

# NORTHERN LINE EXTENSION PROJECT



**ferrovial**  
agroman

LAING O'ROURKE

**TLL 7917**

**Main Design and Build Contract**

**MAYOR OF LONDON**



**TRANSPORT  
FOR LONDON**  
EVERY JOURNEY MATTERS

**TLL7917**

**NORTHERN LINE EXTENSION PROJECT  
MAIN DESIGN AND BUILD CONTRACT**



**SECTION ONE**

**FORM OF AGREEMENT**

THIS AGREEMENT is made the 4<sup>th</sup> day of SEPTEMBER 2014

**BETWEEN:**

(1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales (registered number: 01900907) 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) **FERROVIAL AGROMAN (UK) LIMITED** a company registered in England and Wales (registered number: 05779755) whose registered office is at 10<sup>th</sup> Floor, BSI Building, 389 Chiswick High Road, London, W4 4AL; and

**LAING O’ROURKE CONSTRUCTION LIMITED** a company registered in England and Wales (registered number: 04309402) whose registered office is at Bridge Place Anchor Boulevard, Admirals Park Crossways, Dartford, Kent, DA2 6SN, jointly and severally, (the “*Contractor*”).

**WHEREAS:**

(A) The *Employer* wishes to have provided the Northern Line extension project, the requirements of which are summarised in section WI100 of the Works Information and set out in further detail in the Works Information as a whole (the “*works*”).

(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 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, September 2011 and April 2013) main Option C, and secondary option clauses X1, X2, X4, X5, X7, X16, X18, X20, X21, X23, Y(UK)1 and Y(UK)2 as amended by the *additional conditions of contract* (Z1 and Z2 clauses) ;
- (c) Schedules 1 to 13 inclusive attached to the *conditions of contract*;
- (d) the Contract Data Part 1;
- (e) the Works Information;
- (f) the Contract Data Part 2; and
- (g) the Site Information.

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 <i>conditions of contract</i> appended to this Form of Agreement as amended by the <i>additional conditions of contract</i> designated Z1 or Z2; |
| Third   | : | Schedules 1 to 13 inclusive attached to the <i>conditions of contract</i> ;  |
| Fourth  | : | Contract Data Part 1;  |
| Fifth   | : | The Works Information;   |
| Sixth   | : | Contract Data Part 2 (including the <i>Contractor's Works Information</i> ); and   |
| Seventh | : | Site Information.  |

6. The liability of each party comprising the *Contractor* is joint and several and each such party shall be responsible for any failure of the other party to meet its liabilities and obligations under this contract. Any such failure shall not relieve the remaining party comprising the *Contractor* of any of the liabilities and obligations of the *Contractor* under this contract.

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

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



Signature of Authorised Signatory

**EXECUTED AND DELIVERED AS A DEED**  
by **FERROVIAL AGROMAN (UK) LIMITED**  
acting by:



Signature of Director

Print name of Director

I. CHOPES

In the presence of:



Signature of Witness

Print name of Witness

MARIO MONTANA

Address of Witness



Occupation of Witness

**EXECUTED AND DELIVERED AS A DEED**  
by **LAING O'ROURKE CONSTRUCTION LIMITED**  
acting by:



Signature of Director

Print name of Director

P. GRAMMER

Signature of ~~Director~~/Secretary



Print name of ~~Director~~/Secretary

T. J. MANT

**TLL7917**

**NORTHERN LINE EXTENSION PROJECT  
MAIN DESIGN AND BUILD CONTRACT**



**SECTION TWO**

**CONDITIONS OF CONTRACT**



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

These conditions are based on the NEC family of contracts, the copyright of which belongs to the Institution of Civil Engineers (incorporating 2006, 2011 and 2013 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
- 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 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 *initial fee percentage* to the Defined Cost of both subcontracted work and other work carried out up to the Fee Step Down Date; and
- the *stepped down fee percentage* to the Defined Cost of both subcontracted work and other work carried out from the Fee Step Down Date.

Z1.1.5A

(8A) The Fee Step Down Date means the point at which the Defined Cost of the work done has reached an amount equal to the Defined Cost included in the tendered total of the Prices.

(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.

Z1.1.5AA

(10) Others are people or organisations who are not the *Employer*, the *Project*

Z1.1.6

*Manager, the Supervisor, the Adjudicator, the Contractor or any employee, Subcontractor or supplier of the Contractor.*

(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*

and for the avoidance of doubt, except where otherwise stated, includes the Lifts Subcontractor and Escalators Subcontractor.

