



**Siemens Mobility Limited**

**FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**



DATED 31<sup>st</sup> August 2018

- (1) LONDON UNDERGROUND LIMITED
- (2) SIEMENS MOBILITY LIMITED

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**FRAMEWORK AGREEMENT**

In support of Siemens and Predecessor systems on the London  
Underground Network

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THIS FRAMEWORK AGREEMENT is made on *31<sup>st</sup> August* 2018

**BETWEEN:**

- (1) **LONDON UNDERGROUND LIMITED**, registered number 01900907 whose registered office is at address 55 Broadway, London SW1H 0BD (the "**Employer**"); and
- (2) **SIEMENS MOBILITY LIMITED**, registered number 00016033 whose registered office is at Faraday House, Sir William Siemens Square, Frimley, Camberley, GU16 8QD (the "**Contractor**").

**RECITALS**

- (A) The Contractor installed train signalling and control systems (the "**Systems**") for that part of the Underground Network known as the Central line for the Employer. The Systems require upgrade and support works to avoid obsolescence and to improve reliability, availability and maintainability of the Central line or other train signalling, control or telecommunication systems installed by the Contractor.
- (B) To deliver the Project the Parties have agreed to enter into this Framework Agreement and further that this Framework Agreement and the Appendices to it will as far as reasonable practicable be used as the basis of work to be carried pursuant to any future Associated Contract.
- (C) From time to time the Employer may require the Contractor to provide Works and the Contractor has confirmed that subject to and in accordance with the terms of this Framework Agreement subject to agreement of Prices it is willing to provide Works.
- (D) This Framework Agreement sets out the terms and conditions (as may be amended in accordance with this Framework Agreement) that shall apply to all contracts for such Works carried out by the Contractor from time to time over the next five years (or any such extended period in accordance with this Framework Agreement).
- (E) The documents forming the Framework Agreement are the terms and conditions herein and:
  - (a) Appendix A – Form of Parent Company Guarantee
  - (b) Appendix B – Legal Opinion Template
  - (c) Appendix C – Call-Off Conditions of Contract under Option A
  - (d) Appendix D – Call-Off Conditions of Contract under Option E
  - (e) Appendix E – Schedules to forms of contract at Appendices C and D

- (f) Appendix F – Form of Agreement Template
- (g) Appendix G - Project Contract Data Part One Template
- (h) Appendix H - Project Contract Data Part Two Template
- (i) Appendix I – Initial Consultation Process
- (j) Appendix J – Form of Request for Tender Template
- (k) Appendix K – Commercially Sensitive Information



**NOW IT IS AGREED THAT:**

**1. DEFINITIONS**

1.1 In this Framework Agreement the following expressions shall have the following meanings and other words and expressions used shall be as defined in the Call-Off Conditions to be used for the Project Contracts:

- (a) **“Associated Contract”** means:
  - (i) this Framework Agreement;
  - (ii) any Project Contract;
  - (iii) any other contract that has been entered into, or that may at any time be entered into between: (i) the Employer or any member of the TfL Group (or a combination of them) and (ii) the Contractor or an Group Company (or a combination of them);
- (b) **“Business Day”** means any day other than a Saturday or Sunday or a public bank holiday in England;
- (c) **“Call-Off Conditions”** means the amended and restated conditions of contract for ECC main Options A and Option E included in Appendices C and D, including the schedules referred to therein. The schedules to the Call-Off Conditions are attached at Appendix E;
- (d) **Commercially Sensitive Information** means the information listed in Appendix K which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss;
- (e) **“Contract Data”** means Contract Data as defined in the ECC;
- (f) **“Contract Information”** means (i) the Framework Agreement and any Project Contracts in their entirety (including from time to time agreed changes to the Framework Agreement and any Project Contracts) and but excluding Commercially Sensitive Information and (ii) data extracted from the invoices submitted pursuant to clause 5 of the Project Contracts, which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount;
- (g) **"Data Protection Legislation"** means: any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive)



Regulations 2003 and from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and any other legislation in force from time to time in the United Kingdom relating to either or both privacy or the processing of Personal Data;

- (h) **“Defined Cost”** has the meaning given to that term in the applicable Call-Off Conditions;
- (i) **“Dispute”** means any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
- (j) **“Dispute Resolution Procedure”** means the procedure for resolving Disputes under this Framework Agreement at Schedule 8 of Appendix E;
- (k) **“ECC”** means the Engineering and Construction Contract Third Edition published by the NEC at the date of this Framework Agreement (incorporating 2006, 2011 and 2013 amendments);
- (l) **“Completion Date”** has the meaning given to it in the applicable Call-Off Conditions;
- (m) **“Form of Agreement”** means the form of agreement for a Project Contract substantially in the form set out in Appendix F;
- (n) **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- (o) **“Group Company”** means any group company of the Parent Company incorporated in the United Kingdom;
- (p) **“Framework Contract Data”** means the Contract Data (Parts One and Two) in Appendix G and H of this Framework Agreement;
- (q) **“Information”** means information recorded in any form held by or on behalf of the Employer or any other member of the TfL Group;
- (r) **“Information Request”** means a request for any Information under the FOI Legislation;
- (s) **“Parent Company”** means the Contractor’s ultimate parent company;

- (t) **"Parties"** means the Employer (including its legal successor and assigns) and the Contractor;
- (u) **"Price for Work Done to Date"** has the meaning given to that term in the applicable Call-Off Conditions;
- (v) **"Prices"** has the meaning given to that term in the applicable Call-Off Conditions;
- (w) **"Prohibited Act"** means as defined in Schedule 1 (Additional Definitions) at Appendix E;
- (x) **"Project"** means Works to support Siemens and Predecessor systems on the Underground Network from time to time requested by the Employer to be undertaken by the Contractor;
- (y) **"Project Contract"** means a contract to be entered into between the Employer and the Contractor for the purpose of carrying out any Works;
- (z) **"Project Contract Data"** means the Contract Data (Parts One and Two) included in each Project Contract;
- (aa) **"Project Manager"** means the person appointed from time to time by the Employer to act as project manager for the purposes of a specific Project Contract;
- X (bb) **"~~Request for Tender~~"** means a request issued by the Employer's Representative on behalf of the Employer identified in the request in the form set out in Appendix J;
- (cc) **"Subcontractor"** has the meaning given to it in the applicable Call-Off Conditions;
- (dd) **"Subconsultant"** is a person or corporate body who has an appointment with the Contractor to provide services specifically for the Works as defined in the relevant Project Contract;
- (ee) **"Safety Breach"** means as defined in Schedule 1 (Additional Definitions) in Appendix E and to form part of each Project Contract;
- (ff) **"Systems"** means any components, computers, software, firmware and operating systems, printed circuit boards, assemblies, sub-systems, line-side equipment, wiring, and associated support equipment including power systems supplied, or designed by, the Contractor or its predecessors on the Underground Network;

- (gg) **"TfL Group"** means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The Employer is a member of the TfL Group;
- (hh) **"Transparency Commitment"** means the transparency commitment stipulated by the Local Government Transparency Code 2015 (including any subsequent legislation) in accordance with which the Employer and the TfL Group are committed to publishing their contracts, tender documents and data from invoices received;
- (ii) **"Underground Network"** means the London Underground Network; and
- (jj) **"Works"** means the works and/or services relating to the Systems specified or described in or to be developed pursuant to a Project Contract or in an instruction given in accordance with a Project Contract, such Project Contract to be instructed in accordance with clauses 6 and 7 of this Framework Agreement.

## 2. INTERPRETATION AND CONSTRUCTION

- 2.1 Words importing the singular include the plural and vice versa.
- 2.2 Words importing gender include any other gender and the neuter. The neuter includes the masculine and the feminine.
- 2.3 References to "includes" or "including" mean without limitation.
- 2.4 References to Appendices are to the Appendices to this Framework Agreement.
- 2.5 The headings of sections, clauses and sub-clauses are included for convenience only and do not affect the interpretation or construction of this Framework Agreement.
- 2.6 Unless stated as "Business Days" any periods of time referred to in this Framework Agreement and expressed in "days" shall be calculated in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
- 2.7 Where an act is required to be done within a specified period after or from a specified date the period shall begin immediately after that date.
- 2.8 Any reference to a statute or statutory provision and all statutory instruments, orders, by-laws, directions and notices made pursuant to it (whether made before or after the date of this Framework Agreement), include a reference to the same as from time to time amended, modified, extended, re-enacted, consolidated or replaced.
- 2.9 Any undertaking under this Framework Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

2.10 Any use of the expression "person" or "parties" in this Framework Agreement includes any individual, partnership, local authority, company or unincorporated association or organisation.

2.11 Nothing in the Recitals shall affect in any way the interpretation of the provisions of this Framework Agreement or any Project Contract.

**3. DURATION OF THIS FRAMEWORK AGREEMENT**

3.1 The appointment of the Contractor under this Framework Agreement shall commence from the date of this Framework Agreement and shall continue for a period of five (5) years and, if notified in writing by the Employer no later than three (3) months before the end of the five (5) year period, a further three (3) years.

**4. THE GEOGRAPHICAL EXTENT OF THIS FRAMEWORK AGREEMENT**

This Framework Agreement applies to Projects in England.

**5. NO REPRESENTATION AS TO GUARANTEE OF FUTURE WORKS**

This Framework Agreement does not constitute any guarantee that the Employer will instruct the Contractor to carry out any Works or any particular or future Projects.

**6. SCOPE OF THIS FRAMEWORK AGREEMENT**

6.1 This Framework Agreement relates to the carrying out of works relating to the Systems only including upgrade and support works to the Systems by the Contractor for the Employer.

6.2 The Employer may at its absolute discretion and from time to time issue a Request for Tender to the Contractor in accordance with the procedure set out in clause 7 during the duration of this Framework Agreement.

6.3 The Employer is not able to guarantee the extent of the Works or of the Project Contracts that may be entered into pursuant to this Framework Agreement. As a result, no minimum or maximum values shall apply to this Framework Agreement or to any Project Contracts.

**7. PROCUREMENT OF PROJECT CONTRACTS**

7.1 If the Employer requires the provision of a Project, it shall issue a request in the form of a Request for Tender. For the avoidance of doubt, the Parties acknowledge that neither the Contractor nor the Employer shall be obliged to enter into a Project Contract following the issue of a Request for Tender under this Framework Agreement nor shall the Employer be obliged to accept any tender or offer made by the Contractor pursuant to any such Request for Tender.

X  
X  
X

7.2 Following initial consultation with the Contractor in accordance with Appendix I, in the Request for Tender the Employer will select (at his sole discretion) one of the following main Options (as have been amended and restated in the Call-Off Conditions and in accordance with Secondary Option Z and incorporating the schedules at Appendix E) of the ECC to be the basis of a Project Contract:

- (a) Option A: Priced contract with activity schedule; or
- (b) Option E: Cost reimbursable contract.

7.3 Any one or more of the following ECC Secondary Options (as have been amended and restated in the Call-Off Conditions and in accordance with Secondary Option Z) may be agreed by the Employer and the Contractor. The Employer and the Contractor may select any combination of the Secondary Options depending on the particular requirements of the Project:

- X1 – Price adjustment for inflation
- X2 – Changes in the law
- X3 - Multiple currencies
- X5 – Sectional Completion
- X6 - Bonus for early Completion
- X7 - Delay Damages
- X12 - Partnering
- X15 – Limitation of the Contractor's liability for his design to reasonable skill and care
- X16 - Retention
- X18 – Limitation of Liability
- X20 - Key Performance Indicators
- X21 – Single Point Design Responsibility
- X23 - Key Person Succession Plan
- X24 – Fee Cap
- X25 - Escrow Agreement

- X27 - Design compliance
- Y(UK)2 - The Housing Grants, Construction and Regeneration Act 1996
- Y(UK)3 - The Contracts (Rights of Third Parties) Act 1999
- Z - Additional conditions of contract (as incorporated in the Call Off Conditions)

It is agreed that Secondary Options X16, X21 and X27 are not requirements of the Project which will be recorded in the Contract Data Part A of the Project Contract but may be required on future Associated Contracts. X24 may be used if the Project Contract uses the Call Off Conditions of Contract under Option E.

- 7.4 The Contract Data for each Project Contract will be completed in accordance with the Framework Contract Data.
- X 7.5 The Contractor shall complete the tender documentation including Part Two of the Contract Data in accordance with the Request for Tender (including without limitation the Framework Contract Data) and return it to the Employer within the agreed tender period.
- 7.6 Each Project Contract will be procured in accordance with applicable law and entered into on terms and conditions consistent with this Framework Agreement.
- 7.7 Each Project Contract shall incorporate the Call-Off Conditions for the applicable main Option selected by the Employer in accordance with clause 7.2.
- 7.8 Where the Employer selects or agrees to main Option A pursuant to clause 7.2, the tendered total of the Prices tendered by the Contractor shall in those cases be calculated by reference to any agreed rates, prices and item charges (including in relation to the Data for Schedule of Cost Components) set out within the Framework Contract Data and the Pricing Schedule.
- 7.9 Where the Employer selects or agrees to Option E pursuant to clause 7.2, the Contractor shall provide a first forecast of the total Defined Cost calculated by reference to the agreed rates, prices and item charges (including in relation to the Schedule of Cost Components) set out within the Framework Contract Data and the Pricing Schedule.
- X 7.10 In responding to each Request for Tender in accordance with clause 7.9 the Contractor will also undertake (a) to use reasonable endeavours to ensure that his proposed Subconsultants and Subcontractors provide equivalent information in relation to the detailed breakdown of the Prices or Defined Cost, or (b) to provide information as to the calculations used by the Contractor in assessing or understanding or evaluating how a price provided by a proposed Subconsultant and Subcontractor may have been determined..

