

Corporate IPRs falls below the quality standards notified to it in accordance with Clause 24.12.1, the Company shall give the Contractor written notice of that fact and the Contractor shall correct the use so as to comply with such quality standards taking into account the Company's instructions.

## **25. Failure to Supply the Works**

25.1. Without prejudice to its rights under Clause 26 if: (i) the Contractor fails to perform the Works in accordance with the Contract; or (ii) an emergency exists, then the Company may require the Contractor to remedy such failure in the case of (i) by giving the Contractor at least seven (7) days' notice in writing and in the case of (ii) no prior notice need be given. If the Contractor fails to comply with the requirements of the Company specified in such notice the Company shall be entitled to perform or procure the performance of the Works or part thereof itself or from a third party or permit a third party to perform the Works or part thereof. Without prejudice to any other right or remedy of the Company hereunder or under the general law, all expenditure properly incurred by the Company exercising its rights under this Clause 25 is in the case of an event of the type referred to in (i) recoverable by the Company from the Contractor and the Company shall be entitled to deduct such amounts from any amount due or to become due to the Contractor under the Contract.

25.2. For the purposes of this Clause 25 the Contractor hereby grants to the Company and any third party the right to use any Intellectual Property Rights, Documentation, goods, materials and spares belonging to the Contractor or used by the Contractor in connection with the Contract as may be required by the Company to exercise its rights under Clause 25 and the Contractor shall provide all co-operation and assistance as may be required by the Company to enable the Company to exercise its rights under Clause 25.

## **26. Termination and Suspension**

26.1. The Company may terminate this Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) immediately by notice in writing to the Contractor if:

- (a) the Contractor commits a breach of this Agreement and/or any Contract which in the case of a breach capable of remedy has not been remedied within five (5) Working Days, or such other period as may be agreed between the Contractor and the Company, of the Company serving notice on the Contractor requiring such remedy;
- (b) the Contractor or anyone employed by or acting on behalf of the Contractor (whether or not acting independently of the Contractor when committing any breach) commits a Safety Breach or Prohibited Act;
- (c) the Contractor commits a persistent breach of Clause 35.2 and/or Clause 35.3;

- (d) the Contractor enters into compulsory or voluntary liquidation (other than for the purpose of effecting a solvent reconstruction or amalgamation provided that if the company resulting from such reconstruction or amalgamation is a different legal entity it shall agree to be bound by and assume the obligations of the Contractor under this Agreement and each Contract) or is deemed unable to pay its debts as they fall due *in accordance with* Section 123(1) of the Insolvency Act 1986, or a meeting of its shareholders or directors is convened to consider any resolution for (or petition or file documents with the courts for) its administration or an administrative receiver, manager, administrator, liquidator, trustee or other similar officer is appointed or notice is given to appoint the same
- (e) any limit on the Contractor's liability to pay Liquidated Damages is reached or exceeded;
- (f) the Contractor breaches its obligations under Clause 37;
- (g) the Company becomes entitled to terminate in accordance with the escalation procedure set out in Schedule 12 (Contractor Performance); or
- (h) the Contractor has, at the Framework Commencement Date or Contract Commencement Date (as the case may be), been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure in accordance with Regulation 80(2) of the Utilities Contracts Regulations 2015.

26.2. Without prejudice to Clause 26.1, the Company shall have the right:

- (a) to terminate this Agreement and/or any individual Contract (in which case any remaining outstanding Contracts shall survive) at any time by giving notice of not less than thirty (30) days to the Contractor in writing; or
- (b) at any time to require the Contractor to suspend the provision of the Works by giving notice in writing (a "**Suspension Notice**") to the Contractor.

26.3. In the event that the Company terminates this Agreement and/or any Contract for any reason under Clause 26.1, the Contractor shall, without prejudice to any other rights or remedies which the Company may have under this Agreement and such Contract or under general law at the Company's option:

- (a) permit the Company to enter the Contractor's premises and take possession of any equipment, goods or Documentation which are the property of the Company;
- (b) permit the Company to place an order for the remaining Works with any other person or persons or complete the provision of such Works by its own workforce; and

