LOCROS Lift Schemes East

Maryland, Manor Park and Seven Kings Lift Schemes

Form of Agreement

CROS-ALLW-MPM-TEN-RFL-00009

March 2016

Issue Record

Client	Rail for London
Project	Maryland, Manor Park and Seven Kings Lift Schemes
Report no.	CROS-ALLW-MPM-TEN-RFL-00009

Title	Form of Agreement

Issue record

Issue	*Date*	*Author*	*Approved*	*Description*
T01	18.08.15	S Onojaife	P Herridge	For ITT
B01	01.03.15	S Onojaife	P Herridge	For Contract

Note: this report is uncontrolled when printed.

Contents

1.0 Form of Agreement

THIS AGREEMENT is made the day of 2016

BETWEEN:

(1) Rail for London Limited whose registered office is at Windsor House, 42 – 50 Victoria Street, London SW1H 0TL ("the *Employer*" which expression shall include its successors in title and assigns); and

(2) HOCHTIEF (UK) Construction Limited whose registered office is at Whitehill House, Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PE

WHEREAS:

(A) The *Employer* wishes to have provided Lift Schemes' to Maryland, Manor Park and Seven Kings stations ("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 and amended).

NOW IT IS AGREED THAT:

1. Terms and expressions defined in the *conditions of contract* (as amended) have the same meanings herein.

2. The *Contractor* Provides the Works in accordance with the *conditions of contract* (as amended).

3. The *Employer* pays the *Contractor* the amount due in accordance with the *conditions of contract* (as amended).

4. The documents forming the contract are:

   (a) this Form of Agreement duly executed by the Parties as a deed;

(b) the NEC Engineering and Construction Contract *conditions of contract* Third Edition June 2005 (with amendments dated June 2006 and September 2011) as amended by the *additional conditions of contract* (Z1 and Z2 clauses);

(c) the Contract Data Part 1;

(d) the Contract Data Part 2;

(e) the Works Information;

(f) the Site Information; and

(g) Schedules 1 to 9 inclusive contained in section 4 of this contract.

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

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

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

OVERGROUND

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

[redacted]

Signature of ~~Director/Secretary~~ .....

Authorised Signatory

Print name of ~~Director/Secretary~~ [redacted] .....

EXECUTED AND DELIVERED AS A DEED
by **HOCHTIEF (UK) CONSTRUCTION LIMITED**
acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/~~Secretary~~

[redacted]

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LOCROS Lift Schemes East

Maryland, Manor Park and Seven Kings Lift Schemes

Section 2 – Consolidated Conditions of Contract

CROS-ALLW-MPM-TEN-RFL-00011

March 2016

Client	Rail for London
Project	Maryland, Manor Park and Seven Kings Lift Schemes
Report no.	CROS-ALLW-MPM-TEN-RFL-00011
Title	Section 2 – Consolidated Conditions of Contract

Issue record

Issue	*Date*	*Author*	*Approved*	*Description*
T01		TfL Legal		For ITT
B01		TfL Legal		For Contract

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION A

CONTENTS

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.

Z1.1.1 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. Neither the Accepted Programme, nor any method statement attached to the Accepted Programme, form part of the Works Information.

(2) Completion is when the *Contractor* has

- done all the work which the Works Information states he is to do by the Completion Date ~~and~~

Z1.1.2

- 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.

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.

Z1.1.3 (4)The Contract Date is the date ~~when this contract came into existence~~ of this contract.

Z1.1.4 (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.

Z1.1.5 (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*.

(8) The Fee is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work.

(9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with this contract.

Z1.1.6 (10) Others are people or organisations who are not the *Employer*, the *Project Manager*, the *Supervisor*, ~~the *Adjudicator*,~~ the Adjudicator, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

Z1.1.7 (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.

Z1.1.8

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

- construct or install or design 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*.

Z1.1.9

(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 and
- are not the *Contractor's* headquarters or other offices which are not used solely for the *works*

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.

Z1.39A.1

(22) Defined Cost is ~~the cost of the components in the Shorter Schedule of Cost Components whether work is subcontracted or not~~

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

and

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

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

Z1.39A.2

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

- **is not justified by the *Contractor's* accounts and records,**
- **should not have been paid to a Subcontractor or supplier in accordance with his contract,**
- **was incurred only because the *Contractor* did not**

- **comply with the requirements of the Works Information or**
- **give an early warning which this contract required him to give**

- **the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,**
- **results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,**
- **is attributable to a compensation event under a subcontract which is not also a compensation event under this contract,**
- **is due under a subcontract entered into in breach of clause 26.2 (Z1.14.1)**

and the cost of

- **correcting Defects after Completion,**
- **correcting Defects caused by the *Contractor* not complying with Standards or a constraint on how he is to Provide the Works stated in the Works Information,**
- **Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,**
- **resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested,**
- **costs incurred by the *Contractor* through providing a replacement person as described in clauses 24.1A and 24.1B,**
- **preparation for and conduct of an adjudication or proceedings of the courts,**
- **fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement,**
- **strikes, riots and civil commotion confined to the *Contractor's* employees and/or any Subcontractor's people, and**
- **profit payable to the *Contractor's* subsidiary, affiliate or parent company or a company with the same parent company where such parent or other company is a Subcontractor[, and]**
- **[profit payable between each party comprising the *Contractor*][1]**

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

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

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

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

Z1.2 11.3 Additional defined terms are included in Schedule 1.