7.11 Following receipt of the Contractor's tender submission pursuant to clause 7.5, the Employer may, within ninety (90) days of the date that the tender submission was received and by giving notice in writing:

- (a) accept the Contractor's tender, in which case clause <sup>7.12</sup>~~7.14~~ shall apply; or
- (b) notify the Contractor that the tender is not accepted (giving reasons) and may request that the Contractor provides a new tender submission. ; or
- (c) notify the Contractor that the Project Contract will not proceed.

7.12 If, following the receipt of the Contractor's tender submission pursuant to clause 7.4, the Employer wishes to accept the Contractor's tender, the Employer and the Contractor will execute the Form of Agreement within ninety (90) days of the date that the tender submission (or the new tender submitted pursuant to clause 7.11(b)) was received.

7.13 The Contractor is responsible for all and any of its own (and its Group Companies') costs, charges and expenses arising from or associated with the process in this clause 7 and the Employer shall not be liable for any such costs, charges or expenses, which shall be borne by or on behalf of the Contractor whether or not the Contractor enters into a Project Contract with the Employer.

## 8. PAYMENT

The Contractor shall be paid for the Works it provides to the Employer in accordance with the provisions of the relevant Project Contract. For the avoidance of doubt no obligation to make any payment to the Contractor will arise under this Framework Agreement.

## 9. ASSIGNMENT

9.1 The Contractor may assign, transfer or novate this Framework Agreement or any of its rights hereunder to any member of the Group Company with the prior written consent of the Employer which may not be unreasonably withheld or delayed provided always that a parent company guarantee in the form at Appendix A and legal opinion in the form at Appendix B has been delivered and the parent company guarantee or any replacement approved by the Employer (which may not be unreasonably withheld or delayed) remains in force.

9.2 The Employer may assign, transfer or novate this Framework Agreement or any part of its rights hereunder to any member of the TfL Group with the prior written consent of the Contractor which may not be unreasonably withheld or delayed.

9.3 Within fourteen (14) days of any written request by one party, the other party shall execute a deed of novation in favour of any member of the TfL Group or the Contractor's Group to whom this Framework Agreement is being novated.



10. **TERMINATION**

10.1 The Employer may for any reason without cause and at its sole discretion terminate this Framework Agreement by providing 90 days' written notice to the Contractor.

10.2 The Contractor may not terminate this Framework Agreement without the prior written consent of the Employer which shall be in the Employer's sole discretion.

10.3 Either the Employer or the Contractor may terminate this Framework Agreement by written notice if at any time:

(a) the other party commits any material breach of this Framework Agreement provided that in the case of a remediable breach, the injured party must have provided the defaulting party with prior written notice of the breach and the defaulting party must have failed to remedy the same within 14 days of such prior written notice;

(b) the other party (being a person or firm and including any partner in a firm), becomes bankrupt, has a receiving order or administration order made against it, makes any composition or arrangement with or for the benefit of its creditors, makes any assignment for the benefit of its creditors, grants a trust deed for and on behalf of its creditors or is the subject of any applications made under the Insolvency Act 1986 for the sequestration of its estate;

(c) the other party (being a company) enters into any form of liquidation (other than for the purpose of solvent reconstruction or amalgamation), has a receiver, administrator or administrative receiver appointed in respect of the whole or any part of its assets, has a winding up order made, makes any assignment or composition with any of its creditors or makes any material change in its ownership which in the sole discretion of the injured party adversely affects the ability of the other party to undertake any existing or future Project Contract; or

(d) the other party ceases or threatens to cease carrying on business.

10.3A The Employer may terminate this Framework Agreement by written notice if at any time:

(a) the Contractor commits a Safety Breach in relation to a Project Contract, provided that the Employer issues prior written notice of the Safety Breach to the Contractor and the Contractor fails to remedy the same or propose a remedy within 30 days of receipt of the notice or such further period as the Parties may agree; or

(b) the Employer has a right to terminate pursuant to clauses 27.3 or 27.4 of this Framework Agreement.



- 10.4 Existing Project Contracts will be unaffected by termination of this Framework Agreement. Existing Project Contracts may only be terminated in accordance with and subject to the terms and conditions of those contracts.
- 10.5 The liability of the parties under a Project Contract following any termination of this Framework Agreement will be determined solely in accordance with the terms and conditions of those contracts.
- 10.6 Termination of this Framework Agreement for any reason whatsoever will be without prejudice to any rights of action or remedies of either party in respect of any breach of the terms of this Framework Agreement by the other.
- 10.7 The provisions of Clauses 8 (Payment), 10 (Termination), 11 (Disputes), 12 (Waiver), 13 (Entire Agreement), 14 (Agency), 15 (Non Exclusive Agreement), 17 (Third Party Rights), 19 (Data Protection), 20 (Freedom of Information), 21 (Data Transparency), 22 (Severability), 23 (Confidentiality), 24 (Publicity), 26 (Governing Law and Jurisdiction), 27 (Prohibited Acts) and 29 (Limitation of Liability) and any other clauses or Appendices that are necessary to give effect to those clauses survive the termination or expiry of this Framework Agreement. In addition, any other provision in this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement does so.

## 11. **DISPUTES**

- 11.1 The Parties shall follow the Dispute Resolution Procedure for the avoidance and resolution of Disputes.

## 12. **WAIVER**

Failure by either Party to exercise or enforce any right conferred by this Framework Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right or of any other right on any other occasion. A waiver of any default shall not constitute a waiver of any other default.

## 13. **ENTIRE AGREEMENT**

- 13.1 This Framework Agreement supersedes any previous agreement, arrangement or understanding between the Employer and the Contractor in relation to the matters dealt with in this Framework Agreement and represents the entire understanding and agreement between the Employer (and other members of the TfL Group) and the Contractor in relation to such matters.
- 13.2 The Contractor acknowledges and agrees that he has not relied upon any prior representation by the Employer or any other member of the TfL Group in entering into this Framework Agreement. The Employer acknowledges and agrees that he has not relied upon any prior representation by the Contractor or any Group Company in entering into this Framework Agreement. For the avoidance of doubt nothing in this

Framework Agreement excludes any liability of either Party to the other for fraudulent statements or misrepresentation.

- 13.3 This Framework Agreement may only be varied by a deed in writing signed by the Employer and the Contractor.

14. **AGENCY**

Nothing in this Framework Agreement shall be deemed to create a relationship of principal and agent between the Employer and the Contractor.

15. **NON EXCLUSIVE AGREEMENT**

The appointment of the Contractor under this Framework Agreement is non-exclusive and the Employer may at any time in its absolute discretion appoint any other person to provide Works or Projects.

16. **COUNTERPARTS**

This Framework 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 instrument.

17. **THIRD PARTY RIGHTS**

- 17.1 Subject to Clause 17.2, the Parties do not intend that any of the terms of this Framework Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act") by any person who is not a party to it.

- 17.2 Any member of the TfL Group has the right to enforce the terms of this Framework Agreement as if they were a party to this Framework Agreement in the place of the Employer in accordance with the Third Party Act.

- 17.3 Notwithstanding clause 17.2, the Parties are entitled to vary or rescind this Framework Agreement without the consent of any member of the TfL Group.

18. **NOTICES IN WRITING**

- 18.1 Any notice in respect of this Framework Agreement (but not for a Project Contract) shall be deemed to have been given if sent or delivered to the person at the address given below or such other person or at such other address as may from time to time be notified by either Party to the other in writing.

- For the Employer:

Name: TBA

Address: TBA

- For the Contractor:

Name TBA

Address TBA

18.2 Any notice shall be deemed to have been given to the other Party 4 days after the date of posting (if by letter), on the day of transmission if by facsimile transmission and on the day of delivery if delivered by hand.

18.3 In an emergency an oral notice may be given subject to it being confirmed in writing by the issuing Party within 3 days.

## 19. DATA PROTECTION

19.1 The Parties shall at all times comply with the Data Protection Legislation (including any subordinate legislation made under from time to time) and any policies issued by the Employer from time to time in relation to the processing of data and shall not by any act or fault cause the other Party to be in breach of these requirements.

19.2 The Contractor:

- (a) takes appropriate technical and organisational security measures satisfactory to the Employer against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Legislation) and against accidental loss, destruction of, or damage to such Personal Data;
- (b) provides the Employer and Project Manager with such information as they may reasonably require to satisfy themselves of compliance by the Contractor with the requirements of this clause 19;
- (c) cooperates with the Employer and Project Manager in complying with requests or enquiries made pursuant to the Data Protection Legislation.

## 20. FREEDOM OF INFORMATION ACT 2000

20.1 The Contractor acknowledges that the Employer and other members of the TfL Group:

- (a) are subject to FOI Legislation and agrees to assist and co-operate with the Employer to enable the Employer to comply with his obligations under the FOI Legislation, and

- (b) may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the Contractor.
- 20.2 Without prejudice to the generality of clause 20.1, the Contractor agrees and procures that his Subconsultants and Subcontractors will agree to:
  - (a) transfer to the Employer or such other persons as may be notified by the Employer to the Contractor each Information Request relevant to this Framework Agreement, the Works or any member of the TfL Group that the Contractor or his Subconsultants and/or Subcontractors (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
  - (b) in relation to Information held by the Contractor on behalf of the Employer, provide the Employer with details about and/or copies of all such Information that the Employer requests and such details and/or copies are provided within 6 days of a request from the Employer (or such other period as the Employer may reasonably specify), and in such forms as the Employer may reasonably specify.
- 20.3 The Employer (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Contractor shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the Employer. The Employer acknowledges that certain technical or financial information of the Contractor or its group companies, forming part of this Framework Agreement or otherwise available to the Employer, is a trade secret or otherwise confidential or commercially sensitive.
- 20.4 The Contractor acknowledges that the Employer (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- 21. **DATA TRANSPARENCY**
- 21.1 The Contractor acknowledges that the Employer is subject to the Transparency Commitment. Accordingly, notwithstanding clause 20 and clause 23, the Contractor hereby gives its consent for the Employer to publish the Contract Information to the general public.
- 21.2 The Employer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Employer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Employer may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to clause 21.1. The Employer shall make the final

decision regarding both publication and redaction of the Contract Information. The Employer in exercising its absolute discretion to redact acknowledges that certain technical or financial information of the Contractor or Group Companies, forming part of this Framework Agreement or otherwise available to the Employer, is a trade secret or otherwise confidential or commercially sensitive.

21.3 The provisions of this clause 21 will survive any termination of this Framework Agreement for a period of 6 years from termination.

## 22. **SEVERABILITY**

If any term, condition or provision contained in this Framework Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Framework Agreement.

## 23. **CONFIDENTIALITY**

23.1 The Contractor shall, and shall ensure that his Subconsultants and Subcontractors and Group Companies treat all information (including information concerning the Employer or any member of the TfL Group) derived from or obtained in the course of the Framework Agreement as confidential and shall take all the necessary precautions to ensure that its employees and Subconsultants and Subcontractors and their employees treat such information as confidential.

23.2 Other than for the purpose of carrying out the Works or performing its obligations under any Associated Contracts, the Contractor shall not disclose any information or documents concerning this Framework Agreement to any third party. The Contractor undertakes to treat any information provided by the Employer as confidential and use such information solely in connection with this Framework Agreement.

23.3 The Employer shall, and shall ensure that his Subconsultants and subcontractors and other members of the TfL Group shall, treat all information (including information concerning the Contractor or an Group Company) derived from or obtained in the course of the Framework Agreement as confidential and shall take all the necessary precautions to ensure that its employees and contractors and their employees treat such information as confidential.

23.4 Other than for the purpose of performing its obligations under any Associated Contracts, the Employer shall not disclose any information or documents concerning this Framework Agreement to any third party. The Employer undertakes to treat any information provided by the Contractor as confidential and use such information solely in connection with this Framework Agreement.

23.5 Notwithstanding this clause 23, the Parties agree that the Employer may disclose on a "need to know" basis:

- (a) to LUL, Her Majesty's Railway Inspectorate and the Employer's financiers, bankers and shareholders from time to time, this Framework Agreement and information relating to it; and
- (b) to any member of the TfL Group such information on technical and operational matters relating to this Framework Agreement as is reasonably required by such member of the TfL Group,

and the Contractor consents to such disclosure provided that such disclosure is in relation to this Framework Agreement and that the recipients of the information are subject to confidentiality restrictions similar to those contained in this Framework Agreement. Further, the Employer may disclose any information pursuant to clauses 20 and 21 and the Contractor consents to such disclosure as set out therein.

23.6 The obligations in this Clause 23 shall not apply to confidential information that is in or comes into the public domain through no fault of the other Party or those for whom it is responsible or if disclosure is required by law.

**24. PUBLICITY**

The Contractor shall not append its name or give authority to the appending of its name to any publicity concerning this Framework Agreement or any Project or any Project Contract or indulge in any publicity concerning this Framework Agreement or any Project or any Project Contract without the prior written consent of the Employer.

