

efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard;

- (g) conform to all Applicable Laws (including but not limited to any law and regulations applicable to the Company or the Underground Network and/or the Sites);
- (h) be provided in accordance with the best modern principles and practices in the activity concerned and in accordance with the Specification and will comply with all Standards and any additional standards listed in the Specification, or in the Contract; and
- (i) comply with the requirements of the Company set out in this Agreement and each Contract and all lawful and reasonable directions of the Company,

and, for the purposes of construing the warranties of this Clause 2.2, the Works shall for the avoidance of doubt include any part of the Works. Each warranty of this Clause 2.2 shall be construed as a separate warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or any other term of this Agreement or any Contract.

2.3. Without prejudice to Clause 2.2 the Parties shall co-operate with one another and act reasonably and in good faith in and about the performance of their respective obligations and the exercise of their respective rights under this Agreement and any Contract.

2.4. The Contractor shall use all prudent and commercial steps necessary to mitigate and minimise:

- (a) any actual or potential increase in the Contract Price pursuant to Clause 18 to the maximum extent reasonably practical; and
- (b) any actual or potential Losses (including but not limited to costs on or relating to termination of this Agreement or any Contract).

2.5. The Contractor warrants to the Company that it has entered into and executed this Agreement by its duly authorised representatives in accordance with all procedures required by its governing laws and contractual documents and that it has full capacity and authority and all necessary licences, permits, permissions, powers, approvals, certificates, authorisations and consents to enter into and perform this Agreement and any Contract.

2.6. The Contractor warrants to the Company that it has the right to grant to the Company and any member of the TfL Group all licences (including without limitation all rights to sub-licence) of all and any Intellectual Property Rights as contemplated in this Agreement and each Contract.

2.7. The Contractor warrants to the Company that it is aware of the purposes for which the Works are required and acknowledges that the Company is reliant upon the Contractor's expertise and knowledge in the provision of the Works.

2.8. The Contractor shall perform its obligations under each Contract in accordance with the requirements of the ISO 9000 and ISO 14000 series as appropriate to the provision of the Works, or any equivalent international quality assurance standards as may be accepted as an alternative in the absolute discretion of the Company.

2.9. The Contractor warrants to the Company that as at the date of this Agreement and each Contract that it has not been in any 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 2016.

2.10. Unless otherwise stated in any Order, the Contractor shall:

- (a) provide all plant, equipment, support works and other facilities necessary for the performance of its obligations under this Agreement and each Contract;
- (b) ensure that all plant used shall conform with the requirements set out in Category 1 and Category 2 Standards and draft Standards and with the relevant International, British and European Standards;
- (c) ensure that all operators of plant are appropriately licensed and competent to use the plant and equipment in the working environment and make available evidence of such licenses to the Company within three (3) Working Days (or such other period as the Company may acting reasonably specify) of the Company's request for the same;
- (d) ensure that all plant is appropriately maintained and presented for use in a safe and working condition and make available evidence of corresponding maintenance records to the Company within three (3) Working Days (or such other period as the Company may acting reasonably specify) of the Company's request;
- (e) ensure that all its plant, tools, equipment and materials shall be removed from the Company's premises or Site at the end of each shift unless prior authority for storage has been obtained in writing from the Company's Representative.

2.11. For the avoidance of doubt, neither a communication from the Company nor the review or acceptance of the Works waives, limits or amends in any way any warranties, liabilities or responsibilities of the Contractor under this Agreement and each Contract.

2.12. The Contractor shall be responsible for the accuracy of all Contractual Documentation and shall pay the Company any extra costs occasioned by any discrepancies, errors or omissions therein. The Contractor shall at its own expense carry out any alterations or remedial work necessitated by such errors, omissions or discrepancies and modify the relevant documents or information accordingly.

2.13. If the Contractor becomes aware of any divergence between Applicable Laws and the Contractual Documentation or between the Applicable Laws and any instruction of the Company's Representative, it shall immediately provide to the Company's Representative a written notice specifying the divergence.

2.14. The Contractor shall train at the sole cost of the Contractor any of the Company's employees, TfL employees and any of their contractors or agents as required by the Company in accordance with the Specification.

2.15. Design

2.15.1. The Contractor shall carry out his design in accordance with the Specification, Schedule 10 (Design) and the terms of this Agreement and any Contract.

