplier shall carry out the correction of the defect or damage during the time or times notified in the said instructions or as may otherwise be agreed by the Purchaser or the Purchaser's Representative.
- 13.2 The Supplier shall bear the cost of such correction where the defect or damage arises from any defective materials, workmanship or design or from any act of omission of the Supplier or any other defects or fault within the Goods which has not been caused solely by the Purchaser or the Client.
- 13.3 In case the Supplier fails to correct any defect or damage within the time instructed or at all the Purchaser may arrange for the correction to be carried out by others and may deduct the reasonable cost of doing so from monies due to the Supplier or may recover the said cost from the Supplier as a debt.

### 14. TITLE AND RISK

- 14.1 Title in Goods supplied pursuant to this Supply Contract shall pass to the Purchaser upon their receipt on Site (or such other place of delivery which the Purchaser has agreed) or upon payment for the Goods, whichever is the earlier.
- 14.2 Risk in the Goods remains with the Supplier until delivery on Site (or such other place of delivery which the Purchaser has agreed).

#### 14A. SPECIFIC RISK'S

- 14A.1 The following are the Purchaser's risks.
- Claims, proceedings, compensation and costs payable which are, subject to the Purchaser's obligations under the Main Contract
    - use or occupation of the Site by the Contract Works or for the purpose of the Contract works which is the unavoidable result of the Contract works,
    - negligence, breach of statutory duty or interference with any legal right by the Purchaser or by any person employed by or contracted to him except the Supplier or
    - a fault of the Purchaser or a fault in his design.
    - Loss of or damage to Plant and Materials supplied to the Supplier by the Purchaser, or by Others on the Purchaser's behalf, until the Supplier has received and accepted them.

- Loss of or damage to the Working Area due to
  - war, civil war, rebellion, revolution, insurrection, terrorism, military or usurped power,
  - strikes, riots and civil commotion not confined to the Supplier's employees
  - or radioactive contamination.
  
- Loss of or wear or damage to the parts of the Goods taken over by the Purchaser, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
  - a defect,
  - an event occurring before take over which was not itself a Purchaser's risk or
  - the activities of the Supplier on the Site after take over.
  
- Loss of or wear or damage to the Goods and any Equipment, Plant and Materials retained on the Site by the Purchaser after a termination, except loss, wear or damage due to the activities of the Supplier on the Site after the termination.

14A.2 Except as provided above, the Purchaser carries no risk in relation to the Goods notwithstanding the passing of title to Purchaser in accordance with the main contract.

14A.3 The following are the additional Purchaser's risks.

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14A.4 The Supplier is liable for all other risks.

## 15. **PAYMENTS**

- 15.1 All payment invoices shall be submitted to the Purchaser's address stated on the Order and marked for the attention of the Accounts Department. The Supplier shall be entitled to payment for the Goods as stated on the Order; provided that the Purchaser is satisfied that he has title to the Goods.
- 15.2 The Purchaser shall not use a factoring agent to collect any debts owed to the Purchaser by the Supplier without the prior written consent of the Purchaser.
- 15.3 Payment for the Goods shall be upon delivery to site and as per the Purchase Order payment terms.
- 15.4 Upfront payment for any Goods or payment for Goods outside the working area will require a Client approved on demand Goods and Materials Bond to be in place. The language, wording and conditions of the Bond will be to the Crossrail template as enclosed within Appendix A and supplied by a Client approved bank.



If the rating of the provider of a Goods and Materials bond as published by Standard & Poors falls below "A" and if the Purchaser so requests, the Supplier provides to the Purchaser within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the Supply Manager has accepted provided always that failure by the Supplier to provide to the Purchaser a replacement bond will not of itself constitute default under the contract sufficient to enable the Purchaser to make a demand under the original bond or terminate the contract.

A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the Supply Manager agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.

The Bond must be equal to the value of the upfront payment of the Order and remain in place until all the Goods Order has been delivered to site. The Supplier shall notify in writing to the Purchaser the percentage and value of the Bond proposed and the equivalent quantity of Goods related to this value. The maximum value of any upfront payment will be XXX% of the Order value net of the costs for the Performance Bond and Goods and Materials Bond.

The Purchaser shall deem ownership of all manufactured Goods until delivered to site. The Goods shall be labelled and stored separate from all other Supplier orders and available for inspection at any period by the Purchaser. The Supplier shall notify at 2 week periods the status of the production. The liability for loss or damage to the goods shall remain with the Supplier until delivery to site as per Clause 14.2.

## 16. SET-OFF

- 16.1 The Purchaser has the right to withhold from monies due to the Supplier any amounts which are owed to the Purchaser by the Supplier arising out of or in connection with the Supply Contract or any other contract between the Purchaser or a holding company or subsidiary of Alstom, TSO or Costain (as defined in section 1159 of the Companies Act 2006) and the Supplier. Without prejudice to the foregoing, if the Supplier is in breach of the provisions of the Supply Contract, pending the final agreement between the parties as to the amount of loss or damage suffered or to be suffered by the Purchaser the Supplier shall pay or allow the Purchaser such sum as the Purchaser shall in good faith estimate as the amount of such loss or damage.

## 17. INSURANCE

- 17.1 As per clause 85.3 of the main Contract, the parties comply and the Supplier shall procure that all subcontractors and suppliers any tier shall comply with the terms and conditions of the insurance policies.
- 17.2 The Supplier shall insure the following in the names of the Supplier to the amount of cover stated in the Order for the periods specified below.
- (1) The Goods, from the date of commencement of their manufacture until they have been delivered to the Site or the place of delivery specified in

the Order and unloaded (the Purchaser is responsible for unloading), for their repair or full replacement value.