(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.**

**(23) Defined Cost is**

- 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,
  - payments to Others and
  - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract

and

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

**less Disallowed Cost.**

Z1.1.7

(25) 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 unless the *Contractor* can demonstrate that the cost is attributable to a compensation event in respect of a scope of work or works associated with that subcontract which the *Contractor* retained at the time of entering into the subcontract,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2) or clause 26A.1 (Z1.14A),
- is incurred by the *Contractor* in breach of clause 20A.1 (Z1.9A),

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 24.1B and 24.1C,
- 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 employees, 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, and
- profit payable between each party comprising the *Contractor*.

**(29) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.**

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

Z1.2

11.3 Additional defined terms are included in Schedule 1.

## Interpretation and the law 12

- Z1.3
- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- Z1.3.1 12.1A References to "this contract" mean the contract between the *Employer* and the *Contractor* including the documents listed as forming the contract in the Form of Agreement.
- Z1.3.1A 12.1B In this contract, unless the context otherwise requires, references to:
- (a) "including" means "including without limitation", and
  - (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).
- Z1.3.2 12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- Z1.3.3 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 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 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, 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 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 with 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,
  - 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 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*.

Z1.7.1  
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 18**

**requirements** 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, subject to clause 20A below, in accordance with the Works Information.
- 20.2 Not used (as not an Option C clause)
- 20.3 **The *Contractor* advises the *Project Manager* on the practical implications of the design of the *works* and on subcontracting arrangements.**
- Z1.41.1A
- 20.4 **The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *works* in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the *works* (or, if no interval is stated in the Contract Data, at 4 weekly intervals). Each forecast is in a format prescribed in the Works Information and contains an explanation of the changes made since the previous forecast was submitted.**
- 20.5 Not used (as not an Option C clause)
- 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.

### Commencement Notice 20A

- Z1.9A  
Z1.9A.1
- 20A.1 Notwithstanding any other provision of this contract, unless and until the *Employer* issues a Full Commencement Notice to the *Project Manager* and the *Contractor*, the *Contractor*:
- submits each proposal to incur any individual item of cost of [REDACTED] to the *Project Manager* for approval. The *Contractor* does not incur the cost unless the *Project Manager* has accepted it, and
  - does not incur any cost in excess of a cumulative total of [REDACTED] as the *Employer* may at its sole discretion notify to the *Project Manager* and *Contractor* from time to time.
- Z1.9A.2
- 20A.2 The *Employer* may at its sole discretion issue a Full Commencement Notice to the *Project Manager* and the *Contractor* notifying them that the restrictions in clause 20A.1 cease to apply from the date of such notice.
- Z1.9A.3
- 20A.3 If a Full Commencement Notice is issued by the *Employer*, the *Contractor* remains responsible for completion of any elements of the *works* undertaken prior to the date of the Full Commencement Notice and for the avoidance of doubt, there is no deemed completion of such elements of the *works* by virtue of the issue of the Full Commencement Notice.
- Z1.9A.4
- 20A.4 Notwithstanding any other provision of this contract, the *Employer* may at its sole discretion and at any time prior to a Full Commencement Notice being issued issue a Non-Commencement Notice to the *Contractor* instructing him to cease Providing the Works. If a Non-Commencement Notice is issued in accordance with this clause 20A.4 the *Employer* terminates this contract in accordance with clause 90.1 for reason R27.

### 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. Reasons for not accepting the *Contractor's* design 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 **Design** 22.1 The *Employer* may use and copy the *Contractor's* design for any purpose specified in clause Z2.7.

Z1.11.1 **Design of Equipment** 23

23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with

- the Works Information,
- the *Contractor's* design which the *Project Manager* has accepted or
- the applicable law.

**People** 24

Z1.12 **People** 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.

Z1.12.2 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, the *Contractor* pays to the *Employer* the *key person compensation* applicable to such key person.

Z1.12.3 24.1B 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 24.1C, 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 24.1C 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 24.1B 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 24.1B and 24.1C is without prejudice to any other rights and remedies that 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 any person under his control. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

**Working with the** 25

Z1.13 **Employer and Others** 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, co-ordinates his activities with them and shares the Working Areas with them as stated in the Works Information.

Z1.13.1 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information.

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 as soon as practicable after the date when the Condition for the Key Date is met. 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  
Z1.14.1A 26.1A This clause 26 applies to all subcontracts, except the Lifts Subcontract and Escalators Subcontract which are governed by clause 26A.

