

17.3. Where the Contractor discovers or suspects that the Site has been contaminated or polluted by another party, the Contractor shall notify the Company of the identity of the other party, where known. The Contractor shall not without the prior written consent of the Company undertake any environmental investigations on Site or commission or undertake any Remediation. The Contractor shall provide the Company with a separate record of the costs of any Remediation as soon as possible after such costs are incurred.

17.4. In the event that the Contractor commissions an environmental assessment, the Contractor shall use reasonable endeavours to procure that the environmental assessment includes an acknowledgement by its authors that the Company can rely on any reports, recommendations or summaries prepared in relation to the environmental assessment.

17.5. The Contractor shall provide to the Company:

- (a) copies of all environment-related permissions, permits, consents, licenses, registrations and authorisations required for him to carry out the Works (for the purposes of this Clause 17, the “authorisations”);
- (b) copies of any amendments to the authorisations;
- (c) notification of any revocations, suspensions, cancellations, withdrawals, adverse amendments or refusals to provide any of the authorisations; and
- (d) notification of any event or circumstance that is likely to cause the revocation, suspension, cancellation, withdrawal, adverse amendment or refusal to provide any of the authorisations.

18. Pricing

18.1. The prices for the Works shall be the Contract Price set out in the Order using the rates and prices set out in Schedule 4. The prices for the Works or any Contract Price shall only be changed in accordance with the Contract Variation Procedure.

18.2. The Parties agree that the rates and prices stated in Schedule 4 shall be the maximum rates and prices for each Contract during the term of this Agreement and any Contract.

19. Payment

19.1. The Contractor shall submit an application for payment (a “**Payment Application**”) for the Milestone Payment on completion of the relevant Milestone, to the Company’s Representative at the address stated in the Framework Particulars by the Wednesday of the fourth week of the Accounting Period corresponding to that relevant Milestone.

19.2. Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company to check the Payment Application and set out in reasonable detail a description of the Milestone achieved.

19.3. 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 receives the Payment Application.

19.4. The Company shall assess and verify the Payment Application in a timely manner and shall notify the Contractor in writing not later than five (5) days after the date of receiving the Payment Application of:

(a) the amount (if any) the Company 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 Contract Payment Approval Form ("**CPAF**"). It is immaterial for the purposes of this Clause 19.4 that the amounts referred to in Clauses 19.4(a) or 19.4(b) may be zero. A notification given under this Clause 19.4 shall constitute a payment notice for the purposes of section 110A of the HGCRA. Where the Company fails to comply with its obligations under the Clause 19.4 and there is an undue delay in considering and verifying the Contractor's Payment Application, the CPAF shall be regarded as issued for the purposes of Clause 19.6 after a reasonable time has passed.

19.5. 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 except if the Contractor fails to issue a VAT invoice in accordance with the timescales set out in Clause 19.7 (and such failure is not due to any failure by the Company to comply with its obligations under Clause 19.4), then the final date for payment shall be extended by the additional number of days taken by the Contractor to issue the VAT invoice.

19.6. Subject to Clauses 19.7, 19.8 and 19.9, the Company shall pay the Contractor the sum referred to in the Company's Representative's CPAF pursuant to Clause 19.4 (the "**Notified Sum**") on or before the final date for payment.

19.7. Within six (6) days of receipt by the Contractor of the CPAF, the Contractor shall issue a corresponding VAT invoice for the amount of the relevant CPAF and attach one (1) copy of the CPAF to the said invoice and send the invoice to the Company's Representative at the address stated in the Framework Particulars. The Contractor shall ensure that such VAT invoice:

19.7.1. is dated and issued no earlier than the date when the CPAF was issued; and

19.7.2. clearly states the purchase order number.

If the Contractor's VAT invoice does not comply with the requirements of this Clause 19.7 then the Company shall be under no obligation to pay the same. The final date for payment of each VAT invoice shall be ten (10) days after the date on which the Company's Representative received such VAT invoice.

19.8. 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 Contractor in writing not later than one (1) day (the "**Prescribed Period**") prior to the final date for payment of the relevant VAT invoice 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 19.8 that the amounts referred to in Clause 19.8(a) or Clause 19.8(b) may be zero. Where a notice is given under this Clause 19.8, the Company's obligation to pay the Notified Sum under Clause 19.6 applies only in respect of the sum specified pursuant to this Clause 19.8.

19.9. Notwithstanding Clauses 19.6 and 19.8, if the Contractor is subject to an event set out in Clause 26.1(d) or other like event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment of the relevant VAT invoice.

19.10. The Contract Price shall be fixed and inclusive of all expenses and disbursements and shall only be changed in accordance with the Contract Variation Procedure.

19.11. The Contract 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.

19.12. 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 Contractor:

(a) any sum of money is recoverable from or payable by the Contractor; 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 or which at any time thereafter may become due to the Contractor under this Agreement or any Contract.