Interpretation and the law **12**

Z1.3

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

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

[1] Delete the wording in square brackets if *Contractor* is not a joint venture.

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 provided that the *Employer* has the right in its absolute discretion to enforce a judgement and/or take proceedings in any other jurisdiction in which the *Contractor* is incorporated or in which any assets of the *Contractor* are or may be situated.

12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

Z1.3.3 12.3A Words denoting persons or parties shall include individuals, partnerships, firms and corporations and any organisation having legal capacity.

Z1.3.4 12.4 This contract ~~is the entire agreement between the Parties~~ supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.

Z1.3.5 12.5 The headings to the sections, clauses and sub-clauses of the conditions of this contract are for convenience only and do not affect the construction or interpretation of the *conditions of contract*.

Y2.1(2) 12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

Z1.3.6 12.7 References in this contract to "applicable law" are deemed to include Statutory Requirements and include:

- that law as from time to time amended, re-enacted or substituted and
- any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law.

In performing his obligations under this contract, the *Contractor* complies with the *law of the contract*, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Railway and/or the Underground and Overground Network and/or their 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.

Z1.3.10 12.11 If the *Contractor* comprises two or more companies acting in joint venture, consortium, partnership or otherwise, each such company is jointly and severally liable to the *Employer* for the performance of the *works* and all of the *Contractor's* obligations under this Contract.

Communications 13

Z1.4

Z1.4.1 13.1 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 or is available for access on a nominated hosted web server and/or nominated file transfer platform as set out in the Works Information (save in the case of the notification of a dispute which shall be notified in hard copy only). 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).

Z1.4.2 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. Alternatively, an electronic communication has effect when it is posted on a nominated hosted web service and/or nominated file transfer platform as set out in the Works Information. Communications relating to the notification of a dispute shall have no effect under this contract unless served in hard copy. Any communication sent by hand is deemed to be received upon delivery at such address.

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.

Z1.4.3 13.9 All communications referred to in clause 13.1 from the *Contractor* shall bear the following headings:

- contract name and identifying number,
- subject,
- reference number,
- date, and
- the name of the author (who should be the *Contactor's Representative* or a delegate of the *Contractor* in accordance with clause 14A.1).

Z1.4.4 13.10 All contract documents and drawings sent between the *Project Manager* and the *Contractor* shall be accompanied by a transmittal notice (consecutively numbered) in accordance with a system agreed with the *Project Manager*.

Z1.4.5 13.11 All correspondence between the *Contractor* and other parties appointed by or under the control of the *Project Manager* shall be made through the *Project Manager* unless otherwise authorised by the *Project Manager*.

Conditions Precedent **13A**

Z1.4A

Z1.4A.1 13A.1 The obligations of the *Contractor* to Provide the Works and of the *Employer* to pay the *Contractor* to Provide the Works do not commence until the *Contractor* has satisfied the requirements set out in Schedule 7 (the **"Conditions Precedent"**) save that the *Employer* may waive all or part of the Conditions Precedent.

Z1.4A.2 13A.2 The *Contractor* uses reasonable endeavours to satisfy or procure the satisfaction of any of the Conditions Precedent not already satisfied or waived as soon as possible.

Z1.4A.3 13A.3 The *Contractor* notifies the *Employer* of the satisfaction of any Condition Precedent as soon as possible after such condition has been satisfied and in any event within one day of such satisfaction.

The *Project Manager* and the *Supervisor* **14**

Z1.5

Z1.5.1 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor t~~T~~he *Project Manager*'s or the *Supervisor*'s review or acceptance of a communication from the *Contractor* or of his work ~~does not~~ changes the *Contractor*'s responsibility to Provide the Works or his liability for his design.

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

Z1.5.2 14.3 ~~The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.~~ The *Project Manager* issues instructions implementing decisions and actions which he is authorised to take under this contract including instructions to change the Works Information, to accelerate, suspend or re-sequence the *works* or part of them, to open up or test the *works* or part of them or to correct Defects. All instructions are in writing signed by authorised representatives of the *Project Manager*.