**25. COMPETITION LAW**

Nothing in this Framework Agreement constitutes a breach of the Competition Act 1998 or the Enterprise Act 2002 and the Contractor and Employer each recognises that in carrying out the provisions of this Framework Agreement and any Project Contract its directors and employees must ensure that they comply with all relevant provisions of those Acts.

**26. GOVERNING LAW AND JURISDICTION**

This Framework Agreement shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

**27. PROHIBITED ACTS**

27.1 The Contractor does not and uses his reasonable endeavours to procure that his Subconsultants and Subcontractors do not commit any Prohibited Act.

27.2 The Employer may audit and check any and all such records as are necessary in order to monitor compliance with this clause 27 at any time during performance of this Framework Agreement and during the 12 years thereafter.

27.3 If the Contractor, any of his shareholders or any Subconsultants and Subcontractor or anyone employed by or acting on behalf of the Contractor or any of his agents commits any Prohibited Act, this constitutes a material breach of this Framework Agreement or a Project Contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 10.3A of this Framework Agreement.

27.4 If a Prohibited Act is committed by an employee of the Contractor or by any Subconsultant or Subcontractor (or employee or agent of such Subcontractor) then the Employer may (at his sole discretion) choose to serve a warning notice upon the Contractor instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the Contractor removes or procures the removal of the relevant employee or Subconsultant or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected works by another person or Subconsultant or Subcontractor this constitutes a material breach of this contract and entitles the Employer to terminate the Framework Agreement in whole or in part with immediate effect in accordance with clause 10.3A.

28. **PARENT COMPANY GUARANTEE**

28.1 The Contractor shall, upon receipt of any written request from the Employer, provide a parent company guarantee in the form at Appendix A and legal opinion in the form at Appendix B in respect of all of its obligations pursuant to this Framework Agreement and the Contractor's obligations under the Project Contracts.

29. **LIMITATION OF LIABILITY**

29.1 Save for liabilities arising under Clauses 19, 20, 21, 23 and 27 and without prejudice to the Parties' rights under Project Contracts, neither Party shall be liable to the other for any losses of whatsoever nature whether direct, indirect or consequential arising of or in connection with the Framework Agreement, in particular (without limitation) the termination of this Framework Agreement or the failure by the Employer to issue or the Contractor to accept a Project Contract.

IN WITNESS whereof this Framework Agreement has been executed and unconditionally delivered as a deed by the parties the day and year first above written

6179

<sup>A</sup>  
THE COMMON/~~CORPORATE~~ SEAL of  
LONDON UNDERGROUND LIMITED  
was affixed to THIS DEED  
in the presence of:



~~Signature of Director/Secretary~~

~~Print name of Director/Secretary~~

*A*

*[Handwritten mark]*

Authorised Sign

~~Signature of Director~~

~~Print name of Director~~

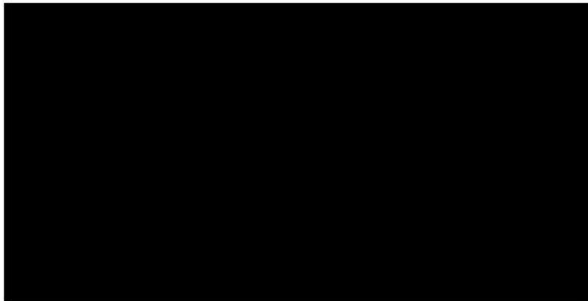
EXECUTED AS A DEED  
by SIEMENS MOBILITY LIMITED  
acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary











**Siemens Mobility Limited**

**FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**

**Appendix A**

**(Schedule 2)**

**Parent Company Guarantee**



**SCHEDULE 2**

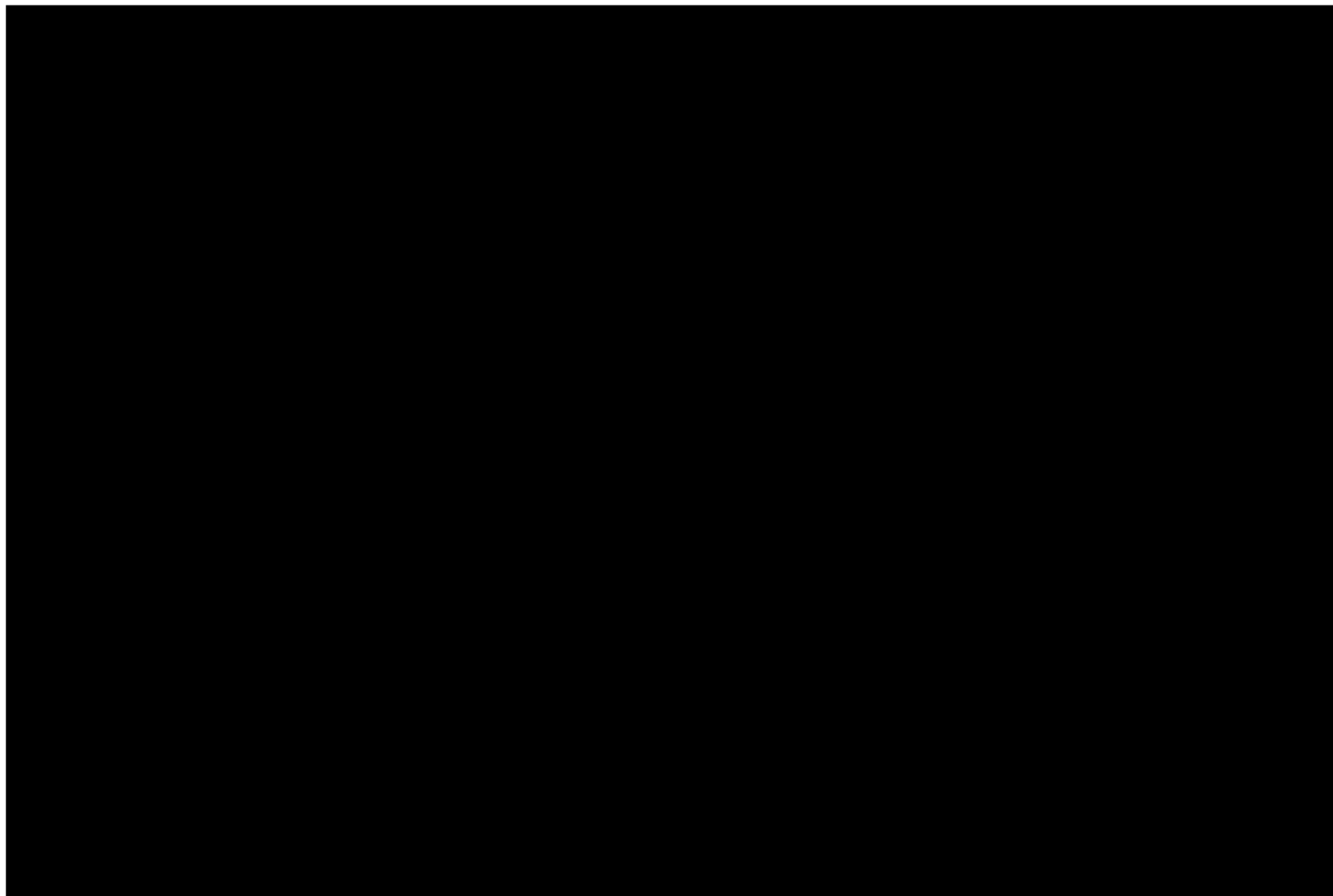
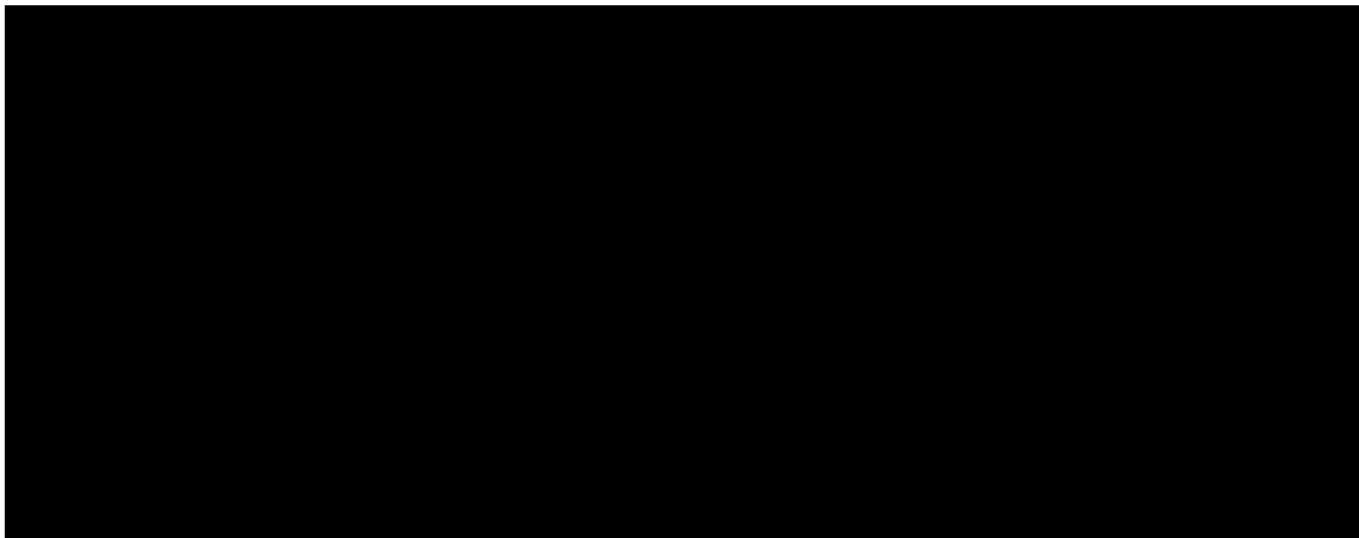
Form of Parent Company Guarantee

