



LONDON UNDERGROUND LIMITED
SSR POWER UPGRADE
PACKAGE 5A

THIS AGREEMENT is made the 19th day of December 2014

BETWEEN:

- (1) London Underground Limited whose registered office is at Windsor House 42-50 Victoria Street London SW1H 0TL ("the *Employer*" which expression shall include its successors in title and assigns); and
- (2) Balfour Beatty Engineering Services Limited whose registered office is at Lumina building, 40 Ainslie Road, Hillington Park, Glasgow G52 4RU

WHEREAS:

- (A) The *Employer* wishes to have provided the design, install test and commission 11kV and 22kV cables including associated HV cable diverts and fibre optic pilot cables; and the decommissioning of HV Cables ("the *works*") on the Underground Network.
- (B) The *Employer* has accepted a tender by the *Contractor* for the design and construction of the *works* and correction of Defects therein in accordance with the *conditions of contract* (as and amended).

NOW IT IS AGREED THAT:

1. Terms and expressions defined in the *conditions of contract* (as amended) have the same meanings herein.
2. The *Contractor* Provides the Works in accordance with the *conditions of contract* (as amended).
3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract* (as amended).
4. The documents forming the contract are:
 - (a) this Form of Agreement duly executed by the Parties as a deed;
 - (b) the NEC Engineering and Construction Contract *conditions of contract* Third Edition June 2005 (with amendments dated June 2006 and September 2011) as amended by the *additional conditions of contract* (Z1 and Z2 clauses);

- (c) the Contract Data Part 1;
- (d) the Contract Data Part 2;
- (e) the Works Information;
- (f) the Site Information;
- (g) Schedules 1 to 11 inclusive contained in this contract (Appendix 8 3.0);
- (h) Appendices 1-8
- (i) Appendix 8 3.0 SCHEDULE 11 - Access Code .

5. Where there is any discrepancy or conflict within or between the documents forming the contract the order of priority shall be as follows:

- | | | |
|--------|---|---|
| First | : | This Form of Agreement; |
| Second | : | The consolidated conditions of contract appended to this Form of Agreement as amended by the <i>additional conditions of contract</i> designated Z1 or Z2 (including any references to the Contract Data and any necessary parts of the Works Information referred to therein); |
| Third | : | The <i>conditions of contract</i> (including any references to the Contract Data and any necessary parts of the Works Information referred to therein); and |
| Fourth | : | The Works Information and any other documents included in this contract. |

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

3456



THE COMMON/CORPORATE SEAL of
LONDON UNDERGROUND LIMITED
was affixed to THIS DEED
in the presence of:

Authorised Signatory



Signature of Director/Secretary



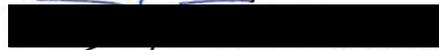
Print name of Director/Secretary

EXECUTED AND DELIVERED AS A DEED
by BALFOUR BEATTY ENGINEERING SERVICES LIMITED
acting by:

Signature of Director



Print name of Director



Signature of

Authorised Signatory
~~Director/Secretary~~



Print name of

Authorised Signatory
~~Director/Secretary~~



MAIN OPTION A
CONTRACT DATA
PART 1

CONTRACT DATA

Part One – Data provided by the *Employer*

Statements given in all contracts

1. General
 - The *conditions of contract* are the core clauses and the clauses for main Option A and secondary Options clauses **X1, X2, X4, X7, X16, X18, X21, X23**, and Y(UK)2 and Z clauses of the NEC3 Engineering and Construction Contract June 2005 (incorporating amendments June 2006 and September 2011) as amended or inserted in each case in accordance with secondary Option Z.
 - The *works* are to design, install, test and commission 11kV and 22kV cables together with associated HV cable diverts and fibre optic pilot cables; and the decommissioning of four HV Cables.
 - The *Employer* is

Name: London Underground Limited (Company registered number 01900907)

Address: Windsor House, 42-50 Victoria Street. London SW1H 0TL
 - The *Project Manager* is

Name: George Pflaster

Address: Power & Cooling Upgrades, Capital Programme Directorate, London Underground Limited, 4th Floor, 200 Buckingham Palace Road, London SW1W 9TJ
 - The *Supervisor* is

Name: The Delivery Manager from time to time of London Underground Limited
-

Address: Power & Cooling Upgrades, Capital Projects Directorate,
London Underground Limited, 4th Floor, 200 Buckingham Palace
Road, London SW1W 9TJ

- The *sections* are as follows:

Section 1:

1A. Installation of 22kV linear cabling between the Neasden Bulk Supply Point site and the Cobourg Street substation site (F2279)

Section 2:

2A Installation of 11kV linear cabling between the Griffith House Bulk Supply Point site and the Bond Street substation site (F219)

2B Installation of 11kV linear cabling between the Griffith House Bulk Supply Point site and the Bond Street substation site (F220).

2C Installation of fibre optic linear cabling between the Bond Street substation site and the Notting Hill Gate substation site (P2067)

2D Decommissioning of 11kV linear cabling between the Cromwell Curve substation site to the Bond Street substation site (F219)

2E Decommissioning of 11kV linear cabling between the Cromwell Curve substation site to the Bond Street substation site (F220)

2F Installation of 11kV linear cabling between the Cromwell Curve substation site to the Notting Hill Gate substation site (F291)

2G Installation of 11kV linear cabling between the Cromwell Curve substation site to the Notting Hill Gate substation site (F292)

2H Installation of fibre optic linear cabling between the Bond Street substation site and the Notting Hill Gate substation site (P2068)

2I Decommissioning of 11kV linear cabling between the Cromwell Curve substation site to the Notting Hill Gate substation site (F291)

2J Decommissioning of 11kV linear cabling between the Cromwell Curve substation site to the Notting Hill Gate substation site (F292)

Section 3:

3A Installation of 11kV linear cabling between the Cromwell Curve substation site to the South Kensington substation site (F734)

Section 4:

4A Installation of 22kV linear cabling between the West Ham BSP site and the Mile End substation site (F22349)

4B Installation of 22kV linear cabling between the West Ham BSP site and the Mile End substation site (F22361)

4C Installation of fibre optic linear cabling between the West Ham BSP site and the Mile End substation site (P2065)

4D Installation of fibre optic linear cabling between the West Ham BSP site and the Mile End substation site (P2066)

4E Installation of 22kV linear cable divert between the Greenwich Substation site and Mile End substation site (F2227)

4F Installation of 22kV linear cable divert between the Greenwich Substation site and Mile End substation site (F2228)

4G Installation of 22kV linear cable divert between the Mile End substation site and Mansell Street substation site (F2223)

4H Installation of 22kV linear cable divert between the Mile End substation site and Mansell Street substation site (F2224)

4I Installation of 22kV linear cabling between the West Ham (New) site and the Stratford Market Depot substation site (F22300)

4J Installation of fibre optic linear cabling between the West Ham BSP site and the Stratford Market Depot substation site (P2064)

4K Installation of fibre optic linear cabling between the West Ham BSP site and the Stratford Market Depot substation site (P2066)

- The Works Information is in WI100 through to WI2000 including all appendices
 - The Site Information is in SI100 through to SI700 including all appendices
 - The *boundaries of the site* are defined in the Site Information
 - The *language of this contract* is English
 - The *law of the contract* is the law of England and Wales
 - The *period for reply* is four (4) weeks
 - The following matters will be included in the Risk Register:

None
3. Time
- The *starting date* is: The Contract Date
 - The *access dates* when the Package 5B Contractor's switchgear is available will be the dates as noted in the Accepted Programme
 - The *Contractor* submits revised programmes at intervals no longer than four (4) weeks.
4. Testing and Defects
- The *defects date* is fifty two (52) weeks after Completion of the whole of the *works*.
 - The *defect correction period* is 7 days
5. Payment
- The *currency of this contract* is GBP Sterling (£)
 - The *assessment interval* is four (4) weeks.
 - The *interest rate* is 2(two per cent) % per annum above the base rate of the Bank of England.
6. Compensation events
- The place where weather is to be recorded is London
 - The *weather measurements* to be recorded for each calendar month are
-

- the cumulative rainfall (mm)
- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 degrees Celsius
- the number of days with snow lying at 12.00 hours GMT.
- The *weather measurements* are supplied by the Met Office, Fitzroy Road, Exeter EX1 3PB
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at Central London and which are available from the Met Office, Fitzroy Road, Exeter EX1 3PB

- **Where no recorded data are available**

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are N/A

8. Risks and insurance

Insurances taken out by the *Employer*

- **Construction All Risks Insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
 - **Public liability insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
 - **Non-negligence insurance** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.
-

Insurances taken out by the *Contractor*

- ***Employer's liability insurance –***

REDACTED

- ***Contractor's equipment loss insurance*** - details and minimum limit of indemnity as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract.

- ***Professional indemnity insurance –***

REDACTED

**Optional
statements**

If the *Employer* has decided the *completion date* for the whole of the *works*

- The *completion date* for the whole of the *works* is 24th November 2016

If no programme is identified in part two of the Contract Data

- The *Contractor* is to submit a first programme issued for acceptance within four (4) weeks of the Contract Date.

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 28 days after the date when payment becomes due in accordance with clause 51.1A of the conditions of contract.

Cover/deductibles for insurances provided by the *Employer*

- 1 **Construction All Risks Insurance** (as stated in the Insurance Table)

REDACTED

- 2 **Public liability insurance** (as stated in the Insurance Table)

REDACTED

3 **Non-negligence insurance** (as stated in the Insurance Table)

REDACTED

If the *Contractor's* liability for liquidated damages under Z2.12 (Schedule 9) is capped:

REDACTED

If Option X1 is used

- The *base date* for indices is 28th July 2014
- The index is the Sterling equivalent of the LME Copper Cash Seller & Settlement

If Option X7 is used (but not if Option X5 is also used)

- REDACTED

If Option X13 is used

- Not Used

If Option X16 is used

REDACTED

If Option X18 is used

REDACTED

Option Z

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract.
-

MAIN OPTION A
CONTRACT DATA
PART 2

CONTRACT DATA

Part Two – Data provided by the *Contractor* for the Works

- The *Contractor* is

Name: Balfour Beatty Engineering Services Limited

Address: 60 Huntly Road, Hillington Park, Glasgow, G52 4DZ
- The *fee* percentage is REDACTED
- The *working* areas are the Site and any site location identified in the work information
- The *Contractor's Representative* is

Name: Simon Jays – Senior Project Manager

Address: Unit 4 & 5, Greenwich Centre Business Park, 53 Norman Road, Greenwich, London SE19QF

Telephone Number 0208 305 7764

- The key people are

1. Name: Michaela Halfacre

Job: Health & Safety Manager

handover period : 4 (four) weeks and effective from the Contract Date

Responsibilities: HS&E

Qualifications: REDACTED

Experience: REDACTED

2. Name: Jim Connor

Job: Planning Manager

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Management of Construction Programme

Qualifications: REDACTED

Experience REDACTED

3. Name: Trevor Meakin

Job: Project Engineer

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Delivering 5A Cabling Installation

Qualifications: REDACTED

Experience: REDACTED

4. Name: Paul Maslen

Job: Project Engineer

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Delivering 5A Cabling Installation

Qualifications: REDACTED

Experience: REDACTED

5. Name: Jamil Abraham

Job: Assurance Manager

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Delivering assurance and quality for the project

Qualifications: REDACTED

Experience: REDACTED

6. Name: Colin Craig

Job: Design Manager

handover period 4 (four) weeks and effective from the Contract Date

Responsibilities: Delivering compliant detailed designs

Qualifications: REDACTED

Experience: REDACTED

7. Name: John Murray

Job: Senior QS

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: All commercial aspects for the project

Qualifications: REDACTED

Experience: REDACTED

8. Name: Shaun Bould

Job: Project Engineer

handover period 4 (four) weeks and effective from the Contract Date

Responsibilities: Site Delivery Team

Qualifications: REDACTED

Experience: REDACTED

9. Name: Paul Riley

Job: Project Engineer

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Site Delivery Team

Qualifications: REDACTED

Experience: REDACTED

10. Name: Peter Berwick

Job: Electrical Design Engineer

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: Detailed Design

Qualifications: REDACTED

Experience: REDACTED

11. Name: Bryan McNally

Job: Commissioning Manager

handover period :4 (four) weeks and effective from the Contract Date

Responsibilities: All commissioning activities for the SSR 5B project

Qualifications: REDACTED

Experience: REDACTED

- The following matters will be included in the Risk Register

N/a

Optional Statements

If the *Contractor* is to provide Works information for his design

- The Works Information for the *Contractor's* design is in WI300

If a programme is to be identified in the Contract Data

- The Programme identified in the Contract Data is the first programme issued for acceptance within four (4) weeks of the Contract Date

If the *Contractor* is to decide the *completion date* for the whole of the works

- The *completion date* for the whole of the *works* is stated in Contract Data Part 1

- The *activity schedule* is: first activity schedule issued for acceptance within four (4) weeks of the Contract Date

- The tendered total of the Prices is £10,978,640.31

(ten million, nine hundred and seventy eight thousand, six hundred and forty pounds, and thirty one pence)

If Option X13 is used and states that the need for a performance bond is dependant on a Dun & Bradstreet credit rating

- The *parent company* of the *Contractor* is Balfour Beatty Investment Holdings Ltd

DATA FOR SCHEDULE OF COSTS COMPONENTS

- The percentage for people overheads is REDACTED
- The published list of Equipment is the last edition of the list published by Civil Engineering Contractors Association
- The percentage for adjustment for Equipment in the published list is REDACTED
- The rates for other Equipment are as per the Balfour Beatty Plant and Equipment supply Price Schedule

Equipment	size or capacity	rate
------------------	-------------------------	-------------

1. n/a

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
----------------------	-------------

- | | | |
|----|------------------------------|----------|
| 1. | Design CEM Assurance Manager | REDACTED |
| 2. | Design Manager | REDACTED |
| 3. | Design Engineer | REDACTED |
| 4. | Design CAD Operative | REDACTED |
| 5. | Design SCADA Engineer | REDACTED |

- The percentage for design overheads is REDACTED
- The categories of design employees whose travelling expenses to and from the Working Areas are included in the Defined Cost are

Not Applicable

- The hourly rates for the Defined Cost of people are included as Appendix 1 of Contract Data Part 2

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION A

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006 and 2011 amendments to the NEC3 suite of contracts)

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CORE CLAUSES

1 General

Actions 10

10.1 The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

Identified and defined Terms 11

Z1.1

11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

(2) Completion is when the *Contractor* has

- done all the work which the Works Information states he is to do by the Completion Date ~~and~~
- **done all the work necessary for the works to be Available and**
- corrected notified Defects which would have prevented the *Employer* from using the *works* and Others from doing their work.

