

Agreement and each Contract and all transactions related to the Agreement and each Contract. For the avoidance of doubt, such records shall include but are not limited to:

- (a) all necessary information for the evaluation of claims or variations;
- (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) subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids etc);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) variation and claims files (including documentation covering negotiated settlements);
- (i) general ledger entries detailing cash and trade discounts and rebates;
- (j) commitments (agreements and leases) greater than 
- (k) detailed inspection records; and
- (l) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, reconciliations against BAFO pricing and project plans, in each case which have not already been provided to the Company.

6.2 The Supplier agrees, and shall procure that its subcontractors agree, to retain all such records in such a manner as the Company may reasonably instruct for a period of not less than twelve (12) years after completion of performance under each Contract. In the absence of specific instructions as to the method of storage, the Supplier shall retain his records in an orderly and logical fashion.

6.3 The Company and its authorised representatives and any party legally authorised to inspect any part of the Underground Network shall have the right to inspect and audit any of the records referred to in Clause 6.1 at any time during the period referred to in Clause 6.2.

6.4 The Supplier shall promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- (a) granting or procuring the grant of access to any premises used in performance of each Contract, whether the Supplier's own premises or otherwise;
- (b) granting or procuring the grant of access to any equipment (including all computer hardware, software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's obligations under each Contract, wherever situated and whether the Supplier's own equipment or otherwise;
- (c) making any contracts and other documents and records required to be maintained under each Contract available for inspection;
- (d) providing a reasonable number of copies of any contracts and other documents or records reasonably required by the Company's auditor and/or granting copying facilities to the Company's auditor for the purposes of making such copies; and
- (e) complying with the Company's reasonable requests for access to senior personnel engaged in the Supplier's performance of each Contract.

6.5 The Supplier shall maintain an effective and economical programme for monitoring and maintaining product quality, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy each Contract's requirements.

6.6 The Supplier shall permit the Company's authorised representatives, access and facilities (as required and when notified) for the purpose of systems and product quality audits including but not limited to access to documentation showing results of testing and inspection, certificates of conformance and safety-related documents. The Supplier shall provide the Company with a copy of any or all of the records listed in Clause 6.1, free of charge within thirty (30) days of the Company's request for the same.

6.7 The Supplier shall and shall ensure that any sub-contractor or sub-supplier shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to data during the audit undertaken pursuant to the Agreement and any Contract.

## **7 Company's Obligations**

7.1 The Company shall pay the Supplier the Order Price for the Goods and Services in accordance with the terms of the relevant Contract.

- 7.2 Payment of the Order Price shall not affect any claims or rights which the Company may have against the Supplier and shall not be an admission by the Company that the Supplier has performed its obligations under the relevant Contract properly.
- 7.3 The Agreement is not an exclusive arrangement and nothing in the Agreement or any Contract operates to prevent the Company from engaging any other organisation or person to supply goods and services similar to or the same as the Goods and Services.

## **8 Additional Goods and Services**

- 8.1 *The Company may, at any time during the term of any Contract, request the Supplier to provide a quotation for the supply of Additional Goods and/or Additional Services in accordance with the Contract Variation Procedure. If a Variation Order is made in respect of such Additional Goods and/or Additional Services, the relevant Contract shall be amended to include such Additional Goods and/or Additional Services, the Expected Order Delivery Date and/or the Order Completion Date and the Order Price.]*

## **9 Variation**

- 9.1 Unless the parties agree otherwise in writing, any variation to the Agreement or any Contract shall be made under the Contract Variation Procedure.
- 9.2 The Supplier shall not proceed to implement any variation unless a Variation Order has been entered into in respect of such variation.

## **10 Price and Payment.**

- 10.1 The Supplier shall submit an application for payment to the Company's Representative according to the rates and prices set out in **Schedule 2** for the relevant portion of the Order Price in respect of the Goods after the Order Delivery Date of such Goods (a "**Payment Application**"). If (as the case may be) the Goods are to be delivered in instalments, the Supplier shall submit a Payment Application for the relevant portion of the Order Price to the Company's Representative after the Order Delivery Date of each instalment.
- 10.2 The Supplier shall submit a Payment Application for the relevant portion of the Order Price in respect of the Services using the rates and prices set out in Error! Reference source not found.2, to the Company's Representative *[on the application for payment dates set out in **Schedule 2** [following the completion of the Services to the satisfaction of the Company].*

respect of the Services using the rates and prices set out in Error! Reference source not found.2, to the Company's Representative *[on the application for payment dates set out in **Schedule 2** following the completion of the Services to the satisfaction of the Company]*.