- (2) Following the incorporation of the Goods into the Contract Works the Supplier shall at all times (including during the Contract period) maintain a policy of insurance to cover the Supplier's third party liability including but not limited to damage to the Contract Works, the Goods or other property, and death or injury to any persons whatsoever including without limitation the workmen of the Purchaser and the Supplier which is due to any fault in the Goods whether due to faulty design or faulty manufacture by the Supplier.
- (3) The material or property referred to in Clause 25.3 (ii) and (iii).
- (4) Professional Indemnity (If applicable): The minimum limit of indemnity for insurance in respect of failure of the Supplier to use the skill and care normally used by similar suppliers providing goods and services similar to those provided by the Supplier in connection with the Contract Works is **£10,000,000** for any one occurrence. Such insurance policy shall contain provision for jurisdiction for claims made in the United Kingdom in addition to jurisdiction for claims made in the domicile of the Supplier or its Ultimate Parent Company.
- (5) Employers Liability: The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Supplier arising out of and in the course of their employment in connection with this contract for any one event is **£10,000,000** for any one occurrence.
- (6) Transit Insurance: The minimum limit of indemnity for insurance for marine and / or transit insurance is the full replacement value of the Goods.
- (7) Public liability: The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the goods, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the Supplier) caused by activity in connection with this contract for any one event is **£10,000,000**
- (8) Product Liability: The minimum limit of indemnity for insurance in respect of loss of or damage to the goods plant and materials provided by the Supplier in connection with the goods is **£10,000,000**

17.3 The Supplier has no benefit under any Purchaser insurance policy.

**18 NOT USED**

**19 CARE OF GOODS**

- 19.1 The Supplier shall be responsible for the care of the Goods or any part thereof until the Goods or part thereof are delivered to the Site or the place or places of delivery and have been unloaded by the Supplier where the Supplier is responsible for unloading. In case all or any part of the Goods suffers loss or damage whilst the Supplier has the responsibility for the care thereof the same shall be made good by the Supplier at his own expense at such time as the Purchaser's Representative may instruct.

## **20 DISPUTES**

- 20.1 If any dispute or difference arises at any time out of or in connection with the Supply Contract and it cannot be resolved amicably it shall initially be referred to formal mediation. Should the mediation be unsuccessful the Courts of England and Wales shall have exclusive jurisdiction over any dispute or difference arising out of or in connection herewith subject only to the rights of the parties to enforce a judgment obtained in the Courts of England and Wales in any other jurisdiction.

## **21 THIRD PARTIES**

- 21.1 Other than as may be expressly stated herein, nothing in this Supply Contract purports to confer on any third party any benefit or right to enforce any term of the Supply Contract and the Contract (Rights of Third Parties) Act 1996 shall not apply.

## **22 TERMINATION**

- 22.1 The Purchaser may without prejudice to any other rights or remedies terminate the Suppliers employment under this Supply Contract in respect of the whole or any portion of the work to be carried out or Goods to be supplied under the Supply Contract if the Supplier:-
- a) fails within three working days' notice in writing to proceed regularly and diligently with the manufacture or delivery of the Goods in accordance with the provisions of Clause 6 (Supplier's Obligations) hereof; or
  - b) without reasonable cause wholly suspends carrying out the manufacture or delivery of the Goods before completion thereof; or
  - c) refuses or neglects after three working days' notice in writing to remove defective work or improper materials or to rectify defects or faults in the Goods; or
  - d) conducts himself in such a manner as to prejudice the completion of the whole or any portion of the Contract; or
  - e) fails to complete and deliver up the whole or any portion of the Goods by the time or times specified, or by such extended time or times as may be allowed by the Purchaser or the Purchaser's Representative; or
  - f) makes any arrangements with its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986); has a receiver, administrator, administrative receiver, provisional liquidator or other encumbrancer appointed over the whole of any material part of its assets under the Insolvency Act 1986; or has a petition presented (and not being the subject of challenge by the Supplier) or a resolution passed or an order made for the administration or winding up, bankruptcy or dissolution of the Supplier;

- g) fails within three working days of a notice in writing from the Purchaser to comply with any of the obligations on the part of the Supplier herein contained; or
- h) significantly breaches any health and safety requirement of the Supply Contract.

22.2 Upon termination, the Supplier shall not be entitled to any compensation and shall upon instruction from the Purchaser remove or leave (as instructed) any of its materials or property from or at the Site or place of delivery.

22.3 Notwithstanding anything to the contrary contained in these conditions, the Supplier's entitlement to payment shall be for the value of the Goods delivered to the place of delivery provided that the Supplier can demonstrate that the Purchaser has title to the same. Such payment shall be subject to Clauses 15 and 16 hereof. The Purchaser shall be entitled to set off all loss, expense and damage suffered by the Purchaser by reason of a termination under this clause.

## **23 TERMINATION OF THE PURCHASER'S EMPLOYMENT**

23.1 If the Purchaser's employment under the Contract is terminated the Supply Contract shall also be terminated. The Purchaser shall bear no liability for any loss or expense suffered by the Supplier and shall not be obliged to make any further payments to the Supplier in the event of the termination of the Purchaser's employment as aforesaid.