Z1.1.1

If the work which the *Contractor* is to do by the Completion Date is not stated in the Works Information, Completion is when the *Contractor* has done all the work necessary for the *Employer* to use the *works* and for Others to do their work.

(3) The Completion Date is the *completion date* unless later changed in accordance with this contract.

Z1.1.2

(4) The Contract Date is the date ~~when this contract came into existence~~ **of this contract**.

Z1.1.3

(5) A Defect is

- a part of the *works* which is not in accordance with the Works Information or **the requirements of this contract, or**
- a part of the *works* designed by the *Contractor* which is not in accordance with the applicable law or the *Contractor's* design which the *Project Manager* has accepted.

Z1.1.4

(6) The Defects Certificate is either a list of Defects that the *Supervisor* or the ***Contractor*** has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

(7) Equipment is items provided by the *Contractor* and used by him to Provide the Works and which the Works Information does not require him to include in the *works*.

Z1.1.5

(8) The Fee is the sum of the amounts calculated by applying the ~~subcontracted fee percentage~~ to the Defined Cost of **both** subcontracted work and ~~the direct fee percentage 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 *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with this contract.

Z1.1.5A

(10) Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, ~~the Adjudicator~~, **the Adjudicator** the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

Z1.1.6

(11) The Parties are the *Employer* **(which expression includes his successors in title and assigns)** and the *Contractor*.

(12) Plant and Materials are items intended to be included in the *works*.

(13) To Provide the Works means to do the work necessary to complete the *works* 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*.

(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~~

- **the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for**
 - **retention,**
 - **payment to the Employer as a result of the Subcontractor failing to meet a Key Date,**
 - **the correction of Defects after Completion, and**
 - **payment to Others**

and

- **the cost of components in the Shorter Schedule of Cost Components for other work**

less Disallowed Cost and excluding the cost of preparing quotations for compensations events

Z1.39A.1

Z1.39A.2

(22A) Disallowed Cost is cost which the *Project Manager* decides

- **is not justified by the Contractor's accounts and records,**
- **should not have been paid to a Subcontractor or supplier in accordance with his contract,**
- **was incurred only because the Contractor did not**
 - **comply with the requirements of the Works Information or**
 - **give an early warning which this contract required him to give**
- **the Contractor is unable to demonstrate has been reasonably and properly incurred by the Contractor for the purposes of this contract,**
- **results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation**

event accepted by the *Project Manager*,

- is attributable to a compensation event under a subcontract which is not also a compensation event under this contract,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2)

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with Standards or a constraint on how he is to Provide the Works stated in the Works Information,
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested,
- costs incurred by the *Contractor* through providing a replacement person as described in clauses 24.1A and 24.1B,
- preparation for and conduct of an adjudication or proceedings of the courts,
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,
- strikes, riots and civil commotion confined to the *Contractor's* employees and/or any Subcontractor's people, and
- profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor

(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 <i>Employer</i> and the <i>Contractor</i> including the documents listed as forming the contract in the Form of Agreement.
Z1.3.1A	12.1B	In this contract, unless the context otherwise requires, references to: (a) "including" means "including without limitation", and (b) "fault" of the <i>Employer</i> or the <i>Contractor</i> include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the <i>Employer</i> or the <i>Contractor</i> (as the case may be).
Z1.3.2	12.2	This contract is governed by and shall be construed in accordance with the <i>law of the contract</i> 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.
- Z1.3.3 12.3A Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.
- Z1.3.4 12.4 This contract ~~is the entire agreement between the Parties~~ 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.
- Z1.3.5 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.
- Z1.3.6 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.
- In performing his obligations under this contract, the *Contractor* complies with the *law of the contract*, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. 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*.
- Z1.3.7 12.8 (a) Subject to sub-clause 12.8(b), 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 who is not a Party to this contract.
- (b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the *Contractor* where such provision confers any benefit or purports to confer a benefit on such member.
- Z1.3.8 12.9 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- Z1.3.9 12.10 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.

Contract Administration Management System 12A

- Z1.3A 12A.1 Notwithstanding clauses 13.1 – 13.2:
- the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information (“CAMS”);
 - all communications provided for in the contract are to be made exclusively through the CAMS (“CAMS Communications”) except for any categories of communications which the *Project Manager* notifies the *Contractor* from time to time are not to be made exclusively through CAMS; and
 - unless the *Project Manager* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through

the CAMS and the parties following any procedure necessary to give effect to the CAMS.

Where a CAMS Communication refers to an attachment that cannot be included with that communication, the attachment is sent via a method complying with clause 13.1.

Communications 13

Z1.4

Z1.4.1

- 13.1 If and to the extent that clause 12A is not applicable to the contract, ~~e~~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*. ~~Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).~~
- 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 14

Z1.5

the Supervisor

Z1.5.1

- 14.1 ~~Neither a communication from the Employer, Project Manager or Supervisor nor~~ ~~The Project Manager's or the Supervisor's review or~~ acceptance of a communication from the *Contractor* or of his work ~~does not~~ changes 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.
- 14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

Y2.1/Z1.5.2

The Contractor's Representative

Z1.5A.1

- 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor's Representative*. The *Contractor's*

Representative acts on behalf of the *Contractor* under this contract. The *Contractor's Representative* may, after notifying the *Employer* and the *Project Manager*, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor's Representative* in this contract includes an action by his delegate. The *Contractor's Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor's Representative* in accordance that clause.

Adding to the Working 15

- Areas** 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

Z1.6
Z1.6.1

- 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
 - change the Accepted Programme,
 - adversely affect the work of Others,
 - constitute a Defect,
 - 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,
 - result in a breach of this contract or any subcontract,
 - lead to the *Contractor* terminating or suspending any subcontract,
 - cause a change to the Subcontractor Procurement Plan, or
 - cause a breach of any applicable law.

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 17

Z1.7

Inconsistencies 17.1

Z1.7.1

The *Contractor* examines the Works Information and all other documents forming this contract and warrants to the *Employer* that he is not aware, as at the Contract Date, of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of the *works* for the tendered Prices in accordance with the *conditions of contract*.

Z1.7.2

17.2 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. Such instruction is not a compensation event where the *Project Manager* assesses:

- that the ambiguity or inconsistency in question is one for which the *Contractor* is responsible under this contract; or
- that a prudent and experienced contractor familiar with works similar to the *works* would have identified such an ambiguity or inconsistency at the Contract Date from the information then available to him.

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

Z1.8
Z1.8.1

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 is not

- an event of insolvency identified in clause 91.1 of the *Contractor* or any Subcontractor or supplier;
- a shortage of labour, Plant, Materials or Equipment; or
- an event attributable to any fault of the *Contractor* or any of his employees or agents or any Subcontractor or supplier or any of their employees or agents

and which

- neither Party could prevent and
- a prudent and experienced contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a 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
- the *Contractor* can demonstrate that he did not allow for it in his tender;

then this is a "Prevention Event" and the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works 20

- Z1.9
Z1.9.1 20.1 The Contractor Provides the Works in a regular and diligent manner and in accordance with the Works Information.
- 20.2-
20.5 Not used (as not option A clauses)
- Z1.9.2 20.6 These conditions of contract and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the Contractor both before and after the Contract Date.

The Contractor's design 21

- Z1.10
Z1.10.1 21.1 The Contractor is responsible for the design of all of the works
- Z1.10.2 21.2 The Contractor submits the particulars of his design as the Works Information requires to the Project Manager for acceptance. A reason Reasons for not accepting the Contractor's design is/are that it does not comply with either the Works Information, this contract or the applicable law- or that
- it is such that it will not allow the works to be constructed,
 - it is such that if constructed the works will not be capable of being used for their intended purpose.
- 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 22

- Z1.11
Z1.11.1 Design 22.1 The Employer may use and copy the Contractor's design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information specified in clause Z2.7.

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

- Z1.12
Z1.12.1 24.1 Subject to the provisions of Option X23 (if applicable), 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.
- Z1.2.2 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the Project Manager considers are outside the Contractor's reasonable control, if a key person:
- ceases to be employed to do the job stated in the Contract Data; and/or
 - (where Option X23 applies), the Contractor fails to comply with an

accepted key person succession plan,

then, subject to clause 24.1B, the salary and expense costs associated with the replacement key person during the relevant *handover period* are treated as Disallowed Cost unless the *Project Manager* agrees to reduce or waive this requirement.

Z1.12.3 24.1B If the key person who ceases to be employed has not remained available for the duration of the *handover period* and/or has failed to properly instruct his replacement so as to avoid any repeated or sub-standard work being performed by the replacement key person (either during or after the *handover period*) and/or failed to comply with the handover requirements of the key person succession plan (if applicable), then the amount treated as Disallowed Cost for the purposes of clause 24.1A is multiplied (subject to the *Project Manager's* discretion to reduce or waive the increase) by a factor of 2. The *Project Manager's* assessment of the amount of Disallowed Cost pursuant to clauses 24.1A and 24.1B is without prejudice to any other rights and remedies the *Employer* may have arising from the replacement of a key person.

Z1.12.4 24.2 The *Project Manager* may, having stated his reasons, instruct the *Contractor* to remove ~~an employee~~ any person under his control. The *Contractor* then arranges that, after one day, ~~the employee~~ such person has no further connection with the work included in this contract.

Working with the 25

Z1.13 Employer and Others

Z1.13.1 25.1 The *Contractor* co-operates with the *Project Manager* and Others in obtaining and providing information which they need in connection with their work and the works. He co-operates with Others, coordinates his activities with them and shares the Working Areas with them as stated in the Works Information.

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*.

Z1.13.2 25.3 If the *Project Manager* decides that the work does not or will not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs or will incur 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~~ as soon as practicable after 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.~~ The *Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

Z1.13.3 25.4 Unless provided for in the Works Information or authorised by written instruction by the *Project Manager*, the *Contractor* Provides the Works and corrects Defects in such a way as not to cause delay or disruption to the *Employer* and/or Others.

Z1.13.4 25.5 In the event that the works cause delay or disruption to the *Employer* and/or Others, the *Contractor* takes all reasonable steps to mitigate and minimise such delay or disruption.

Subcontracting 26

Z1.14

26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

Z1.14.1 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. Reasons ~~A reason~~ for not accepting the Subcontractor include:

- that his appointment will not allow the *Contractor* to Provide the Works,
- the *Contractor* has not complied with any requirements in the Works

Information regarding the appointment or acceptance of Subcontractors,

- the proposed Subcontractor does not have an acceptable health and safety track-record on other projects.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.

Z1.14.2

26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless

~~an NEC contract is proposed or~~
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. **Reasons** A ~~reason~~ for not accepting them ~~is that~~ include:

- they will not allow the *Contractor* to Provide the Works, or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the terms of the proposed subcontract do not adequately reflect the terms of this contract or are inconsistent with the terms of this contract;
- the proposed subcontract works represent too large a proportion of the total works,
- the proposed subcontract conditions do not include any of the key flowdown provisions listed in the Works Information,
- the proposed subcontract does not oblige the Subcontractor to provide a Form of Warranty in favour of the *Employer* or other stated beneficiaries within 21 days of their appointment on the terms set out in Schedule 5 or 6 (as appropriate).

Other responsibilities 27

Z1.15

27.1 The *Contractor* obtains approval of his design from Others where necessary.

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*.

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*.

Z1.15.1

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

Starting, Completion and 30 Z1.16

Key Dates 30.1 The *Contractor* does not start work on the Site until the first *access date* and does the work so that Completion is on or before the Completion Date.

Z1.16.1 30.1A The *Contractor* notifies the *Project Manager* when in his opinion the *works* will have been completed in accordance with this contract and requests an inspection. The *Project Manager* and the *Contractor* undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The *Supervisor* may attend the inspection.

Z1.16.2 30.2 The *Contractor* provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the *works* have been so completed. If the *Project Manager* is satisfied that the *works* have been so completed, he ~~*Project Manager*~~ decides the date of Completion. The *Project Manager* certifies Completion within one week of Completion. If the *Project Manager* is not so satisfied, he notifies the *Contractor* of his reasons for not accepting that the *works* have been completed and the *Contractor* notifies the *Project Manager* in accordance with clause 30.1A when the necessary corrective action has been taken.