- 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 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 contract for each subcontract to the *Project Manager* for acceptance unless
- the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. Reasons for not accepting them include:

- they will not allow the *Contractor* to Provide the Works,
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- 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).
- The proposed subcontract does not include an obligation on the Subcontractor to novate or

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otherwise transfer the subcontract to LUL if required to do so in accordance with clause 92.1 (P2).

26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if

- an NEC contract is proposed and
- the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.

26.5 When a Subcontractor and subcontract are approved by the *Project Manager*, the *Contractor* does not change the Subcontractor and subcontract without the *Project Manager's* approval.

## Lifts and Escalators Subcontracts

### 26A

Z1.14A

26A.1 Insofar as permitted under applicable law, the *Contractor* appoints the Lifts Subcontractor using the form of lifts subcontract specified in the Works Information (WI 1200) and the Escalators Subcontractor using the form of escalators subcontract specified in the Works Information (WI 1200). The *Contractor* does not make or agree to any changes to these forms of contract without the prior approval of the *Project Manager*.

26A.2 The *Contractor* is responsible for Providing the Works which are the subject of the Lifts Subcontract and Escalators Subcontract as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

26A.3 If any event arises which in the opinion of the *Contractor* entitles him to terminate a Lifts Subcontract and/or Escalators Subcontract, or to treat a Lifts Subcontract and/or Escalators Subcontract as having been repudiated by the Subcontractor, the *Contractor* at once notifies the *Project Manager* who instructs the *Contractor* how to proceed. The *Contractor* complies with any such instruction.

26A.4 If the Lifts Subcontractor and/or Escalators Subcontractor claims or gives any indication that he may be entitled to terminate the Lifts Subcontract and/or Escalators Subcontract, or to treat a Lifts Subcontract and/or Escalators Subcontract as having been repudiated by the *Contractor*, the *Contractor* notifies the *Project Manager* as soon as he is aware of any such claim, and the *Project Manager* instructs the *Contractor* how to proceed. The *Contractor* complies with any such instruction.

26A.5 The *Contractor* does not agree to assign, transfer, novate or charge a Lifts Subcontract and/or Escalators Subcontract (or any rights or obligations under them) without the prior written approval of the *Employer*.

26A.6 The *Contractor* does not agree to vary or amend the terms of a Lifts Subcontract and/or Escalators Subcontract nor waive or release any of the obligations of a Lifts Subcontractor and/or Escalators Subcontractor without the prior written approval of the *Employer*.

26A.7 If an event listed in clause 91.1 occurs in relation to the Lifts Subcontractor and/or Escalators Subcontractor, this is treated as a compensation event.

## 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 in his sole discretion choose to serve a warning notice upon the *Contractor* instead of exercising his

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right to terminate with immediate effect pursuant to clause 91.8 and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant person or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected *works* by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

### 3 Time

<b>Starting, Completion and</b>	<b>30</b>	
Z1.16		
<b>Key Dates</b>	<b>30.1</b>	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.16.1	30.1A	Prior to the <i>completion date</i> , the <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law. The <i>Supervisor</i> may attend the inspection.
Z1.16.2	30.2	The <i>Contractor</i> 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 <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
<b>The programme</b>	<b>31</b>	
Z1.17		
	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.17.1	31.2	The <i>Contractor</i> shows on each programme which he submits for acceptance <ul style="list-style-type: none"><li>• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,</li><li>• planned Completion,</li><li>• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,</li><li>• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,</li><li>• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,</li><li>• provisions for<ul style="list-style-type: none"><li>• float,</li><li>• time risk allowances,</li><li>• environmental and health and safety requirements and</li></ul></li><li>• the procedures set out in this contract,</li><li>• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none"><li>• access to a part of the Site if later than its <i>access date</i>,</li><li>• acceptances,</li><li>• Plant and Materials and other things to be provided by the <i>Employer</i> and</li><li>• information from Others,</li></ul></li><li>• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use,</li><li>• for each operation, a cost-loaded programme showing the forecast resources required for that operation,</li></ul>

- 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 *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.

- 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*.

Z1.41.1B

- 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 C clause).