## **24 COLLATERAL WARRANTIES**

24.1 In case the Client requires the Purchaser's suppliers to provide collateral warranties to the Client or third parties the Supplier shall provide such warranties as the Purchaser may reasonably require. Provided that the Supplier's liabilities thereunder shall not be greater than the Supplier's liability to the Purchaser under the Supply Contract.

24.2 The cost of supplying any such warranties shall be deemed to be included in the Price or the Schedule of Rates.

## **25 WARRANTIES AND LIABILITY**

25.1 The Supplier warrants to the Purchaser that the Goods:-

- (i) will be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time the Supply Contract is entered into;
- (ii) will be free from defects in design, material and workmanship;
- (iii) will correspond with any relevant specification or sample;
- (iv) will comply with all statutory requirements and regulations relating to the supply of the Goods;
- (v) that the Goods will be manufactured by appropriately qualified and trained personnel, with due care and diligence to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances;
- (vi) that where no standards are specified in the Supply Contract the Goods will be in accordance with the standards specified in the industry standard or in the absence of any such standards in accordance with instructions to be issued by the Purchaser's Representative;

- (vii) the Goods will be free from defect; free from any third party rights and interests (including liens, charges and options) and that the use or possession by the Purchaser of any of the Goods will not subject the Purchaser to any claim for infringement of any intellectual property rights of any third party.
- 25.2 Without prejudice to any other remedy, if any other Goods are not supplied or do not perform in accordance with the Supply Contract, then the Purchaser shall be entitled:-
- (i) to require the Supplier to repair the Goods free of charge or to supply replacement Goods free of charge in accordance with the Supply Contract within XXXX; or
  - (ii) at the Purchaser's sole option, and whether or not the Purchaser has previously required the Supplier to repair the Goods or to supply any replacement Goods, to treat the Supply Contract as repudiated by the Supplier's breach and require the payment of any sums which have been paid by the Purchaser to the Supplier in respect of such Goods.
- 25.3 The Supplier hereby indemnifies and shall keep indemnified the Purchaser in full against all liability, loss, damage, costs and expenses (including legal expenses) awarded against or incurred or paid by the Purchaser as a result of or in connection with:-
- (i) the Supplier's failure to perform in accordance with the Supply Contract;
  - (ii) the personal injury or death of any persons arising out of or in the course of or caused by the carrying out of the Supply Contract by the Supplier; or
  - (iii) any injury or damage whatsoever to any property real or personal due to any negligence, omission or default of the Supplier his servants or agents.
- 25.4 The Supplier shall insure in the names of the Supplier any material or property sent to the Supplier by the Purchaser for any purpose in connection with the Supply Contract against any damage which may occur to it whilst in the custody of the Supplier.
- 25.5 The Supplier shall indemnify and save harmless the Purchaser from all liens and other encumbrances against the Goods or any property belonging to or in possession of the Purchaser on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors. On behalf of the Purchaser and in the Purchasers name, as the case may be the Supplier shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser in connection therewith.
- 26 VAT**
- 26.1 All rates and prices included in the Supply Contract are exclusive of Value Added Tax.
- 27 NOTICES**
- 27.1 All notices required by this Supply Contract to be served on the Purchaser by the Supplier shall be served in writing at the address given in the Order.
- 28 LAW OF THE SUPPLY CONTRACT**

28.1 The Supply Contract shall be governed by the law of England and Wales.

## **29 ADMINISTRATION OF THE CONTRACT**

29.1 Whenever the Purchaser is required by the Contract to give any return, account or notice to the Client or the Client's representative the Supplier shall in relation to the Supply Contract give a similar return, account or notice or such other information in writing to the Purchaser as will enable the Purchaser to comply with the terms of the Contract, and shall do so in sufficient time to enable the Purchaser to comply with such terms punctually. If by reason of any breach by the Supplier of this provision the Purchaser is prevented from recovering any sum from the Client under the Contract then without prejudice to any other remedy which the Purchaser may possess for such breach the Purchaser may deduct such sum from monies otherwise due to the Supplier under the Supply Contract.

## **30 ENTIRE AGREEMENT**

29.1 The Supply Contract constitutes the entire agreement between the Supplier and the Purchaser as to the terms upon which the Goods shall be supplied and delivered and supersedes any previous agreements relating to the subject matter of the Supply Contract. Any other terms whether written or verbal (including without limitation any terms and conditions contained in the Supplier's order forms, tender, printed conditions, correspondence or delivery notes) are expressly excluded.

## **31 ANTI BRIBERY AND CORRUPTION**

31.1 The Supplier acknowledges that it has seen the Purchaser's Anti-Bribery Policy and agrees to comply with and support such policy so as not to breach or cause the Purchaser to breach the Bribery Act 2010. The Supplier shall further comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

31.2 Where the Supplier is a non-UK company, in relation to its activities, practices and conduct outside the UK, the Supplier shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

31.3 The Supplier shall have and shall maintain in place throughout the term of the Supply Contract its own policies and procedures, including but not limited to adequate procedures in accordance with the Bribery Act 2010, to ensure compliance with this clause 31 and will enforce them where appropriate.

31.4 The Supplier warrants that it has not received or provided any request or demand for any undue financial or other advantage of any kind in entering into the Supply Contract and the Supplier shall promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier from any other party in connection with the performance of the Supply Contract.

31.5 With regard to the Supplier's compliance with this clause 31, the Purchaser reserves the right to audit (at any time during normal working hours) the



Supplier's methods of working and processes upon giving reasonable prior notice to the Supplier.

