

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

36.8. The Contractor shall promptly notify the Company of any circumstances from time to time that might give rise to a right of the Company to require replacement of a Subcontractor pursuant to Clauses 36.7.1 or 36.7.2.

36.9. The Company shall have no obligation to make any termination or compensation payment in respect of any termination pursuant to Clauses 36.7.1 or 36.7.2.

37. Change of Control

The Contractor shall not without the prior written consent of the Company implement any change of ownership of the Contractor where such change relates to fifty per cent (50%) or more of the issued share capital of the Contractor.

38. Notices

38.1. Subject to Clause 38.2, any notice, communication or document given under, or in connection with, this Agreement and each Contract must be in English and in writing and, if and to the extent that Clause 38.3 is not applicable to the Contract, sent by letter or fax or delivered by hand to the other Party's representatives in each case to the address stated in the Framework Particulars. If a Party's details change, it shall notify the other Party promptly in writing of any such changes. The notice, communication or document will be effective as follows:

- (a) if sent by letter, it will be effective when it is delivered;
- (a) if sent by fax, it will be effective when it has been transmitted and the transmission report from the fax machine states that the entire fax has been sent successfully; and
- (b) if delivered by hand to the other Party's representative, it will be effective immediately it is delivered.

38.2. If and to the extent that Clause 38.3 is not applicable to the Contract, where stated in the Framework Particulars, notices, communications or other documents may be given by email to the other Party's email address stated in the Framework Particulars. The notice, communication or document will be effective five (5) working hours (where "working hours" are 09:00 to 17:00 in a Working Day) following the time when the sender's electronic mail system dispatches the electronic mail provided that the correct email addresses as detailed in the Framework Particulars are used.

38.3. Notwithstanding Clauses 38.1 and 38.2, where stated in the Framework Particulars, the Parties may use the Company's e-tendering system as identified in the Framework Particulars for making communications ("**E-Tender Communications**") except for any categories of communications which the Company's Representative notifies the Contractor from time to time are not be made through the e-tendering system. Unless the Company's Representative gives an instruction suspending the operation of the e-tendering system, E-Tender Communications are only effective if made through the e-tender system and the Parties follow any procedure necessary to give effect to the e-tender system. Where an E-Tender Communication refers to an attachment that cannot be included with that communication, the attachment shall be sent via a method complying with Clause 38.1 or Clause 38.2. Unless specified otherwise in the e-tendering system, communications made through the system shall be effective when they are received at the address last notified by the recipient for receiving communications through that system or if none is identified at the email address of the recipient stated in the Framework Particulars.

38.4. This Clause 38 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

39. Entire Agreement

This Agreement and each Contract embodies and sets forth the entire contract and understanding of the Parties and shall supersede all prior oral or written contracts understandings or arrangements relating to the subject matter of this Agreement or any Contract. Except in the case of fraud, neither party shall be entitled to rely on any contract, understanding, arrangement, representation or warranty which is not expressly set forth in this Agreement or any Contract.

40. Further Assurance

40.1. Each party to this Agreement and each Contract shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Agreement and each Contract.

41. Free Issue Materials

41.1. In the event of the Company supplying Free Issue Materials to the Contractor under any Contract the cost of which has been included in calculating the Contract Price, the Contract Price shall be reduced by the amount included in the Contract Price for the materials which have been replaced by such Free Issue Materials.

41.2. Any Free Issue Materials supplied by the Company to the Contractor shall remain the property of the Company and the Contractor shall ensure that all Free Issue Materials are properly labelled as the property of the Company and are kept separate from and not mixed

with any materials owned or in the possession of the Contractor or with any materials supplied to it by third parties.

41.3. The Contractor shall properly store all Free Issue Materials and other property of the Company whilst the same are in the Contractor's possession and protect the same from damage by exposure to the weather and shall take every reasonable precaution against accident or damage to the same from any cause. The Contractor shall be liable for all loss thereof or damage to such Free Issue Materials and other property of the Company whilst the same are in the Contractor's possession or in the possession of any subcontractor of the Contractor except where such loss or damage is solely due to any negligent act or omission of the Company or its employees.

42. No Waiver

No failure or delay on the part of either party to exercise any right or remedy under this Agreement or any Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement or any Contract are cumulative and are not exclusive of any rights or remedies provided by law.

43. Severance

43.1. If any provision of this Agreement or any Contract is, or becomes, invalid, illegal or unenforceable in whole or in part then the validity, legality and enforceability of all other provisions and the remainder of the affected provisions of this Agreement or any Contract shall not be affected or impaired, provided that the operation of this Clause 43.1 would not negate the commercial interest and purpose of the Parties under this Agreement or any Contract.

43.2. Where a tribunal determines that any provision of this Agreement or any Contract is in any way unenforceable the relevant provision shall be amended or modified to the extent necessary to give the provision a valid legal and enforceable provision which is as similar as possible to that unenforceable provision and is reasonably consistent with the purpose and intent of this Agreement or Contract.