## 4 Testing and Defects

### Tests and inspections 40

- 40.1 This clause only applies to tests and inspections required by the Works Information or the applicable law.
- 40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Works Information.
- 40.3 The *Contractor* and the *Supervisor* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated.
- 40.5 The *Supervisor* does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful becomes due at the later of the *defects date* and the end of the last *defect correction period* if
- the *Supervisor* has not done the test or inspection and
  - the delay to the test or inspection is not the *Contractor's* fault.
- 40.6 The *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.
- 40.7 When the *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, the *Project Manager* does not include the *Contractor's* cost of carrying out the repeat test or inspection.**

### 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 *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.

Z1.24.1A

50.2A Subject to clause 53.6, and for the avoidance of doubt, for the purposes of assessing the Price for Work Done to Date under clause 50.2 the entitlement to Fee:

- for work carried out up to the Fee Step Down Date, is calculated by applying the *initial fee percentage* to the Defined Cost of such work which the *Project Manager* forecasts will have been paid by the *Contractor* before the relevant assessment date; and
- for work carried out after the Fee Step Down Date, is calculated by applying the *stepped down fee percentage* to the Defined Cost of such work which the *Project Manager* forecasts will have been paid by the *Contractor* before the relevant assessment date.

Z1.24.1B

50.2B If and to the extent that, in the final assessment of the amount due to the *Contractor* the amount arrived at by applying the *initial fee percentage* to the Defined Cost included in the tendered total of the Prices exceeds the Fee included in the final Price for Work Done to Date, an amount equal to the excess is included in the final assessment. Provided that this amount shall form no part of the assessment of the Price for Work Done to Date, the Prices or the *Contractor's share*.

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. 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 Payments of Defined Cost made by the *Contractor* in a currency other than**

the *currency of this contract* are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate the Fee and any *Contractor's* share using the *exchange rates*.

50.7 Not used (as not an Option C clause).

Z1.24.4 50.8 If any parent company guarantee or retention bond required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 or Option X16 (as appropriate), 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, Z2.2 and/or Z2.3 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 and/or Z2.3, 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*. 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 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 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 specifying the amount due at the payment due date (the notified sum) and stating the basis on which 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 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 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 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 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.

- Z1.41.2 52.2 **The *Contractor* keeps these records**
  - **accounts of payments of Defined Cost,**
  - **proof that the payments have been made,**
  - **communications about and assessments of compensation events for Subcontractors,**
  - **other records as stated in the Works Information and**
  - **information used to compile forecasts of Defined Cost.**
- 52.3 **The *Contractor* allows the *Project Manager* to inspect at any time within working hours the accounts and records which he is required to keep.**

**The *Contractor's* share 53**

- 53.1 **The *Project Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.**
- 53.2 **If the Price for Work Done to Date is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices, the *Contractor* pays his share of the excess.**
- 53.3 **The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the whole of the *works* using his forecasts of the final Price for Work Done to Date and the final total of the Prices. This share is included in the amount due following Completion of the whole of the *works*.**

- 53.4 The *Project Manager* makes a final assessment of the *Contractor's* share using the final Price for Work Done to Date and the final total of the Prices. This share is included in the final amount due.
- Z1.41.3 53.5 Without limiting sub-clauses 53.1 to 53.4 and 93, if at any time prior to Completion:
- the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from compensation events which have not yet been implemented); and
  - the *Project Manager* assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices
- then the *Project Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* reasonable assessment of the likely *Contractor's* share of the excess. Any sum so deducted shall be taken into account in assessing the amount due under clauses 53.3 and 53.4, or if applicable, 93.
- Z1.41.3A 53.6 No Fee is payable on the amount by which the Price for Work Done to Date exceeds the total of the Prices.
- The Activity Schedule 54
- 54.1 Information in the Activity Schedule is not Works Information or Site Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the activities on the Activity Schedule do not relate to the operations on the Accepted Programme, he submits a revision of the Activity Schedule to the *Project Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Activity Schedule is that
- it does not comply with the Accepted Programme,
  - any changed Prices are not reasonably distributed between the activities or
  - the total of the Prices is changed.
- 55 Not used (as not an Option C 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 (i) they are not due to any fault of the *Contractor* and (ii) 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,
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer*, or
- an instruction which is stated in this contract not to give rise to a compensation event.

(2) Subject to the requirements of the Works Information regarding access and 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 other than those Statutory Undertakers identified in WI 2400 Appendix 24-00 in respect of the works, locations and periods referred to therein):

- do not work within the times shown on the Accepted Programme, or
- do not work within the conditions 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 proposal to incur cost of [REDACTED] in accordance with clause 20A.1, or of a quotation for acceleration or for not correcting a Defect) for a reason not stated in this contract.