- 31.6 Without prejudice to the generality of clause 31.5, if the Purchaser reasonably suspects the Supplier or any person associated with the Supplier of breach of this clause 31, the Purchaser and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 31. The Supplier shall give all necessary assistance to the conduct of such audit during the term of the Supply Contract and for a period of three years after termination or expiry of the Supply Contract.
- 31.7 The Supplier shall ensure that any person associated with the Supplier who is providing any part of the Goods or providing works or service in connection with the Supply Contract, including its agents, suppliers or subcontractors, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 31 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Purchaser for any breach by such persons of any of the Relevant Terms.
- 31.8 Should the Purchaser determine that the Supplier or any person associated with the Supplier who is providing any part of the Goods or providing works or service in connection with the Supply Contract, including its agents, supplier or subcontractors, has acted in a manner which could constitute a breach of the Bribery Act 2010 or of this clause 31, the Purchaser may immediately terminate the Agreement, at its sole discretion, in accordance with clause 22.1. For the avoidance of doubt, if the Purchaser terminates this Supply Contract in accordance with this clause, there will be no rectification or period to put right the default before termination.

## **32 PERFORMANCE BOND**

- 32.1 If required, the Supplier gives the Purchaser an on demand performance bond, provided by a bank or insurer which the Supply Manager has accepted, for in an amount equivalent to XXX% of the tendered total of the Prices. The Performance Bond shall remain in place for XXX months post the final delivery of the Goods. The language, wording and conditions of the Bond will be to the Crossrail template as enclosed within Appendix B.
- 32.2 If the bond was not given by the Contract Date, it is given to the Purchaser within four weeks of the Contract Date.
- 32.3 If the rating of the provider of a performance bond as published by Standard & Poors falls below "A" and if the Purchaser so requests, the Supplier provides to the Purchaser within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the Supply Manager has accepted provided always that failure by the Supplier to provide to the Purchaser a replacement bond will not of itself constitute default under the contract sufficient to enable the Purchaser to make a demand under the original bond or terminate the contract.

- 32.4 A reason for not accepting a bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the Supply Manager agrees otherwise) be strong enough if it does not have a rating of "A" (Standard & Poors) or equivalent.

### 33 EQUALITY & DIVERSITY (Z3)

- 33.1 **Equality and diversity (Z3.1)** Without limiting the generality of any other provision of the contract, the Supplier:

- complies with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- acknowledges that the Purchaser is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:
  - promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - eliminate unlawful discrimination; and
  - promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Goods, the Supplier assists and co-operates with the Purchaser where possible to enable the Purchaser to satisfy its duty; and

- assists and co-operates with the Purchaser where possible to enable the Purchaser to comply with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections.

33.2 **Crime and disorder (Z3.2)** The Supplier acknowledges that the Purchaser is under a duty under Section 17 of the Crime and Disorder Act, 1998 to

- have due regard to the impact of crime, disorder and community safety in the exercise of the Purchaser's duties,
- where appropriate, identify actions to reduce levels of crime and disorder, and
- without prejudice to any other obligation imposed on the Purchaser, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area

## **34 THE PARTIES' USE OF MATERIALS (Z8)**

### **34.01 Defined Terms (Z8A)**

In this clause Z8:

- (1) 60% Design Gate Review is the design gate review to be undertaken when a design is 60% complete as further detailed in the Works Information Volume 2B Part 29 - Contractor's Design, Assurance, Records and Certification (Systemwide).
- (2) 90% Design Gate Review is the design gate review to be undertaken when a design is 90% complete as further detailed in the Works Information Volume 2B Part 29 - Contractor's Design, Assurance, Records and Certification (Systemwide).
- (3) Background Rights means in respect of each party the Intellectual Property rights owned or licensed by that party at the date of this contract (and including in the case of the Supplier any Intellectual Property rights owned or licensed by any subcontractor or supplier of any tier at the date of this contract), except any such Intellectual Property rights licensed to that party from the other party.
- (4) Escrow means the deposit with, and retention by, the Escrow Agent of, the Escrow Information.
- (5) Escrow Agent means NCC Escrow International Limited or any successor or replacement to all or any of its functions.
- (6) Escrow Agreement means an agreement in the form of the NCC Group Single Licensee Software Escrow Agreement between the Supplier, the Purchaser and the Escrow Agent, subject to any amendments required to give effect to the requirements of clause Z8K.

- (7) Escrow Information means the Software, the Source Code and the Hardware Information.
- (8) Foreground Rights means all Intellectual Property rights developed by either party (and in the case of the Supplier any Intellectual Property developed by any subcontractor or supplier of any tier) under or in connection with this contract and/or the goods.
- (9) Hardware means all hardware and IT system components comprised in, installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the works or any equipment to be used in conjunction with the works and supplied by the Supplier under this contract.
- (10) Hardware Information means all information necessary to enable a reasonably skilled technician to operate, maintain, support, service, repair, overhaul and enhance the Hardware, including details of its system architecture.
- (11) Intellectual Property means any and all patents, trademarks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software (including source codes) and databases, topography rights (in each case whether registered or not and including any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, Know-How, trade secrets and other confidential information, rights in databases and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world.
- (12) Know-How means information and know-how whether patentable or not including but not limited to all patented techniques, operating instructions, machinery designs, raw material or product specifications, drawings, blueprints, and any other technical and commercial information relating to design, development, manufacture, assembly, use or sale.
- (13) Maintenance Release means a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Release.
- (14) Materials means all documents, items information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by the Supplier as part of or in connection with the works and/or this contract.
- (15) Modifications means any Maintenance Release or New Release.
- (16) New Release means a new release of all or any part of the Software suitable for use by the Purchaser in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