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

Y2.1/Z1.5.3 14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

The *Contractor's Representative*

Z1.5A

Z1.5A.1 14A.1 The *Contractor* ensures that at all times a competent and experienced person is appointed to act as the *Contractor's Representative*. The *Contractor's Representative* acts on behalf of the *Contractor* under this contract. The *Contractor's Representative* may, after notifying the *Employer* and the *Project* Manager, delegate any of his actions and may cancel any delegation. A reference to an action of the *Contractor's Representative* in this contract includes an action by his delegate. The *Contractor's Representative* is a key person for the purposes of clause 24 of this contract and the *Employer* may require the *Contractor* to remove and replace the *Contractor's Representative* in accordance that clause.

Adding to the Working Areas **15**

Z1.5B.1 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 or is being used or occupied by Others or includes the *Contractor's* headquarters or other offices which are not used solely for the *works*.

Early warning **16**

Z1.6

Z1.6.1 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- delay Completion,
- delay meeting a Key Date, ~~or~~
- impair the performance of the *works* in use

- change the Accepted Programme,
- interfere with the work of Others,
- constitute a Defect,
- constitute a compensation event,
- adversely affect the health and/or safety of any person,
- result in the replacement of or change in any key person or affect the ability of a key person to carry out his duties,
- give rise to any strike, lockout or combination of workmen or any other industrial action,
- 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 and Overground Network and/or the 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.

Z1.6.2 16.2 ~~Either~~ The Project Manager may instruct the Contractor or the Contractor may request the Project Manager (such request not to be unreasonably withheld) to attend a risk reduction meeting. ~~The *Project Manager* or the *Contractor* may instruct the *Contractor* to attend a risk reduction meeting. Each~~ The Project Manager may instruct other people to attend if the ~~other~~ *Contractor* 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.

Z1.6.3 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. For the avoidance of doubt, the *Contractor's* only entitlement to a change in the Prices, the Completion Date or a Key Date as a result of any revision to the Risk Register is in accordance with clauses 60 to 65.

Ambiguities and Inconsistencies **17**

Z1.7

Z1.7.1 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.*

Z1.7.2 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**

Z1.7A

Z1.7A.1 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 or to carry out works which if completed in accordance with this contract will result in the *works* not being in accordance with the Statutory Requirements. 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,
- 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, or
- a constraint set out or referred to in the Works Information

and which

- neither Party could prevent and
- a~~n~~ prudent and experienced contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it, and
- the *Contractor* can demonstrate that he did not allow for it in his tender,

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

2 The *Contractor*'s main responsibilities

Providing the Works **20**

Z1.9

Z1.9.1 20.1 The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information and in such a manner:

20.1.1 as is consistent with the health and safety, environmental and quality requirements referred to in the Works Information; and

20.1.2 so as to Provide the Works at the lowest overall achievable cost.

20.2–20.5 Not used (as not Option A clauses)

Z1.9.2 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.

The *Contractor*'s design **21**

Z1.10

Z1.10.1 21.1 The *Contractor* is responsible for the design of all of the *works* and (without prejudice to Option X21) accepts entire responsibility for and for any mistake, ambiguity, inconsistency, inaccuracy, discrepancy, defect or omission contained in the same.

Z1.10.2 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. ~~A reason~~ Reasons for not accepting the *Contractor's* design is 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,
- it is not in a format which is accepted for use by the *Project Manager.*

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.

Z1.10.3 21.4 The *Contractor* warrants to the *Employer* that the *works*

- comply with the Works Information and any performance specification or requirements in the Works Information,
- comply with all Statutory Requirements,
- comply with the applicable law,
- comply with Standards,
- are integrated with the designs of Others,
- are integrated with the Network and in particular the Interfacing Projects,
- will on Completion be Available and, in the case of the On-Network Works, capable of being Taken Into Use and be fit for their intended purpose.

Z1.10.4 21.5 The *Contractor* warrants to the *Employer* that it shall only specify:

- substances and materials for incorporation in the *works* which are in accordance with the relevant British Standards, European Standards and International Standards and codes of practice and general good building practice, and
- which have not been declared deleterious in any publication of the Building Research Establishment current at the time of incorporation of such substances and materials into the *works* provided that this bullet shall not apply where an experienced contractor would have judged at the time of their specification that there was no reasonable prospect of them being declared deleterious by the scheduled date for their incorporation into the *works*.

Z1.10.5 21.6 The *Contractor* has had an opportunity of inspecting the physical conditions (including the sub-surface conditions and condition of any existing assets) and other conditions of or affecting the site of the *works* and is deemed to be fully acquainted

with the same before the Contract Date and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the *works*. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to any additional payment (whether by way of an addition to the Prices or otherwise) or to any change to the Completion Date and/or Key Dates. As between the *Contractor* and the *Employer*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Employer* regarding any such matter as is referred to in this clause or as set out in the Works Information and/or Site Information and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document. The *Contractor* shall undertake any other surveys and /or investigations that may be necessary to facilitate his detailed design and construction of the w*orks*.

Using the *Contractor*'s Design **22**

Z1.11

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

Design of Equipment **23**

Z1.11A

Z1.11A.1 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, or
- the provisions of this contract.