30.3 The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date.

The programme 31

Z1.17

31.1 If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.

Z1.17.1

31.2 The *Contractor* shows on each programme which he submits for acceptance

- the *starting date*, *access dates*, Key Dates and Completion Date,
- planned Completion,
- the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,
- the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Works Information,
- the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Employer* and Others to do their work,
- provisions for
 - float,
 - time risk allowances,
 - **environmental and** health and safety requirements and
- the procedures set out in this contract,
- the dates when, in order to Provide the Works in accordance with his programme, the *Contractor* will need
 - access to a part of the Site if later than its *access date*,
 - acceptances,
 - Plant and Materials and other things to be provided by the *Employer* and
 - information from Others,
- for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use, ~~and~~
- **for each operation, a cost-loaded programme showing the forecast resources required for that operation,**
- **its access requirements in accordance with the Works Information, and**

- 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

Z1.18
Z1.18.1

- 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,
 - the effects of decisions reached and approved by the *Project Manager* at risk reduction meetings,
 - 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 33

Z1.19

the Site

Z1.19.1

33.1 Subject to the provisions of the Works Information regarding access, the ~~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.

Z1.19.2

33.1A The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Instructions to stop or 34

not to start work

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

Z1.20

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.

Z1.20.1

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 does not take over, and is not treated as having taken over, the part of the *works* when he (or Others) begins to use it and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3. ~~except if the use is~~

• ~~for a reason stated in the Works Information or~~

~~to suit the Contractor's method of working.~~

- 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

- 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*.

Z1.39.A.3

- 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, then the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction.**

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

4 Testing and Defects

Tests and inspections 40

- 40.1 The subclauses in this clause only apply 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.

Z1.21.1

- 42.2 **Subject to sub-clause 46,** 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

Z1.22

- 43.1 The *Contractor* corrects a Defect whether or not the *Supervisor* notifies him of it.

Z1.22.1

- 43.2 **Subject to sub-clause 46, the** ~~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.

Critical Defects 46

Z1.23

The *Contractor* acknowledges and agrees that the *Project Manager* may, either before or after Completion, arrange for a Critical Defect to be corrected by Others, instead of by the *Contractor*, at the cost of the *Contractor*. Without prejudice to any other right or remedy of the *Employer*, the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting a Critical Defect. The *Project Manager* notifies the *Contractor* of a Critical Defect as soon as reasonably practicable.

5 Payment

Assessing the amount 50

Z1.24

- due 50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur
- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
 - at Completion of the whole of the *works*.

Z1.24.1

50.1A The *Contractor* submits an application for payment to the *Project Manager* 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 *Contractor* 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

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

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 *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.

Z1.24.2

50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor*

until such revised programme has been submitted to the *Project Manager* for acceptance.

- Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted ~~in accordance with clause 50.1A on or before the assessment date~~. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Not used (as not an Option A clause).**
- 50.7 Not used (as not an Option A clause).**
- Z1.24.4 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* 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 *Contractor* until such documents have been delivered.
- Z1.24.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.24.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.24.7 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 ~~not later than five days after each payment due date and issues a copy of the payment certificate to the Contractor within one week 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*. ~~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.~~ Payments are in the *currency of this contract* unless otherwise stated in this contract.
- Y1.1.2 51.1A The date on which payment becomes due is ~~seven days after the assessment date~~ the later of:
- the assessment date; and
 - fourteen days after the date of receipt by the *Project Manager* of the *Contractor's* application for payment in accordance with clause 50.1A.
- The final date for payment is ~~fourteen days or a different period for payment if stated in the Contract Data~~ **twenty eight days** 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 that sum 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 three weeks 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, Subject to clause 51.2B, if 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 a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.
- Y1.1.4 51.2B If either Party intends to pay less than the notified sum, he notifies the other Party not later than ~~seven days~~ **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. **In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.**
- Z1.25.1 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~~ **courts,**
- 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.
- Z1.25.2 51.4 Interest is calculated on a daily basis at the *interest rate* and is ~~compounded annually~~ **simple interest.**
- 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 (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 (not an Option A clause)**
- Z1.26.1 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*

then 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.

Z1.27.1

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

Z1.28

Z1.28.1

60.1 The following are compensation events, but only to the extent that they are not due to any fault of the Contractor and provided that the Contractor has taken all reasonable steps to mitigate the actual or potential effect of the event.

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

- a change made in order to accept a Defect or
- 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
- a change arising from an accepted Cost Saving Proposal, or
- an instruction which is stated in this contract not to give rise to a compensation event.

(2) ~~The Employer~~ Subject to the requirements of the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the Contractor, 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 (not being Statutory Undertakers)

- do not work within the times shown on the Accepted Programme, or
- 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 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

- 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*~~ ~~(except to the extent caused or contributed to by the *Contractor* or any Subcontractor or any person for whom those parties are responsible)~~ which is not one of the other compensation events in this contract.

(19) An event which ~~is a Prevention Event and is not one of the other compensation events stated in this contract provided that the *Contractor* is not entitled under this clause 60.1(19) to any change to the Prices.~~

~~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.~~

Z1.28.2 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 **thorough** visual inspection of the Site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

Z1.28.3 60.3 **Subject to clause 17**, 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 61

Events 61.1 For compensation events which arise from the *Project Manager* or the *Supervisor* giving an instruction or changing an earlier decision, the *Project Manager* notifies the *Contractor* of the compensation event at the time of giving the instruction or changing the earlier decision. 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.

Z1.28A.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~~ **four weeks of when he becomes aware, or 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 *Project Manager* should have notified the

event to the *Contractor* but did not. *The Project Manager may notify the Contractor of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the Contractor has failed to notify a compensation event in accordance with this clause.*

- 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.

If the *Project Manager* does not notify his decision to the *Contractor* within either

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

the *Contractor* may notify the *Project Manager* to this effect. 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.

Z1.28A.2

- 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 **may notify** ~~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

- 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.

Z1.28B.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* to this effect. 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 63

Z1.29

- Events** 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.

The date when the *Project Manager* instructed or should have instructed the *Contractor* to submit quotations divides the work already done from the work not yet done.

- 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.

Z1.29.1

- 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 delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent:**

- that the compensation event is the principal cause of the delay; and
- the *Contractor* demonstrates that the compensation event has caused or (in the case of future delay) will cause delay to the Completion Date or a Key Date.

The *Project Manager* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.

Z1.29.2

- 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 **and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.**

Z1.29.3

- 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, **or**
 - **did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,**

the event is assessed as if the *Contractor* had given early warning at the appropriate time.

Z1.29.4

- 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.

- 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 instead of Defined Cost.

The *Project Manager*'s 64

Z1.29A

Assessments

64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- 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.

Z1.29A.2

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. 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~~four weeks of this notification the notification is treated as acceptance of the *Contractor*'s quotation by the *Project Manager*.

Z1.29A.3

64.5 The *Project Manager* may extend the time allowed for the following actions:

- notification of a decision and/or instruction (cl. 61.4);
- reply to a quotation (cl. 62.3); or
- assessment of a compensation event (cl. 64.3 and cl. 64.4)

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues

connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

**Implementing 65
compensation events**

- 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.
- 65.3 Not used (as not an Option A clause).**
- 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

The Employer's title to	70	
Z1.30		
Plant and Materials	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> or <i>Supervisor</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier if the <i>Supervisor</i> has marked it as for this contract. 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> .
Z1.30.1		
Z1.30.2	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. Subject to clause 70.1 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.
Z1.30.3	70.3	If requested by the <i>Project Manager</i>, 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.
Marking Equipment, Plant	71	
and Materials outside the Working Areas	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	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.
Objects and materials within the Site	73	
	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

	Employer's risks	80
Z1.31		80.1 The following are <i>Employer's</i> risks.
		<ul style="list-style-type: none">• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none">• 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>,• 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
Z1.31.1		<ul style="list-style-type: none">• a fault of the <i>Employer</i> other than a fault in his design.
		<ul style="list-style-type: none">• 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.• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none">• war, civil war, rebellion, revolution, insurrection, military or usurped power,• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees and/or any <i>Subcontractor's</i> employees or• radioactive contamination.• 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">• a Defect which existed at take over,• an event occurring before take over which was not itself an <i>Employer's</i> risk or• the activities of the <i>Contractor</i> on the Site after take over.• 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.• Additional <i>Employer's</i> risks stated in the Contract Data.
Z1.31.2		
	The Contractor's risks	81
		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> .
	Repairs	82
		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.
	Indemnity	83
Z1.32		83.1 Each Party The <i>Contractor</i> is responsible for and indemnifies the <i>Employer</i> , his employees and agents and members of the TfL Group against all Losses in respect of events or matters the other against claims, proceedings, compensation and costs due to an event which is are at his risk including subject to any applicable limitation of liability under Secondary Option X18:
Z1.32.1		<ul style="list-style-type: none">• personal injury to or death of any person;• loss of or damage to property real or personal other than to the <i>works</i>; and• any other Losses arising under his contracts with Others.
		Without prejudice to the foregoing, the <i>Contractor</i> provides this indemnity against:
		<ul style="list-style-type: none">• 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 *works* or the project, and

- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could have been avoided by the *Contractor* using all reasonable and practical means.

Z1.32.2 83.2 The *Contractor's* liability of each Party to indemnify the *Employer*, his employees and agents and members of the TfL Group ~~other~~ is reduced if events at the ~~other~~ Party's ~~Employer's~~ risk contributed to the *Losses* claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the *Employer's* ~~other~~ Party's risk contributed, taking into account each Party's responsibilities under this contract. ~~The Contractor's indemnity under clause 83.1 remains in force for the duration of this contract and continues to survive expiry or termination of the contract along with any other clauses or schedules of the contract necessary to give effect to it.~~

Z1.32.3 83.3 REDACTED

Remedies

Z1.33 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/or low performance damages pursuant to Option X17; and
- (b) delay damages pursuant to Option X7 or low performance damages pursuant to Option X17 (as the case may be) is without prejudice to the *Employer's* right to low performance damages under Option X17 or delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

Insurance cover 84

Z1.34 Z1.34.1 84.1 The *Parties provide Contractor* provides the insurances stated in the Insurance Table ~~except any insurance which the Employer is to provide as stated in the Contract Data.~~ The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.34.2 84.2 ~~The insurances are in the joint names of the Parties and provide cover for events which are at the Contractor's risk from the starting date until the Defects Certificate or a termination certificate has been issued.~~

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the <i>Employer</i>
Loss of or damage to Equipment	The replacement cost

Liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately
Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event

Insurance Table

Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
Construction All Risks insurance		
All risks of loss of or damage to (not excluded by the terms and conditions of the policy) 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	REDACTED
Public liability insurance		
All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).	Employer in the joint names of the Parties	REDACTED
Non-negligence insurance		
Any expense, liability, loss claim or proceedings which the Employer incurs or sustains by reason of injury, loss of or damage to any property other than the works, Site materials or existing property of the Employer caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of carrying out the works (unless excluded by the terms and conditions of the policy)	Employer in the joint names of the Parties	REDACTED

Employer's liability insurance

Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with this contract or the project	<i>Contractor</i>	Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater
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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 <i>Contractor</i>	<i>Contractor</i>	The replacement cost
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Professional Indemnity Insurance

Fault in respect of design of the <i>works</i> or other professional services for which the <i>Contractor</i> or his Subcontractors is responsible	<i>Contractor</i>	£2,000,000 for each and every claim or as otherwise stated in the Contract Data
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- Z1.34.3 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;
 - 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.
- Z1.34.4 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.
- Z1.34.5 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; and
 - professional indemnity insurance covering their liabilities under subcontracts in respect of their design.
- Z1.34.6 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

- Z1.35
Z1.35.1 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. **Reasons A reason for not accepting the certificates is include:**
- 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;
 - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.

Z1.35.2	85.2	Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud. Not used.
	85.3	The Parties comply with the terms and conditions of the insurance policies.
Z1.35.3	85.4	Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the <i>Employer</i> for events which are at his risk and by the <i>Contractor</i> for events which are at his risk.
Z1.35.4	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 86		
Z1.36	not insure	
Z1.36.1	86.1	The <i>Employer</i> may insure a risk which this contract requires the <i>Contractor</i> to insure if the <i>Contractor</i> does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the <i>Employer</i> in respect of taking out such insurance) to the <i>Employer</i> is paid by the <i>Contractor</i> . If the <i>Employer</i> insures a risk which this contract requires the <i>Contractor</i> to insure, this is without prejudice to any of the <i>Employer's</i> other rights, powers or remedies under this contract.
Insurance by the 87		
	Employer	
	87.1	The <i>Project Manager</i> submits policies and certificates for insurances provided by the <i>Employer</i> to the <i>Contractor</i> for acceptance before the <i>starting date</i> and afterwards as the <i>Contractor</i> instructs. The <i>Contractor</i> accepts the policies and certificates if they comply with this contract.
	87.2	The <i>Contractor's</i> acceptance of an insurance policy or certificate provided by the <i>Employer</i> does not change the responsibility of the <i>Employer</i> to provide the insurances stated in the Contract Data.
	87.3	The <i>Contractor</i> may insure a risk which this contract requires the <i>Employer</i> to insure if the <i>Employer</i> does not submit a required policy or certificate. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Employer</i> .
Z1.36.2	87.4	The <i>Contractor</i> co-operates with the <i>Employer</i> regarding the handling and settlement of claims under the <i>Employer's</i> insurances and complies with the requirements of the <i>Employer's</i> insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the <i>Employer</i> , its claims handler and its insurers require.
Z1.36.3	87.5	The <i>Contractor</i> shall comply, and shall ensure that its subcontractors comply, with the requirements of the <i>Employer's</i> claims handling procedures, such procedure to be provided to the <i>Contractor</i> by the <i>Employer</i> .
Z1.36.4	87.6	The <i>Contractor</i> does not compromise, settle or waive any claim which the <i>Contractor</i> may have under the <i>Employer's</i> insurances without the prior written consent of the <i>Employer</i> .