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

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- are not conditions of a type referred to in the GBR,
- 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.

(12A) The *Contractor* encounters conditions which:

- are within the Site,
- are of a type referred to in the GBR and
- are more adverse than the conditions set out in the GBR.

Only the difference between the conditions encountered and those set out in the GBR are 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 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.

(20) A Lifts Subcontractor and/or an Escalators Subcontractor becoming insolvent within the meaning of section 113 of the Act.

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

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

a proposed instruction or a proposed changed decision into effect.

Z1.28A.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 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 event arises from the *Project Manager* or *Supervisor* giving an instruction issuing a certificate, changing an earlier decision or correcting an assumption. 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.

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

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

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

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

## Assessing compensation 63

Z1.29

### Z1.29.1 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.

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

- the *initial fee percentage* is applied to the Defined Cost of the work done, or forecast to be done, up to the Fee Step Down Date; and
- the *stepped down fee percentage* is applied to the Defined Cost of the work done, or forecast to be done, from and including the Fee Step Down Date.

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.

Z1.29.1A

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:

- 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 *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 **Not used (as not an Option C clause).**
- 63.11 **If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted or
  - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event,
- the Prices are reduced.**
- 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 C clause).**
- 63.14 **If the *Project Manager* and the *Contractor* agree, rates and lumps sums may be used to assess a compensation event.**
- 63.15 **If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.**

**The Project Manager's 64**

Z1.29A

**Assessments**

Z1.29A.1

64.1 The *Project Manager* assesses a compensation event

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,

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

- 65
- 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 C 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 Z1.30.1

Whatever title the *Contractor* has to Plant and Materials which is outside the Working Areas passes to the *Employer* as soon as the *Contractor* or *Supervisor* has marked them as for this contract or the *Employer* makes payment (partial or otherwise) for them, whichever is the earlier. The *Contractor* ensures that such Plant and Materials are clearly identified as belonging to the *Employer* and are set aside for the *Employer*. The *Contractor* keeps such Plant and Materials in a manner suited to their specialist requirements (if any) and is liable for and indemnifies the *Employer* against all loss, injury, breakage or damage to such Plant and Materials whilst the same are outside the Working Areas save to the extent that such loss, injury, breakage or damage is attributable to the *Employer's* default.

#### Z1.30.2 70.2

Whatever title the *Contractor* has to Plant and Materials passes to the *Employer* if it has been brought within the Working Areas. Subject to clause 70.1, the title to Plant and Materials passes back to the *Contractor* if it is removed from the Working Areas with the *Project Manager's* permission.

#### Z1.30.3 70.3

If requested by the *Project Manager*, the *Contractor* 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.

#### Z1.30.4 70.4

The *Contractor* does not part with possession of such Plant and Materials (or any of them) in any circumstances other than as part of the *Contractor's* responsibility to Provide the Works, nor does the *Contractor* lease, sell, charge, pledge, mortgage or otherwise dispose of such Plant and Materials (or any of them) or any interest in them or permit any security interest to arise over any of them.

#### Z1.30.5 70.5

The *Contractor* promptly notifies any mortgagees or chargees of all or any of its assets that such Plant and Materials are the *Employer's* property, and provides satisfactory evidence of such notification and, where requested by the *Employer*, a written acknowledgement from any mortgagees or chargees that such Plant and Materials are not within the scope of any such mortgage or charge.

### Marking Equipment, Plant 71 and Materials outside the 71.1 Working Areas

The *Supervisor* marks Equipment, Plant and Materials which are outside the Working Areas if

- this contract identifies them for payment and
- the *Contractor* has prepared them for marking as the Works Information requires.

### Removing Equipment 72

#### 72.1

The *Contractor* removes Equipment from the Site when it is no longer needed unless the *Project Manager* allows it to be left in the works.

### Objects and materials 73 within the Site 73.1

The *Contractor* has no title to an object of value or of historical or other interest within the Site. The *Contractor* notifies the *Project Manager* when such an object is found and the *Project Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions.

#### 73.2

The *Contractor* has title to materials from excavation and demolition only as stated in the Works Information.