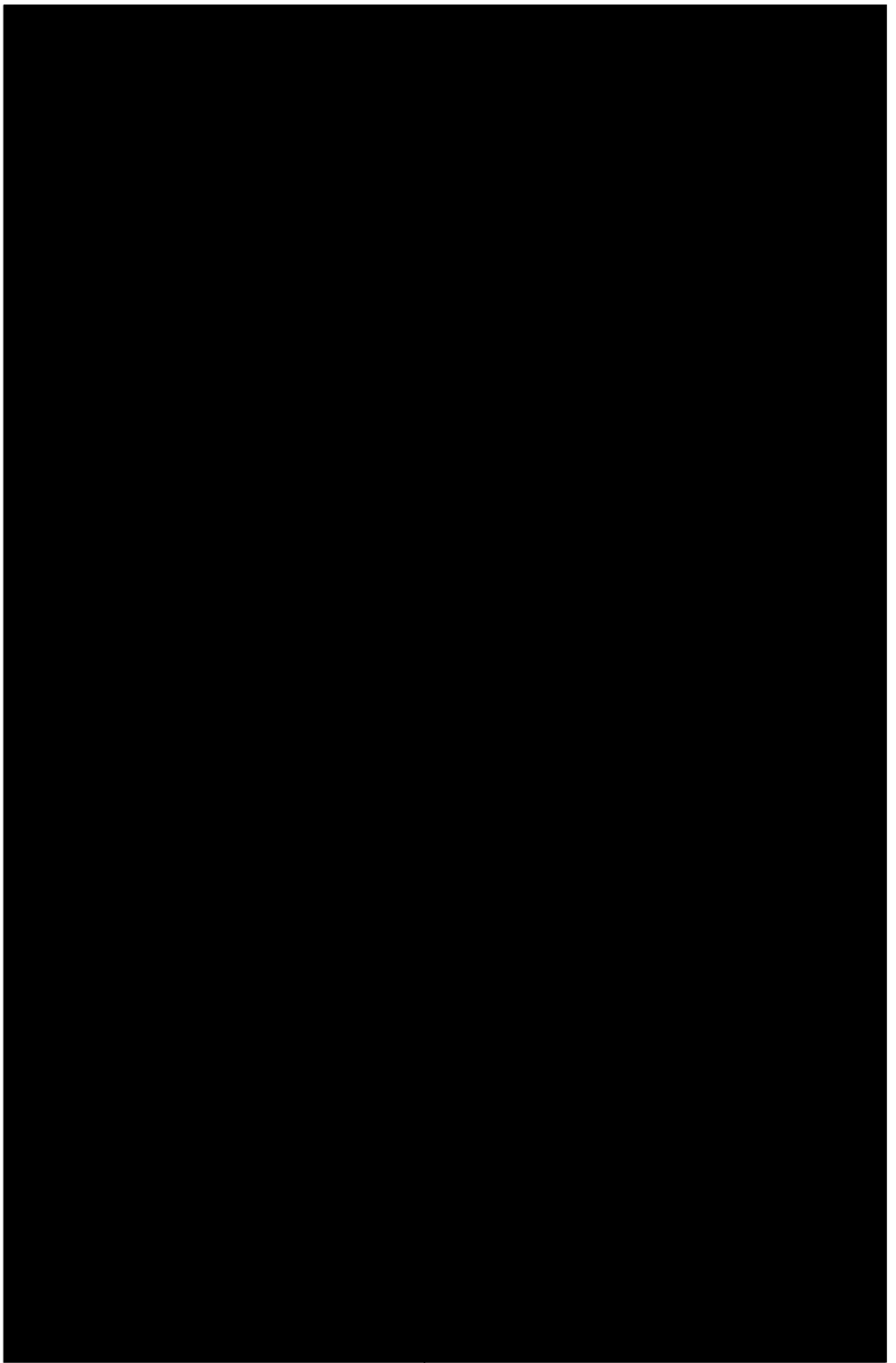
**PARENT COMPANY GUARANTEE No.**

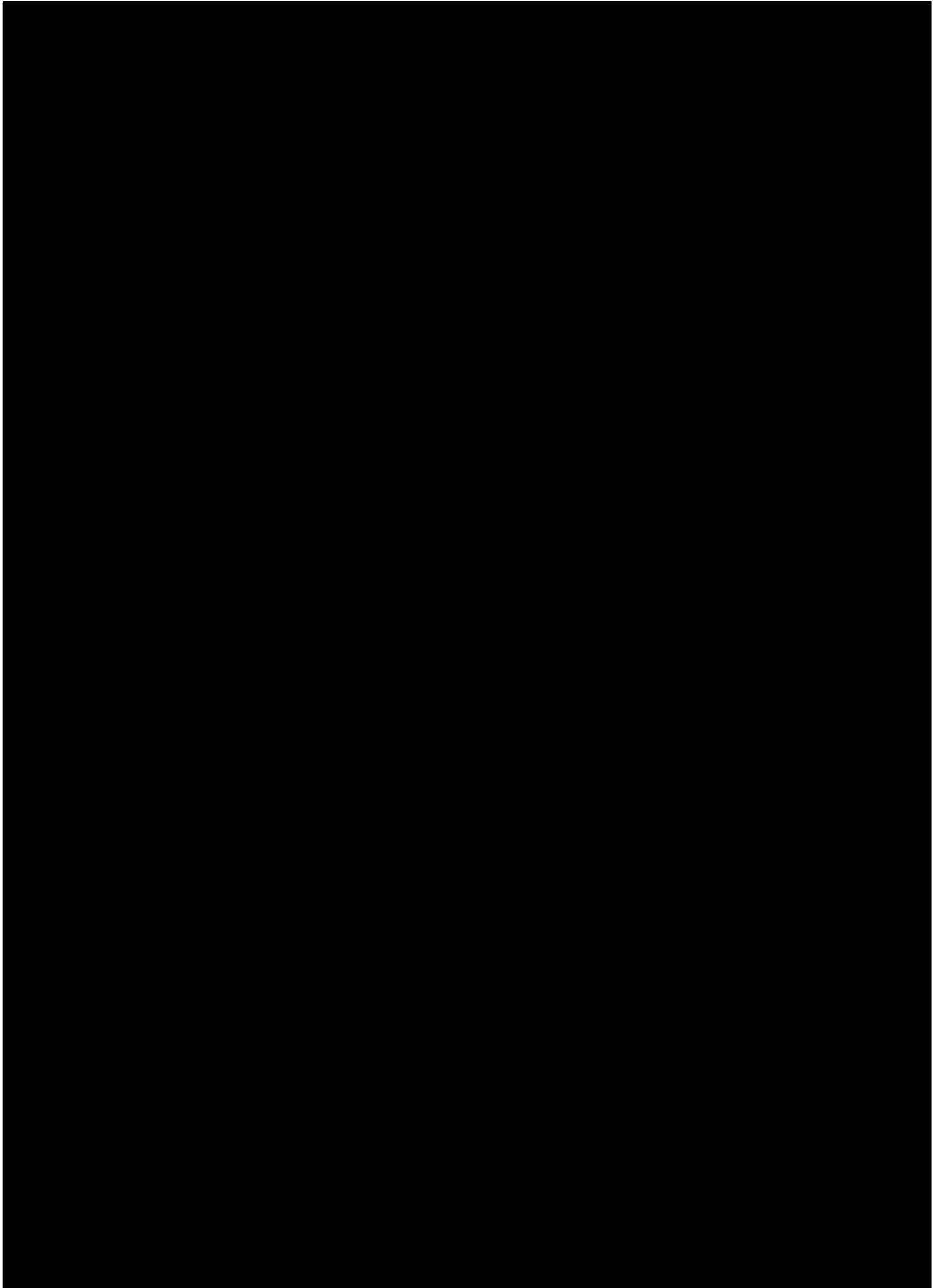
**THIS GUARANTEE** is made this [            ] day of [        ]

**BETWEEN:**

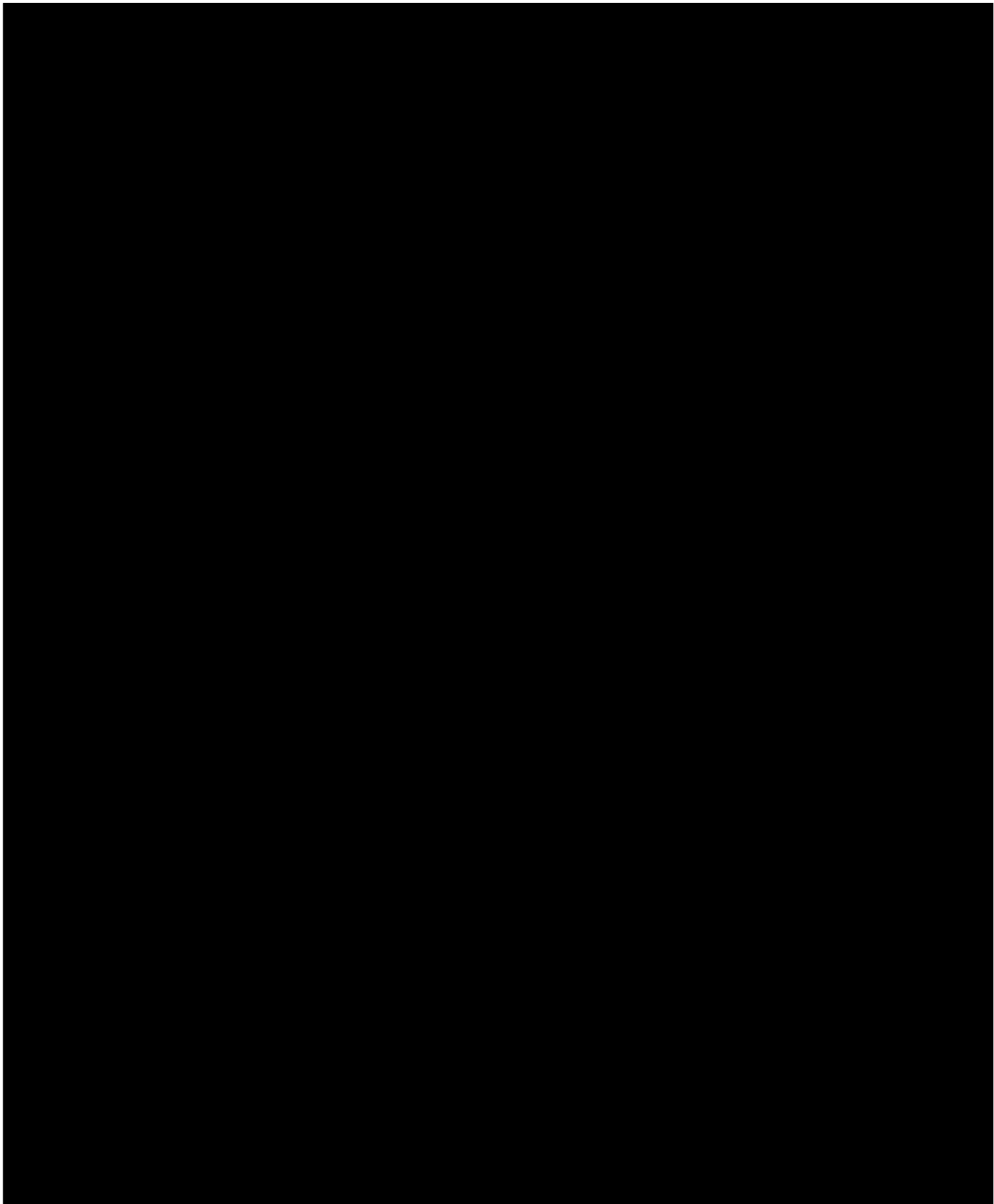
1. **SIEMENS AKTIENGESELLSCHAFT**, a company established in Berlin and Munich, Germany, company number, 12300 Berlin-Charlottenburg and 6684 Munich and with registered office at Wittelsbacherplatz 2, D-80333 Munich (the "**Guarantor**"); and
2. **LONDON UNDERGROUND LIMITED**, with registered office at 55 Broadway, London SW1H 0BD, company number 01900907 (the "**Beneficiary**").















**Siemens Mobility Limited**

**FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**

**Appendix B**

**(Schedule 3)**

**Legal Opinion Template**



**SCHEDULE 3**

Form of Legal Opinion Letter



---

DRAFT DATED [ ] MARCH 2018

SUBJECT TO REVIEW OF FINAL DOCUMENTATION AND  
LEGAL OPINION COMMITTEE APPROVAL AND INTERNAL REVIEW.

SUBJECT TO CHANGES IN LAW (IF ANY).

---

[*NAME OF LAW FIRM*] OPINION LETTER  
(GERMAN LAW)  
ISSUED IN CONNECTION WITH  
A [PARENT COMPANY GUARANTEE] IN CONNECTION  
WITH [THE CENTRAL LINE LIFE EXTENSION PROJECT  
WITH  
LONDON UNDERGROUND LIMITED]

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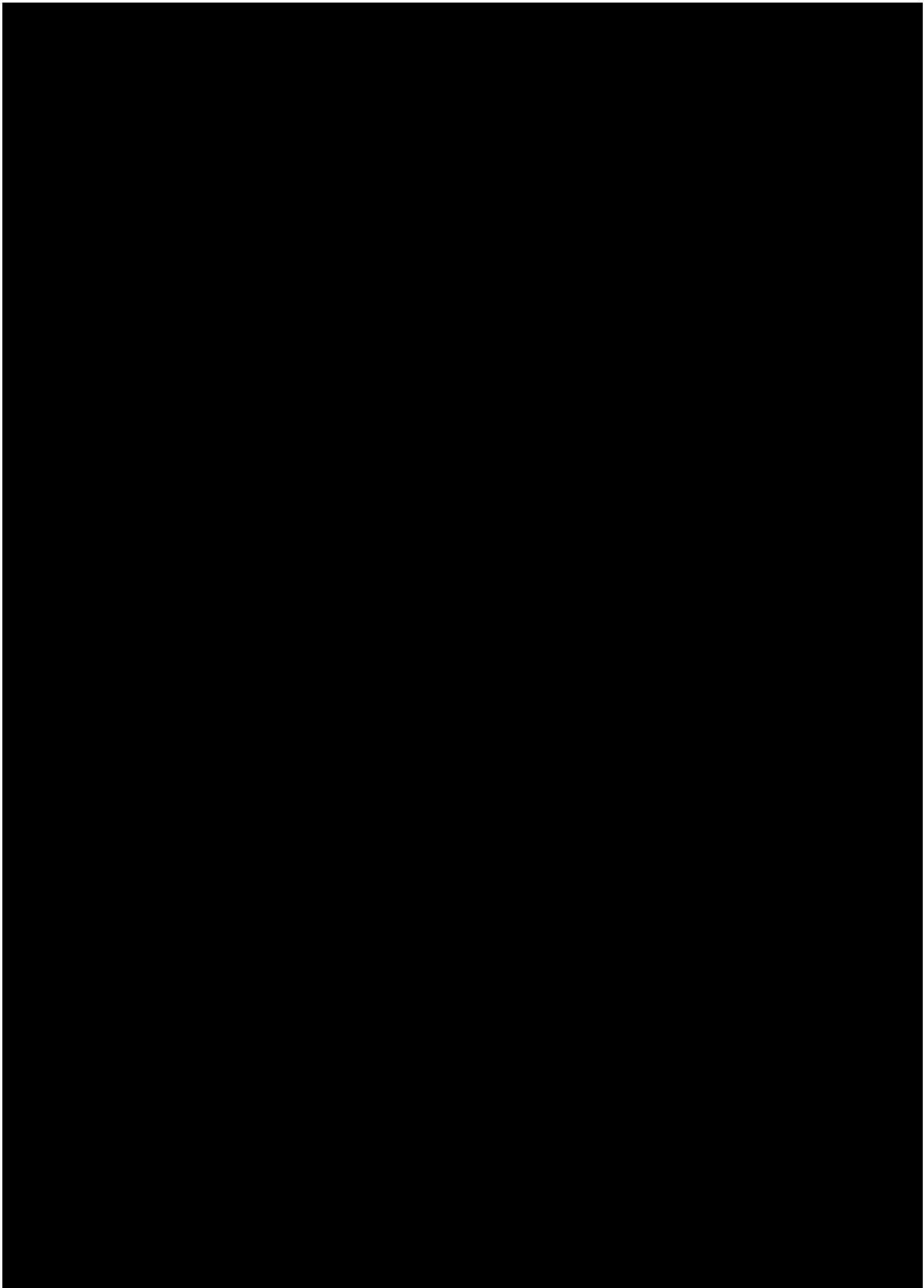
Draft 1