Z1.11A.2 The *Contractor* in designing and specifying any Equipment which he is required to design and specify for use in Providing the Works, warrants, undertakes and represents to the *Employer* that the Equipment:

- complies with the Works Information and any performance specification or requirements in the Works Information,
- complies with all Statutory Requirements,
- complies with the applicable law,
- complies with Standards,
- is integrated with the designs of Others, including Network Rail,
- will on completion be fit for their intended purpose.

People **24**

Z1.12

Z1.12.1 24.1 Subject to the provisions of Option X23 (if applicable), the ~~The~~ *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

Z1.2.2 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:

- ceases to be employed to do the job stated in the Contract Data; and/or
- (where Option X23 applies), the *Contractor* fails to comply with an accepted key person succession plan,

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

requirement.

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

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

Working with the *Employer* and Others **25**

Z1.13

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

25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

Z1.13.2 25.3 If the *Project Manager* decides that the work does not or will not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs or will incur additional cost either

- in carrying out work or
- by paying an additional amount to Others in carrying out work

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor* which cost includes any Losses incurred by the *Employer* arising from any resulting compensation event claimed by Interfacing Others. The *Project Manager* assesses the additional cost ~~within four weeks of~~ as soon as practicable after the date when the Condition for the Key Date is met. ~~The *Employer*'s right to recover the additional cost is his only right in these circumstances.~~ The *Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* failure to meet a Key Date.

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

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

Z1.13.5 25.6 Without prejudice to Clause 25.1, the *Contractor* liaises with Interfacing Others and as often as may be required to ensure that any programme produced by the *Contractor* in accordance with Clause 31 is developed to ensure that the *works* are co-ordinated and interfaced with the works to be undertaken by Interfacing Others and the *Contractor* Provides the Works in accordance with any such co-ordinated and interfaced programme. If the *Contractor* fails to properly coordinate and interface the *works* with the works to be undertaken by Interfacing Others the *Contractor* is not entitled to: a compensation event pursuant to Clause 60.1; a change in the Prices; a change to the Completion Date; or a change to any Key Date.

Z1.13.6 25.7 If as a result of a breach by the *Contractor* the *Employer* is liable to pay any additional sum to Interfacing Others that additional sum is paid to the *Employer* by the *Contractor*. The *Project Manager* assesses such additional sum as soon as reasonably practicable after the date of the breach. The *Project Manager's* assessment is without prejudice to any other rights and remedies the *Employer* may have arising from the *Contractor's* breach.

Subcontracting 26

Z1.14

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

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

- that his appointment will not allow the *Contractor* to Provide the Works,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- the proposed Subcontractor does not have an acceptable health and safety track-record on other projects.

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

Z1.14.2 26.3 The *Contractor* submits the proposed ~~conditions of~~ contract for each subcontract to the *Project Manager* for acceptance unless

~~an NEC contract is proposed or~~

the *Project Manager* has agreed that no submission is required.

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

- they will not allow the *Contractor* to Provide the Works, ~~or~~
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation~~.~~,
- the *Contractor* has not complied with any requirements in the Works Information regarding the appointment or acceptance of Subcontractors,
- that if the proposed Subcontractor is retained on the proposed conditions of subcontract and performs his duties under them, the *works* when completed will not comply with the Works Information,
- they do not require the proposed Subcontractor to give early warning of matters which may affect matters in respect of which this contract obliges the *Contractor* to give early warning,
- they are not, in the opinion of the *Project Manager*, consistent with the terms of this contract,
- they do not include a provision preventing the *Contractor* from determining the employment of the Subcontractor without first giving the *Employer* reasonable notice of his intention to do so,
- they do not include a provision requiring the *Contractor* to obtain the approval of the *Employer* to the appointment of a replacement Subcontractor in the event of the employment of the first Subcontractor being determined,
- they do not include a provision requiring the proposed Subcontractor to maintain accounts and records of an equivalent extent and nature to those required by this contract,
- they do not include a provision requiring the proposed Subcontractor to assign IPR to the *Employer* in accordance with clause Z2.7 and requiring the Subcontractor to grant a non-exclusive, perpetual, irrevocable, royalty-free licence to the *Employer* to use Background IPR (including the right to grant sub-licences) of an equivalent extent and nature to those required by this contract,
- they do not include a provision imposing equivalent obligations of confidentiality on the proposed Subcontractor to those required by this contract,
- they do not include a provision imposing equivalent obligations regarding

Prohibited Acts and health and safety as required by this contract,

- they do not include an obligation on the Subcontractor to provide a collateral warranty in favour of the *Employer* and/or any beneficiary listed in clause Z2.2.1 within 21 days of the *Contractor's* request on the terms of Schedule 5 or Schedule 6 (as appropriate),
- they are not, in the opinion of the *Project Manager*, consistent with good project management practice or the efficient, economical and effective construction of the *works*,
- the proposed subcontract works represent, in the *Project Manager's* opinion, too large a proportion of the total *works*, or too large a proportion of the remaining *works* yet to be completed as at the time it is proposed to let the proposed Subcontract,
- the terms of the proposed Subcontract are, in the *Project Manager's* opinion, unfair or unenforceable in material respects,
- the proposed Subcontractor lacks (in the opinion of the *Project Manager*) technical or financial capacity to carry out the works which the *Contractor* intends the proposed Subcontractor shall carry out.