- 10.3 Each Payment Application shall specify the sum that the Supplier considers will become due on the payment due date and the basis upon which that sum is calculated. The Supplier shall submit any supporting documents that are reasonably necessary to enable the Company's Representative to check the Payment Application.
- 10.4 *[The payment shall become due for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 ("**HGCRA**") on the date on which the Company's Representative receives the Payment Application.]*
- 10.5 The Company's Representative shall assess the Payment Application and shall notify the Supplier in writing not later than *[fourteen (14) days] [five (5) days]* after the date of receiving the Payment Application of:
- (a) the amount (if any) the Company's Representative considers to be due at the payment due date (which amount shall be net of any discount to which the Company is entitled); and
  - (b) the basis on which the amount was calculated,
- a "**Payment Certification**". It is immaterial for the purposes of this Clause 10.5 that the amounts referred to in Clauses 10.5(a) or 10.5(b) may be zero. *[A notification given under this Clause 10.5 shall constitute a payment notice for the purposes of section 110A of the HGCRA.]*
- 10.6 Within seven (7) days of receipt of a Payment Certification the Supplier shall issue a VAT invoice for the amount stated in that Payment Certification to the Company. The final date for payment of such VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.
- 10.7 *[The final date for payment for the purposes of the HGCRA shall be thirty (30) days after the date on which the Company's Representative received the Payment Application.]*
- 10.8 *Subject to Clause 10.9 and Clause 10.10, the Company shall pay the Supplier the sum referred to in the Company's Representative's Payment Certification pursuant to Clause 10.5 (or, if the Company's Representative has not served a Payment Certification, the sum referred to in the Supplier's Payment Application under Clause 10.1 and/or Clause 10.2) (the "**Notified Sum**") on*

*or before the final date for payment.*

10.9 *If the Company intends to pay less than the Notified Sum the Company or the Company's Representative (as the case may be) should notify the Supplier in writing not later than one (1) day (the "Prescribed Period") prior to the final date for payment of:*

- (a) *the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or*
- (b) *if there is more than one basis, each basis and the amount attributable to it.*

*It is immaterial for the purposes of this Clause 10.9 that the amounts referred to in Clause 10.9(a) or Clause 10.9(b) may be zero. Where a notice is given under this Clause 10.9, the Company's obligation to pay the Notified Sum under Clause 10.8 applies only in respect of the sum specified pursuant to this Clause 10.9.*

10.10 *Notwithstanding Clauses 10.8 and 10.9, if the Supplier is subject to an event set out in Clause 22.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Supplier the Notified Sum on or before the final date for payment.]*

10.11 The Order Price shall be fixed and inclusive of all expenses and disbursements including, but not limited to, the costs incurred in supplying the Goods to the Delivery Address. The Order Price for the Goods and/or Services shall only be changed in accordance with the Contract Variation Procedure.

10.12 The Order Price shall not include VAT and, to the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application and will be shown as a separate item on all such Payment Applications.

10.13 In addition to any other rights of the Company whether at law or equity under this Agreement or any Contract, whenever under or arising out of this Agreement or any Contract between the Company and the Supplier:

- (a) any sum of money is recoverable from or payable by the Supplier; or
- (b) any Losses are reasonably and properly owed to, or incurred by, the Company, or any member of the Tfl Group

then the same may be set-off against and/or deducted and/or withheld from any sum then due due or which at any time thereafter may become due to the Supplier under this Agreement or any Contract.

- 10.14 Payment Applications shall be submitted separately for each Contract and all such Payment Applications shall clearly show the Contract Reference Number, the Order number (as indicated on the relevant Order), the date of the Order, the Order Price and any associated Variation Order. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Supplier. The Company's Representative shall from time to time agree with the Supplier the detailed information required in relation to all such Payment Applications and the Supplier shall provide such information as is reasonably required.
- 10.15 All sums payable to the Company by the Supplier under each Contract shall be paid in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever; and if the Supplier is compelled by law to make any deduction or withholding, the Supplier shall gross up the payment so that the net sum received by the Company will be equal to the full amount which the Company would have received had no such deduction or withholding been made.
- 10.16 No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Goods delivered or any Services performed or of any act or omission of the Supplier or will absolve the Supplier from any obligation or liability imposed upon the Supplier by any provision of the Agreement and any Contract or otherwise.