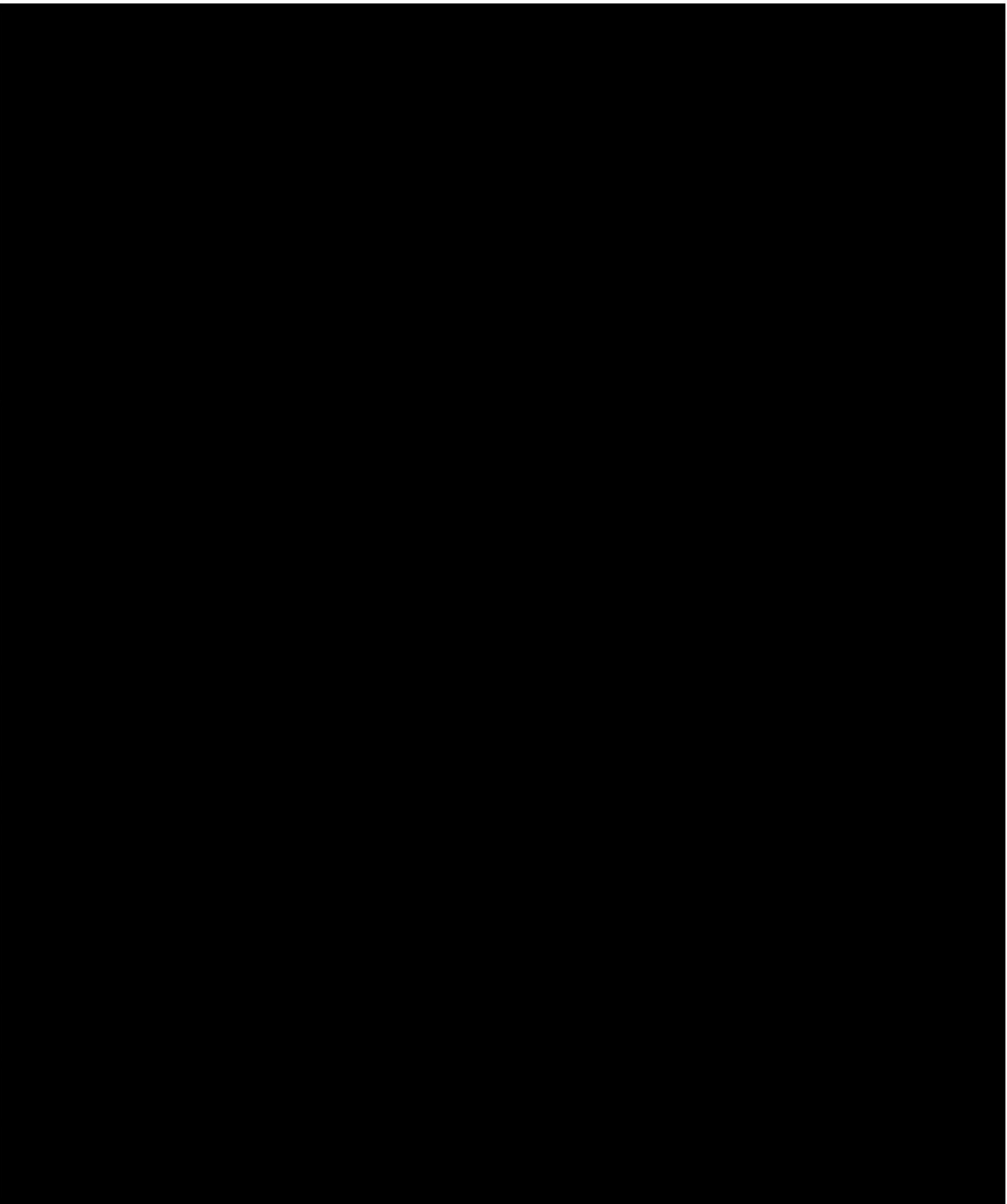
Draft Date 6 March 2018

To: [London Underground Limited] (the "Addressee")

[Central line life extension project with London Underground Limited] - [parent company guarantee]

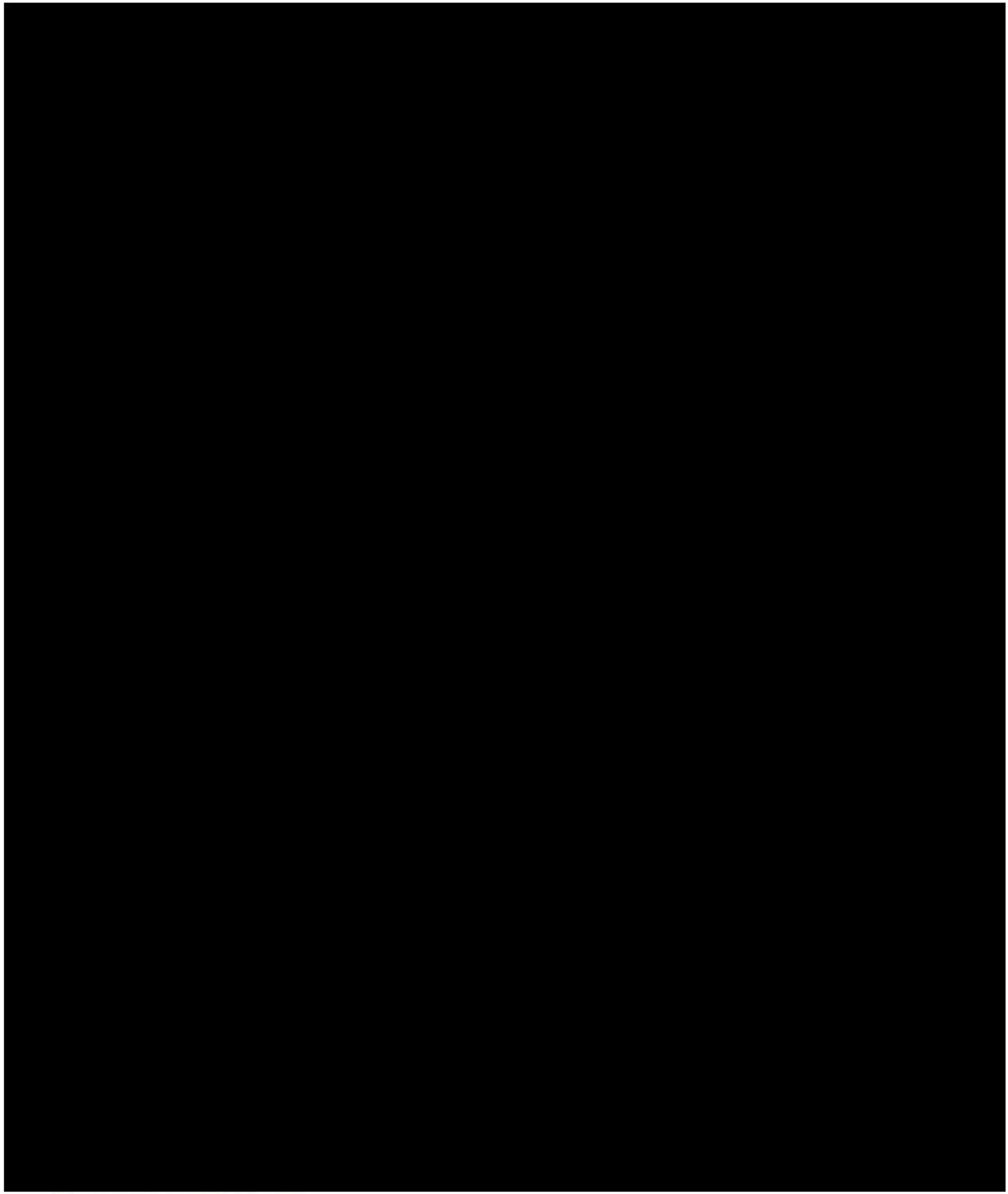






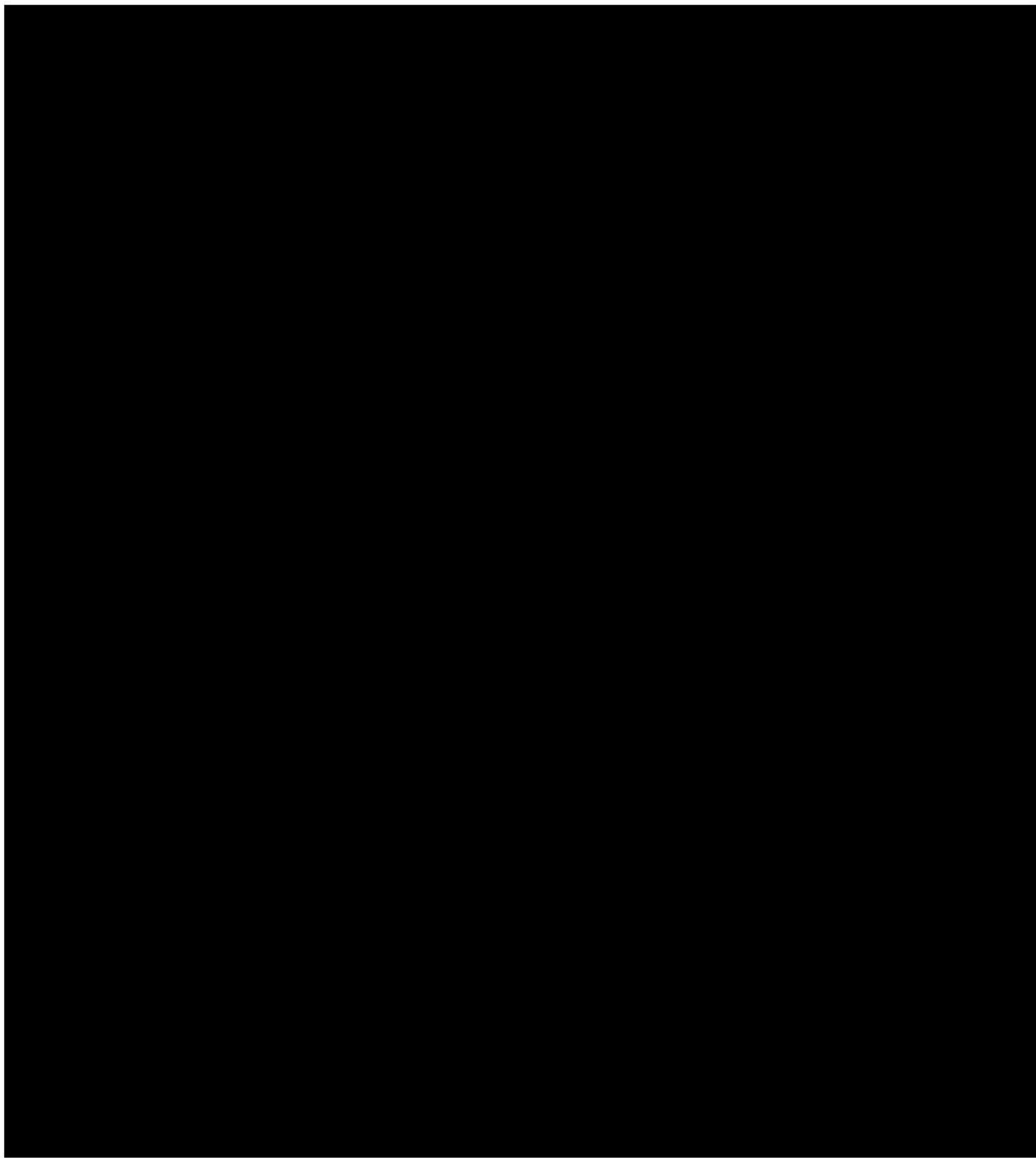
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<sup>1</sup> Subject to review of the [Parent Company Guarantee].  
<sup>2</sup> Subject to review of the [Parent Company Guarantee].