Other responsibilities **27**

Z1.15

Z1.15.1

27.1 The *Contractor* obtains approval of his design from Others where necessary or where stipulated in the Works Information. The *Contractor* is not entitled to any change in the Prices, the Completion Date or any Key Date due to any delay or inability to obtain approval of his design.

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*.

Z1.15.2

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

Z1.15.3

27.5 The *Contractor:*

- takes full responsibility for the adequacy, stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations;
- warrants that it is fully conversant with the Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations;
- warrants to the *Employer* that to the extent it is responsible for design it is fully aware of the provisions of Regulation 11 ("Duties of designers") of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 11;
- to the extent that he is in control of the Site or any part of it within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Site, its access and egress, safe and without risk to the health of persons using it;
- agrees to assist the *Employer* in discharging the obligations placed upon the *Employer* under the CDM Regulations.

Z1.15.4 27.6 Without limitation to the obligations in clause 27.5, the *Contractor* performs all the functions and duties of a Designer (as that expression is defined in the CDM Regulations) and where it is stated in the Contract Data that the *Contractor* is the Principal Contractor the *Contractor* performs all the functions and duties of and exercises the powers of the Principal Contractor (as that expression is defined in the CDM Regulations) for the purposes of the *works*. Where it is stated in the Contract Data that another party is principal contractor for the purposes of the CDM Regulations the *Contractor* co-operates with, assists and (where relevant) complies with the directions of the party named as principal contractor in connection with the CDM Regulations.

Z1.15.5 27.7 Where it is stated in the Contract Data that the *Contractor* is the principal contractor (as that expression is defined in the Site Waste Management Plans Regulations 2008) the *Contractor* performs all the functions and duties of the principal contractor under the Site Waste Management Plans Regulations 2008 and any amendment, consolidation, revision and/or replacement thereto.

Z1.15.6 27.8 Where it is stated in the Contract Data that the *Employer* or another party is principal contractor for the purposes of the Site Waste Management Regulations 2008 the *Contractor* agrees to assist the *Employer* with the preparation of the Site Waste Management Plan prior to starting work on site. The *Contractor* assists the *Employer* to implement and update the site waste management plan in accordance with the requirements of the Site Waste Management Plan Regulations 2008. The obligations are without prejudice to the *Contractor's* obligations under this contract in respect of Statutory Requirements.

Z1.15.7 27.9 The *Contractor* performs any On-Network Works and any other *works* which take place on the Network strictly in accordance with and subject to the relevant provisions identified or referred to in the Works Information.

3 Time

Starting, Completion and Key Dates **30**

Z1.16

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

Z1.16.1

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

Z1.16.2

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

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

The programme **31**

Z1.17

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

Z1.17.1

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

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

Z1.17.2 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,
- it does not comply with the Works Information,
- it does not allow the *Employer* or Others to start, carry out and complete their work as planned and subsequently to maintain any assets or facilities delivered as a result of the work, or
- it is not in a format which is accepted for use by the *Project Manager*.

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* revises the Accepted Programme from time to time as required by the *Project Manager* and as necessary in order to Provide the Works in accordance with this Contract. 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.

Z1.18.2 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* and
- following the occurrence of a compensation event.

Access to and use of the Site 33

Z1.19

Z1.19.1 33.1 Subject to the provisions of the Works Information regarding access, the ~~The~~ *Employer* allows access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Accepted Programme.

Z1.19.2 33.1A The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Instructions to stop or not to start work 34

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

Take over 35

Z1.20

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~~takes~~ over, and is not treated as having taken over, the part of the *works* when he (or Others) begins to use it and the *Contractor* remains responsible for the care and protection of that part of the *works* and for its maintenance in accordance with the requirements of the

Works Information whilst it is being used by the *Employer* and/or Others until take over is certified by the *Project Manager* in accordance with clause 35.3. ~~except if the use is~~

- ~~for a reason stated in the Works Information or~~
- ~~to suit the *Contractor*'s method of working.~~

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

Acceleration 36

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

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

Z1.39A.3 36.3 **When the *Project Manager* accepts a quotation for an acceleration, he changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme. If the *Project Manager* does not accept a quotation for an acceleration, or does not accept the *Contractor's* reasons for not submitting a quotation, then the *Project Manager* may issue an instruction to the *Contractor* to accelerate and the *Contractor* proceeds to accelerate in accordance with that instruction.**

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

4 Testing and Defects

Tests and inspections **40**

40.1 The subclauses in this clause only apply to tests and inspections required by the Works Information or the applicable law.