## **11 Delivery of Goods**

- 11.1 The Goods shall be delivered by the Supplier to the Company on the Expected Order Delivery Date and on the times stated in the Order and at the Delivery Address. The Supplier shall be responsible for, and shall comply with all reasonable instructions of the Company with regard to, the unloading of the Goods at the Delivery Address. The Company shall be under no obligation to accept partial delivery of an Order.
- 11.2 The time of delivery of the Goods shall be of the essence in respect of each Contract.
- 11.3 If the Goods are not supplied on the Expected Order Delivery Date stated in the relevant Order then, without limiting any other remedy, the Company shall be entitled to deduct from the price payable for such Goods or to claim from the Supplier by way of Liquidated Damages for delay the amount stated in Schedule 1 for the period of delay stated in Schedule 1 *[up to a maximum of the percentage stated in Schedule 1 of the price payable for such Goods]*. The Company shall not be entitled to deduct such amount from the price payable for such Goods or to claim such amount from the Supplier by way of Liquidated Damages for delay to the extent that the delay is due to (i) a default or other act of prevention of the Company, its agents, employees or contractors (other than the Supplier) or (ii) a Force Majeure Event, or a (iii) Permitted Delay Event.

- 11.4 The Supplier accepts that the amount of Liquidated Damages under any Contract constitutes a genuine pre-estimate of the loss that would be suffered by the Company as a result of the Supplier's failure to achieve the Expected Order Delivery Date.
- 11.5 The Goods shall be properly packed and secured in such a manner as to reach the Delivery Address in good condition and otherwise in a condition which fully complies with the requirements of each Contract.
- 11.6 The Supplier shall provide a detailed delivery note stating the relevant Contract Reference Number, Order number (given on the relevant Order) and giving full particulars of the Goods to be supplied (the "**Delivery Note**"). A copy of the Delivery Note shall be delivered with the Goods and be sent by facsimile to the Company on the Order Delivery Date in accordance with Clause 43.
- 11.7 If for any reason the Company is unable to accept delivery of the Goods on or after the Expected Order Delivery Date, the Supplier shall store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until the Order Delivery Date, and the Company shall be liable to the Supplier for the reasonable cost (including insurance) of its so doing.
- 11.8 In the event that all or any of the obligations of the Supplier under any Contract to pay Liquidated Damages are held to be unenforceable, the Supplier agrees to pay the Company damages in respect of all actual Losses suffered by the Company due to the circumstances in respect of which Liquidated Damages would have been payable if the relevant obligation had been enforceable including, without limitation, loss of profit, loss of use, loss of revenues, loss of production and loss of savings. The damages payable by the Supplier in accordance with this Clause 11 shall not exceed the amounts which would have been payable if the relevant obligation(s) to pay Liquidated Damages had been enforceable save where such obligation(s) are held to be unenforceable as a result of any argument or proceedings raised or brought by the Supplier that such obligation(s) are unenforceable, in which case the amount of such damages shall be unlimited.
- 11.9 The Supplier will not, and will ensure that neither its subcontractors, suppliers nor any other person will have, a lien, charge or encumbrance on or over any of the Goods which are vested in the Company under Clause 18.2 for any sum due to the Supplier or its subcontractors, suppliers or other persons and the Supplier shall 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 subcontractors and other persons dealing with any such Goods.

- 11.10 The Company shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Company elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them. Within 7 days of receipt by the Supplier of such notice the Supplier shall remove the excess and refund to the Company any expenses incurred by the Company as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Company shall be entitled to dispose of such Goods and to charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier until they are collected by or on behalf of the Supplier or disposed of or purchased by the Company, as appropriate
- 11.11 Notwithstanding Clause 11.6 the Company may revise the Delivery Note by providing the Supplier with not less than one (1) days notice of the revised Delivery Date (the "Revised Delivery Note").

## **12 Supplier Performance**

- 12.1 *On the date that the Company's Representative receives the first Payment Application and every 4 weeks after that date, the Company assesses the Supplier's performance under the Agreement and each Contract in accordance with Schedule 11 Supplier Performance*
- 12.2 *The Company shall have the right to:*
- (a) *abate the Supplier for failure to meet the key performance indicators stated in Schedule 11 Supplier Performance; and*
  - (b) *use the escalation process stated in Schedule 11 Supplier Performance to rectify any unsatisfactory performance by the Supplier in its performance of the Agreement and any Contract or any failure by the Supplier to meet the performance standards set out in Schedule 11 Supplier Performance*

## **13 Failure to Perform the Services**

- 13.1 If the Supplier has not performed the Services in accordance with the terms of any Contract, without prejudice to any other rights the Company shall have under such Contract, the Company shall be entitled to require the Supplier to carry out such work as is necessary to rectify its non-performance which where necessary shall include re-performing the Services within the time period that the Company shall specify.