9 Termination

Termination 90

Z1.37

- 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

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21 the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, or R18, R25A	P1, P2 and P3	A1 and A3
	R17, or 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	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

Z1.37.2

Reasons for termination 91

Z1.38

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 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 requirement of this contract (R15).

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (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 and prudent contractor familiar with works similar to the works and exercising the foresight appropriate to such a 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 or a Prohibited Act 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 satisfaction in accordance with the provisions of Z2.12 (R23),
 - any cap on the Contractor's liability under this contract has been or is reasonably likely to be exceeded (R24),
 - the Employer not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
 - A Change of Control (R25A).

- Z1.38.5 91.9 In the event that 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:
- 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 shall 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 shall survive the declaration or order as aforesaid.

Procedures on 92

- Z1.39 termination 92.1 On termination, the Employer may complete the works and may use any Plant and Materials to which he has title (P1).

- Z1.39.1 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table. In each case, the Site is left in a safe, clean and workmanlike condition to the satisfaction of the Project Manager.

P2 The Employer may instruct the Contractor to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of and/or enter into a novation of any subcontract or other contract related to performance of this contract to the Employer.

P3 The Employer may use any Equipment to which the Contractor has title to complete the works. The Contractor promptly removes the Equipment from Site when the Project Manager notifies him that the Employer no longer requires it to complete the works.

P4 The Contractor leaves the Site and removes the Equipment from the Working Areas and removes the Equipment unless otherwise instructed by the Project Manager.

Payment on termination 93

- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost for Plant and Materials

- within the Working Areas or
- to which the *Employer* has title and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
- any amounts retained by the *Employer* and
- a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works*.

A4 The ~~direct fee percentage~~ applied to

- for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or
- for Options E and F, any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.

93.3 The amount due on termination is assessed without taking grouping of activities into account.

Z1.39.2

2. Additional Conditions of Contract

Contractor's Warranties

Z2.1

Z2.1.1 The *Employer* may at any time before or within 12 years after Completion enter into an agreement or agreements without the *Contractor's* consent being required with:

- PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*.

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request made no later than the Completion Date, duly executes and delivers to the *Employer* deeds of warranty in the appropriate form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty in the appropriate form attached at Schedule 5 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 6 in favour of

- any member of the TfL Group,
- the PFI Contractors,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in the whole or any part of the *works*.

If the *Contractor* is unable to procure and deliver to the *Employer* any requisite deed of warranty in the appropriate form within 21 days of the relevant appointment the *Contractor* without prejudice to the *Employer's* rights and remedies consults with the *Project Manager* as to what steps can reasonably be taken to procure the outstanding warranty and safeguard the *Employer's* interests.

Z2.3 Not used

Warranties and Undertakings

Z2.4

Z2.4.1 The *Contractor* warrants and undertakes to the *Employer* as a condition of this contract that:

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in accordance with the Works Information and applicable law,
- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it

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

- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he will maintain a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* will be used solely for the purposes of the *works* and for no other purpose.

Accounts and Records

Z2.5

Z2.5.1 In this section:

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-sub-contractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*;
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

Z2.5.2 The *Contractor* maintains and procures in each subcontract that each of his Subcontractors (and sub-sub-contractors of any tier) maintains and retains the Minimum Records for a minimum of twelve (12) years from Completion with respect to all matters for which the *Contractor* and his Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the *Employer* and his authorised representatives.

Z2.5.3 The *Contractor* undertakes and procures that his Subcontractors (and sub-subcontractors of any tier) undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and his authorised representatives may, from time to time during the performance of this contract and for 12 years following Completion, audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including any aspect of the *Contractor's* or any Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* rights pursuant to this sub-clause Z2.5.3 include the right to audit and check and to take copies of and extracts from any document or record of the *Contractor* or his Subcontractors including Minimum Records.

Z2.5.4 The *Contractor* promptly provides (and procures that his Subcontractors and sub-subcontractors of any tier promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by:

- (a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,
- (b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
- (c) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
- (d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
- (e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance

Z2.6

Z2.6.1 The *Contractor* prevents any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto.

Z2.6.2 Without prejudice to the *Contractor's* obligations under clause Z2.6.1 if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

Intellectual Property Rights

Z2.7

Z2.7.1 Vesting of IPR

The Parties agree that the IPR in all Documentation and works that is created wholly or mainly in connection with the performance of this contract (including IPR created by a Subcontractor or sub-subcontractor of any tier) vests in the *Employer*. The *Contractor* procures that each Subcontractor (or sub-subcontractor of any tier)

assigns such IPR to the *Employer*.

Z2.7.2 Background IPR

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's or other third party's Background IPR) a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for the following purposes:

- (a) understanding the *works*,
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*, any Equipment or Plant and Materials,
- (c) extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others,
- (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network,
- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network,
- (f) executing and completing the *works*, and
- (g) designing, testing and commissioning the *works*.

In this section, "**Infrastructure Manager**" has the meaning ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006) and "**Operator**" means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway who secures the provision of such services either through contractual arrangements in the terms of the PPP Contracts or through substantially similar terms.

Z2.7.2A The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* immediate access to all Documentation in whatever form requested by the *Project Manager* at any time but at the latest on termination or expiry of this contract.

Z2.7.2B IPR Claims

- (a) The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims, demands or actions (collectively "Claims") relating to the same) which affects or may affect the provision of the *works*
- (b) Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all Claims and Losses that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.
- (c) The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such Claim. The *Contractor* reimburses the *Employer* for all Losses incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such Claim. The *Contractor* consults with the *Employer* in respect of the conduct of any Claim and keeps the *Employer* regularly and fully informed as to the progress of such Claim.

Z2.7.3 Corporate IPR

- (a) The *Employer* grants the *Contractor* a non-exclusive, non transferable, royalty-free licence to the *Contractor* to use, and allow his Subcontractors to use, the Corporate IPRs for the

duration of this contract for the sole purpose of enabling the *Contractor* to Provide the Works and to comply with his obligations under this contract.

- (b) The *Contractor* uses, and procures that his Subcontractors use, the Corporate IPRs in compliance with any relevant Standards and applicable law.
- (c) The *Contractor* does not use, and procures that his Subcontractors do not use, the Corporate IPRs in combination with any other trade marks without the *Employer's* prior written consent.
- (d) On written request by the *Project Manager*, the *Contractor* supplies to the *Project Manager* copies or details of items on or in relation to which it uses the Corporate IPRs or details of the manner in which they are used. If the *Project Manager* reasonably determines that any use of the Corporate IPRs falls below the Standards, the *Project Manager* gives the *Contractor* written notice of that fact and the *Contractor* corrects the use so as to comply with the Standards taking into account the *Project Manager's* instructions.
- (e) The *Contractor* is not entitled to bring any action against any third party for infringement relating to the Corporate IPRs and the *Employer* is not obliged to bring or extend any proceedings relating to the Corporate IPRs if it decides in his sole discretion not to do so.
- (f) As soon as reasonably practicable after expiry or termination of this contract for any reason, the *Contractor* and his Subcontractors remove the Corporate IPRs from or (where removal is not reasonably practical) destroy or, if the *Project Manager* so elects, deliver to the *Project Manager* or any other UK company or person designated by the *Project Manager*, all items and documents which the *Project Manager* does not require for the operation, maintenance, repair, renewal or enhancement of the Underground Network on or in relation to which the Corporate IPRs are then used.

Assignment

Z2.8

- Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).
- Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

- Z2.9.1 The *Contractor* shall, and shall ensure that his Subcontractors (and sub-subcontractors of any tier) treat all information obtained under, arising from or in connection with this contract and the project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.
- Z2.9.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer*, the TfL Group or the Infracos or PFI Contractors to any other person.
- Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.
- Z2.9.4 Clause Z2.9.1 does not apply to the disclosure of:
 - (a) any information which is already in the public domain at the time

of its disclosure other than by breach of these provisions,

- (b) any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision;
- (c) any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

Z2.9.5 The *Contractor* procures that the Connected Persons comply with the provisions of this clause Z2.9 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

Z2.9.6 The *Contractor* notifies the *Employer* promptly if the *Contractor* becomes aware of any breach of confidence by a Connected Person and gives the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

Z2.9.7 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

Z2.9.8 At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.

Z2.9.9 Except as provided under deeds of warranty required by the *Employer* under Sub-clause Z2.1, the *Contractor* does not (and procures that the Connected Persons do not) without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning this contract or the *works* or the project.

Cost saving proposals

Z2.10

Z2.10.1 The *Contractor* may submit a proposal to change the Works Information provided by the *Employer* ("**Cost Saving Proposal**") to the *Project Manager* for acceptance. Such proposal is submitted in accordance with the Works Information.

Z2.10.2 The *Project Manager* may reject a Cost Saving Proposal for any reason. If he accepts a Cost Saving Proposal, the *Project Manager* assesses the effect of the Cost Saving Proposal on forecast Defined Cost and the resulting Fee and the Prices are reduced by 50% of the amount of the assessed saving. The costs of preparing and submitting a Cost Saving Proposal (including the reasonable costs of exploring and establishing the merits and feasibility of the same) are borne by the *Contractor*.

Dispute Resolution Procedure

Z2.11

Z2.11.1 The *Employer*, *Contractor* and the *Project Manager* follow the Dispute Resolution Procedure for the avoidance and resolution of Disputes.

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

- Z2.12.1 The *Contractor* will pay and/or the *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 9 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* to Provide the Works or a breach of his obligations under this contract.

TFL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

- Z2.13.1 The *Contractor* has regard to the Responsible Procurement Principles and complies at all times with the obligations with regard to the Responsible Procurement Principles set out in the Works Information and/or instructed by the *Project Manager* from time to time. Compliance with such obligations and instructions does not constitute a compensation event unless the *Project Manager* issues an instruction and states in his instruction that it constitutes a compensation event.

Crime and Disorder

Z2.14

- Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with 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,
- without prejudice to any other obligation imposed on the *Employer*, exercise his 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 his Subcontractors (and sub-sub-contractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy his duty.

London Living Wage

Z2.15

- Z2.15.1 In this clause:

"GLA Act"	means the Greater London Authority Act 1999;
"Greater London"	means that term as it is used in the GLA Act;
"London Living Wage"	means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the <i>Employer</i> ;
"Mayor"	means the person from time to time holding the office of Mayor of London as established by the GLA Act;

“RPIX” means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree;

Z2.15.2 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.

Z2.15.3 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* shall and shall procure that his Subcontractors (if any) shall:

- (a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
- (b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and
- (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Transparency

Z2.16

Z2.16.1 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clauses Z2.19 and Z2.9, the *Contractor* hereby gives his consent for the *Employer* to publish the Contract Information to the general public.

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his 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 his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

Z2.16.3 In this clause

“Contract Information” means (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 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

“Transparency Commitment” means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received

Data Protection

Z2.17

Z2.17.1 Without prejudice to sub-clause Z2.5, the *Contractor* at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the *Employer* from time to time in

relation to the processing of data and does not by any act or fault cause the *Employer* to be in breach of these requirements.

Z2.17.2 The Contractor:

- 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 Act) and against accidental loss, destruction of, or damage to such Personal Data;
- 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 Z2.11;
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest

Z2.18

Z2.18.1 The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.

Z2.18.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and works with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the *works* from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* shall be entitled to terminate the contract.

Freedom of Information

Z2.19

Z2.19.1 The *Contractor* acknowledges that the *Employer*:

- is 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
- may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*.

Z2.19.2 Without prejudice to the generality of Clause Z2.19.1, the *Contractor* agrees and procures that his Subcontractors will agree to:

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the *works* or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
- 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.

Z2.19.3 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*.

- Z2.19.4 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*.

Criminal Record Declarations

- Z2.20 Z2.20.1 In this section:

“**Relevant Individual**” means any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.

“**Relevant Conviction**” means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

- Z2.20.2 The *Contractor* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* shall procure that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.3 The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.4 The *Employer* may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.5 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.2 and/or Z2.20.3, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.2) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.2.
- Z2.20.6 A persistent breach of Clause Z2.20.2 and/or Z2.20.3 by the *Contractor* shall constitute 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.
- Z2.20.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z2.20.8 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor*’s obligation to Provide the Works remains in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

Best Value

- Z2.21
Z2.21.1 The *Contractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the *Employer* are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* (and, where appropriate, TfL)

to discharge this duty and agrees to negotiate in good faith any changes to this contract in order for the *Employer* (and, where appropriate, TfL) to achieve best value.

Prohibited Acts

- Z2.22
- Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.
- Z2.22.3 If the *Contractor*, any of his shareholders or any 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 contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.
- Z2.22.4 If a Prohibited Act is committed by an employee of the *Contractor* or by any 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 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.

POWER: ADDITIONAL Z CLAUSES

Definitions In clauses Z2.23 to Z2.26 (inclusive), the following expressions have the following meanings:

Adoption Procedure means the adoption procedure set out in the Works Information.

Assets means the power assets, plant, equipment, cabling, apparatus and civil assets and structures to be installed in accordance with the Works Information at the Sites.

Employer's Substation Access Procedures means all relevant requirements of the *Employer's* LUL Operations Power Planning Team and all relevant policies with which compliance is required to gain access to an *Employer's* substation.

Street Authority shall bear the meaning ascribed to that term at Section 49 of the New Roads and Street Works Act 1991.

Street Works shall bear the meaning ascribed to that term at Section 48(3) of the New Roads and Street Works Act 1991.

Street Works Licence shall bear the meaning ascribed to that term at Section 50 of the New Roads and Street Works Act 1991.

Third Party Consent shall bear the meaning ascribed to it in clause Z2.24.1.