40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Works Information.

40.3 The *Contractor* and the *Supervisor* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor*.

40.4 If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated.

40.5 The *Supervisor* does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor*'s test or inspection being successful becomes due at the later of the *defects date* and the end of the last *defect correction period* if

- the *Supervisor* has not done the test or inspection and
- the delay to the test or inspection is not the *Contractor*'s fault.

40.6 The *Project Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.

Testing and inspection before delivery **41**

41.1 The *Contractor* does not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection.

Searching for and notifying Defects **42**

42.1 Until the *defects date*, the *Supervisor* may instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include

- uncovering, dismantling, re-covering and re-erecting work,
- providing facilities, materials and samples for tests and inspections done by the *Supervisor* and
- doing tests and inspections which the Works Information does not require.

Z1.21.1 42.2 Subject to sub-clause 46, u~~U~~ntil the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects **43**

Z1.22

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

Z1.22.1 43.2 Subject to sub-clause 46, the ~~The~~ *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.

43.3 The *Supervisor* issues the Defects Certificate at the later of the *defects date* and the end of the last *defect correction period*. The *Employer*'s rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.

43.4 The *Project Manager* arranges for the *Employer* to allow the *Contractor* access to and use of a part of the *works* which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.

Z1.22.2 43.5 If in the reasonable opinion of the *Project Manager* it would be more efficient for a Defect to be corrected by Others instead of by the *Contractor* the *Project Manager*

notifies the *Contractor* that the Defect is to be corrected by Others and the *Contractor* pays to the *Employer* all costs reimbursed by the *Employer* to Others for correcting the notified Defect.

Z1.22.3 43.6 The *Project Manager* may at any time prior to the *defects date* instruct the *Contractor* to correct a defect in or damage to the *works* which is not the result of a failure of the *Contractor* to comply with this contract.

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

Z1.22A

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.

Z1.22A.1 45.3 The *Contractor* remains liable for Defects including Defects listed in the Defects Certificate and latent or inherent Defects after

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

in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.

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 due 50

Z1.24

50.1 The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur

- at the end of each *assessment interval* until four weeks after the *Supervisor* issues the Defects Certificate and
- at Completion of the whole of the *works*.

Z1.24.1 50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each

assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

50.2 The amount due is

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

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

50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.

Z1.24.2 50.3A If any revised programme is not submitted by the *Contractor* to the *Project Manager* for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such revised programme has been submitted to the *Project Manager* for acceptance.

Z1.24.3 50.4 In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A ~~on or before the assessment date~~. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.

50.5 The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.

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

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

Z1.24.4 50.7A If the Conditions Precedent listed in Schedule 7 are not procured by the *Contractor* and delivered to the *Employer*, the provisions of clause 13A shall apply.

Z1.24.5 50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the *Contractor* until such documents have been delivered.

Z1.24.6 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.

Z1.24.7 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.

Z1.24.8 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:

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

Payment 51

Y1.1.1 51.1 The *Project Manager* certifies a payment not later than five days after each payment

due date and issues a copy of the payment certificate to the *Contractor* ~~within one week of each assessment date~~. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.

Y1.1.2 51.1A The date on which payment becomes due is ~~seven days after the assessment date~~ the later of:

- the assessment date; and
- fourteen days after the date of receipt by the *Project Manager* of the *Contractor's* application for payment in accordance with clause 50.1A.

The final date for payment is ~~fourteen days or a different period for payment if state in the Contract Data~~ twenty eight days after the date on which payment becomes due.

Y1.1.2A 51.1B The *Project Manager's* certificate is the *Employer's* notice of payment ~~to the *Contractor*~~ specifying the amount due at the payment due date (the notified sum) and stating the basis on which ~~the amount~~ that sum is calculated.

Y1.1.2B 51.1C Not later than five days after receipt of the payment certificate the *Contractor* delivers to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.

Y1.1.3 51.2 ~~Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue,~~ Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

Y1.1.3A 51.2A If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

Y1.1.4 51.2B If either Party intends to pay less than the notified sum, he notifies the other Party not later than ~~seven days~~ one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.

Z1.25.1 51.3 If an amount due is corrected in a later certificate either

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

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

Z1.25.2 51.4 Interest is calculated on a daily basis at the *interest rate* and is ~~compounded annually~~ simple interest.

Z1.25.3 51.5 No payment is made to the *Contractor* and no interest for late payment shall becomes payable by the *Employer* until the *Employer* has been provided with sufficient details by the *Contractor* so as to enable the BACS payment process to be set up.

Defined Cost **52**

52.1 All the *Contractor*'s costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or

competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

53 Not used (not an Option A clause).

The Activity Schedule **54**

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

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

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

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

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

Z1.26.1 56 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever

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

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract. Any payment payable by the *Contractor* under this contract is made in full without any set-off or counterclaim howsoever arising and is free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the *Contractor* under this contract.