2.15.2. The Contractor shall submit the particulars of his design which the Specification requires to the Company's Representative for acceptance. The Contractor shall not proceed with the performance of the Works until the Company's Representative has accepted his design. Reasons for not accepting the Contractor's design shall include (without limitation):

- (a) it does not comply with the Specification or any other part of this Agreement or any Contract;
- (b) it does not comply with Applicable Laws and Standards;
- (c) it is not integrated and coordinated with the designs of others where the Contractor is required by the Specification or instructions of the Company's Representative to do so or such integration is necessary for the Contractor to perform the Works;
- (d) it is not in a format which is accepted for use by the Company's Representative.

2.15.3. The Contractor shall not be entitled to any changes to the Contract Price or Contract Completion Date by reason of anything in this Clause 2.15.

2.15.4. The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.

2.15.5. The Contractor in designing and specifying the Works which he is required to design and specify, warrants, undertakes and represents to the Company that the design:

- (a) is in accordance with the Specification and any other performance or output specification or requirements contained or referred to in this Agreement and each Contract;

(b) complies with all Applicable Laws and Standards;

(c) is fit for the purpose defined in the Specification.

2.15.6. The Contractor accepts entire responsibility for the design and specification of the Works which he is required to design and specify and for any mistake, inaccuracy, ambiguity, inconsistency or omission in or between his design and specification of the Works and the documents which are part of this Agreement and any Contract.

3. Contract Programme

3.1. Contract Programme

3.1.1. If a programme is not included in the Contract, the Contractor shall within the period stated in the Order submit a programme to the Company's Representative for his acceptance showing:

- (a) the Contract Commencement Date and key dates;
- (b) the sequence and timing of activities by which the Contractor proposes to carry out the Contract;
- (c) alignment with the Milestone Payment Plan;
- (d) provisions for float, time risk allowances and environmental and health and safety requirements;
- (e) the respective dates for submission by the Contractor of any documentation;
- (f) the dates by which, in order to carry out the Contract, the Contractor will need (to the extent provided for under the Contract):
 - (i) access to a part of the Site if later than its access date;
 - (ii) acceptances;
 - (iii) plant and materials and other things to be provided by the Company;
 - (iv) information from others;
- (g) the dates when the Company plans to conduct tests and inspections; and
- (h) any other information which the Specification requires the Contractor to show on the Contract Programme.

3.1.2. The Contractor undertakes to carry out the Works in a regular and diligent manner and in accordance with the Contract Programme.

3.1.3. The matters set out in the Contract Programme shall be wholly without prejudice to the Contractor's obligations to meet the Contract Completion Date.

3.2. Form of programme

The programme shall be in such form as may be specified in the Framework Particulars and the Contract or, if not so specified, as may reasonably be required by the Company's Representative.

3.3. Acceptance of programme

Within two (2) weeks of the Contractor submitting a programme for acceptance, the Company's Representative shall either accept the programme or notify the Contractor of his reasons for not accepting it in each case in the Company's Representative's absolute discretion. Reasons for not accepting the programme may include:

- (a) the Contractor's plans shown on it are not practicable;
- (b) it does not show the information which the Contract requires;
- (c) it does not represent the Contractor's plans realistically; or
- (d) it does not comply with the Contract or the Specification.

3.4. Acceptance by the Company's Representative of the programme shall not relieve the Contractor of any of its obligations under the Contract.

3.5. Alterations to Programme

The Contractor shall not without the Company's Representative's prior written consent make any alteration to the Contract Programme.

3.6. Revision of Programme

The Contractor shall submit a revised programme to the Company's Representative for acceptance:

- (a) every four (4) weeks from the Contract Commencement Date; and
- (b) if instructed to do so pursuant to Clause 3.7.

3.7. Rate of Progress

3.7.1. The Company's Representative may notify the Contractor if it assesses that the Works will not be capable of any of the Contract Completion Dates and that this is not due to a circumstance for which the Contractor is entitled to an extension of time under Clause 28.

3.7.2. Following receipt of such notice the Contractor shall take such steps as may be necessary and as the Company's Representative may approve to remedy or mitigate the likely delay, including submitting a revised programme to the Company's Representative for acceptance. The Contractor will not be entitled to additional payment or an extension of time for taking such steps.