Adoption Procedure

Z2.23

- Z2.23.1 The *Contractor* complies with the Adoption Procedure.
- Z2.23.2 The *Contractor* engages, consults and co-operates with the *Employer* as required to enable the Assets to be adopted by the *Employer* in accordance with the Adoption Procedure.

Street Works The *Contractor*, in relation to all Street Works:

Z2.23.3

- (a) provides a copy of a Street Works Licence which:
- (i) has been issued prior to the date on which the works are due to commence, and is valid throughout the duration of the works;
 - (ii) does not require any consideration to be paid by the *Employer* following adoption of the Assets;
 - (iii) does not contain any condition binding upon the *Employer* prior to or subsequent to the Assets being adopted;
 - (iv) does not prohibit assignment of the Street Works Licence (or make assignment thereof subject to conditions), and
- (b) provides written evidence from the Street Authority that:
- (i) all the conditions in the Street Works Licence have been complied with; and
 - (ii) the licensee under the Street Works Licence has given at least six (6) weeks notice to the Street Authority of the proposed parting with his interest in the Assets or that the Street Authority has waived such period of notice;
 - (iii) on the date that an Adoption Certificate is issued by the *Employer* the Street Authority has not served notice on the Street Works licensee of the withdrawal of the Street Works Licence; and
 - (iv) the Street Authority will not remove the Assets on the expiry, withdrawal or surrender of the Street Works Licence, and
- (c) does not carry out the works in any street in respect of which a Highway Authority or Bridge Authority have served a notice under Section 85(2) of the New Roads and Street Works Act 1991.

Provision of information

Z2.23.4

Within seven (7) days of the *Project Manager's* written request, the *Contractor* provides the following information, to the extent it has already been prepared, to the *Employer*:

- (a) pre-construction designs and associated plans,
- (b) method statements,
- (c) any other relevant pre-construction information and/or associated plans produced by the *Contractor*, and
- (d) any other information which is required from the *Contractor*, or reasonably requested by the *Project Manager*, in order to comply with the Adoption Procedure.

Provision of information

Z2.23.5

The *Contractor* delivers the following information to the *Project Manager* in relation to the Assets within seven (7) days of a written request:

- (a) as-built drawings,

- (b) the health and safety file,
- (c) electrical protection settings,
- (d) copies of any warranties,
- (e) all test certificates (including manufacturer's tests),
- (f) all design documents and supporting calculations (including, where applicable, network modelling works), and
- (g) all other data and information reasonably required by the *Employer*, including all relevant manuals, instructions, data and documentation.

Local authorities Z2.23.6 The *Contractor* ensures that the designs and the works comply with all relevant Local Authority requirements, whether stated as conditions within Local Authority Planning Permissions or otherwise.

Obligation to verify information Z2.23.7 To the extent that the *Contractor* reasonably requires verification of any information it has received from the *Project Manager* or Others, he will verify the information by any possible means (including, where relevant, by carrying out site surveys and investigations).

Obligations in relation to unavailable documentation Z2.23.8 If any documentation is unavailable, the *Contractor* contacts the *Project Manager* or the relevant Infraco contact, as appropriate, and takes all necessary steps (including, without limitation, the carrying out of intrusive and non-intrusive surveys at its own cost) to obtain such information and documentation.

No Warranty Z2.23.9 Save only where it is expressly confirmed to the *Contractor* in writing at the time that any document (or any information therein) may be relied on by the *Contractor* as being accurate and/or complete, the *Employer* gives no warranty as to the accuracy or completeness of any record drawings, existing surveys or other documents or information which are made available to the *Contractor* by the *Project Manager*, the *Employer*, the Infracos or any of the *Employer's* contractors. The *Contractor* is responsible for taking all such steps as it considers necessary or appropriate (including, without limitation, the carrying out of intrusive and non-intrusive surveys at its own cost) in order to verify such unwarranted documents and information.

Familiarisation Training Z2.23.10 The *Contractor* provides the *Employer*, at the appropriate time, with all necessary training and instruction in respect of the Assets.

Property And Related Matters
Z2.24

Planning Permissions and Consents Z2.24.1 Subject to receiving the *Project Manager's* written permission to do so, the *Contractor* obtains all Local Authority Planning Permissions, consents, licences, authorisations, permissions, wayleaves and other third party approvals or permits which are required in order to Provide the Works (Third Party Consents). The *Employer* pays the third party cost of acquiring such Third Party Consents, other than the cost of the *Contractor's* time (including the costs of his consultants, employees and Subcontractors), making the applications and providing all information (including without limitation copies of all necessary drawings, plans and designs) and providing all necessary assistance to the relevant third parties, which shall be at no additional cost to the *Employer*.

Programme Z2.24.2 The *Contractor* includes in the programme, and any Accepted Programme, the timescale for the preparation, submission and receipt of the Third Party Consents.

Employer's prior written consent to be obtained Z2.24.3 The *Contractor*:
(a) obtains the *Project Manager's* prior written consent before making any

application in respect of the relevant Third Party Consents, and

- (b) as soon as the *Project Manager's* prior written consent has been obtained, promptly provides to the *Project Manager* copies of all applications for the relevant Third Party Consents which it intends to make.

Third Party Consents to extend for the benefit of the Employer
Z2.24.4

The *Contractor* shall ensure that any Third Party Consent extends to and for the benefit of the *Employer*, its employees, agents and contractors.

Approval of applications
Z2.24.5

The *Contractor* submits any applications for Third Party Consents in draft to the *Project Manager*, for approval by the *Employer's* property department, on the requisite form, accompanied by plans to identify the land to which it relates and the nature of the proposed development, prior to such applications being made.

Submission of applications
Z2.24.6

Once the *Project Manager* has provided its written consent, the *Contractor* submits the application for any such Third Party Consent to the relevant authority, together with the appropriate fee.

Third Party Services
Z2.24.7

If the *Contractor* needs to relocate any third party services (including without limitation apparatus owned or maintained by a Statutory Undertaking including cables, cable ducts, pipes, sewers and other apparatus) identified in or reasonably identifiable acting in accordance with good industry practice from the Works Information in order to carry out the works, this is at no additional cost to the *Employer*.

Contractor's Personnel
Z2.25

Permits and Authorizations
Z2.25.1

The *Contractor* complies with the *Employer's* Substation Access Procedures in order to gain access to the *Employer's* substations.

Z2.25.2 Without prejudice to its obligations under sub-clause Z2.25.1:

- (a) where the *Contractor* requires access to an *Employer* substation to carry out a visual survey, he will either:
 - (i) require an *Employer's* substation entry permit, an *Employer's* entry permit and fire safety training, or
 - (ii) need to be accompanied by an appropriate representative of either the *Employer* or the *Project Manager*; and
- (b) where the *Contractor* is to carry out works within an *Employer's* substation, he shall issue a planning request to the *Employer*, at least eight (8) weeks before the relevant works are due to commence, in accordance with the Works Information.

Access Z2.26

Access to Substations

Permits and authorizations
Z2.26.1

The *Contractor* ensures that all personnel entering an *Employer's* substation:

- (a) possess a LUL sub-station entry permit,
- (b) possess an LUL entry permit,

(c) have fire safety authorisation, and

in relation to those Sites which the *Employer* has notified the *Contractor* have a high security risk, the relevant personnel shall satisfactorily complete all relevant police security checks.

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Metal price adjustment X1

- X1.1 If, by reference to the London Metal Exchange, the prices for copper (the “**Relevant Materials**”) assumed in the Contractor’s tender increase or decrease during the period from the *base date* until the date at which such prices are determined for the purpose of any order for such Relevant Materials placed by the *Contractor* (the “**Order Date**”), Clause X1.2 applies.
- X1.2 Where this Clause X1.2 applies, those elements of the Prices attributable to each Relevant Material the subject of the relevant order are adjusted in proportion to the increase or decrease in the rates quoted for that Relevant Material on the London Metal Exchange between the *base date* and the Order Date, provided that the *Contractor* has provided all documentary evidence reasonably required by the *Project Manager* (including, for the avoidance of doubt, evidence of (i) the rate and tonnage assumed at the *base date* and (ii) the rate and tonnage applicable to the relevant order) in relation to the orders placed.

Option X2: Changes in the law

Changes in the law X2

Z1.40.1

- X2.1 A change in the law of the country in which the Site is located (and which is not a change in law which a competent and experienced contractor familiar with works similar to the works and exercising the foresight appropriate to such a contractor ought reasonably to have anticipated at the Contract Date) is a compensation event if it occurs after the Contract Date. The *Project Manager* may notify the *Contractor* of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X3: Multiple currencies

Multiple currencies X3 Not used

Option X4: Parent company guarantee

Parent company Guarantee X4

Z1.41.1

- X4.1 If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor*’s performance in the form set out in the Works Information attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the *Employer* within ~~four~~ one weeks of the Contract Date.

Option X5: Sectional Completion

Sectional Completion X5 Not used

Option X6: Bonus for early Completion

Bonus for early Completion X6 Not used

Option X7: Delay damages

Delay damages X7

- X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of
- Completion and
 - the date on which the *Employer* takes over the *works*.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- X7.3 If the *Employer* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.

Option X12: Partnering

Identified and defined terms X12 Not used

Option X13: Performance bond

Performance bond X13 Not used

Option X14: Advanced payment to the *Contractor*

Advanced payment X14 Not used

X14.1 The *Employer* makes an advanced payment to the *Contractor* of the amount stated in the Contract Data.

X14.2 The advanced payment is made either within four weeks of the Contract Date or, if an advanced payment bond is required, within four weeks of the later of

- the Contract Date and
- the date when the *Employer* receives the advanced payment bond.

The advanced payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the *Contractor* has not repaid and is in the form set out in the Works Information. Delay in making the advanced payment is a compensation event.

X14.3 The advanced payment is repaid to the *Employer* by the *Contractor* in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

Option X15: Limitation of the *Contractor's* liability for his design to reasonable skill and care

The *Contractor's* design X15 Not used

Option X16: Retention

Retention X16

X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of

- Completion of the whole of the *works* and
- the date on which the *Employer* takes over the whole of the *works*

the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

X16.2 REDACTED

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Z1.45.1

X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the *Contractor* has contracted.

Option X17: Low performance damages

Low performance Damages X17 Not used

Option X18: Limitation of liability

Limitation of liability X18 REDACTED

Option X20: Key Performance Indicators (not used with Option X12)

Key Performance Indicators Not used

Option X21: Single Point Design Responsibility

Single Point Design X21

Responsibility

Z1.48

X21.1 In this Option, "***Employer's Design Information***" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents, or concepts prepared or developed by the *Employer* and included in the Works Information.

X21.2 The *Contractor* is deemed to have scrutinized, prior to the Contract Date, the *Employer's* Design Information. The *Contractor* is responsible for the design of the *works* and for the accuracy of such *Employer's* Design Information except as stated in clause X21.3 below.

X21.3 The *Employer* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's* Design Information as originally included in the contract and is not deemed to have given any representation of accuracy or completeness of any data or information, except as stated below.

The *Employer* is responsible for the correctness of the following elements of the *Employer's* Design Information:

- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
- (b) definitions of intended purposes of the *works* or any part thereof, and
- (c) criteria for the testing and performance of the completed *works*.

X21.4 Where there is a mistake, inaccuracy or discrepancy in or omission from the *Employer's* Design Information, the *Contractor* informs the *Project Manager* in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the *Project Manager* may consent to the *Contractor's* proposed amendment or comment in writing on such an amendment provided that the *Project Manager* does not unreasonably withhold his consent to a proposed amendment. The *Contractor* takes account of such comments and resubmits his proposed amendment to the *Project Manager*. Such process is repeated until the *Project Manager* accepts the *Contractor's* proposed amendment.

X21.5 The following shall not give rise to a compensation event:

- anything which is the *Contractor's* responsibility as set out in this Option X21;
- any comment, failure to comment or delay in commenting by the *Project Manager* in connection with this Option X21 (which shall also not be treated as an act of prevention or breach of contract by the *Employer*); or
- any discrepancy, mistake, inaccuracy in, or omission from, the *Contractor's* design and/or the *Employer's* Design Information.

Novation of Associated Contracts X22 Not used

Key Person Succession Plan X23

Z1.50

X23.1 If a key person succession plan is stated in the Works Information to be applicable to the project, then the *Contractor* complies with the provisions set out in the Works Information regarding the appointment and replacement of key persons in accordance with the key person succession plan.

X23.2 The *Contractor* submits his key person succession plan to the *Project Manager* for acceptance in accordance with the Works Information. A reason for not accepting a key person succession plan is that it does not contain the information required by the Works Information and/or a key person named in the key person succession plan does not have acceptable competency, qualifications or experience.

X24 Not used with Option A

Escrow Agreement X25 Not used

X25.1 In this Secondary Option X25:

"Escrow" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means the NCC Group or such other successor, replacement or substitute agent as may be approved by the *Employer* from time to time;

"Escrow Agreement" means the NCC Group's standard single licensee escrow agreement in the form attached at Schedule 11 provided that the Release Events referred to in clause 6 thereof shall be amended to include:

- a failure by the *Contractor* to maintain the Escrow Agreement; and
- termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the *Contractor* of its obligations under the Escrow Agreement or the contract howsoever arising including failure by the *Contractor* to pay any of the Escrow Agent's fees.