## 8 Risks and insurance

	<b>Employer's risks</b>	<b>80</b>	
Z1.31		80.1	The following are <i>Employer's</i> risks. <ul style="list-style-type: none"><li>• Claims, proceedings, compensation and costs payable which are due to<ul style="list-style-type: none"><li>• use or occupation of the Site by the <i>works</i> or for the purpose of the <i>works</i> which is the unavoidable result of the <i>works</i>,</li><li>• negligence, breach of statutory duty or interference with any legal right by the <i>Employer</i> or by any person employed by or contracted to him except the <i>Contractor</i> or</li><li>• a fault of the <i>Employer</i> other than a fault in his design for which he does not retain responsibility for under clause X21.3 (a) to (c).</li></ul></li><li>• Loss of or damage to Plant and Materials supplied to the <i>Contractor</i> by the <i>Employer</i>, or by Others on the <i>Employer's</i> behalf, until the <i>Contractor</i> has received and accepted them.</li><li>• Loss of or damage to the <i>works</i>, Plant and Materials due to<ul style="list-style-type: none"><li>• war, civil war, rebellion, revolution, insurrection, military or usurped power,</li><li>• strikes, riots and civil commotion not confined to the <i>Contractor's</i> employees and/or any Subcontractor's employees or</li><li>• radioactive contamination.</li></ul></li></ul>
Z1.31.1			
Z1.31.2			
Z1.31.2A			<ul style="list-style-type: none"><li>• Loss of or wear or damage to the parts of the <i>works</i> not taken over by the <i>Employer</i> but which the <i>Employer</i> uses or permits Others to use in accordance with clause 35 provided always:<ul style="list-style-type: none"><li>• such loss, wear or damage is caused by the <i>Employer's</i> or such Others failure to follow the reasonable instructions given or which ought reasonably to have been given by the <i>Contractor</i>,</li><li>• the <i>Contractor</i> has taken all reasonable steps to mitigate such loss, wear or damage, and</li><li>• such loss, wear or damage is not due to<ul style="list-style-type: none"><li>• a Defect,</li><li>• an event occurring which was not itself an <i>Employer's</i> risk and</li><li>• the activities of the <i>Contractor</i> on the Site.</li></ul></li></ul></li><li>• Loss of or wear or damage to the parts of the <i>works</i> taken over by the <i>Employer</i>, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to<ul style="list-style-type: none"><li>• a Defect which existed at take over,</li><li>• an event occurring before take over which was not itself an <i>Employer's</i> risk or</li><li>• the activities of the <i>Contractor</i> on the Site after take over.</li></ul></li><li>• Loss of or wear or damage to the <i>works</i> and any Equipment, Plant and Materials retained on the Site by the <i>Employer</i> after a termination, except loss, wear or damage due to the activities of the <i>Contractor</i> on the Site after the termination.</li><li>• Additional <i>Employer's</i> risks stated in the Contract Data.</li></ul>
	<b>The Contractor's risks</b>	<b>81</b>	
		81.1	From the <i>starting date</i> until the Defects Certificate has been issued, the risks which are not carried by the <i>Employer</i> are carried by the <i>Contractor</i> .
	<b>Repairs</b>	<b>82</b>	
		82.1	Until the Defects Certificate has been issued and unless otherwise instructed by the <i>Project Manager</i> , the <i>Contractor</i> promptly replaces loss of and repairs damage to the <i>works</i> , Plant and Materials.

**Indemnity 83**

Z1.32  
Z1.32.1

83.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents and members of the TfL Group against all Losses in respect of events or matters which are ~~is~~ at his risk including subject to any applicable limitation of liability under Secondary Option X18:

- personal injury to or death of any person;
- loss of or damage to property real or personal other than to the *works*; and
- any other Losses arising under his contracts with Others.

Without prejudice to the foregoing, the *Contractor* provides this indemnity against:

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) that both arise out of the design, construction or use of the *works* or project and result from the failure of the *Contractor* to comply with any of its obligations under clauses Z2.7.1, Z2.7.2 and / or Z2.7.2A, and
- all Losses arising from any nuisance or interference referred to in clause Z2.6 which could have been avoided by the *Contractor* using all reasonable and practical means.
- all Losses arising from any breach by the *Contractor* of clauses Z2.12A and Z2.12B.

Z1.32.2

83.2 The *Contractor's* liability to indemnify the *Employer*, his employees and agents and members of the TfL Group is reduced if events at the ~~Employer's~~ risk contributed to the Losses. The reduction is in proportion to the extent that events which were at the *Employer'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 Notwithstanding any other clause in this contract the *Contractor's* liability for damage by an insured peril to existing structures belonging to the *Employer* which do not form part of the *works* shall be limited to [REDACTED] per occurrence. The *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* for such Losses above [REDACTED] per occurrence.