19.13. 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 Contract Price and any associated Variation Order and, unless the Company directs otherwise, be in the format set out in Appendix 1 of Schedule 4. Supporting documentary information shall be submitted to the Company's Representative for all Payment Applications submitted by the Contractor. The Company's Representative shall from time to time agree with the Contractor the detailed information required in relation to all such Payment Applications and the Contractor shall provide such information as is reasonably required.

19.14. Failure on the part of the Contractor to submit a Payment Application in accordance with Clause 19.13 may lead to delays in processing the Payment Application and subsequent payment of invoices. Any loss or additional expenses incurred by the Contractor in the correction or re-submission of a Payment Application or invoice shall be at the Contractor's own expense.

19.15. All sums payable to the Company by the Contractor 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 Contractor is compelled by law to make any deduction or withholding, the Contractor 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.

19.16. No payments made by the Company hereunder, including final payment under any Contract, shall prevent the Company from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Contractor by mistake of law or of fact. The Company shall be entitled to withhold from any sums due or which may become due to the Contractor from the Company:

- (a) any amount in respect of which there exists a bona fide dispute; and
- (b) any amount that on the basis of the Company's bona fide estimate the Company considers due to it from the Contractor. Such estimates shall be binding on the Contractor unless and until varied by agreement between the Parties or any award, order or judgement.

19.17. No payment made by the Company will indicate or be taken to indicate the Company's acceptance or approval of any part of the Works or of any act or omission of the Contractor or

will absolve the Contractor from any obligation or liability imposed upon the Contractor by any provision of this Agreement and any Contract or otherwise.

20. Contractor Performance

20.1. On the date that the Company receives the first Payment Application and every four (4) weeks after that date, the Company will assess the Contractor's performance under this Agreement and each Contract in accordance with Schedule 12.

20.2. The Company shall have the right to:

- (a) abate the Contractor for failure to meet the key performance indicators stated in Schedule 12; and
- (b) use the escalation process stated in Schedule 12 to rectify any unsatisfactory performance by the Contractor in its performance of this Agreement and any Contract or any failure by the Contractor to meet the performance standards set out in Schedule 12.

21. Bonds, Warranties and Guarantees

21.1. Where stated in the Framework Particulars, the Contractor shall at its own expense provide within seven (7) days of the Framework Commencement Date:

- (a) an executed bond issued by a financial institution whose long term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's in the form set out in Schedule 8 in favour of the Company;
- (b) an executed parent company guarantee from the ultimate holding company or other parent company of the Contractor (provided that such company's long-term debt obligations are rated not less than A- by Standard & Poor's and/or A3 by Moody's) in the form set out in Schedule 8 in favour of the Company.

21.2. The Contractor shall ensure that any bond required under Clause 21.1:

- (a) provides, in aggregate, credit protection for the Company in an amount of not less than 10% of the Contract Price (or such other amount as may be stated in the Framework Particulars) at all times until the expiry of the Defects Liability Period; and
- (b) is renewed every twelve (12) months until the expiry of the Defects Liability Period.

21.3. If at any time the existing bond and/or parent company guarantee cease(s) to meet the requirements of Clauses 21.1 and 21.2 then the Contractor shall replace such bond and/or parent company guarantee with a bond and/or parent company guarantee (as the case may be) that meets the requirements within seven (7) days.

21.4. If requested by the Company, the Contractor shall provide an accompanying legal opinion to the bond and/or parent company guarantee supplied under Clause 21.1 completed and signed by a qualified lawyer from the country in which the guarantor and/or parent company is resident in the form specified by the Company.

21.5. If any performance bond and/or parent company guarantee required by any Contract is not procured by the Contractor and delivered to the Company in accordance with Clause 21.1, one quarter of the aggregate of the Contract Price for the relevant Contract shall be retained in assessments of the amount due and shall not be payable to the Contractor until such documents have been delivered.

21.6. If required by the Company, the Contractor shall procure that the terms of any Subcontract require the Subcontractor, within seven (7) days of a written request by the Company to the Subcontractor, to enter into:

(a) a collateral warranty in the form set out in Schedule 9 in favour of the Company and if requested by the Company, the Contractor shall require the subcontractor to provide an accompanying legal opinion completed and signed by a qualified lawyer from the country in which the subcontractor is resident in the form specified by the Company;

(b) a parent company guarantee in the form provided by the Company from the ultimate holding company of the subcontractor in respect of any of the Subcontractor's obligations under any collateral warranty required under this Clause 21.6.

21.7. If any warranty (including any accompanying parent company guarantee) required under Clause 21.6 is not delivered to the Company in accordance with Clause 21.6 one quarter of the aggregate of the Contract Price relative to the Works provided by the relevant Subcontractor shall be retained in assessments of the amount due and is not payable until such warranty has been delivered.

22. Variation

22.1. The Company may, at any time during the term of any Contract, instruct or authorise (as the case may be) a Variation in accordance with the Contract Variation Procedure in which case the relevant parts of the Contract shall be amended accordingly.

22.2. Any other variation to the terms of this Agreement and/or any Contract shall be effective only if in writing and signed by both Parties.

23. Transfer Regulations

23.1. For the purposes of this Clause 23: