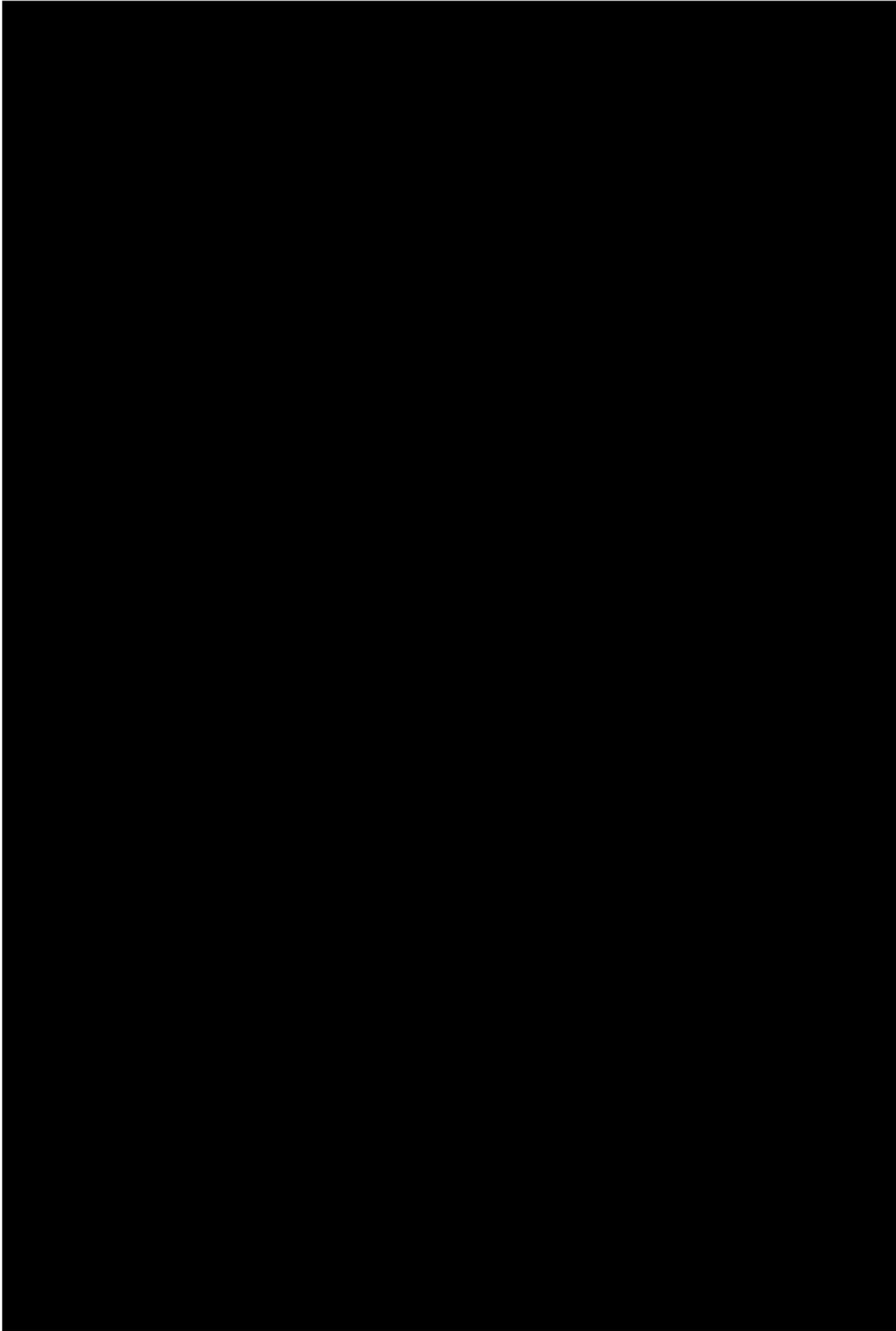


Section 5



SECTION 5

**TfL INSURANCE TABLE and
CONTRACTOR INSURANCE CERTIFICATES**



Section 6



SECTION 6

**TfL AMENDMENTS to nec3
ENGINEERING AND CONSTRUCTION SHORT CONTRACT**

For use with the
London Trams Remedial Works at Sandilands Croydon

SCHEDULE 6

AMENDMENTS TO NEC ENGINEERING AND CONSTRUCTION SHORT CONTRACT 3RD EDITION

Part 1 - Amendments to Conditions of Contract

The *conditions of contract* are amended as follows:

- Clause 11.2(3) After "not in accordance with" insert: "the *Contractor's* obligations under this contract or".
- Clause 11.2(10) Replace clause 11.2 (10) in the contract in its entirety with the following:

 'The Prices are the amounts to be calculated in accordance with the Price List Schedules 1 to 3 in Section 4 of the Contract.'
- Clause 11.2 Insert the following new definitions:
- "(14) Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause 20.5.
- (15) Not used.
- (16) CDM Regulations are the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and the related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.
- (17) Not used.
- (18) Contract Information means (i) this contract in its entirety (including from time to time agreed changes to this contract) and (ii) data extracted from invoices submitted by the *Contractor* which consists 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.
- (19) Not used.
- (20) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as defined by Section 1124 of the Corporation Tax Act 2010.