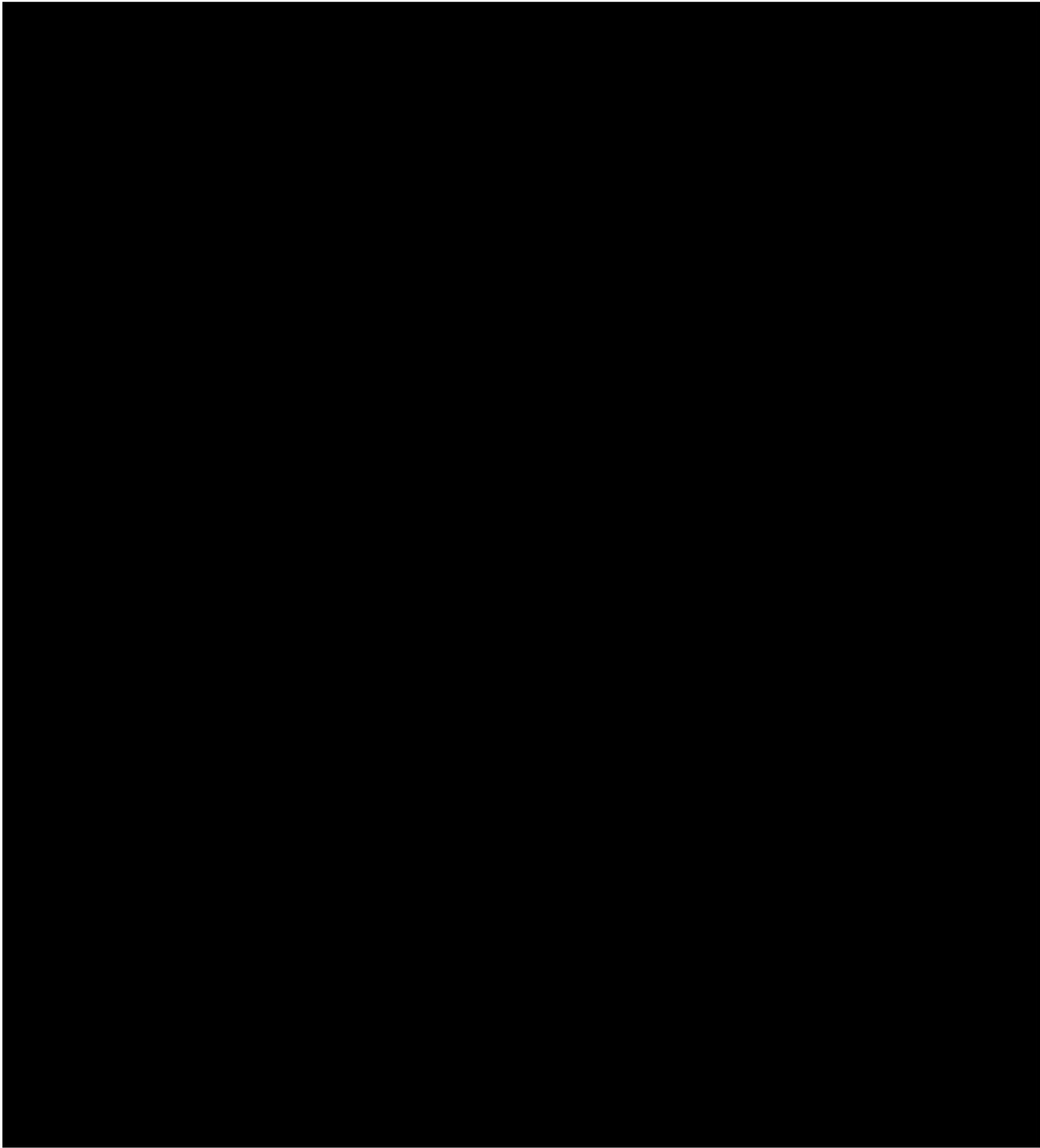
<sup>3</sup> Subject to review of the **Parent Company Guarantee**.

<sup>4</sup> Subject to review of the **Parent Company Guarantee**.



<sup>5</sup> Subject to review of the [Parent Company Guarantee].

<sup>6</sup> Subject to review of the [Parent Company Guarantee].

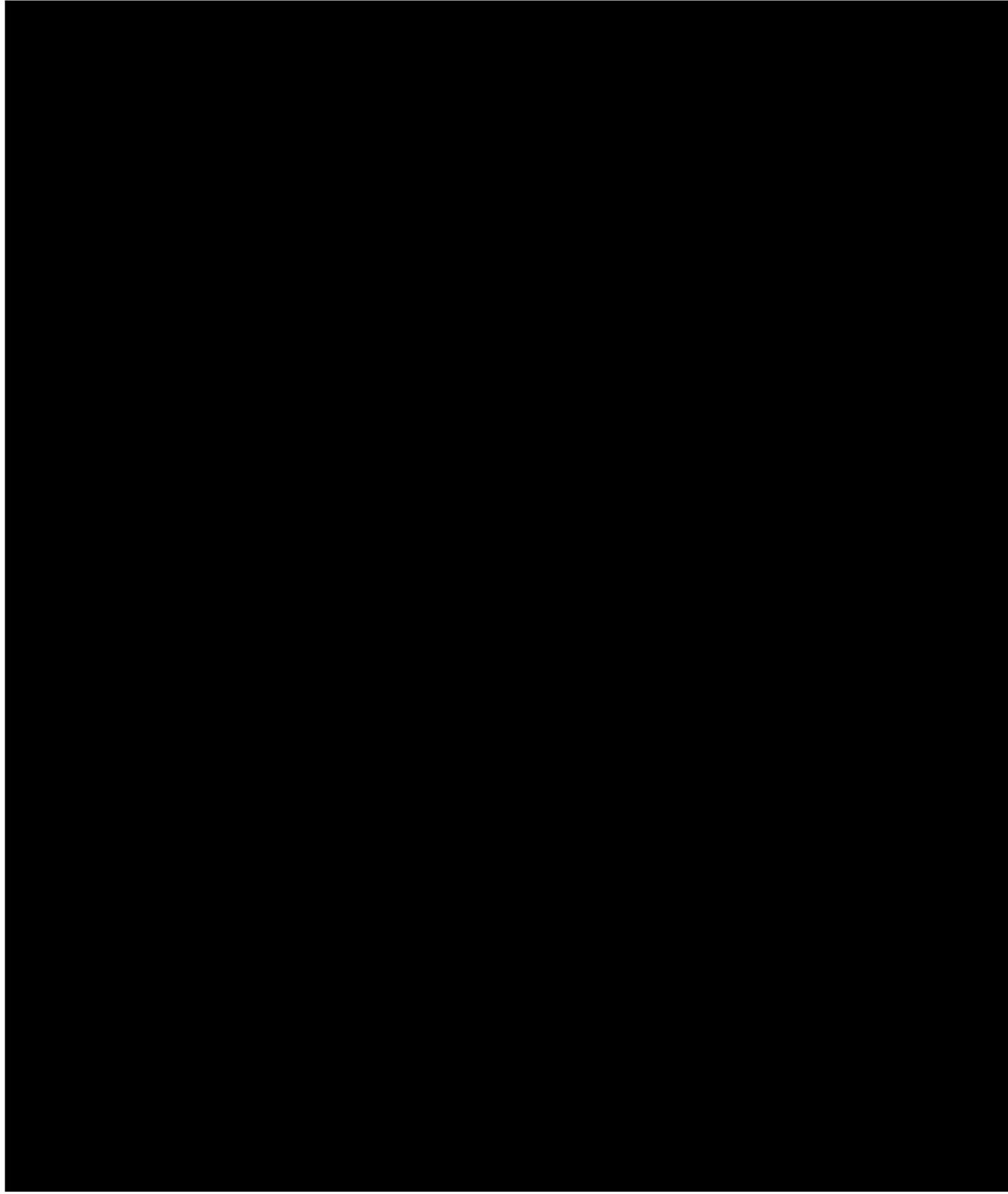


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<sup>7</sup> Subject to review of the Parent Company Guarantee.

<sup>8</sup> Subject to review of the Parent Company Guarantee.

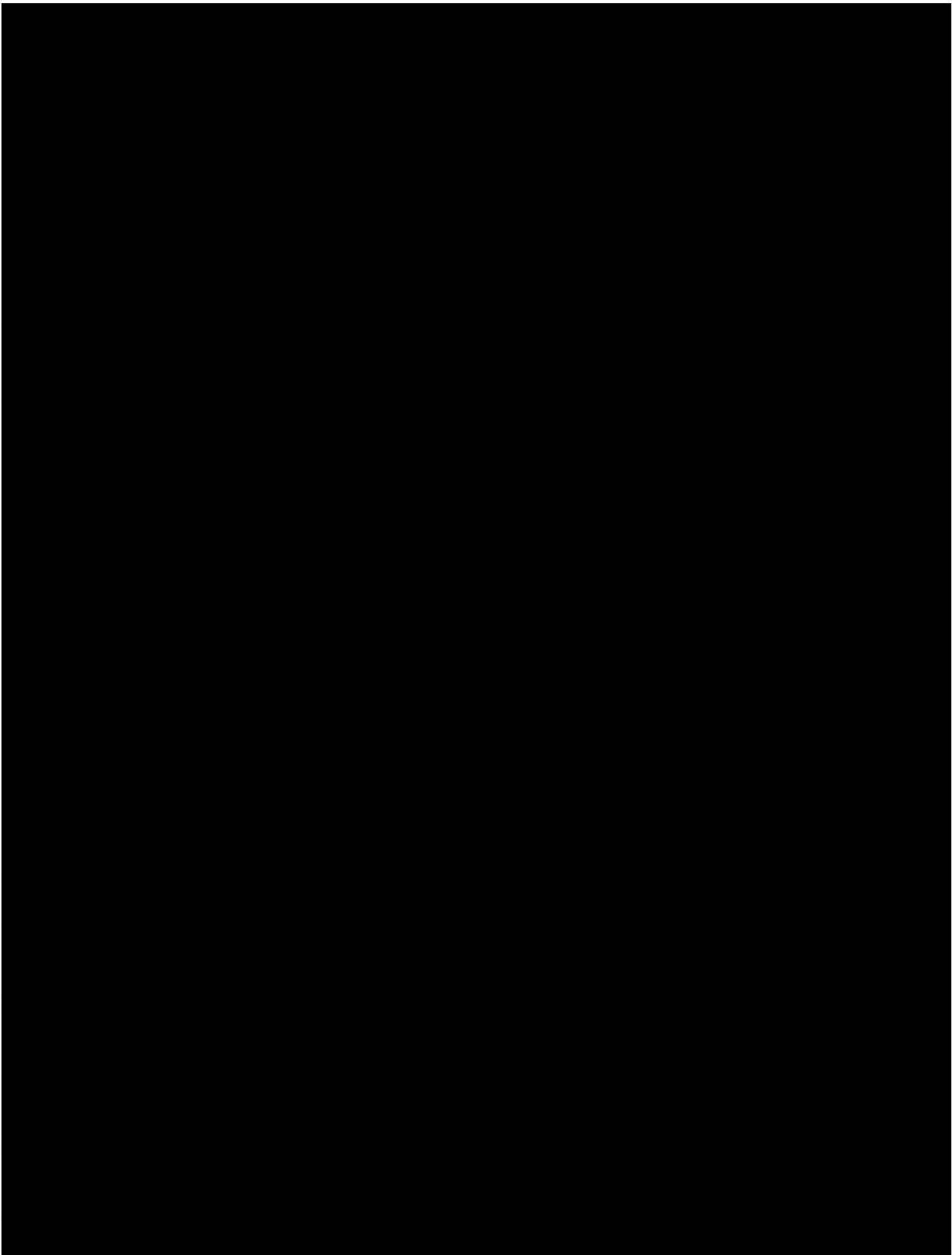
<sup>9</sup> Subject to review of the Parent Company Guarantee.



---

<sup>10</sup> Subject to review of the **Parent Company Guarantee**.









**Siemens Mobility Limited**

## **FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**

**Appendix C**

**CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION A**

This amended contract is based on the NEC family of contracts (2013 edition), the copyright of which belongs to the Institution of Civil Engineers.

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## CORE CLAUSES

### 1 General

	<b>Actions</b>	<b>10</b>	
		10.1	The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation.
	<b>Identified and defined Terms</b>	<b>11</b>	
		11 1	In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
Z1.1		11.2	(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i> . The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes. (2) Completion is when the <i>Contractor</i> has <ul style="list-style-type: none"><li>• done all the work which the Works Information states he is to do by the Completion Date and</li><li>• corrected notified Defects which would have prevented the <i>Employer</i> from using the <i>works</i> and Others from doing their work.</li></ul> If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the <i>works</i> and for Others to do their work. (3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract
Z1 1.1			(4) The Contract Date is the date of this contract.
Z1.1.2			(5) A Defect is <ul style="list-style-type: none"><li>• a part of the <i>works</i> which is not in accordance with the Works Information or</li><li>• a part of the <i>works</i> designed by the <i>Contractor</i> which is not in accordance with the applicable law, any applicable Standards or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted</li></ul>
Z1.1.3			(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> or the <i>Contractor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none. (7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the <i>works</i> . (8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work. (9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.
Z1.1.4			(10) Others are people or organisations who are not the <i>Employer</i> , the <i>Project Manager</i> , the <i>Supervisor</i> , the Adjudicator the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i> .
Z1 1.5			(11) The Parties are the <i>Employer</i> (which expression includes his successors in title and assigns), the <i>Contractor</i> , and a member of the Contractor's Group to which the contract has been assigned, transferred or novated with the prior written consent of the <i>Employer</i> , such consent not to be unreasonably withheld or delayed. (12) Plant and Materials are items intended to be included in the <i>works</i> . (13) To Provide the Works means to do the work necessary to complete the <i>works</i> in accordance with this contract and all incidental work, services and actions which this contract requires

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Project Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(15) The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in this contract.

(16) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(17) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- construct or install part of the *works*,
- provide a service necessary to Provide the Works or
- supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works* or
- a Subconsultant providing consulting design services.

(18) The Working Areas are those parts of the *working areas* which are

- necessary for Providing the Works and
- used only for work in this contract

unless later changed in accordance with this contract.

(19) Works Information is information which either

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with this contract.

(20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

(22) Defined Cost is the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not-excluding the cost of preparing quotations for compensations events.

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group,

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

Z1.2 11 3 Additional defined terms are included in Schedule 1.

**Interpretation and the law 12**

Z1.3 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

Z1.3.1 12.1A References to "this contract" mean the contract between the *Employer* and the *Contractor* including the documents listed as forming the contract in the Form of Agreement.