Z1.27.1 57.1 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the *Contractor* complies with the provisions of the Works Information regarding the Construction Industry Scheme.

6 Compensation events

Compensation events 60

Z1.28

Z1.28.1 60.1 The following are compensation events~~.~~, but only to the extent that they are not due to any fault of the *Contractor* and provided that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effect of the event.

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

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

(2) ~~The *Employer*~~ Subject to the requirements of the contract and the Works Information regarding access and to the giving of proper and timely notice and proper coordination by the *Contractor*, the *Employer* does not allow access to and use of a part of the Site in accordance with the provisions of this contract by the later of its *access date* and the date shown on the Accepted Programme.

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

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

(5) The *Employer* or Others (not being Statutory Undertakers)

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

(6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract unless in the opinion of the *Project Manager* the communication does not contain sufficient information to enable a response to be made and the *Project Manager* has notified the *Contractor* accordingly or the communication is not accompanied by all the information required to be provided by the *Contractor* under the contract or such further information reasonably required by the *Project Manager* or the *Supervisor*.

(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* unreasonably withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect or acceptance of a proposal which does not comply with this contract) 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) Not used. ~~The *Contractor* encounters physical conditions which~~

- ~~are within the Site,~~
- ~~are not weather conditions and~~
- ~~an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.~~

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

(13) Not used. ~~A *weather measurement* is recorded~~

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

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

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

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

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

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

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

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

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

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

~~and which~~

~~neither Party could prevent,~~
~~an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and~~
~~is not one of the other compensation events stated in this contract.~~

(20) An instruction by the *Project Manager* under clause 43.6.

Z1.28.2 60.2 Not used. ~~In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account~~

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

Z1.28.3 60.3 Not used. ~~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.~~

Z1.28.4 60.4 The *Contractor* takes all prudent and commercial steps necessary to minimise the impact of any actual or potential compensation event. The *Contractor* mitigates or avoids any effects on the Prices and / or any Key Date and / or the Completion Date as far as is reasonably practicable.

Notifying compensation **61**

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

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

Z1.28A.1

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

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

If the *Contractor* does not notify a compensation event within ~~eight weeks of becoming aware~~ four weeks of when he becomes aware, or ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date ~~unless the *Project Manager* should have notified the event to the *Contractor* but did not~~. The *Project Manager* may notify the *Contractor* of a change to the Completion Date or a Key Date (but not a change to the Prices) notwithstanding that the *Contractor* has failed to notify a compensation event in accordance with this clause.

Z1.28A.2

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

- arises from a fault of the *Contractor,*
- arises by reason of any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any Subcontractor or supplier or any of their employees or agents,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed.

If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

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

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

the *Contractor* may notify the *Project Manager* to this effect. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

Z1.28A.3

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

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

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

Quotations for compensation events

62

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

Z1.28B.1

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

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

- an instruction to submit a revised quotation,
- an acceptance of a quotation,

- a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
- a notification that he will be making his own assessment.

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

62.5 The *Project Manager* extends the time allowed for

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

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

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

Assessing compensation **63**

Z1.29

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

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

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

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

Z1.29.1 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme provided always that the delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent:

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

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

Z1.29.2 63.4 The rights of the Employer and the Contractor to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.

Z1.29.3 63.5 If the ~~*Project Manager* has notified the *Contractor* of his decision that the~~ *Contractor*:

- did not give an early warning of a compensation event which an experienced contractor could have given, or
- did not give an early warning at the time he became aware or ought reasonably to have become aware of the matter requiring an early warning,

the event is assessed as if the *Contractor* had given early warning at the appropriate time and taking into account any savings in cost and time which would have occurred had the *Contractor* given early warning.

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.

Z1.29.5

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. Where the *Project Manager* decides that the *Contractor* has failed to act in accordance with such assumptions this can be taken into account when making the assessment. No change in Prices is made in respect of any matter notified after the *defects date.*

63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.

63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.

63.10 If the effect of a compensation event is to reduce the total Defined Cost and the event is

- **a change to the Works Information or**
- **a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event**

the Prices are reduced.

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

63.12 Assessments for changed Prices for compensation events are in the form of changes to the Activity Schedule.

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

63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.

The *Project Manager*'s Assessments **64**

Z1.29A

64.1 The *Project Manager* assesses a compensation event

Z1.29A.1

- if the *Contractor* has not submitted a quotation and details of his assessment in accordance with the Works Information within the time allowed,
- if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor*'s latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor*'s submission of his quotation for the same event. This period starts when the need for the *Project Manager*'s assessment becomes apparent.

Z1.29A.2

64.4 If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he

states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply within ~~two~~four weeks of this notification the notification is treated as acceptance of the *Contractor*'s quotation by the *Project Manager*.