- (21) Indirect Subcontractor means any subcontractor of whatever tier beneath any Subcontractor appointed in relation to the *works*."
- (22) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- (23) A Statutory Requirement is any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the *works* or performance of any obligations under this contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the *works* or with those systems the *works* are, or are to be, connected, including without limitation any statutory provisions and any decision of a relevant authority under such provisions which control the right to develop the *site*.
- (24) Statutory Undertaker means any governmental or local authority or statutory undertaker
- which has any jurisdiction with regard to the *works* including without limitation any jurisdiction to control development of the site or any part of it
 - with whose requirements the *Employer* is required to comply or
 - with whose systems and/or utilities the *works* will be associated.
- (25) Subcontractor means any subcontractor appointed in relation to the *works*.
- (26) The TfL Group is Transport for London and all its subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time.
- (27) Not used.
- (28) TfL Premises are any premises owned, leased or under the control of any member of the TfL Group.
- (29) Transparency Commitment means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Employer is committed to publishing its contracts, tender documents and data from invoices received.

- (30) The Workplace Policy is the *Employer's* "Workplace Harassment Policy", as updated from time to time, copies of which are available on request from the *Employer*."
- (31) The Construction Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
- (32) Pay Less Notice means the notice referred to in clause 51.6.
- Clause 12.1 Delete the current wording in clause 12.1 and replace with "This contract is governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts."
- Clause 12.3 Delete the existing wording and replace with
- "12.3 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."
- Clause 12.4 Insert a new clause:
- "12.4 Save that any member of the TfL Group has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999, the *Employer* and the *Contractor* do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party. Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all members of the TfL Group (other than the *Employer*)"
- Clause 12.5 Insert a new clause:
- "12.5 "If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect."
- Clause 12.6 Insert a new clause:
- "12.6 The *Contractor* shall not assign the benefit of and its rights under this contract without the prior written consent of the *Employer*".

Clause 12.7 Insert a new clause:

"12.7 "Where a period of time stated in days or weeks includes Christmas Day, Good Friday or a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales, that day is excluded. For the avoidance of doubt, nothing in this sub-clause shall prevent or restrict the *Contractor* from Providing the Works or correcting Defects on any day."

Clause 12.8 Insert a new clause:

"12.8 In this contract the words "including", "includes" and "included" are construed without limitation unless inconsistent with the context."

Clause 14.3 Delete the word "does" and replace with:

"and the acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer* do".

Clause 20.1 At the end insert: "and the Statutory Requirements, and the *Contractor* ensures that the *works* will, when completed, comply with the Works Information and this contract.

Clause 20.4 Insert new clause:

"20.4 The *Contractor* warrants to the *Employer* that insofar as it is responsible for the design of the *works*, it has exercised and exercises in the design of the *works* all reasonable skill and care as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the *works*".

Clauses 20.5 to 20.15 Insert the following new clauses 20.5 to 20.15:

"20.5 The parties agree that the IPR in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or works created by a Subcontractor or Indirect Subcontractor) vests in the *Employer*. The *Contractor* procures that each Subcontractor and Indirect Subcontractor assigns such IPR to the *Employer*.

20.6 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of

- understanding the *works*,
- completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*,
- extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others, and
- enabling Tramtrack Croydon Limited to carry out the operation, maintenance, repair, renewal and enhancement of the "Tramtrack Croydon Tramlink" network (where applicable).

20.7 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause 20.6.

20.8 The *Contractor* indemnifies the *Employer* and members of the TfL Group against all losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 20.6 infringes the intellectual property rights or other rights of any third party.

20.9 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer*.

20.10 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *works*.

20.11 IPR in all items supplied and owned by the TfL Group to the *Contractor* remains the property of the TfL Group.

20.12 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the Works. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.

20.13 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *works*.

20.14 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims,

demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

20.15 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim, demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action.”

Clause 22.1 Insert at the end:

“The *Contractor* co-operates with others as required to Provide the Works. The *Contractor* shares the *site* with others as stated in the Works Information”.

Clause 23 Insert a new clause:

“23 **Additional Responsibilities**

23.1 The *Contractor* takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations. Where it is stated in the Contract Data that the *Contractor* is the Principal Contractor the *Contractor* performs all the functions and duties of and exercises the powers of the Principal Contractor (as that expression is defined in the CDM Regulations) for the purposes of the *works* and, where the *Contractor* is responsible for design, the *Contractor* performs all the functions and duties of a Designer (as that expression is defined in the CDM Regulations).

23.2 The *Contractor* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to

- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
- where appropriate, identify actions to reduce levels of crime and disorder and
- without prejudice to any other obligation imposed on the *Employer*, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area

and in the performance of the contract, the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors and Indirect

Subcontractors assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty.

23.3 Where it is stated in the Contract Data that the *Contractor* is the "principal contractor", the *Contractor* performs all the functions and duties of the "principal contractor" under the Site Waste Management Plans Regulations 2008 and any amendment, consolidation, revision and/or replacement thereto.