- Z1.3.2 12.1B In this contract, unless the context otherwise requires, references to:
- (a) "including" means "including without limitation", and
  - (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be)
- Z1.3.3 12.2 This contract is governed by and is construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.4 12.3A Words denoting persons or parties includes individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.5 12.4 This contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- Z1.3.6 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*
- Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- Z1.3.7 12.7 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:
- that law as from time to time amended, re-enacted or substituted and
  - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.
- The *Contractor* complies with the applicable law. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.
- Z1.3.8 12.8 Not used.
- Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

**Communications 13**

- Z1.4
- Z1.4.1 13.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* comply with the communications requirements in the Works Information. Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.

- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

**The Project Manager and the Supervisor**

14

Z1.5

- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.

- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.

- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.

- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.

Y2.1/Z1.5.1

- 14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

**Adding to the Working Areas**

15

- 15.1 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the Works or used for work not in this contract.

**Early warning**

16

Z1.7

Z1 7.1

- 16 1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date, or
- impair the performance of the works in use,
- adversely affect the work of Others, or
- adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the Project) and/or cause any disruption to the operation of the Underground Network

In the notification the *Contractor* and the *Project Manager* state whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting.



The *Contractor* may give an early warning by notifying the *Project Manager* of any other matter which could increase his total cost. The *Project Manager* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.

16.3 At a risk reduction meeting, those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with this contract, will take them and
- deciding which risks have now been avoided or have passed and can be removed from the Risk Register

16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register

**Ambiguities and  
Inconsistencies**

17

17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

**Illegal and impossible  
requirements**

18

18.1 The *Contractor* notifies the *Project Manager* as soon as he considers that the Works Information requires him to do anything which is illegal or impossible. If the *Project Manager* agrees, he gives an instruction to change the Works Information appropriately

**Prevention**

19

19.1 If an event occurs which

- stops the *Contractor* completing the works or
- stops the *Contractor* completing the works by the date shown on the Accepted Programme,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event

## 2 The *Contractor's* main responsibilities

<b>Providing the Works</b>	<b>20</b>	
Z1.8		
Z1.8.1	20.1	The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.2- 20.5	Not used (as not option A clauses)
Z1.8.2	20.6	These <i>conditions of contract</i> and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the <i>Contractor</i> both before and after the Contract Date
<b>The <i>Contractor's</i> design</b>	<b>21</b>	
Z1.9		

- Z1.9.1 21.1 The *Contractor* is responsible for the design of all of the *works* which the Works Information states he is to design and for the integration of the works into the Systems but for the avoidance of doubt the *Contractor* is not responsible for a defect in the design of the Systems
- Z1.9.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with the Works Information, applicable Standards or the applicable law.
- The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.
- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

**Using the Contractor's Design 22**

- Z1.10 22.1 The *Employer* may use and copy the *Contractor's* design for any purpose specified in clause Z2.7.
- Z1.10.1

**Design of Equipment 23**

- 23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with
- the Works Information,
  - the *Contractor's* design which the *Project Manager* has accepted or
  - the applicable law.

**People 24**

- Z1.11 24.1 The *Contractor* complies with Option X23 (where applicable) and the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- Z1.11.1
- Z1.11.2 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under his control who has misconducted himself, been incompetent, negligent or in breach of health and safety requirements. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

**Working with the Employer and Others 25**

- Z1.12 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *works*. He co-operates with Others and shares the Working Areas with them as stated in the Works Information.
- Z1.12.1 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.
- Z1.12.1 25.3 [If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either
- in carrying out work or
  - by paying an additional amount to Others in carrying out work
- on the same project the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The *Employer's* right to recover the additional cost is his only right in these circumstances ]<sup>11</sup>

**Subcontracting 26**

- Z1.13  
Z1.13.1 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted and he complies with the provisions of the Works Information. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*
- Z1.13.2 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.
- Z1.13.2 26.3 The *Contractor* submits the proposed contract for each subcontract to the *Project Manager* for acceptance unless the Project Manager has agreed that no submission is required.
- The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that
- they will not allow the *Contractor* to Provide the Works,
  - they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation
  - they contain payment terms that do not comply with the Public Contracts Regulations 2015. or
  - where required by Z2.2.1 they do not grant suitable third party rights (by way of collateral warranty or pursuant to the Contracts (Rights of Third Parties) Act 1999) in favour of the *Employer* or other members of the TfL Group.

**Other responsibilities 27**

- Z1.14 27.1 The *Contractor* obtains approval of his design from Others where necessary.
- Z1.14 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for
- the *Project Manager*,
  - the *Supervisor* and
  - Others notified to him by the *Project Manager*

<sup>11</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option A  
Consolidated Conditions of Contract

Z1.14.1

- 27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* or the *Supervisor*.
- 27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information and co-operates with persons having health and safety responsibilities on or adjacent to the Site for the effective discharge of all such responsibilities. Without prejudice to the generality of the above, if a Safety Breach is committed by one of the *Contractor's* employees or agents or by any Subcontractor (or one of the Subcontractor's employees or agents) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect pursuant to clause 91.8 and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant person or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected *works* by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

### 3 Time

<b>Starting, Completion and Key Dates</b>	<b>30</b>
Z1.15	30.1 The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.15.1	30.1A The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information. The <i>Supervisor</i> may attend the inspection.
Z1.15.2	30.2 The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
	30.3 The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
<b>The programme</b>	<b>31</b>
Z1.16	31.1 If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.16.1	31.2 The <i>Contractor</i> shows on each programme which he submits for acceptance <ul style="list-style-type: none"><li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li><li>• planned Completion,</li><li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li><li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li><li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li><li>• provisions for<ul style="list-style-type: none"><li>• float,</li><li>• time risk allowances,</li><li>• environmental and health and safety requirements and</li></ul></li><li>• the procedures set out in this contract,</li><li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none"><li>• any access in accordance with the access requirements in the Works Information and access to a part of the Site if later than its <i>access date</i>,</li><li>• acceptances,</li><li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li><li>• information from Others,</li></ul></li><li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and</li></ul>

- other information which the Works Information requires the *Contractor* to show on a programme submitted for acceptance.

31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which this contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Works Information.

31.4 **The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance.**

**Revising the programme**

**32**

32.1 The *Contractor* shows on each revised programme

- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
- the effects of implemented compensation events,
- how the *Contractor* plans to deal with any delays and to correct notified Defects and
- any other changes which the *Contractor* proposes to make to the Accepted Programme.

32.2 The *Contractor* submits a revised programme to the *Project Manager* for acceptance

- within the *period for reply* after the *Project Manager* has instructed him to,
- when the *Contractor* chooses to and, in any case,
- at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the works.

**Access to and use of the Site**

**33**

Z1.17  
Z1.17.1

33.1 Subject to the provisions of the Works Information regarding access, the *Employer* allows access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Accepted Programme.

Z1.17.2

33.1A The *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and access is limited in accordance with this contract but shall be sufficient to enable delivery of the works in accordance with the Works Information and the Accepted Programme.

**Instructions to stop or not to start work**

**34**

34.1 The *Project Manager* may instruct the *Contractor* to stop or not to start any work and may later instruct him that he may re-start or start it.

**Take over**

**35**

Z1.18

35.1 The *Employer* need not take over the works before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the *Employer* takes over the works not later than two weeks after Completion.

Z1.18.1

35.2 The *Employer* may use or permit Others to use any part of the works before Completion has been certified. If he does so, he takes over the part of the works

when he (or Others) begins to use it except if the use is

- for a reason stated in the Works Information,
- to suit the Contractor's method of working or
- in accordance with the Accepted Programme.

35.3 The *Project Manager* certifies the date upon which the *Employer* takes over any part of the works and its extent within one week of the date.

**Acceleration 36**

Z1 19

36.1 The *Project Manager* may instruct the *Contractor* to submit a quotation for an acceleration to achieve Completion before the Completion Date. The *Project Manager* states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of his assessment with each quotation.

36.2 The *Contractor* submits a quotation or gives his reasons for not doing so within the *period for reply*

Z1.19.1

**36.3 When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction and the *Project Manager* makes his own assessment of the compensation event**

36.4 Not used (as not an Option A clause).



## 4 Testing and Defects

- Tests and inspections 40**
- 40.1 This clause only applies to tests and inspections required by the Works Information or the applicable law.
- 40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Works Information.
- 40.3 The *Contractor* and the *Supervisor* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated.
- 40.5 The *Supervisor* does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful becomes due at the later of the *defects date* and the end of the last *defect correction period* if
- the *Supervisor* has not done the test or inspection and
  - the delay to the test or inspection is not the *Contractor's* fault.
- 40.6 The *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.
- Testing and inspection before delivery 41**
- 41.1 The *Contractor* does not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection.
- Searching for and notifying Defects 42**
- 42.1 Until the *defects date*, the *Supervisor* may instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
  - providing facilities, materials and samples for tests and inspections done by the *Supervisor* and
  - doing tests and inspections which the Works Information does not require.
- 42.2 Until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it
- Correcting Defects 43**
- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.
- 43.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
- 43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.
- 43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.

**Accepting Defects 44**

- 44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.
- 44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

**Uncorrected Defects 45**

- 45.1 If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.
- 45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

## 5 Payment

	<b>Assessing the amount due</b>	<b>50</b>	
Z1.20		50.1	The <i>Project Manager</i> assesses the amount due at each assessment date. The first assessment date is decided by the <i>Project Manager</i> to suit the procedures of the Parties and is not later than the <i>assessment interval</i> after the <i>starting date</i> . Later assessment dates occur <ul style="list-style-type: none"><li>• at the end of each <i>assessment interval</i> until four weeks after the <i>Supervisor</i> issues the Defects Certificate and</li><li>• at Completion of the whole of the <i>works</i></li></ul>
Z1.20.1		50.1A	The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to him at the payment due date and the basis on which that sum is calculated.
		50.2	The amount due is <ul style="list-style-type: none"><li>• the Price for Work Done to Date,</li><li>• plus other amounts to be paid to the <i>Contractor</i>,</li><li>• less amounts to be paid by or retained from the <i>Contractor</i>.</li></ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due.</p>
		50.3	If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.
Z1.20.2		50.3A	If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one tenth of the total cumulative increase in the amount due since the assessment date following the last submission of such revised programme is retained in all assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.
Z1.20.3		50.4	In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.
		50.5	The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.
		<b>50.6</b>	<b>Not used (as not an Option A clause).</b>
		<b>50.7</b>	<b>Not used (as not an Option A clause).</b>
Z1.20.4		50.8	If any performance bond or parent company guarantee required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such documents have been delivered.
Z1.20.5		50.9	If a warranty required under sub-clause Z2.2 is not delivered to the <i>Employer</i> in accordance with the provisions of sub-clause Z2.2 the <i>Employer</i> may withhold the sum stated in the Contract Data which is not payable to the <i>Contractor</i> until such warranty is delivered.
Z1.20.6		50.10	If where the Contract Data states that this clause is to apply a Management Plan is not provided by the times or within the timescales required by this contract, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such Management Plan is

retained in all assessments of the amount due and is not payable to the *Contractor* until such Management Plan is delivered

Z1.20.7

50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:

- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
- in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

**Payment 51**

Y1.1 1

51.1 The *Project Manager* certifies a payment within seven days of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the currency of this contract unless otherwise stated in this contract. If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

Y1.1 2

Y2.2 The date on which payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.

Y1.1 2A

51.1B The *Project Manager's* certificate is the *Employer's* notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount is calculated.

Y1.1.2B

51.1C Not later than five days after receipt of the payment certificate the *Contractor* delivers to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.

Y1.1 3

51.2 Each certified payment is made within twenty-one days of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue, or either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

Y1 1.3A

51.2A If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand.

Y1 1.4

Y2 3 If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

51.3 If an amount due is corrected in a later certificate either

- by the *Project Manager* in relation to a mistake or a compensation event or
- following a decision of the *Adjudicator* or the *tribunal*,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is

certified and is included in the assessment which includes the correcting amount.

51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

**Defined Cost 52**

52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

53 **Not used (as not an Option A clause)**

**The Activity Schedule 54**

54.1 **Information in the Activity Schedule is not Works Information or Site Information.**

54.2 **If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.**

54.3 **A reason for not accepting a revision of the Activity Schedule is that**

- **it does not comply with the Accepted Programme,**
- **any changed Prices are not reasonably distributed between the activities or**
- **the total of the Prices is changed**

55 **Not used (as not an Option A clause)**

Z1.21.1

56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever

- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
- any Losses are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract or any other contract between the *Employer* and the *Contractor*

subject to issue of a Pay Less Notice by or on behalf of the *Employer* the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.22.1

57.1 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the *Contractor* complies with the provisions of the Works Information regarding the Construction Industry Scheme

## 6 Compensation events

### Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events

(1) The *Project Manager* gives an instruction changing the Works Information except

- a change made in order to accept a Defect
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer*, or
- an instruction which is stated in this contract not to give rise to a compensation event.

(2) Subject to the requirements of the Works Information regarding access and provided that the *Contractor* has booked and co-ordinated access in accordance with its requirements, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

(3) The *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.

(4) The *Project Manager* gives an instruction to accelerate or to stop or not to start any work or to change a Key Date.

(5) The *Employer* or Others

- do not work within the times shown on the Accepted Programme,
- do not work within the conditions stated in the Works Information or
- carry out work on the Site that is not stated in the Works Information.