"Software" means any computer programs or software produced or supplied by the *Contractor* from time to time as part of or in connection with the *works* and all user documentation in respect of such programs or software and any modification which is required by the *Employer* before the *defects date*;

"Source Code Materials" means the source code of the Software and all technical information and documentation required to enable the *Contractor* to modify and operate the Software;

"Release Event" means an event the occurrence of which shall entitle the *Employer* to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement;

X25.2 The *Contractor* shall no later than the Contract Date procure that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and shall thereafter maintain the agreement for a minimum period of [12 years¹] from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) shall be borne by the *Contractor*. The execution of the Escrow Agreement is a condition precedent to this contract becoming effective. If the *Contractor* thereafter ceases to maintain such agreement then one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has provided the same to the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

(a) the Source Code Materials shall constitute the "Material" referred to in the Escrow Agreement;

(b) the licence provided pursuant to clause Z2.7.2 shall constitute the "Licence Agreement" referred to in the Escrow Agreement; and

(c) the Software shall constitute the "Package" referred to in the Escrow Agreement.

X25.3 The *Contractor* procures that any Subcontractor or supplier providing software for incorporation or operation of the *works* enters into software escrow agreements on the same terms as set out in the Escrow Agreement.

¹ Insert required period

OPTION Y

Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

Definitions <i>Note: incorporated in Schedule 1 and 12.6.</i>	Y(UK)2	
	Y2.1	(1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
Dates for payment	Y2.2	The date on which a 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. The Project Manager's certificate is the 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 was calculated.
Notice of intention to withhold payment	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.
Suspension of performance	Y2.4	If the Contractor exercises his right under the Act to suspend performance, it is a compensation event.
Payment	Y1	
Z1.51.1	Y1.1	<i>NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.</i>

Option Z: Additional conditions of contract

Additional conditions of contract		The <i>additional conditions of contract</i> stated in the Contract Data are part of this contract <i>incorporated into these consolidated conditions of contract.</i>
Z1.52.1		

SHORTER SCHEDULE OF COST COMPONENTS

Z1.53.1

- An amount is included only in one cost component and only if it is incurred in order to Provide the Works.
- People 1** The following components of the cost of
- people who are directly employed by the *Contractor*, and whose normal place of working is within the Working Areas,
 - people who are directly employed by the *Contractor*, and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
 - people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.
- 11 Amounts paid by the *Contractor* including those for meeting the requirements of the law and for pension provision.
- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
- 21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
- 22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- 23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
- 24 Unless the item is in the published list and the rate includes the cost component, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
 - erecting and dismantling Equipment and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
- 26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
- 27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office.
	45	Specialist services.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7	The following are deducted from cost <ul style="list-style-type: none"> • costs against which this contract required the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers and • the cost of excess payments or deductibles.

SUPPLEMENTARY NOTES TO SHORTER SCHEDULE OF COST COMPONENTS

The following notes should be read in conjunction with the relevant definitions of Defined Cost and Disallowed Cost and the Shorter Schedule of Cost Components. Without prejudice to the effect of clause 52.1 (by virtue of which all items not included in the Defined Cost are deemed to be included in the Fee):

- **Part A** of the notes provides some additional clarification as to what will be considered Defined Cost.
- **Part B** contains notes applicable to all cost components including requirements in relation to the presentation of costs by the *Contractor*, pre-conditions for costs reasonably and properly incurred and requirements for the verification and payment of costs by the *Employer*.

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

Amounts paid by the *Contractor* shall not include any overheads or profit paid with respect to people employed or seconded from group companies.

Payments made to people for bonuses and incentives:

Only those bonuses and incentive payments which have been made in relation to performance on this contract will be considered to be Defined Cost. There must be clear identification that any bonus and incentive payments made are related to the achievement of pre-agreed performance criteria.

Any bonus or incentive payment which has been made in respect of the following is not included in the Defined Cost:

- bonus or incentive payment which is not linked to Providing the Works
- any bonus or incentive payment which exceeds 10% of the base salary cost.

Payments made to people for overtime:

In the absence of express agreement to the contrary, any hours worked:

- in excess of 9.5 hours per day by an individual carrying out physical construction works; or
- in excess of 8 hours per day (up to a maximum of 40 hours per week) by an individual carrying out any other activity

will be deemed to be overtime. Only overtime payments which have been authorised in advance in accordance with these Supplementary Notes will be considered Defined Cost.

Payments made to people for absence due to sickness or holidays:

Any payments made to people in respect of sickness or holidays will only be considered Defined Cost if the people have worked continually within the Working Areas in excess of a three month time period. Payments to people in respect of absence arising from sickness or holidays lasting for a continuous period in excess of 3 weeks are not included in Defined Cost.

Payments made to people for severance related to work on this contract:

Only payments made to people representing a genuine pro-rata of time spent on the project against total time spent within the employ of the company will be considered Defined Cost. An example of what is considered an acceptable severance payment cost for a person employed on the project for one year but employed by the *Contractor* for ten years would be 10% of total severance payment cost.

Payments made to people for non-productive time

Only payments made to people for time spent working on this contract will be considered Defined Cost. Any payments made to people for attending internal company briefings, personnel meetings, appraisals, staff meetings, personal development training or the like is deemed to be included within the Fee.

Payments made to people for training

Only payments made to people for providing or attending training as a direct requirement of this contract will be considered Defined Cost. Any costs incurred providing training for purposes of personal or company development is deemed to be included within the Fee. Any costs incurred for time receiving or providing personal or company development training is considered allocated within the Fee.

The following components of the cost of people who are not directly employed by the Contractor but paid by the Contractor according to the time worked whilst they are within the Working Areas.

Only those people who are paid by the *Contractor* on a time only basis are included within this cost component, for example specialist consultants, agency staff, consultant or labour only subcontract staff.

An example of "people" who would not meet the criteria would be where the Subcontractor supplies labour and has the added requirement of providing any associated accommodation, equipment, supplies and services for those items listed within item 44 to support the provision of people. This would not be considered a time only cost component.

Section 2: Equipment

Payments made for overhead to group companies for Equipment

Only the reasonable equipment overhead cost of group companies subcontracted under this contract shall be considered Defined Cost.

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

Only the reasonable plant and materials overhead cost of group companies subcontracted under this contract shall be considered Defined Cost.

Section 4: Charges

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for people overheads stated in the Contract Data to people item 11. The charge includes provision and use of equipment, supplies and services for item 41.

Any costs relating to the provision by the *Contractor* of a parent company guarantee are deemed to be included in the Fee and are not admissible as Defined Cost.

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

Hourly rates for categories of employee shall represent the cost of employment, exclusive of any overheads and the percentage for manufacture and fabrication overhead shall represent the reasonable cost of local manufacture and fabrication related overheads only on a percentage basis as anticipated from the associated business plan for the facility.

Section 6: Design

Payments made for overhead to group companies for design:

Hourly rates for categories of employee shall represent the cost of employment, exclusive of any local and corporate overhead and the percentage for design overhead shall represent the reasonable cost of local design related overheads only on a percentage basis as anticipated from the associated business plan for the facility.

Design consultants – overhead charge

Only design undertaken outside the Working Areas by employees of the *Contractor* will attract the design overhead percentage. Design undertaken outside the Working Areas by consultants/Subcontractors or the like will not attract the design overhead percentage.

Section 7: Insurance

Excess payments or deductibles on all insurance policies relating to this contract are not considered Defined Cost.

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

Costs shall only be considered properly incurred in accordance with this contract if they meet all of the following criteria:

- they are in accordance with the applicable Main Option;
- they have been accepted by the *Project Manager* pursuant to the terms of this contract;
- they are in accordance with the Shorter Schedule of Cost Components (as amended) and these Supplementary Notes;
- (in relation to any time-based charges) they comply with any agreed procedure or system for capturing or allocating time;
- authorisation of overtime will be subject to compliance with a project-specific overtime policy accepted by the *Project Manager*. No overtime will be considered Defined Cost in the absence of such an agreed policy. Overtime costs charged to this contract will not attract the Working Area overheads percentage or design overheads percentage;

Where the *Contractor* is unable to demonstrate that costs have been reasonably and properly incurred by either himself or his Subcontractors such costs shall not be allocated to Defined Cost and shall be deemed to be Disallowed Cost.

The *Employer* is not liable for interest due to any delays in payment caused by the *Contractor's* failure to meet the requirements of these Supplementary Notes in respect of properly incurred costs.

2 - Reasonably Incurred Costs

Costs shall only be considered reasonably incurred if they meet the following criteria:

- their expenditure was an unavoidable consequence of Providing the Works;
- the *Contractor* can demonstrate that they represented current competitive market rates at the Contract Date;
- they do not fall within the definition of Disallowed Costs;
- they are not included within the *Contractor's* Fee or overhead percentages;
- they have been captured within systems for the collection of data either accepted by the *Project Manager* or stated in the Works Information.

3 - Cost Verification

An audit of the *Contractor's* financial controls and compliance procedures specified in this contract will be carried out by the *Employer* or his representatives to ensure the controls are operating effectively.

Without prejudice to the requirement of Z2.5, the *Employer* or his representatives will carry out a range of reviews and detailed audits to verify and provide internal assurances that all costs have been reasonably and properly incurred by the *Contractor* and his Subcontractors and that they accord with the Shorter Schedule of Cost Components and these Supplementary Notes.

The *Contractor* is required to replicate a similar cost verification regime when dealing with the costs of his Subcontractors and other related parties and shall ensure that the *Employer* has rights of access to all Subcontractors and suppliers (including at lower tier levels) and their accounts to audit/verify Defined Cost.

THE SCHEDULES

Schedule

- 1 Additional definitions
- 2 Form of Performance Bond – Not Used
- 3 Form of Parent Company Guarantee
- 4 Form of Warranty from *Contractor*
- 5 Form of Warranty from Subcontractor
- 6 Form of Warranty from Subconsultant
- 7 Corporate IPR
- 8 Dispute Resolution Procedure
- 9 Disruption Damages
- 10 Form of Deed of Novation – Not Used
- 11 Escrow Agreement – Not Used

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

Adjudicator means any adjudicator appointed from time to time in accordance with the Dispute Resolution Procedure.

Available means:

the *works* are safe and fit for their intended purpose, there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and the *works* are readily accessible and operable by the *Employer*.

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 Z2.7.1;

BCV Contract means the contract between Metronet Rail BCV Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee BCV on 27 May 2008 and as amended from time to time in accordance with its terms;

Change of Control means a change of ownership of the *Contractor* (or *parent company* if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or *parent company* as the case may be).

Connected Persons means all and any of the *Contractor's* employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005;

Corporate IPRs are those trade marks, trade names and other IPRs listed in Schedule 7 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards;

Critical Defect means a Defect which appears on or before the *defects date* and which is: critical to the operation and/or safety of the Underground Network; within a category of Defects identified in the Works Information as Critical Defects; or deemed by the *Project Manager* to be critical to the carrying out and completion of the *works* and/or the work of Others;

Customer means a customer on the Underground Network;

Dispute means any dispute, controversy or claim arising out of or in connection with this contract;

Dispute Resolution Procedure means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 8;

Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract;

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;

Form of Agreement means the form of agreement to which these *conditions of contract* are attached;

Information means information recorded in any form held by or on behalf of the *Employer*;

Information Request means a request for any Information under the FOI Legislation;

Infraco means any of or all of LUL Nominee BCV, LUL Nominee SSL and TLL and their respective successors in title and assigns;

IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names and 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;

JNP Contract means the contract between Tube Lines Limited and the *Employer* for the provision of infrastructure maintenance services dated 31 December 2002 as amended from time to time in accordance with its terms;

Losses means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising;

LUL means London Underground Limited (No. 1900907) or its successor in title or assignee;

LUL Nominee BCV means LUL Nominee BCV Limited (No. 06221959) or its successor in title or assignee;

LUL Nominee SSL means LUL Nominee SSL Limited (No. 06242508) or its successor in title or assignee;

Management Plans mean any management plans (including any plans relating to key person succession (if Option X23 applies), the Subcontractor Procurement Plan, the Risk Management Plan and the Quality Plan) identified as such in the Works Information;

Pay Less Notice means the notice referred to in clause 51.2B;

PFI Contract means, in each case, the main project contract entered into or to be entered into by the *Employer* and/or TfL and the relevant private sector partner in respect of a project undertaken under the Private Finance Initiative (as referred to in the Construction Contract (England and Wales) Exclusion order 1998 (SI 1998 No 648) and any replacement scheme for the public procurement of the capital assets which is similar in nature);

PFI Contractors means those contractors who have entered into or will enter into PFI Contracts and as further referred to in the Works Information;

PPP Contracts means the BCV Contract, the JNP Contract and the SSL Contract and **PPP Contract** means any one of them or, as the context requires, a particular one of them;

Prevention Event has the meaning ascribed to that term in clause 19.1;

Prohibited Act means:

(a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:

for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;

(b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;

(c) committing any offence:
under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
under any law or legislation creating offences in respect of fraudulent acts, or
at common law in respect of fraudulent acts
in relation to this contract or any other contract with the *Employer*; or

(d) defrauding or attempting to defraud the *Employer*.

Responsible Procurement Principles mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time;

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network and/or the safety of the *Employer's* Customers, staff or any other person.

SSL Contract means the contract between Metronet Rail SSL Limited and the *Employer* for the provision of infrastructure maintenance services dated 4 April 2003 as subsequently transferred to LUL Nominee SSL on 27 May 2008 and as amended from time to time in accordance with its terms;

Standards means the various standards documents and associated codes of practice identified in the Works Information as applicable to the project;

Station means a building, equipment or facilities designed to be used by Customers to access or leave a train;

Statutory Requirement means any act of parliament, any instrument, rule or order made under any act of parliament and any regulation or by-law of any local authority or of any Statutory Undertaker which has jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the site in connection with which the *works* are to be provided;

Statutory Undertaker means any governmental or local authority or statutory undertaker: which has any jurisdiction with regard to the *works* and/or the project including any jurisdiction to control development of the Site or any part of it; with whose requirements the *Employer* is accustomed to comply; or with whose systems and/or utilities the project and/or the *works* will be connected.