- (c) promptly return to the Company any equipment, goods or Documentation which are the property of the Company and of which the Contractor or any of its subcontractors have possession.
- 26.4. In the event that this Agreement and/or any Contract is terminated, the liability of the Company shall be limited to payment to the Contractor for those Works provided in accordance with this Agreement and/or Contract(s) up until the date of such termination.
- 26.5. Following a termination in accordance with Clause 26.1 (but not a termination in accordance with Clause 26.2(a)) the Contractor shall be liable to the Company for
- (a) any Losses of whatever nature arising out of or in connection with the relevant breach; and
  - (b) where the Company exercises its rights under Clause 26.3(b) and in so doing incurs costs which are in excess of those which would have been incurred in relation to the due provision of the Works under this Agreement and the relevant Contract by the Contractor ("**Excess Costs**"), such Excess Costs.
- 26.6. In the event that this Agreement and/or any Contract is suspended in accordance with Clause 26.2(b), the Contractor shall:
- (a) issue to the Company an application for payment in respect of those Works provided to the Company in accordance with this Agreement and the relevant Contract up until the date of such suspension; and
  - (b) not carry out any further work in connection with the provision of the Works until such time as the Company issues a notice lifting the suspension (a "**Notice to Proceed**").
- 26.7. Termination of this Agreement and/or any Contract for whatever reason shall not affect the accrued rights of the Parties arising in any way out of this Agreement and the relevant Contract as at the date of termination and in particular but without limitation the right to recover damages against the other party.

## 27. Survival

- 27.1. The provisions of Clauses 2.2, 2.4, 2.5, 2.6, 2.7, 2.11, 2.15.5 (Contractor's Primary Obligations), 7 (Records and Audit), 13 (Title), 14 (Defects), 17 (Environmental Claims), 19.12 (Set-off), 23.6, 23.7 (Transfer Regulations), 24 (Intellectual Property Rights), 26 (Termination), 27 (Survival), 29 (Indemnity), 30 (Insurance), 31 (Confidentiality), 32 (Freedom of Information), 33 (Data Transparency), 34 (Dispute Resolution), 35 (Corrupt Gifts and Payments of Commission), 38 (Notices), 39 (Entire Agreement), 41 (Free Issue Materials), 42 (No Waiver), 43 (Severance), 46 (Contracts (Rights of Third Parties) Act 1999), 48 (Governing Law and Jurisdiction), 49.3 (Partnerships and Joint Ventures), 50 (Responsible Procurement), 53.1

(Declaration of Ineffectiveness), 53.5 (Data Protection) and 55 (Access) will survive the termination or expiry of this Agreement and each Contract and continue in full force and effect, along with any other clauses, appendices or Schedules of this Agreement and each Contract necessary to give effect to them. In addition, any other provision of this Agreement and each Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination will survive such termination as aforesaid.

## **28. Force Majeure and Permitted Delay Events**

### **28.1. Force Majeure**

Neither party shall be in breach of its obligations under this Agreement or any Contract if there is any total or partial failure of performance by it of its duties and obligations under this Agreement or any Contract occasioned by any Force Majeure Event. If either party is unable to perform its duties and obligations under this Agreement or any Contract as a direct result of a Force Majeure Event, that party shall within one (1) Working Day of such event taking place give written notice to the other party specifying the event and the steps taken by it to minimise or overcome the effects of such event. The operation of the relevant Contract shall be suspended during the period (and only during the period) in which the Force Majeure Event continues. Without delay upon the Force Majeure Event ceasing to exist the party relying upon it shall give written notice to the other of this fact. If the Force Majeure Event continues for a period of more than twenty-eight (28) days and substantially affects the abilities of the Contractor to perform its obligations under the relevant Contract, the Company shall have the right to terminate such Contract immediately upon giving written notice of such termination to the Contractor.

### **28.2. Permitted Delay Events**

- (a) If a delay is caused or either party can reasonably foresee delay occurring by reason of a Permitted Delay Event then the Contractor shall give notice to the Company's Representative of the same and any claim for an extension of time to the Contract Completion Date, within five (5) days after the cause of any delay has arisen.
- (b) For the purposes of this Agreement or any Contract, the occurrence of one or more of the following shall constitute a "Permitted Delay Event":
  - (i) any act of prevention, omission, default, neglect or breach by the Company of an express obligation under this Agreement or any Contract; or
  - (ii) any variation of this Agreement or any Contract under Clause 22; or
  - (iii) any denial of access under Clause 55; or

- (iv) the suspension of this Agreement or any Contract in accordance with Clause 26 (other than where the suspension is necessary by reason of default of the Contractor).
- (c) Where any delay in achieving the Contract Completion Date arises, the Contractor shall be entitled to an extension to such Contract Completion Date (either prospectively or retrospectively) but only to the extent that such delay is directly caused by a Permitted Delay Event that has a direct and material adverse effect on the Contractor's ability to perform the Works by the Contract Completion Date and provided that the Contractor:
  - (i) notifies the Company of the Permitted Delay Event in accordance with Clause 28.2(a) and subsequently provides such further information as the Company may reasonably require regarding the nature and likely duration of such event;
  - (ii) provides the Company with reasonable access to the Contractor's premises or of its subcontractors for investigating the validity of the potential Permitted Delay Event;
  - (iii) uses its reasonable endeavours to mitigate the delay to the Contract Completion Date; and
  - (iv) shall not be entitled to an extension of time to the extent that the Permitted Delay Event was caused by or resulted from any act, omission, neglect, default or breach of this Agreement or any Contract by the Contractor, its subcontractors or employees.