23.4 If requested by the *Employer*, the *Contractor* enters into a novation agreement within the *period for reply* in the form of the novation agreement in the form attached or in such other format as the *Employer* may reasonably require in order to novate the benefit and burden of this contract to another member of the TfL Group.

23.5 The *Contractor* gives notice to the *Employer* within 10 days where

- there is any change in ownership of the *Contractor* where such change relates to fifty percent (50%) or more of the issued share capital of the *Contractor*, and
- there is any change in ownership of the Holding Company where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company; and
- (in the case of an unincorporated *Contractor*) there is any change in the management personnel of the *Contractor*, which alone or taken with any other change in management personnel not previously notified to the *Employer*, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the *Contractor*."

Clause 30.1 Insert at the end of the clause:

"The *Contractor* proceeds regularly and diligently to provide the *works* in accordance with this contract, and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the *works*."

Clause 41.5 Insert a new clause:

"41.5 For the avoidance of doubt, the *Contractor* continues to be liable for Defects (including Defects listed in the Defects Certificate and latent or inherent Defects) after

- the issue of the Defects Certificate
- the operation of this section and
- the termination of this contract for any reason (including breach by the *Employer*)

in accordance with the English law."

Clause 50.2 Delete the first sentence of clause 50.2 and substitute:

"The *Contractor* submits an application for payment to the *Employer* addressed as specified in the Contract Data in a form approved by the *Employer* not less than fourteen days prior to each *assessment day*. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated."

Clause 50.8 Insert a new clause:

"50.8 If the *Contractor's* employment is terminated under clause 90.2A because the *Contractor* has become insolvent within the meaning of Section 113 of the Construction Act, the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 92 either:

- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* 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."

Clause 51.1 Delete Clause 51.1 and Insert: Not used

Insert the following new clauses 51.3-51.7:

51.3 "The date on which payment becomes due is the later of:

- the *assessment day*; and
- fourteen days after the date of receipt by the *Employer* of the *Contractor's* application for payment in accordance with clause 50.2.

The final date for payment is fourteen days after the date on which payment becomes due.

51.4 The *Employer* certifies a payment not later than 5 days after each payment due date. The *Employer's* certificate is the *Employer's* notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated. Not later than 5 days after receipt of the *Employer's* certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected invoice, where required, within five days of receipt of any Pay Less Notice.

51.5 If a certificate is not issued by the *Employer* in accordance with clause 51.4, the sum to be paid by the *Employer* is, subject to clause 51.6, the sum stated as due in the *Contractor's* application in accordance with clause 50.2.

51.6 If either Party intends to pay less than the notified sum, he notifies the other Party not later than one day (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.

51.7 The *Contractor* issues invoices in the manner and format required by the Contract Data and/or the Works Information."

Clause 60.1 Amend as set out below:

(15) Insert new clause:

"A breach of contract by the *Employer* which is not one of the other compensation events in this contract."

Clause 61.1A Insert new Clause 61.1A

"61.1A If the *Contractor* exercises his right under the Construction Act to suspend performance, it is a compensation event whether or not the event has been notified by the *Contractor* within the period specified in clause 61.1."

Clause 80.1 Delete.

Clause 81 Delete clause 81 and replace with the following new clause:

"81 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever ("Losses") incurred in respect of

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible) and
- any other Losses which may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part performance of this contract

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission, or default by the *Contractor*, his employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are at the *Contractor's* risk. The *Contractor's* indemnity under this clause remains in force for the duration of this

contract and continues to survive the expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract. The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents."

Clause 82.1 Delete "Insurance Table" and substitute with "Insurance Table set out in **Section 5 of this contract**." Delete the "Insurance Table" in its entirety.

At the end of the clause insert:

"Subject to clause 82.2, the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later (or for such other period as stated in the Contract Data)."

Clause 82.2 Insert a new clause:

"82.2 The *Contractor* maintains with reputable insurers carrying on business in the European Union until twelve years after Completion of the *works*, professional indemnity insurance of no less than the amount set out in **Section 5 of this contract** for any one occurrence or series of occurrences arising out of any one event in relation to the *works* provided that such insurance is generally available in the market to design and build contractors at commercially reasonable rates and terms."

Clause 82.3 Insert a new clause:

"82.3 The *Contractor* provides insurance covering loss or damage to motor vehicles and liability to third parties arising out of the use of motor vehicles used in connection with the *works*. Such insurance shall contain an indemnity to principals clause. The minimum amount of cover/indemnity provided by such insurance shall be the replacement cost in respect of loss or damage and the amount required by the applicable law in respect of third party liability".

Clause 82.4 Insert a new clause:

"82.4 The *Employer* provides the insurances set out in the Contract Data (if any) to the extent such insurance is available at reasonable commercial rates. Nothing in such insurance changes the allocation of risks to the *Contractor* and the *Employer*. In relation to all claims made under insurances obtained by the *Employer* the following provisions apply

- (1) Unless the *Employer* otherwise decides, the *Contractor* authorises the *Employer* to submit all claims and the *Employer* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* must provide such information, documents and records in connection with such claims as the *Employer* requires