- (17) Software is any computer programme installed in, or used for the operation, maintenance, servicing, repairing or overhauling of, the subcontract works or any equipment to be used in conjunction with the subcontract works and supplied by the Supplier under this contract.
- (18) Source Code means, with respect to any Software, all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to support, maintain, amend and enhance that Software without reference to any other person or document, all in human eye readable or machine-readable form.
- (19) Third Party Rights means all Background Rights which are not owned by the Purchaser or the Supplier but which are used by the Supplier in connection with Providing the Goods and Services (including in supplying the Materials) and complying with the Supplier's obligations under this contract, including any such Background Rights subsisting in the goods and in any equipment used or to be used in conjunction with development, operation and maintenance of the goods and supplied by the Supplier under this contract.

#### 34.02 **Background Rights (Z8B)**

- Z8B.1 The Background Rights shall remain the absolute unencumbered property of the owner of such rights at the date of this contract. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background Rights of the other party except under the terms of this contract, and each party acknowledges that nothing contained in this contract shall give it any right, title or interest in or to the Background Rights of the other party save as granted in this contract.
- Z8B.2 Where the Supplier uses its Background Rights (including any Third Party Rights) in connection with Providing the Goods and Services (including in supplying the Materials) and complying with the Supplier's obligations under this contract, including any Background Rights subsisting in the subcontract works and in any equipment used or to be used in conjunction with development, operation and maintenance of the subcontract works, the Supplier grants the Purchaser a nonexclusive, irrevocable, perpetual and royalty free licence to use, copy, develop, enhance, supplement, modify, interface, integrate and/or maintain such Background Rights (including any Third Party Rights) for the purposes of the Programme. Such purposes include but are not limited to the construction, testing, commissioning, completion, operation, maintenance, repair, renewal, decommissioning, extension and enhancement of the Programme (including the subcontract works) and the training of personnel in connection with any of the above activities. The licence shall be capable of assignment and includes the right to grant sub-licences, in both cases without the consent of the Supplier.

### 34.03 Foreground Rights (Z8C)

Z8C.1 All Foreground Rights shall vest in and be the property of the Purchaser on their creation. To the extent that any such Foreground Rights vest in the Supplier or any sub subcontractor or supplier of any tier or other third party engaged by the Supplier in performing this contract, the Supplier hereby assigns to the Purchaser (or shall procure that the Purchaser is granted an assignment of) all such present and future Foreground Rights immediately upon creation.

Z8C.2 The Supplier shall in engaging or employing any Subcontractor enter into an enforceable written contract with such party which provides that:

- (a) all Foreground Rights and Materials created by the Supplier and subcontractors or suppliers of any tier pursuant to such contract shall vest in and becomes the property of the Purchaser immediately upon creation;
- (b) upon such vesting, the Purchaser shall become entitled to exclusive perpetual and unrestricted rights of use and ownership of such Foreground Rights and Materials; and
- (c) the Purchaser or its nominee shall be able to enforce the rights of the Supplier against such Subcontractor and subcontractors or suppliers of any tier pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999;

Z8C.3 The Supplier shall provide a copy of any contract proposed pursuant to clause Z8B.2 to the Supply Manager for approval and authorisation prior to entry into or execution of the same.

Z8C.4 Except for items placed in Escrow, to which clause Z8K applies, the Supplier agrees to provide to the Purchaser or any person nominated by the Purchaser immediate access to all Materials in whatever form requested by the Purchaser (including without limitation the source code of any software that is not commercially available) at any time but at the latest on termination or expiry of this contract. The Supplier shall upon the written request of the Purchaser enter into a deposit and/or source code escrow contract with the Purchaser and a third party nominated by the Purchaser in respect of such Materials in such form as the Purchaser may require.

### 34.04 Third Party Rights (Z8D)

Z8D.1 The Supplier shall be responsible for obtaining all necessary consents, authorities or approvals required to use any Third Party Rights necessary for performing its obligations under this contract.

Z8D.2 The Supplier shall ensure that it is a condition of any licence into which the Supplier or any subcontractor or supplier of any tier enters with a third party



that the Purchaser shall be entitled to a license in respect of such Third Party Rights on the terms set out in clause Z8B.

#### 34.05 Licence from the Purchaser (Z8E)

Z8E The Purchaser hereby grants to the Supplier for the term of this contract and free of charge a non-exclusive, royalty-free licence to use such of the Purchaser's data, reports, drawings, specifications, plans, software, designs, inventions and/or other material of the Purchaser as are required by the Supplier to Provide the Goods and Services and to fulfil its other obligations pursuant to this contract and which relate to the goods or services. This licence is limited to use of such materials for the purpose of, and solely as necessary for, the goods or services during the term of this contract. To the extent that any modifications or enhancements to materials licensed by the Purchaser to the Supplier under this clause Z8E are carried out by or on behalf of the Supplier in Providing the Goods and Services, the Supplier hereby assigns (or shall procure that the Purchaser is granted an assignment of) all present and future Intellectual Property in those modifications and enhancements. By virtue of this clause Z8E all such Intellectual Property rights shall vest in the Purchaser on their creation.