Subcontractor Procurement Plan means a plan for the procurement and appointment of Subcontractors by the *Contractor* containing the information stated in the Works Information and which is submitted and accepted in accordance with the provisions of the Works Information;

Supplementary Notes means the notes entitled "Schedule of Cost Components/Shorter Schedule of Cost Components Supplementary Notes" included in this contract;

TfL Group means Transport for London ("**TfL**"), 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;

TLL means Tube Lines Limited (No. 03923425) (or its successor in title or assignee);

Underground Network means the Stations and depots (wherever situate), assets, systems, track, and other buildings, which are used in the maintenance and provision of the underground service known as "the "London Underground".

SCHEDULE 2

(Form of Performance Bond)

NOT USED

SCHEDULE 3

(Form of Parent Company Guarantee)

THIS DEED OF GUARANTEE is effective as of the _____ day of _____ 201[]

BETWEEN:

- (1) [•], a company incorporated in [•] with registered number [•] and having its registered office at [•] (the “**Guarantor**”); and
- (2) **LONDON UNDERGROUND LIMITED**, a company incorporated in England with registered number 01900907 and having its registered office at Windsor House 42-50 Victoria Street London SW1H 0TL (the “**Company**”).

WHEREAS:

- (A) Pursuant to an agreement (the “**Contract**”) dated on or about the date hereof between the Company and [] (the “**Contractor**”), the Contractor has agreed to carry out the services as described therein.
- (B) It is a condition of the entering into of the Contract that the Guarantor enters into and delivers this Guarantee in favour of the Company to guarantee the due performance of the Contract by the Contractor, in the manner hereinafter described.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Guarantee:

- 1.1.1 “**Contractor’s Obligations**”: shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;
- 1.1.2 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;
- 1.1.3 references to “**Contractor**”, “**Guarantor**” and/or “**Company**” shall include their respective transferees, successors and assigns whether immediate or derivative;
- 1.1.4 the headings to Clauses are for convenience only and have no legal effect;

- 1.1.5 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;
- 1.1.6 the expression “**person**” shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and
- 1.1.7 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.

1.2 The parties to this Guarantee intend it to be a deed.

2. Guarantee and Indemnity

2.1 The Guarantor irrevocably and unconditionally:

2.1.1 guarantees to the Company the prompt performance or discharge by the Contractor of the Contractor’s Obligations;

2.1.2 undertakes with the Company that whenever the Contractor:

(a) does not pay any amount in respect of the Contractor’s Obligations when due, it shall forthwith on written demand by the Company stating that the Contractor has failed to pay such amount pay the relevant amount; and

(b) does not perform or discharge any obligation in respect of the Contractor’s Obligations when due, it shall within five (5) business days of written demand by the Company stating that the Contractor has failed to perform the Contractor’s Obligations perform or cause to have performed or discharge such obligation,

in each case as if it, instead of the Contractor, were expressed to be the principal obligor; and

2.1.3 as principal obligor agrees to indemnify the Company on written demand against any loss or liability suffered by it if any Contractor’s Obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.

2.2 The Guarantor’s liability under this Guarantee shall be no greater than the liability of the Contractor under or pursuant to the Contract or what would have been the liability of the Contractor under or pursuant to the Contract were it not for the unenforceability, invalidity or illegality of the Contract and, accordingly, the Guarantor shall be entitled to raise the same defences as those which the Contractor is entitled to raise (save as to the unenforceability, invalidity or illegality of the Contract) or would have been entitled to raise were it not for the unenforceability, invalidity or illegality of the Contract (but so that the same defence shall not be raised more than once).

3. Continuing Guarantee

This Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by the Contractor, the Guarantor or any other person) until

all obligations (whether actual or contingent), warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor and the Company under the Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full and will extend to the ultimate balance of all sums payable by the Contractor in respect of the Contractor's Obligations, regardless of any intermediate payment or discharge thereof in whole or in part.

4. Reinstatement

- 4.1 Where any discharge (whether in respect of the Contractor's Obligations or any security for such obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.
- 4.2 The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

5. Waiver of Defences

- 5.1 The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):
- 5.1.1 any time or waiver granted to, or composition with, the Contractor or any other person;
 - 5.1.2 any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;
 - 5.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - 5.1.4 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;
 - 5.1.5 any variation (however fundamental) or replacement of the Contract or any other document or security so that references to such documents in this Guarantee shall include each variation or replacement;
 - 5.1.6 any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity; or
 - 5.1.7 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the

purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

6. Immediate Recourse

6.1 The Guarantor:

6.1.1 gives the guarantee contained in this Guarantee as principal obligor and not merely as surety; and

6.1.2 waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

7. Appropriations

Until all amounts which may be or become payable in respect of the Contractor's Obligations have been irrevocably paid in full, the Company may:

7.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Company in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

7.2 hold in a suspense account any moneys received from the Contractor on account of the Contractor's Obligations or on account of the Guarantor's liability under this Guarantee.

8. Non-Competition

8.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Contractor's Obligations have been irrevocably paid, performed or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

8.1.1 be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;

8.1.2 claim, rank, prove or vote as a creditor of the Contractor or its estate in competition with the Company unless the Company so directs in which case it shall; or

8.1.3 receive, claim or have the benefit of any payment, distribution or security from or on account of the Contractor, or exercise any right of set-off as against the Contractor unless the Company so directs in which case it shall.

8.2 The Guarantor shall hold in trust for and forthwith pay or transfer to the Company any payment or distribution or benefit of security received by it either contrary to this Clause 8 (Non-Competition) or as a result of a direction of the Company under Clause 8.1.2 or 8.1.3.

9. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Company.

10. Assignment

The Company may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor, provided that the Company shall give a written notice to the Guarantor to that effect.

11. Notices

Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery) or facsimile (in the case of facsimile to be confirmed in writing within 24 hours of being sent by such notice being delivered or sent by first class recorded delivery as aforesaid). The address for service of each party shall be as follows:

Guarantor:

Address:

Attention:

Company:

Address: London Underground Limited, Windsor House, 42-50 Victoria Street, London SW1H 0TL

Attention: []

with a copy to

Address: Transport for London, Windsor House, 42-50 Victoria Street, London SW1H 0TL

12. Miscellaneous

- 12.1 The Company is entitled to make any number of demands under this Guarantee.
- 12.2 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
- 12.3 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 12.4 The Company acknowledges and agrees that it will notify the Guarantor within five (5) Business Days of any claim made against the performance bond provided pursuant to the Contract.

13. Counterparts

This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

14. Governing Law and Jurisdiction

14.1 This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.

14.2 If any dispute or difference arises between the Guarantor and the Company in connection with this Guarantee or any non-contractual obligation arising out of or in connection with this Guarantee which cannot be resolved by mutual agreement, it shall be referred to the jurisdiction of the English Courts.

IN WITNESS whereof this Guarantee has been executed as a deed and delivered by the Guarantor and the Company the day and year first before written.

EXECUTED AS A DEED by)
[•])
on being signed by two)
duly authorised officers) (duly authorised officer)
)
)
)
) (duly authorised officer)

Date: _____

THE COMMON SEAL of
[LONDON UNDERGROUND LIMITED]
was affixed to **THIS DEED**
in the presence of:

Signature of Director/Secretary

Print name of Director/Secretary
.....

Date: _____

SCHEDULE 4

(Form of Warranty from *Contractor*)

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**"); and
- (2) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) By a contract dated ● (the "**Contract**") [● (whose registered office is at ●)]¹ ("the *Employer*", which expression shall include its successors in title and assigns) appointed the *Contractor* to design, carry out and complete certain [**Works and/or Services**] at ● (the "*works*").

B) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] [has entered into] an agreement to provide finance for the carrying out and completion of the *works*.] [The Beneficiary [intends to enter into] [has entered into] an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] [take a lease of] the whole or part of the *works*.] [The Beneficiary has an interest in the whole or part of the *works* as a developer and [intends to enter into] [has entered into] an agreement with the *Employer* in respect of [].]/[the Beneficiary is a member of the TfL Group and has an interest in the works as ●.]²

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
2. The *Contractor* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out works of a similar scope, size and complexity to the *works*; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.

¹ Insert the details of the relevant member of the TfL Group.

² Select appropriate recital depending on whether the Beneficiary is (i) a PFI Contractor; (ii) funder; (iii) purchaser/tenant; (iv) developer or (v) member of the TfL Group.

3. The *Contractor* warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed, [the]³ [The] *Contractor* further warrants and undertakes to the Beneficiary that:
 - (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) the *works* are integrated with the designs of Others as specified in the Contract;
 - (d) *works* will on Completion be Available,⁴;
 - (e) the *works* will on Completion comply with all applicable law and all relevant Standards; and
 - (f) the *works* will be carried out and completed timeously in accordance with the Accepted Programme.
5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[2 million]⁵ in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly

³ Use shaded text on all forms of warranty where Beneficiary is not a PFI contractor or a member of the TfL Group.

⁴ Use shaded text if X15 is selected.

⁵ The PI figure should be the same as the figure inserted in the Contract Data.

maintained and that payment has been made of the last premium due in respect of such insurance.

7. To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the *works* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:

- (a) understanding the *works*;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
- (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
- (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the *Contractor*.

8. The *Contractor* agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
- (b) at the *Contractor's* expense to provide the Beneficiary with a set of all such material on Completion of the *works*.

9. If called upon to do so by the Beneficiary, the *Contractor* shall provide the Beneficiary with such information relating to the *works* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Contractor* for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Contractor* under the Contract or relieve the *Contractor* from any liability which it has in relation to the *works*.
10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (B), or]⁶ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Contractor* being required and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "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.
11. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works*.
13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.
14. [The *Contractor* shall not be liable to the Beneficiary under this Deed for any delay to Completion of the *works*.]⁷
- 15.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer*.
- 15.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder.

⁶ Use shaded text if a PFI Contractor is the Beneficiary.

⁷ Consider for use on PFI Contractor form of warranty. On other forms insert "Not Used".

16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**[EXECUTED AND DELIVERED AS
A DEED for and on behalf of
[THE BENEFICIARY] BY**



being duly authorised in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 5A

(Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is ●¹ (the "*Employer*" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "*Subcontractor*"); and
- (3) ● whose registered office is situate at ● (the "*Contractor*").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "*Contract*") with the *Employer* for the design and carrying out of certain [Works and/ or Services] at ● (the "*works*").
- (B) The Subcontractor [has entered] [will shortly enter] into a subcontract (the "*Subcontract*") with the *Contractor* for the design and carrying out of certain parts (the "*subcontract works*") of the *works* more particularly defined in *Annex* ● hereto².

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
 - (c) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to

¹ Insert details of the relevant member of the Tfl Group.

² A description of the works should be provided in the Annex.

therein or relating thereto and any similar records which the *Employer* may reasonably request.

- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (e) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Subcontract or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*; or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *subcontract works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (g) "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.

- (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Subcontractor warrants and undertakes to the *Employer* that:
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
 - (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subcontractor further warrants and undertakes to the *Employer* that:
- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the

Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[2 million]³ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the *Employer* an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

³ The PI figure should be the same as the figure inserted in the Contract Data.

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:
 - (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the Subcontractor's expense to provide the *Employer* with a set of all such material on Completion of the *subcontract works*.
9. If called upon to do so by the *Employer*, the Subcontractor shall provide the *Employer* with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* nor the approval by the *Employer* of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.
10. The Subcontractor warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the *Employer* that the Subcontract contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the 12 years thereafter.
11. The Subcontractor shall provide such assistance to the *Employer* as it may reasonably require in connection with the *subcontract works*.

12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
- (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.
- 13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Subcontract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.

15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
19. The Subcontractor hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *subcontract works* and/or the PFI Contractor(s). Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*.
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the [*Employer*] that:
 - (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 20.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.

- 20.3 Clause 20.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
- 20.7 At the *Employer's* request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.

22. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subcontractor including without limitation any remedies in negligence.
23. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subcontractor to the *Contractor* under the Subcontract.
24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of
[THE EMPLOYER]

was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUB-CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX

(subcontract works)

SCHEDULE 5B

(Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**")
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ● whose registered office is situate at ● (the "**Employer**") which expression shall include its successors and assigns for the design and carrying out of certain [**Works and/ or Services**] at ● (the "**works**").

(B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the *Contractor* for the design and carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in *Annex* ● hereto⁴.

(C) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works*]. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works*.] [The Beneficiary has an interest in the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●]⁵

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);

⁴ A description of the works should be provided in the Annex.

⁵ Select appropriate description.

- (b) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (c) "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.
- (d) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

2. The Subcontractor warrants and undertakes to the Beneficiary that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

4. [Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed [the]]⁶ [The] Subcontractor further warrants and undertakes to the Beneficiary that:

- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
- (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
- (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
- (d) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards; and
- (e) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.

5. The Subcontractor warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[2 million]⁷ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the Beneficiary an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

⁶ Use shaded text on all forms of warranty where Beneficiary is not a PFI Contractor.

⁷ The PI figure should be the same as the figure inserted in the Contract Data.

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the Subcontractor's expense to provide the Beneficiary with a set of all such material on Completion of the *subcontract works*.
9. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.
10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (C), or]⁸ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
11. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 13.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract.

⁸ Only use shaded text if Beneficiary is a PFI Contractor.

- 13.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of
[THE BENEFICIARY]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUB-CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON/CORPORATE SEAL of
[THE CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

(subcontract works)

SCHEDULE 6A

(Form of Warranty from Subcontractor to Employer (where Subcontractor is providing consulting services))

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is at ●¹ ("the *Employer*" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "*Subconsultant*"); and
- (3) ● whose registered office is situate at ● (the "*Contractor*").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "*Contract*") with the *Employer* for the carrying out of certain [Works and/or Services] at ● (the "*works*").
- (B) The *Subconsultant* has been invited to design certain parts (the "*design works*") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "*Appointment*") for the *design works*.