**Remedies 83A**

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 the insurances stated in the Insurance Table. The *Contractor* provides additional insurances as stated in the Contract Data.

Z1.34.2



**Transit insurance**

*Contractor*

All risks of loss of or damage (including theft and vandalism) to goods, Plant and Materials, Equipment, including for the avoidance of doubt the Tunnel Boring Machines, during transit (or being stored during a journey) by road, rail, air, sea or inland waterways, until the point that these items are delivered and unloaded to the Site.

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; and
- if the professional indemnity insurance to be provided in accordance with the Insurance Table 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.
- Where the *Contractor* is a joint venture or consortium, each member of the joint venture or consortium (as applicable) procures and maintains separate professional indemnity insurance policies, and the aggregate of those policies is not less than the minimum limit of indemnity specified in the Insurance Table. Furthermore, those policies are evidenced by partner's coverage, including a joint and several liability extension for the joint venture or consortium (as applicable), which is acceptable to the *Employer*.

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 consultants (and sub-subcontractors and consultants of any tier) maintain:

- employer's liability (and where appropriate) motor liability insurances and any relevant marine insurances as required by law; and
- professional indemnity insurance covering their liabilities under subcontracts in respect of their design as follows:
  - in respect of the *Contractor's* lead designer, which at the Contract Date is or any replacement lead designer, [REDACTED] [REDACTED] for each and every claim without aggregation, and
  - in respect of the *Contractor's* other Subcontractors and consultants (and sub-subcontractors and consultants of any tier) in an amount commensurate with the professional activity being carried out but not less than [REDACTED] [REDACTED] for each and every claim and in the aggregate per annum unless otherwise agreed by the *Project Manager* but in any event not less than [REDACTED] [REDACTED] for each and every claim and in the aggregate per annum.

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 policies 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 for not accepting the certificates include:

- that they do not comply with this contract,

		<ul style="list-style-type: none"> <li>the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;</li> <li>the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the <i>works</i>, of sufficient financial strength.</li> </ul>
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.
	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.
	<b>86</b>	
	<b>If the Contractor does</b>	
Z1.36	<b>not insure</b>	
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.
	<b>87</b>	
	<b>Insurance by the</b>	
Z1.36.1A	<b>Employer</b>	
Z1.36.1B	87.1	The <i>Project Manager</i> submits policies and cover notes 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 cover notes if they comply with this contract.
Z1.36.1C	87.2	The <i>Contractor's</i> acceptance of an insurance policy or cover note provided by the <i>Employer</i> does not change the responsibility of the <i>Employer</i> to provide the insurances in accordance with this contract.
Z1.36.1D	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 cover note. The cost of this insurance to the <i>Contractor</i> is paid by the <i>Employer</i> .
	87.3A	In respect of the insurances provided by the <i>Employer</i> .
		<ul style="list-style-type: none"> <li>the insurances are in the joint names of the <i>Employer</i>, the <i>Contractor</i>, and all other contractors, Subcontractors and sub-subcontractors of any tier for their activities on the Site;</li> <li>the Construction All Risks policy insures against the usual risks covered by a Construction All Risks policy, including terrorism cover. If the <i>Employer</i> elects not to include terrorism cover, or if terrorism cover is not available in the market, then the <i>Employer</i> indemnifies and holds each of the insureds under that policy harmless from any physical loss of or damage to the <i>works</i> but only to the extent: <ul style="list-style-type: none"> <li>of the terrorism cover that is available or would have last been available, from the Pool Reinsurance Company Limited scheme or of any similar successor scheme at the time of loss or damage,</li> <li>that had such cover been included in the Construction All Risks policy the insurer would have been under an obligation under that policy to indemnify those insureds in respect of such cover, and</li> <li>that the amounts payable by the <i>Employer</i> are as determined by the <i>Employer's</i> nominated claims adjuster whose decision on such payments is final and binding on the parties;</li> </ul> </li> <li>the insurances are in effect from the <i>starting date</i> until the Defects Certificate or a termination certificate has been issued, whichever is the later provided, however, that the <i>Contractor</i> acknowledges and agrees that the <i>Employer</i> provides the insurances on the terms of its annual insurance programme until such time as the</li> </ul>

project specific insurances are incepted; and

- cover is provided for each Tunnel Boring Machine from the time at which it is successfully offloaded at the Site until the time at which it is disassembled and stored ready for removal from the Site. All risks during loading, unloading and transit to and from the Site are not insured by the *Employer*. The *Contractor* is responsible for insuring the Tunnel Boring Machines at all times when they are not insured by the *Employer*.