(6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract.

(7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

(8) The *Project Manager* or the *Supervisor* changes a decision which he has previously communicated to the *Contractor*

(9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in this contract.

(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.

(11) A test or inspection done by the *Supervisor* causes unnecessary delay.

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- [are not conditions of a type referred to in the Ground Baseline Report included in the [Site][Works] Information]<sup>12</sup>
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

(13) A *weather measurement* is recorded

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<sup>12</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option A  
Consolidated Conditions of Contract

- within a calendar month,
- before the Completion Date for the whole of the *works* and
- at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in ten years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event

(14) An event which is an *Employer's* risk stated in this contract.

(15) The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.

(16) The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Works Information.

(17) The *Project Manager* notifies a correction to an assumption which he has stated about a compensation event.

(18) A breach of contract or act of prevention on the part of ~~by~~ the *Employer* which is not one of the other compensation events in this contract.

(19) An event which

- stops the Contractor completing the works or
  - stops the Contractor completing the works by the date shown on the Accepted Programme,
- and which
- neither Party could prevent,
  - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
  - is not one of the other compensation events stated in this contract.

Z1.23.2 60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

- the Site Information,
- publicly available information referred to in the Site Information,
- information obtainable from a visual inspection of the Site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

Z1.23.3 60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work

**Notifying compensation Events 61**

Z1 24 61.1 For compensation events which arise from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the *Project Manager* notifies the *Contractor* of the compensation event at the time of that communication. He also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* puts the instruction or changed decision into effect

61.2 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect

Z1.24.1 61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which he expects to happen as a compensation event if

- the *Contractor* believes that the event is a compensation event and
- the *Project Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware or when he ought reasonably to have become aware of the

event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving a instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

Z1.24.2

61.4 If the *Project Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either

- one week after the *Contractor's* notification or
- a longer period to which the *Contractor* has agreed,

If the *Project Manager's* decision is that the Prices, the Completion Date or the Key Dates are not to be changed, the *Contractor* notifies the *Project Manager* if he does not accept the decision and at the same time of his reasons for not accepting the decision. The *Contractor's* notification does not affect the *Project Manager's* decision that the Prices, Completion Date or the Key Dates are not to be changed. If the *Contractor* does not provide this notification within eight weeks of notification of the *Project Manager's* decision, he is treated as having accepted the *Project Manager's* decision.

If the *Project Manager* does not notify his decision, the *Contractor* may notify the *Project Manager* of his failure. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

61.7 A compensation event is not notified after the *defects date*.

#### Quotations for compensation events

62

Z1.25

62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.

Z1.25.1

62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment in accordance with the requirements of the Works Information with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. His reply is

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or a proposed



changed decision will not be made or

- a notification that he will be making his own assessment.

62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Project Manager* extends the time allowed for

- the *Contractor* to submit quotations for a compensation event and
- the *Project Manager* to reply to a quotation

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Project Manager*.

### Assessing compensation Events

63

Z1.26

63.1 The changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting Fee.

If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.

Z1.26.1

63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the *Contractor* shall not be entitled to an addition to the Prices for any period of delay caused by a concurrent *Contractor's* risk.

Z1.26.2

63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.

63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.

Z1.26.3

63.6 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract. Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event

- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information or
  - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event
- the Prices are reduced.
- 63.11 Not used (as not an Option A clause).
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.
- 63.13 Not used (as not an Option A clause).
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.

**The *Project Manager's* Assessments**

Z1.27

**64**

Z1.27.1

- 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
  - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
  - if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
  - if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.
- 64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if
- there is no Accepted Programme or
  - the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract
- 64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.
- 64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project*

*Manager.*

**Implementing  
compensation events**

**65**

Z1.28

65.1 A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or
- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

Z1.28.1

65.3 The *Contractor* notifies the *Project Manager* if he does not accept the *Project Manager's* assessment and at the same time of his reasons for not accepting the *Project Manager's* assessment. If the *Contractor* does not provide this notification within eight weeks of notification of the *Project Manager's* assessment, he is treated as having accepted the *Project Manager's* assessment.

**65.4 The changes to the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.**

## 7 Title

<b>The Employer's title to Plant and Materials</b>	<b>70</b>	
Z1.29		
Z1.29.1	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> delivered them to site or the <i>Employer</i> makes payment for them, whichever is the earlier. The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> and are set aside for the <i>Employer</i> .
	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.29.2	70.3	If requested by the <i>Project Manager</i> , in advance of the payment assessment, the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract
<b>Marking Equipment, Plant and Materials outside the Working Areas</b>	<b>71</b>	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none"><li>• this contract identifies them for payment and</li><li>• the <i>Contractor</i> has prepared them for marking as the Works Information requires.</li></ul>
<b>Removing Equipment</b>	<b>72</b>	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works
<b>Objects and materials within the site</b>	<b>73</b>	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

## 8 Risks and insurance

	<b>Employer's risks</b>	<b>80</b>	
Z1.30		80.1	The following are <i>Employer's</i> risks. <ul style="list-style-type: none"><li>• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none"><li>• use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,</li><li>• negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or</li><li>• a fault of the <i>Employer</i>.</li></ul></li><li>• Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.</li><li>• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none"><li>• war, civil war, rebellion, revolution, insurrection, military or usurped power,</li><li>• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees or</li><li>• radioactive contamination.</li></ul></li><li>• Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to<ul style="list-style-type: none"><li>• a Defect which existed at take over,</li><li>• an event occurring before take over which was not itself an <i>Employer's</i> risk or</li><li>• the activities of the <i>Contractor</i> on the Site after take over</li></ul></li><li>• Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.</li><li>• Additional <i>Employer's</i> risks stated in the Contract Data.</li></ul>
Z1.30.1			
	<b>The Contractor's risks</b>	<b>81</b>	
		81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .
	<b>Repairs</b>	<b>82</b>	
		82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.
	<b>Indemnity</b>	<b>83</b>	
Z1.31		83.1	Each Party is responsible for and indemnifies the other, its employees and agents (and the <i>Contractor</i> indemnifies the <i>Employer</i> in respect of members of the TfL Group) against claims, proceedings, compensation and costs due to personal injury to or death of any person due to an event at the indemnifying Party's risk.
Z1.31 1			
Z1 31 2		83.2	The <i>Contractor</i> indemnifies the <i>Employer</i> against all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the <i>works</i> or the project as set out at clause Z2 7 4(b).

Z1.31.3 83.3 The indemnities under clauses 83.1 and 83.2 remain in force for the duration of this contract and continue to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to them.

**Remedies**

Z1.32 83A.1 The Parties acknowledge and agree that the payment or deduction of:  
 (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7; and  
 (b) delay damages pursuant to Option X7 is without prejudice to the *Employer's* right to liquidated damages for disruption pursuant to clause Z2.12.

**Insurance cover 84**

Z1.33 84.1 The Parties provide the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.  
 Z1.33.1  
 Z1.33.2 84.2

**Insurance Table**

<b>Insurance Against</b>	<b>Party Responsible for ensuring insurance is in place</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
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**Construction All Risks insurance**

All risks of loss of or damage (not excluded by the terms and conditions of the policy) to the *works* and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the *works*), equipment, temporary buildings and property owned by or supplied by the *Employer*.

*Employer*  
  
in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the *works* on the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

The full reinstatement value of the *works*

**Public liability insurance**

All sums for which the insured becomes 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, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with the carrying out of the *works* at the Site (unless excluded by the terms and conditions of the policy).

*Employer*  
  
in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the *works* on the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

Not less than [redacted] per occurrence or as otherwise stated in the Contract Data.

**Employer's liability insurance**

Liability for death of or bodily injury or illness sustained by employees of the *Contractor* arising out of or in the course of their employment in connection with this contract or the Project

*Contractor*

Not less than [redacted] per occurrence or as otherwise stated in the Contract Data, whichever is the greater

**Contractor's Equipment loss insurance**

Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the *Contractor*

*Contractor*

The replacement cost

**Professional Indemnity Insurance**

Fault in respect of design of the *works* or other professional services for which the *Contractor* or his Subcontractors is responsible

*Contractor*

[redacted] each and every claim and the annual aggregate or as otherwise stated in the Contract Data

Z1 33.3

84 3 In respect of the insurances provided by the *Contractor*:

- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
- the *Contractor* bears the cost of all premiums, which is deemed to be

included in the Fee,

- if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.

- Z1.33.4            84.4    The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.33.5            84.5    The *Contractor* procures that his Subcontractors (and sub-subcontractors of any tier) maintain employer's liability (and where appropriate) motor liability insurances as required by law.
- Z1.33.6            84.6    The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.



**Insurance policies 85**

- Z1.34  
Z1.34.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker (which may be the *Contractor's* internal insurance broker). A reason for not accepting the certificates is that:
- they do not comply with this contract,
  - the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom; or
  - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.
- Z1.34.2 85.2 Not used.
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- Z1.34.3 85.4 Any amount not recovered from an insurer (including excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- Z1.34.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance

**If the Contractor does not insure 86**

- Z1.35
- Z1.35.1 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

**Insurance by the Employer 87**

- Z1.36
- 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.1 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.2 87.5 The *Contractor* complies and ensures that its Subcontractors comply with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.3 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written

consent of the *Employer*.

Z1.36.4

87.7 The insurances provided by the *Employer* are in effect for the duration of the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

Z1 36 5

87.8 The *Contractor* ensures that each subcontract with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the *Employer* while the Subcontractor is engaged in carrying out the *works* at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

## 9 Termination

### Z1.37 Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

#### TERMINATION TABLE

	Terminating Party	Reason	Procedure	Amount due
Z1.37.1	The <i>Employer</i>	R25A and reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
		R1–R15, R10A, or R18,	P1, P2 and P3	A1 and A3
		R17, R20 or R26	P1 and P3	A1 and A2
		R21	P1 and P4	A1 and A2
		R22-R24	P1, P2 and P3	A1 and A3
		R25	P1 and P4	A1 and A2
		The <i>Contractor</i>	R1–R10, R10A, R16 or R19	P1 and P4
	R17 or R20	P1 and P4	A1 and A2	
Z1.37.2	90.3	The procedures for termination are implemented immediately after the <i>Project Manager</i> has issued a termination certificate.		
	90.4	Within thirteen weeks of termination, the <i>Project Manager</i> certifies a final payment to or from the <i>Contractor</i> which is the <i>Project Manager's</i> assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the <i>Project Manager's</i> certificate or (where payment is due to the <i>Contractor</i> ) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the <i>Contractor</i> delivers to the <i>Employer</i> a VAT invoice in the amount of the certificate.		
	90.5	After a termination certificate has been issued, the <i>Contractor</i> does no further work necessary to Provide the Works		
Z1.38	<b>Reasons for termination 91</b>			
Z1.38.1	91.1	Either Party may terminate if the other Party has done one of the following (or its		

equivalent in other jurisdictions).

- If the other Party is an individual and has
  - presented his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
  - had a winding-up order made against it (R5),
  - had a provisional liquidator appointed to it (R6),
  - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
  - had an administration order made against it (R8),
  - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
  - made an arrangement with its creditors (R10).
- If the other Party has become insolvent as defined in section 113 of the Act (R10A).

91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.

- Substantially failed to comply with his obligations (R11).
- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).

Z1.38.2

91.3 The *Employer* may terminate if the *Project Manager* has notified the *Contractor* and copied in the *Contractor's* Senior Representative that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.

- Substantially hindered the *Employer* or Others (R14)
- Substantially broken a health or safety regulation or a health or safety requirement in the Standards (R15)

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).

91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).

91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
- either Party may terminate if the instruction was due to any other reason (R20).

Z1.38.3

91.7 The *Employer* may terminate if an event occurs which

- stops the *Contractor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than

13 weeks,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.4

91.8 The *Employer* may terminate the *Contractor's* appointment in the event of

- a Safety Breach, a Prohibited Act or a breach of the Modern Slavery Act 2015 by the *Contractor*, or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* reasonable satisfaction in accordance with the provisions of Z2.18 (R23),
- any cap on the *Contractor's* liability under this contract has been exceeded (R24),
- the *Employer* not obtaining any necessary funding for the Project and/or the necessary funding is curtailed (R25),
- A Change of Control unless approved in writing by the *Employer* (R25A)

Z1.38.5

91.9 In the event that either

- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union; or
- this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016; or
- the *Contractor* has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (to the extent not already covered by this clause 91.9) and should therefore have been excluded from the procurement procedure in accordance with those Regulations; or
- to the extent not already provided for in this clause 91.9, the *Employer* may terminate if it determines that the contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement regulations.

then.

- the *Employer* notifies the *Project Manager* and the *Contractor* in writing as soon as reasonably practicable of the declaration or order,
- the *Project Manager* issues a termination certificate to both Parties certifying the date the contract became or is to become ineffective or shortened, and
- the contract is deemed for all purposes to have been terminated by the *Employer* on the date named in the termination certificate (R26)

Notwithstanding the declaration or order, the provisions of clauses 90-93 continue in full force and effect along with any other provisions of this contract necessary to give effect to them. In addition, any provisions of the contract which by their nature or implication are required to regulate, determine or limit the Parties' rights and liabilities that have accrued at the date the contract became ineffective or shortened survive the declaration or order as aforesaid.