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the *Subconsultant's* employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Subconsultant* in connection with the *design works* (whether in existence or to be made);
 - (c) "Minimum Records" means all records relating to the *Subconsultant's* operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to

therein or relating thereto and any similar records which the *Employer* may reasonably request.

- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (e) "Prohibited Act" means:
 - (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Appointment or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the *Employer* or the *Contractor*; or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (g) "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.

¹ Insert details of relevant member of the TfL Group.

- (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Subconsultant warrants and undertakes to the *Employer* that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
3. The Subconsultant warrants to the *Employer* that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subconsultant further warrants and undertakes to the *Employer* that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;
 - (e) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of

not less than £[2 million]² in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant

² The PI figure should be the same as the figure inserted in the Contract Data.

sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the *Employer* with a set of all such material on Completion of the *design works*.
9. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
10. The Subconsultant warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the *Employer* that the Appointment contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.
11. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the

Contractor (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:

- (a) continue to observe and carry out his obligations under the Appointment and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Appointment shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.
- 13.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Appointment and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Appointment.
- 13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.

16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:
 - (a) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the *design works* relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and
 - (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 19.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 19.3 Clause 19.1 does not apply to the disclosure of:
 - (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and

- (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 19.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 19.7 At the *Employer's* request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 20.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment.
- 20.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
21. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
22. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.

23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of

[THE EMPLOYER]

was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 6B

(Form of Warranty from Subcontractor to Beneficiary (where Subcontractor is providing consulting services))

THIS DEED is made on ● 201●

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**");
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ●³ (the "**Employer**") which expression shall include its successors and assigns for the carrying out of certain [Works and/or Services] at ● (the "**works**").

(B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.

(C) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works*.] [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works*.] [The Beneficiary has an interest in the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●]⁴

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials

³ Insert details of relevant member of the TfL Group.

⁴ Select appropriate description.

provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);

- (b) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (c) "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.
- (d) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

2. The Subconsultant warrants and undertakes to the Beneficiary that;

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
- (b) he has complied with and will continue to comply with the terms of the Appointment.

3. The Subconsultant warrants to the Beneficiary that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

4. [Provided that nothing in this clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed [the]]⁵ [The] Subconsultant further warrants and undertakes to the Beneficiary that:

- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
- (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
- (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;

⁵ Use shaded text on all forms of warranty where Beneficiary is not a PFI Contractor.

- (d) the *design works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
- 5. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[2 million]⁶ in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
- 6. As and when reasonably requested by the Beneficiary, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
- 7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;

- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.
9. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (C), or]⁷ to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
11. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.

⁶ The PI figure should be the same as the figure inserted in the Contract Data.

⁷ Only use shaded text if Beneficiary is a PFI Contractor.

13. The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment.
- 13.1 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
- 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of

[THE BENEFICIARY]

was affixed to **THIS DEED**

in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

]

SCHEDULE 7

(Corporate IPR)

1. The Roundel (examples of which are given in Annex 1), including the following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1321443	BLANK ROUNDDEL	39
UK	1094664	ROUNDDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDDEL	16
UK	2236110	UNDERGROUND & ROUNDDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDDEL	25
UK	1321442	UNDERGROUND ROUNDDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDDEL	14 16 18 25 32
CTM	299206	ROUNDDEL DEVICE	16 25 28 39
CTM	814004	ROUNDDEL DEVICE & UNDERGROUND	18 25 42

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the *New Johnston Typeface*) (examples of which are attached in Annex 2).
3. The Underground map attached in Annex 3.
4. The following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39

Country	Registration/ Application	Trademark	Class
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

Annex 1

Examples of the London Underground Roundels



Annex 2

Examples of the New Johnston Typeface

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'##*

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'##*

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
Abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

SCHEDULE 8

(Dispute Resolution Procedure)

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

“**Adjudicator**” means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 8.

“**Nominating Authority**” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“**Notice of Adjudication**” means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- details of where and when the Dispute arose; and
- the nature of the redress which is sought.

“**Referral Notice**” means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

“**Senior Representative**” means a representative of a Party at senior executive level;

W2.A The *Employer*, *Contractor* and the *Project Manager* follow the procedure set out in W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may in the first instance be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.

W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred

to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.

W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.

W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:

- is a natural person acting in his personal capacity; and
- is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute

W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

- W2.6 The Referral Notice includes:
- the facts relied upon by the referring party in support of its claim(s);
 - a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
 - a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
 - is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.
- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice

mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.

W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.

W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.

W2.14 The Adjudicator:

- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- reaches his decision in accordance with the law of the contract;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such

meetings or in writing within such reasonable time as he requires;

- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
- inspect any part of the Underground Network.

W2.16 The Adjudicator is not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.

W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.

W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.

W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.

SCHEDULE 9

(Liquidated Damages for Disruption)

1. In this Schedule, the following terms have the following meanings:
 - (a) “LCH” or “Lost Customer Hours” means the total additional journey time measured in hours, applying planned or unplanned NACHs as appropriate, experienced by Customers as a result of a planned or unplanned Service Disruption;
 - (b) “NACHs” or “Nominally Accumulated Customer Hours” means the system of weights used to estimate the cumulative additional perceived journey time encountered by Customers as a result of planned or unplanned Service Disruptions, as the case may be, as the same is set out in the NACHs Tables 2014 contained in the Works Information.
 - (c) “Service Disruption” means any disruption to customer services on the Underground Network comprising an interruption to train services or station services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures, escalator failures (either partial or total failures, that add to each passengers’ overall journey time) and lift downtimes.
2. In the event of a Service Disruption resulting from a failure on the part of the *Contractor* to comply with its obligations under this contract the *Contractor* shall pay on demand and/or the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 9. The duration of any Service Disruption is measured using a network-based database known as CuPID (Contract Performance Information Database).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by multiplying (a) the relevant Lost Customer Hours attributable to the applicable Service Disruption by (b) X
where:
 - (i) “X” equals [£3.55]¹ (three pounds fifty-five pence sterling) indexed as provided for in paragraph 4; and
 - (ii) the applicable NACHs table is the unplanned NACHs Tables 2014 for the first seven (7) days of such Service Disruption and the planned NACHS Tables 2014 for any subsequent days of the same Service Disruption.
4. The value of ‘X’ (as defined in paragraph 3) is revised as at 1 April in each year according to the following calculation:

$$X_{cy} = \frac{\Gamma_n}{\Gamma_o} \times X$$

¹ Amount to be included must be confirmed and updated as stated in the Guidance Manual.

where:

X_{cy} = value of X for the year commencing on the applicable 1 April;

r_n = RPIX published for the month of August immediately preceding the applicable 1 April; and

r_o = RPIX published for February [2012].

5. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.
6. The *maximum aggregate liability* of the *Contractor* for liquidated damages payable or allowable under this Schedule 9 is stated in the Contract Data Part One (and if no maximum is stated the aggregate liability of the *Contractor* for liquidated damages under this Schedule 9 is unlimited).

SCHEDULE 10

(Form of Deed of Novation for use with Option X22)

Not Used

SCHEDULE 11

(Escrow Agreement)

Not Used



WORKS INFORMATION

WI 100

DESCRIPTION OF THE WORKS

Document History: Version:	Prepared by		Quality Checked by		Legal Review		Peer Review	
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1.0	Henry Bwire	07/05/14	Daren Stinton	07/05/14	<input type="checkbox"/>			
2.0	Henry Bwire		Daren Stinton		<input type="checkbox"/>		Ailsa Waygood	
3.0					<input type="checkbox"/>			
4.0					<input type="checkbox"/>			
5.0					<input type="checkbox"/>			

Final Sign-off		
	Commercial Line Manager	Project Manager
Name	Andrew Thornton	James Carter
Signature		
Date		

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WI105 Description of the Works

- (1) The works of package 5 provides mitigation against various identified contingencies in the *Employer's* High Voltage (HV) network and improves resilience.

Package 5 Sub-Surface Railway (SSR) Upgrade Works consists of three packages; Package 5A - HV cable reinforcement works, Package 5B - Substation reinforcement and Package 5C - Power Quality reinforcement.
- (2) The *Employer* enters into an agreement with the *Contractor* to provide detailed design; procurement, supply, construction, install, termination, testing and commissioning together with, where applicable, the decommissioning and removal of existing cables.
- (3) The works to be executed by the *Contractor*, via Package 5A, will include provision of a detailed system design and its staged works integration; procurement, supply, construction, install, terminating, testing and commissioning and handover of the Assets and structures necessary to facilitate implementation of the various items of work as detailed in this description of works at the prescribed *Employer's* substations and the cable route adjacent to the track.
- (4) The works will be undertaken during both traffic hours and engineering hours and in accordance with the prevailing 'guide to switching traction current on and off' and the prevailing *Employer's* Access Code requirements.

WI105.1 General Description of the Works

- (1) The works to be executed by the *Contractor*, via Package 5A, will include the following items of work as prescribed by the *Employer* in this Works Information.
 - Detailed design of the new HV and Fibre Optic (FO) cable route(s);
 - Supply, install and joint along designated route HV cable circuits;
 - Supply, install and joint the associated FO cables;
 - Supply and install in designated substation sites optical distribution rack(s) (ODR)/FO cabinet and its associated optical distribution frames;
 - Propose to *Project Manager* and undertake commissioning tests;
 - Terminate the new HV cables onto the switchgear, pressure test and commission;
 - Terminate FO cables onto the optical distribution frames, test and

commission;

- Decommissioning of existing cables, including but not limited to powering down, ID, spike and cut, cutting into sections and full removal.
- (2) Cable testing arrangements shall be defined as part of the detail design and construction.
 - (3) The *Contractor's* proposed design considers compatibility to the *Employer's* existing cables, circuits and requirement for new cable transits as in additional hangers, ducting or cleating.
 - (4) The *Contractor* ensures segregation to mitigate common cause failure and take into consideration cable movement due to thermo-mechanical loading.
 - (5) The *Contractor* produces as-built drawings for each cable route. These as-built drawings shall include all existing power cables (HV and Pilot Cables) in the vicinity of the proposed new route. Details of these existing power cables can be obtained from existing route records provided by the *Employer*. The *Contractor* is not expected to validate the record information for existing cables which are unaltered by these Works.
 - (6) The *Contractor* notes that where aluminium armour single core cables are used, the use of constant force springs and/or jubilee clips for earth connections to the armour is prohibited.

Connections to the armour at joints must be achieved by ferruled connections of the armour across the joint. At terminations earth connections shall be by means of a suitable clamp arrangement (e.g. Tyco EAKT 1643/1644) or an armour gland.

The proposed earthing arrangement shall be submitted to the *Project Manager* for acceptance prior to use.
 - (7) The *Contractor* terminates the newly installed HV cables onto the designated HV panels installed by the Package 5B Contractor; and terminates the FO cable onto the optical distribution frames.

Connection of the protection relays to the optical distribution frames (ODF) using patch leads will be done by the Package 5B Contractor.
 - (8) The overall HV feeder unit protection scheme will be designed, implemented, tested and commissioned by the Package 5B Contractor.
 - (9) The *Contractor's works* to conform to all Standards including but not limited to the *Employer's* standards and specifications as contained in this Works Information.
 - (10) The Works Information contains Conceptual Design Statements (CDS) of the

various worksites of the Site.

WI105.1.1 Neasden Bulk Supply Point (BSP) substation site to Cobourg Street substation site

- (1) The *works* for this element are detailed in Conceptual Design Statement (CDS) LUL-SSR-R0001-CDS-001.

The *works* area new 11.3kilometre (km) cable route consisting of 1-off 22kV cable circuit connecting Neasden BSP 22kV substation site to Cobourg Street substation site; the *Contractor* ensures correct phasing and joints the cable; the new feeder shall be designated F2279 NEASDEN and shall be segregated from F2210.

- (2) The cable circuit is required to carry 480Ampere (A) in distribution system degraded mode. The deduced conductor size to achieve this rating through varying containment sections of the cable route is detailed in section 5 of the cable sizing report MKPSL/LUL/SSR5/007 REV2 (F2279).

The cable route runs through the Dollis Hill, Willesden Green, Kilburn, West Hampstead, Finchley Road, Baker Street, Great Portland Street Place and Euston Square stations.

The *Contractor* notes that the new feeder's unit protection scheme design/modifications, the protection study, relay parameterisation and full protection scheme commissioning tests shall be done by the Package 5B Contractor.

WI105.1.2 Mile End Substation site to West Ham Substation site

- (1) The *works* for this element are detailed in Conceptual Design Statement CDS LU-SSR-2039-R001-CDS-0002. The *works* area new 3.9km cable route, consisting of 2-off 22kV cable circuits from Mile End substation site to West Ham substation site; the *Contractor* ensures correct phasing and joints the cable;

The new cables feeders will be segregated and designated F22349 WEST HAM and F22361 WEST HAM.

The *works* are also a new 3.9km, 2-off 40-core Fibre optic cable to run between Mile End substation site to West Ham substation site; the *Contractor* joints the fibre optic pilot cable cores.

The FO cables will be designated P2065 and P2066.

- (2) Each cable circuit is required to carry 310A in distribution system degraded mode. The deduced conductor size to achieve this rating through varying containment sections of the cable route is detailed in section 5 of the cable sizing reports MKPSL-LUL-SSR-004 (F22349) and MKPSL-LUL-SSR-008 (F22361).