## 29. Indemnity

29.1. The Contractor shall be liable for, and shall indemnify the Company, including any of its employees, servants, agents, subcontractors, directors and officers and members of the TfL Group on an after-tax basis against all Losses suffered or incurred by the Company or relevant member of the TfL Group, arising from or in connection with the performance or non-performance of the Contractor under this Agreement and each Contract:

- (a) in respect of death or personal injury to any person;
- (b) in respect of loss of or damage to any property (including the Underground Network and/or the Sites and any other property belonging to the Company or for which it is responsible);
- (c) arising out of or in the course of or by reason of any act, omission, negligence or breach of contract or breach of statutory duty, wilful misconduct of the Contractor, its employees, agents or subcontractors; and

(d) arising under the Company's contracts with third parties,

and shall, at its own cost on the Company's request, defend the Company in any proceedings involving the same.

29.2. The Contractor shall not be liable to indemnify the Company or any member of the TfL Group under the indemnity in Clause 29.1 to the extent Losses are solely due to the negligence, breach of duty or breach of contract of the Company.

29.3. The Contractor's indemnity under Clause 29.1 and all other indemnities under this Agreement and each Contract shall remain in force for the duration of this Agreement and each Contract and for the period of twelve (12) years after the Contract Completion Certificate or earlier termination of each Contract.

29.4. The Company may withhold from any sum due or which may become due to the Contractor any sum due to the Company as a result of the operation of Clause 29.1.

29.5. Other than in respect of the Losses (i) described in Clauses 29.1(a) and (d) above and (ii) Excepted Liabilities, neither party shall have any liability to the other for any Consequential Loss arising out of the performance of its obligations under or in connection with this Agreement and each Contract. Each party respectively undertakes not to sue the other party, TfL or any member of the TfL Group in respect of Consequential Loss.

29.6. The Contractor's total liability to the Company for all matters arising under or in connection with this Agreement and any Contract, other than the excluded matters, is limited to the amount specified in the Framework Particulars and applies in contract, tort and otherwise to the extent allowed under the law of this Agreement and each Contract. The excluded matters are amounts payable by the Contractor as stated in the Contract for:

**29.6.1.** Excepted Liabilities;

**29.6.2.** loss of or damage to the Company's property;

**29.6.3.** any Losses against which the Company is indemnified under Clause 23 (*Transfer Regulations*);

**29.6.4.** any Losses against which the Company is indemnified under Clause 24.9 (*Intellectual Property Rights*).

### **30. Insurance**

30.1. The insurance requirements under this Agreement and any Contract shall not relieve the Contractor from or limit any of its other obligations and liabilities under this Agreement and any Contract.

30.2. The Contractor shall ensure that the following policy or policies shall, at its own cost, be effected with a reputable insurer for the duration of this Agreement and (in respect of Clause 30.2ii) for a period of not less than twelve (12) years after expiry or termination of this Agreement or any Contract, whichever is the later. Such insurance shall be on terms approved by the Company (such approval not to be unreasonably withheld or delayed):

- i. employer's liability insurance in respect of the Contractor's liability for any person in the Contractor's employment in the sum of not less than ten million pounds (£10,000,000) per incident or such other minimum level as may from time to time be required by law;
- ii. professional indemnity insurance in a sum normal and customary for a contractor or supplier in the business of providing services of a similar scope, nature and complexity to the services being provided under this Agreement and any Contract but not less than two million pounds (£2,000,000) in the aggregate per annum or such other sum as may be specified in the Order;
- iii. insurance against loss, destruction, theft or damage to tools plant equipment, temporary buildings (including contents therein) belonging to or the responsibility of the Contractor; and
- iv. insurance of all materials acquired by or delivered to the Contractor for the purposes of performing its obligations under this Agreement or any Contract (whether or not the property of the Contractor or of the Company) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the Company and/or the Works are completed.

(together the "**Contractor's Insurances**").

30.3. The Company shall effect the following insurances for each Contract:

- 30.3.1. construction all risks insurance against loss of or damage to the Works at the Site (as provided for in the policy terms and conditions) in an amount sufficient to cover the full reinstatement value of the Works; and
- 30.3.2. public liability insurance in respect of sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property during the period of insurance arising out of or in connection with the Works at the Site in an amount not less than £25,000,000 per occurrence (or such other sum as may be specified in the Contract),

(together, the "**Company's Insurances**").