44. Costs

Except as otherwise agreed each party shall bear its own costs incurred in connection with the negotiation, preparation and execution of this Agreement and each Contract.

45. Interest

45.1. If either party fails to pay to the other any amount payable in connection with this Agreement or any Contract on or before the due date for payment, interest shall accrue on

the overdue amount from the due date for payment until the date of actual payment (whether before or after judgment) at the Interest Rate. Any interest accruing under this Clause 45.1 shall be immediately payable by the paying party on demand.

45.2. Interest (if unpaid) arising on an overdue amount will be compounded monthly with the overdue amount but will remain immediately due and payable.

46. Contracts (Rights of Third Parties) Act 1999

46.1. No person except any member of the TfL Group may enforce any term or terms of this Agreement or any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, but this shall not affect any other right or remedy of a third party arising at law.

46.2. Notwithstanding the rights referred to at Clause 46.1 above, the Company and the Contractor may agree to vary or rescind this Agreement or any Contract without the consent of any third party.

47. Counterparts

47.1. This Agreement may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same document.

48. Governing Law and Jurisdiction

48.1. This Agreement and each Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

48.2. The Company and the Contractor submit, subject to the provisions of this Agreement and any Contract, to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any asset of the Contractor may be situated.

49. Partnerships and Joint Ventures

49.1. If the Contractor is a partnership, the rights, obligations and liabilities of the partners in the partnership under this Agreement and any Contract are joint and several. This Agreement and any Contract and the liabilities of the partners under this Agreement and any Contract shall not automatically terminate upon the death, retirement or resignation of any one or more members of such partnership or upon the admission of additional partner or partners. The partner or partners in the partnership shall use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Company confirming

his/her acceptance of the rights, obligations and liabilities of the Contractor under this Agreement and any Contract.

49.2. If the Contractor comprises two (2) or more parties in joint venture, the rights, obligations and liabilities of each such party under this Agreement and any Contract are joint and several.

49.3. Nothing in this Agreement or any Contract shall constitute, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement or any Contract, neither party is deemed to be the agent of the other and neither party holds itself out as the agent of the other.

50. Responsible Procurement

50.1. The Contractor and the Company acknowledge and agree that the Mayor, in accordance with section 155 of the GLA Act has directed TfL and its subsidiaries (including the Company) to do all things reasonably necessary to comply with (inter alia) the Responsible Procurement Policy in its procurement activities.

50.2. The Contractor shall and shall procure that its subcontractors (of any tier) shall comply with, and shall provide such co-operation and assistance as may be reasonably requested by the Company to enable the Company to comply with, the Responsible Procurement Policy.

50.3. The Contractor acknowledges and agrees that the Company is required to develop a policy relating to the promotion of the procurement of works in an ethical manner (the "**Ethical Sourcing Policy**") which shall reflect and be consistent with the relevant principles of the Responsible Procurement Policy, and the Contractor shall and shall procure that all of its subcontractors shall comply with the Ethical Sourcing Policy to the extent it does not conflict with the Responsible Procurement Policy.

50.4. The Contractor acknowledges and agrees that it (and its subcontractors) shall be required to comply with any changes to the Responsible Procurement Policy (and any adjustment or amendment to the Ethical Sourcing Policy as a result of such amendment or adjustment to the Responsible Procurement Policy).

50.5. The Contractor shall not be entitled to any addition to the Contract Price in the event of any change to the Responsible Procurement Policy (and any change to the Ethical Sourcing Policy as a result of such change to the Responsible Procurement Policy).

50.6. The Contractor shall procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 50 and the provisions of this Clause 50 are included in any subcontract (of any tier).

50.7. The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 50.

51. London Living Wage

51.1. The Contractor shall, to the extent each Contract is for the provision of services necessary to perform the Works to be undertaken within Greater London or on the Underground Network or the Sites:

51.1.1. ensure that none of its employees engaged in the provision of services necessary to perform the Works under any Contract is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

51.1.2. provide to the Company such information concerning the application of the London Living Wage as the Company or its nominees may reasonably require;

51.1.3. disseminate on behalf of the Company to its employees who are paid no more than the London Living Wage such perception questionnaires in relation to the London Living Wage as the Company or its nominees may reasonably require and promptly collate and return to the Company responses to such questionnaires;

51.1.4. co-operate and provide all reasonable assistance to the Company and its nominees in monitoring the effect of the London Living Wage; and

51.1.5. procure that any subcontractor (of any tier) is required to comply with the provisions of this Clause 51 and the provisions of this Clause 51 are included in any subcontract (of any tier).

51.2. The Contractor shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Company, vary or purport to vary the provisions contained in any contract or subcontract in accordance with the operation of this Clause 51.

52. Criminal Record Declarations

52.1. For the purposes of this Clause 52:

"Relevant Individual" means any servant, employee, officer, consultant or agent of either the Contractor or any subcontractor or supplier involved in carrying out, or intended to carry out, any aspect of the Works; and

"Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.