#### 34.06 Warranties and Indemnity (Z8F)

Z8F.1 The Supplier warrants that:

- (a) it is the beneficial owner of its Background Rights; and
- (b) the Purchaser's use of the Supplier's Background Rights or any Foreground Rights developed or supplied by the Supplier pursuant to this contract will not infringe Intellectual Property owned by any third party.

Z8F.2 The Supplier will indemnify and hold harmless the Purchaser and against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Purchaser (whether direct or consequential) in respect of any claim or action that the Purchaser's use of:

- (a) Intellectual Property rights licensed by the Supplier to the Purchaser under this clause Z8; or
- (b) the Foreground Rights developed or supplied by the Supplier under this contract;

infringes the Intellectual Property rights of any third party.

### 34.07 Infringements (Z8G)

Z8G The Supplier shall exercise good commercial discretion in watching for Intellectual Property rights and the publication of any applications for the registration of Intellectual Property rights owned or controlled by third parties which may be relevant to the intentions of the Purchaser and the Supplier as expressed in this contract. Should any such Intellectual Property rights of a third party come to the notice of the Supplier, then the Supplier shall inform the Purchaser promptly and the parties shall decide jointly what action is to be taken. In the event of an agreement not being reached by the Purchaser and the Supplier, the Purchaser shall make the final decision. The Purchaser and the Supplier shall at all times have regard when making their decision to the Patents Act 1977 and any subsequent amendment or enactment of such legislation and any other Applicable Law.

### 34.08 Copyright and Publication (Z8H)

Z8H.1 The Purchaser shall be the proprietor of the copyright in this contract and any data relating to this contract. The Purchaser reserves the right to determine whether the results of the goods or services shall be published and if so on what conditions. The Supplier shall provide any reports that the Purchaser shall request and shall enclose with the report the following disclaimer:

"The authors of this report are employed by [ ]. The work reported herein was carried out under a deed placed on [date of this contract] by Crossrail Limited and should not be relied upon as authoritative by any third party.

*This report shall not be copied or reproduced in whole or in part except with the express consent of Crossrail Limited."*

Z8H.2 The following copyright statement shall be included by the Supplier on all copyright items intended for reproduction including final reports:  
"© Crossrail Limited".

Z8H.3 The Supplier hereby waives irrevocably and shall procure that any Group Company of the Supplier and all of the Supplier's and any Group Company of the Supplier's officers, employees, agents, subcontractors and suppliers of any tier involved in Providing the Goods at any time during the term of this contract shall waive irrevocably all moral rights (including without limitation such rights of the Supplier, its officers, employees, agents, subcontractors and suppliers of any tier under sections 77 to 85 of the Copyright Designs and Patents Act 1988 or any similar laws of any jurisdiction to the extent permitted in that jurisdiction) in respect of any Materials.

### 34.09 Further Assurances (Z8I)

Z8I.1 The Supplier shall (at its own cost) upon the request of the Purchaser promptly execute all documents and do all acts and things which may be necessary to bring into effect or confirm any assignment or the terms of any of the licences contained or referred to in this clause Z8

Z8I.2 The Parties shall, when appropriate, execute a formal licence or licences for the purpose of registering any licences granted pursuant to this clause Z8 in such form as may be necessary to give effect to this contract and to conform with the laws for the time being existing in respect of Intellectual Property rights. Such licence or licences shall be subject to all the terms and conditions of this contract.

**34.10 General (Z8J)**

Z8J.1 The Supplier shall not sell, copy or use the Intellectual Property referred to in this clause 34 (Z8) if this might compromise the goods or services and/or Materials (or any part thereof) or the Purchaser's use of them.

Z8J.2 The Supplier shall notify any proposed assignee of this contract of the licences granted to the Purchaser under or in accordance with this contract.

Z8J.3 Not used.

Z8J.4 The Supplier agrees to provide all assistance requested by the Purchaser on termination or expiry of this contract to handover the Materials and/or the provision of the goods to a third party nominated by the Purchaser.

**34.11 Escrow (Z8K)**

Not Used

**35 PUBLICITY (Z9)**

Z9.1 The Supplier shall not, except with the consent of the Purchaser and the Purchaser, make any press announcements or publicise this contract or the Programme in any way unless the purpose of such disclosure is to allow compliance with a requirement to disclose information concerning this contract as required by law or the requirement of the stock exchange. The provisions of this clause shall not apply to any information relating to this contract, which is or which pursuant to this clause Z9 is public knowledge (otherwise than by breach of this clause) or which is limited to the fact of the Supplier being a party to this contract.

Z9.2 The Supplier shall ensure that any subcontract of any tier imposes obligations on the Subcontractor or Supplier of any tier which are identical in effect to the obligations imposed on the Supplier under this clause 35 (Z9).

## 36 DATA PROTECTION (Z10)

### Z10.1 The Supplier

- (a) collects the Construction Data as required by the Goods Information in accordance with the Crossrail Data Policy
- (b) ensures that all individuals whose Personal Data are collected by the Supplier in accordance with the Crossrail Data Policy are provided with a copy of the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed
- (c) transfers the Construction Data to the Purchaser or Supply Manager as required by the Goods Information, at which point the Client becomes the Data Controller of such Personal Data and such Personal Data shall become Crossrail Data. For the avoidance of doubt the Crossrail Data shall comprise of Personal Data collected from a number of sources and shall not be limited to the Construction Data.

Z10.2 The Supplier may retain a copy of the Construction Data for its own purposes provided that it remains responsible at all times for all Processing other than that which is undertaken on behalf of the Purchaser.