Z1.36.2

87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.

Z1.36.3

87.5 The *Contractor* shall comply, and shall ensure that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.

Z1.36.4

87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.

## 9 Termination

Termination  
Z1.37

90

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

### TERMINATION TABLE

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, R13A R18, or R25A	P1, P2 and P3	A1 and A3
	R17, R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	R26A	P1, P2 and P3	A1 and A3
	R27	P1 and P4	A5
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

Z1.37.2

- 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.

EXECUTED VERSION

90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

**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).

Z1.38.1A

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 pursuant to clause 26.3 (Z1.14) (R13).
- Appointed a Lifts Subcontractor and/or Escalators Subcontractor in breach of clause 26A (Z1.14A) (R13A)

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).

Z1.38.2A

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

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

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

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the

*Employer* (R19) and

- either Party may terminate if the instruction was due to any other reason (R20).

Z1.38.3

- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
  - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

- neither Party could prevent and
- an experienced 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 which, in the opinion of the *Employer* (acting reasonably), results in a material deterioration in the:
  - technical and operational capability of the *Contractor*, or
  - financial standing of the *Contractor*, any company forming part of the *Contractor* or a *parent company* and where the *Contractor* is a joint venture or consortium, the other parties to the joint venture or consortium do not assume (in whole or in part) the participating interest of the party which is subject to the 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.

Z1.38.6

- 91.10 The *Employer* may terminate the *Contractor's* appointment if an event occurs which is an *additional termination event* (R27).

Z1.41.4

91.11 Without limiting sub-clauses 53.1 to 53.5 and 93, the *Employer* may terminate if the *Project Manager* assesses at any time that (having regard to the Price for Work Done to Date and the total of the Prices at the relevant time):

- the final Price for Work Done to Date is likely to exceed the final total of the Prices; and
- the resulting forecast of the *Contractor's* share of the excess is likely to exceed the *share termination threshold* (R26A).

Z1.39  
Procedures on  
termination

92

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 unless otherwise instructed by the *Project Manager*.

Payment on termination

93

Z1.39.1A

93.1 Where specified in the Termination Table 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.

Z1.37.1B

93.2 Where specified in the Termination Table the amount due on termination includes one or more of the following.

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 *initial fee percentage* applied to any excess of the Defined Cost included in the tendered total of the Prices over the Defined Cost of the work carried out up to the Fee Step Down Date.

- A5
- 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,

- any amounts retained by the *Employer* and
- a deduction of any un-repaid balance of an advanced payment.

93.3 Not used (as not an Option C clause).

Z1.41.9

93.4 If there is a termination, the *Project Manager* assesses the *Contractor's* share after he has certified termination. His assessment uses, as the Price for Work Done to Date, the total of the Defined Cost which the *Contractor* has paid and which he is committed to pay for work done before termination and the resulting Fee. The assessment uses as the total of the Prices

- the lump sum price for each activity which has been completed and
- a proportion of the lump sum price for each incomplete activity which is the proportion of the work in the activity which has been completed.

93.5 Not used (as not an Option C clause).

93.6 The *Project Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess.

## 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 the 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 Schedules 4A and 4B in favour of each such persons and/or in favour of any member of the TfL Group.

### Subcontractors' Warranties

#### Z2.2

Z2.2.1 This clause Z2.2.1 applies to all Subcontractors except the Lifts Subcontractor and Escalators Subcontractor. 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.

### Lifts and Escalators Warranties

#### Z2.3

Z2.3.1 The *Contractor* procures that the Lifts Subcontractor and Escalators Subcontractor duly execute and deliver to the *Employer*, within 21 business days (in the case of the Escalators Subcontractor) or 30 business days (in the case of the Lifts Subcontractor) of the date of their appointment, deeds of warranty from the Lifts Subcontractor, Escalators Subcontractor and their sub-sub-contractors and sub-sub-consultants in the appropriate form attached to the Lifts Subcontract and Escalators Subcontract.

### 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*,

- while it will be a defence to any claim arising out of the design and / or specification that such is in accordance with practice conventionally accepted as appropriate at the time of the execution of the *works* having regard to their size, scope and complexity, all of the 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-subcontractors 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);

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