4. Key Personnel

- 4.1. The Contractor shall ensure that each of the Key Personnel devotes substantially their whole time and effort to the performance of the Works. The Contractor shall take all reasonable steps to ensure it retains the services of the Key Personnel and shall not without the Company's prior written consent terminate their employment, remove or change Key Personnel or do any such thing which would cause any of the Key Personnel to resign.
- 4.2. The Contractor agrees to inform the Company of any changes to the Key Personnel where any relevant member of Key Personnel dies, suffers long term sickness or disability, is incapacitated by reason of ill health or accident from performing his or her duties for a period of or periods aggregating thirty (30) days in the preceding three (3) months, is guilty of gross or serious misconduct, goes on any period of statutory leave (other than holiday) or leaves the Contractor's employment.
- 4.3. The Contractor shall be responsible for the costs of replacing any member of Key Personnel with an appropriately qualified and competent replacement (including but not limited to, the cost of training any replacement to ensure that they can take over the vacated position efficiently and without disrupting the Works). The Contractor shall use all reasonable endeavours to ensure that any replacement for any member of Key Personnel is engaged and available to perform his or her role as soon as reasonably practicable and at least within seven (7) days of the expiry of the notice period of the relevant member of Key Personnel. Where termination of the relevant member of Key Personnel is due to gross or serious misconduct, a replacement shall be engaged and available to perform his/her role as soon as reasonably practicable and in any event within twenty-eight (28) days. Further, save where the relevant member of Key Personnel being replaced has vacated the position immediately due to death, illness, gross misconduct or some other similar reason, the Contractor shall, at its own cost, ensure that the member of Key Personnel being replaced works in parallel with his or her replacement to hand over to them for a period of seven (7) days or any shorter period agreed between the Parties.
- 4.4. A reasonable period before an offer of engagement is made to a replacement member of Key Personnel, the Contractor shall provide such information about and access to the relevant individual as the Company may reasonably require. The Company shall notify the Contractor if it objects to the appointment of an individual as a member of Key Personnel, together with its reasons for such objection. The Contractor shall comply with any request by the Company that a particular person should not become a member of Key Personnel.
- 4.5. The Company may change the list of Key Personnel on reasonable notice and subject to the consent of the Contractor, such consent not to be unreasonably withheld or delayed.

5. Company's and Contractor's Representative

5.1. The Company and the Contractor shall appoint one or more representatives to act on its behalf under this Agreement and each Contract as the Company's Representative and the Contractor's Representative, respectively as recorded in the Framework Particulars (or, in the case of the Company's Representative, as may otherwise be identified in the applicable Contract). The Contractor shall not appoint a replacement or additional Contractor's Representative without the prior written consent of the Company (which consent shall not be unreasonably withheld). Any party may, on giving reasonable notice to the other party, appoint an additional representative or replace an existing representative but the Contractor may only do so with the prior written consent of the Company. Each party shall be responsible for the acts, omissions, neglects and defaults of its representatives as if such acts, omissions, neglects and defaults were its own. Each party will be bound by any decision made or action taken by its representatives.

6. Contractor Personnel

- 6.1. The Contractor shall be responsible for providing the staff necessary or appropriate to perform its obligations.
- 6.2. The Contractor warrants that all its staff involved in the Works are entitled to work in the United Kingdom whether as of right or by holding the necessary permits.
- 6.3. If and when instructed by the Company, the Contractor shall submit to the Company a list of names of all persons who may or do require access to the Site, specifying the capacity in which they are connected with the Works, the reason why they require access to the Site and such other particulars as the Company may reasonably require. The Company may issue Site passes as appropriate, and the Contractor shall comply with any conditions notified by the Company in respect of those Site passes.
- 6.4. Without prejudice to Clause 26.1(b), if anyone employed by the Contractor, acting independently of the Contractor, commits a Safety Breach or Prohibited Act, then the Company may require the Contractor to exclude that individual from the Works with immediate effect and that individual may only be readmitted to the Works at the Company's absolute discretion.

7. Records and Audit

- 7.1. The Contractor shall, and shall procure that its subcontractors shall, maintain a true and correct set of records including personnel records relating to all aspects of their performance of this Agreement and each Contract and all transactions related to this 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, variation and claims files (including documentation covering negotiated settlements);