Z10.3 Unless the Purchaser takes appropriate steps to widen the Processing which can be undertaken by it, the Purchaser shall only Process the Construction Data for the purposes specified in the information statement specified in the Crossrail Data Policy setting out how their Personal Data will be Processed.

Z10.4 The Crossrail Data may be processed by the Supplier to enable the Supplier to undertake the Processing specified in the Crossrail Data Policy. In such circumstances the Supplier

- (a) complies with the requirements of the DPA and any equivalent applicable legislation in any other country and in accordance with good industry practice. In particular, the Supplier complies with the provisions of the DPA in respect of the Processing of the Crossrail Data as if it were a Data Controller
- (b) collects, compiles, manipulates and stores or otherwise processes the Crossrail Data only as instructed in writing in advance by the Purchaser or Supply Manager . The Supplier does not carry out any other processing, use or disclosure of the Crossrail Data and
- (c) where and when requested by the Purchaser or Supply Manager, provides a copy of all or any part of the Crossrail Data which has been collected by the Supplier or provided to the Supplier by the Purchaser or a third party, to the Purchaser.

Z10.5 The Purchaser or Supply Manager may request by written notice that any specific item of data contained in the Crossrail Data held by the Supplier be amended or deleted by the Supplier and the Supplier immediately fulfils such a request.

Z10.6 The Supplier in particular but without limiting its obligations under Z10.4 above:

- (a) maintains comprehensive registrations or notifications under the DPA or equivalent legislation in any other country in relation to the processing of Personal Data by the Supplier
- (b) is aware at all times of the registerable particulars of the Client under the DPA, and ensures that it does not use, disclose or process the Crossrail Data in any way that is outside the scope of those particulars, provided that the Client notifies the Supplier of any alterations in its registerable particulars
- (c) keeps the Crossrail Data fully up to date on a timely basis at all times during the continuance of this contract
- (d) assists the Purchaser or Client to respond to any request for information under Section 7 of the DPA made by an individual which complies with the requirements of the DPA
- (e) at all times has in place appropriate technical, procedural and organisational security measures, to protect the Crossrail Data including but not limited to the protection of:
  - (i) database software and equipment;
  - (ii) the Crossrail Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to the Crossrail Data
- (f) ensures that any employees, Data Processors or sub-Data Processors involved in the Processing of the Crossrail Data are bound by the security measures specified in Z10.6(e);
- (g) provides details of the security measures specified in Z10.6(e) to the Purchaser or Supply Manager in writing within 10 days of a written request from the Purchaser or Supply Manager; and
- (h) notifies the Purchaser or Supply Manager immediately if it receives any notice of non-compliance with, or a request for information under the DPA or any equivalent legislation in any other country.

Z10.7 The Client may, at its discretion and on reasonable written notice, require

access to the Supplier's premises and the provision of sufficient relevant information in order to assess the adequacy of the Supplier's security measures.

Z10.8 If any of the Crossrail Data or the Construction Data collected by or in the sole possession of the Supplier are either lost or sufficiently degraded to be unusable, the Supplier provides replacement and or corrected data within three working days.

Z10.9 The Supplier agrees and undertakes to indemnify the Client and hold the Client harmless against all and any costs, liabilities and losses whatsoever incurred by the Client arising out of any action or inaction of the Supplier that results in the Client being in breach of any of its obligations or duties under the DPA or equivalent applicable legislation in any other country.

Z10.10 The Supplier may not, in any circumstances, transfer any of the Crossrail Data to any country or territory outside the European Economic Area without the Client's prior written consent, which may be withheld in its absolute discretion.

Z10.11 Upon the termination of this contract for whatever reason, the Supplier, unless notified otherwise by the Purchaser or Client or required by law, immediately ceases all processing of the Crossrail Data and, as requested by the Purchaser or Client, destroys, sends, or returns to the Purchaser on suitable media all copies of the Crossrail Data held in whatever form by the Supplier or any sub-Data Processor.

Z10.12 The Crossrail Data and any rights subsisting in them, including without limitation any database rights, are and shall remain at all times the property of the Client, and the Supplier assigns to the Client the copyrights, database rights and all other rights of a like nature in the Crossrail Data conferred under the laws of the United Kingdom and all other countries of the world that will be created by the Supplier during the term of this contract for the full term during which those rights and any renewals or extensions subsist.

Z10.13 The Supplier warrants that it:

- (a) has maintained and will continue to maintain comprehensive registrations under the DPA or equivalent legislation in any other country in relation to the Processing of Personal Data by the Supplier
- (b) has not received any notice of non-compliance with, or a request for information under the DPA;
- (c) has in place adequate technical and organisational security measures, including database software and equipment, governing the Processing of the Crossrail Data and any employees involved in such Processing; and



- (d) shall carry out the Processing of the Crossrail Data with due skill and care.

### **37 ACCESS TO INFORMATION (Z11)**

Z11.1 The Supplier shall free of charge disclose to the Client and allow the Client and/or those nominated by him to inspect and take away copies of all information relating to the goods and services (including without prejudice to the generality of the foregoing accounts and records) as the Client shall require in order to satisfy itself that the provisions of this contract are being observed and performed, and/or in order to facilitate the operation of this contract, and the Supplier shall provide all reasonable assistance required by the Client and/or those nominated by him in order to obtain such information and shall ensure that the Client and/or those nominated by him have full and free access (including access to the Supplier's premises) and licence to use such information in order to facilitate the operation of this clause but the Supplier shall not be obliged to supply any information which would be treated as privileged in any proceedings.

### **38 FREEDOM OF INFORMATION (Z12)**

Z12.1 The Supplier acknowledges that the Client is subject to the FOI Legislation and agrees to assist and co-operate with the Purchaser to enable the Client to comply with its obligations under the FOI Legislation. The foregoing shall not preclude the Supplier from objecting to a disclosure of Supplier Information.

Z12.2 The Client shall be responsible for determining whether Supplier Information is exempt information under the FOI Legislation and for determining what Supplier Information will be disclosed in that respect to an Information Request in accordance with the FOI Legislation. The Supplier shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Purchaser.

Z12.2 The Supplier acknowledges that the Client may be obliged under the FOI Legislation to disclose Supplier Information

### **39 CONFIDENTIAL INFORMATION (Z13)**

Z13.1 Subject to the other provisions of and as expressly permitted by this clause Z13, the Supplier:

- (a) may not use any Confidential Information for any purpose other than the performance of its obligations under this contract;
- (b) may not disclose any Confidential Information to any person except with the prior written consent of the Purchaser.  
and

(c) shall make every effort to prevent the use or disclosure of the Confidential Information.

Z13.2 Notwithstanding clause Z13.1, the Supplier may disclose any Confidential Information to the following parties in the following circumstances:

(a) to any officer or servant of the Supplier or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the Supplier to Provide the Goods and Services or to enforce its rights under this contract, upon obtaining an undertaking of strict confidentiality from such officer, servant or person;

(b) to the extent required by any Applicable Law, the rules of any stock exchange or regulatory body or any written request of any taxation authority; and

(c) pursuant to the order of any court or tribunal of competent jurisdiction.

Z13.3 The provisions of clause Z13.1 above shall not apply to any Confidential Information which:

(a) is at the date of this contract or any time thereafter becomes publicly known other than by breach of this contract or of an obligation of confidence;

(b) can be shown by the Supplier to the Purchaser's satisfaction to have been known by the Supplier before disclosure by the Purchaser.

Z13.4 Before disclosure of any Confidential Information, the Supplier shall ensure that the recipient is made aware of and complies with the Supplier's obligations of confidentiality under this contract as if the recipient was a party to this contract.

Z13.5 Without prejudice to any other rights or remedies which the Purchaser may have, the Supplier acknowledges and agrees that in the event of breach of this clause Z13 the Purchaser shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.

Z13.6 If this contract is terminated, the Supplier shall return to the Purchaser all of the Confidential Information then within its possession or control or destroy such Confidential Information using a secure and confidential method of destruction and furnish to the Purchaser sufficient evidence of such destruction, save that the Supplier may retain one copy of the Confidential Information if required to do so by law.

#### **40 CONFLICT OF INTEREST (Z17)**

Z17.1 The Supplier confirms that as at the date of this contract neither it nor any

subcontractor or supplier of any tier has any interest in any matter and does not act and has not acted for any party in respect of any matter which would (in either case) create a conflict of interest in Providing the Goods and Services. The Supplier will undertake ongoing conflict of interest checks and will notify the Purchaser immediately if any conflict or potential conflict of interest arises (including notification of any instructions from a party with whom the Purchaser has or has had any dealings with respect to the Programme).

Z17.2 To the extent that an actual or potential conflict may arise involving the Purchaser, the Supplier shall where required continue to act for and advise the Purchaser and if required will cease to act for any other party where to act so would constitute a conflict of interest.

Z17.3 The Supplier shall ensure that any subcontractor of any tier imposes obligations on the subcontractor or Supplier of any tier which are identical in effect to the obligations imposed on the Supplier under this clause 40 (Z17).

#### **41 BEST VALUE (Z18)**

Z18.1 The Supplier acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such the Purchaser is required to make arrangements to secure continuous improvement in the way it exercises its functions having regard to a combination of economy, efficiency and effectiveness. The Supplier assists the Purchaser and Client to discharge the Client's duty where possible, and in doing so, inter alia carries out any reviews of the Project or the Programme requested by the Purchaser or the Client from time to time.

#### **42 TRANSPARANCY (Z24)**

##### **42.01 Defined Terms (Z24.1)**

- (1) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Purchaser is committed to publishing its contracts, tender documents and data from applications for payment and/or invoices received.
- (2) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from applications for payment and/or invoices submitted pursuant to this contract which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.

##### **42.02 Data Transparency (Z24.2)**

Z24.2 The Supplier acknowledges that the Client is subject to the Transparency Commitment. Accordingly, notwithstanding any other provision of this

contract, the Supplier hereby gives its consent for the Client to publish the Contract Information to the general public.

Z24.3 The Client 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 Client may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Client may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to clause Z24.2. The Client makes the final decision regarding publication and/or redaction of the Contract Information.

#### 43 Subcontract Condition of Contract (Z28)

Z28.2 The Supplier ensures that any subcontract of any tier imposes obligations on the subcontractor or supplier of any tier which are identical in effect to the obligations imposed on the *Supplier* under the following clauses of this contract

- Insurance policies,
- Z8 (The Parties' use of material),
- Z9 (Publicity),
- Z10 (Data Protection),
- Z11 (Access to Information),
- Z12 (Freedom of Information),
- Z13 (Confidentiality),
- Z17 (Conflicts of Interest), and
- Z24 (Transparency).