Z1.29A.3

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

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

provided that this discretion will only be exercised where it is reasonable to do so having regard to all the circumstances including the complexity of the issues connected with the event, the level of detail included in the quotation, the time required to make an assessment and the value of the compensation event either on its own or when combined with other outstanding compensation events. The *Project Manager* notifies the extension to the *Contractor* before the date that such notification, reply or assessment would become due under the contract.

Implementing 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 A clause).

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

7 Title

The *Employer*'s title to Plant and Materials **70**

Z1.30

Z1.30.1

70.1 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~~ if the *Supervisor* has marked it as for this contract~~. The *Contractor* ensures that such Plant and Materials are clearly identified as belonging to the *Employer* and are set aside for the *Employer*. Risk in such Plant and Material does not pass on payment.

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, t~~T~~he 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.

Marking Equipment, Plant and Materials outside the Working Areas **71**

71.1 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 within the Site **73**

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

Employer's risks **80**

Z1.31 80.1 The following are *Employer*'s risks.

- Claims, proceedings, compensation and costs payable which are due to
  - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
  - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or
  - Z1.31.1 a fault of the *Employer* ~~or a fault in his design~~ other than a fault in his design.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer*'s behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the *works*, Plant and Materials due to
  - war, civil war, rebellion, revolution, insurrection, military or usurped power,
  - Z1.31.2 strikes, riots and civil commotion not confined to the *Contractor*'s employees and/or any Subcontractor's employees or
  - radioactive contamination.
- Loss of or wear or damage to the parts of the *works* taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
  - a Defect which existed at take over,
  - an event occurring before take over which was not itself an *Employer*'s risk or
  - the activities of the *Contractor* on the Site after take over.
- Loss of or wear or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination.
- Additional *Employer*'s risks stated in the Contract Data.

The _Contractor_'s risks **81**

81.1 From the *starting date* until the Defects Certificate has been issued, the risks which are not carried by the *Employer* are carried by the *Contractor*.

Repairs **82**

82.1 Until the Defects Certificate has been issued and unless otherwise instructed by the *Project Manager*, the *Contractor* promptly replaces loss of and repairs damage to the *works*, Plant and Materials.

Indemnity **83**

Z1.32

Z1.32.1 83.1 ~~Each Party~~ 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~~the other against claims, proceedings, compensation and costs due to an event~~ 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) arising out of the design, construction or use of the *works* or the project, and
- any Losses arising from any nuisance or interference referred to in clause

Z2.6 and which could not have been avoided by the *Contractor* using all reasonable and practical means.

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

Z1.32.3 83.3 Notwithstanding any other clause in this contract the *Contractor's* liability for damage to existing structures belonging to the *Employer* which do not form part of the *works* shall be limited to £25,000 per occurrence. The *Employer* will ensure that its property insurers waive rights of subrogation against the *Contractor* for such Losses.

Remedies

Z1.33

83A.1 The Parties acknowledge and agree that the payment or deduction of:

(a) Disruption Losses 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 is without prejudice to the *Employer's* right to recover Disruption Losses pursuant to clause Z2.12.

Insurance cover **84**

Z1.34

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

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

~~**INSURANCE TABLE**~~

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

Insurance Table

Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
Construction All Risks insurance		
All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the *works* and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the *works*), equipment, temporary buildings and property owned by or supplied by the *Employer*.	*Employer* in the joint names of the Parties	The full reinstatement value of the *works*
Public liability insurance		
All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).	*Employer* in the joint names of the Parties	Not less than £25,000,000 per occurrence
Non-negligence insurance		
Any expense, liability, loss claim or proceedings which the *Employer* incurs or sustains by reason of injury, loss of or damage to any property other than the *works*, Site materials or existing property of the *Employer* caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of carrying out the *works* (unless excluded by the terms and conditions of the policy)	*Employer* in the joint names of the Parties	Not less than £25,000,000 per occurrence
Employer's liability insurance		
Liability for death of or bodily injury or illness sustained by employees of the *Contractor* arising out of or in the course of their employment in connection with this contract or the project	*Contractor*	Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

Contractor's Equipment loss insurance Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the *Contractor*	*Contractor*	The replacement cost
Professional Indemnity Insurance Fault in respect of design of the *works* or other professional services for which the *Contractor* or his Subcontractors is responsible	*Contractor*	£10,000,000 for each and every claim or as otherwise stated in the Contract Data

Z1.34.3 84.3 In respect of the insurances provided by the *Contractor*:

- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
- the *Contractor* bears the cost of all premiums;
- if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.

Z1.34.4 84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.

Z1.34.5 84.5 The *Contractor* procures that his Subcontractors (and Indirect Subcontractors) maintain:

- employer's liability (and where appropriate) motor liability insurances as required by law; and
- professional indemnity insurance covering their liabilities under subcontracts in respect of their design.

Z1.34.6 84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.

Z1.36.7 84.7 If and to the extent that the *Contractor* receives payment in respect of any damage or destruction following an insurance claim in respect of damage or destruction of the works the *Contractor* shall apply the same to remedy the damage or destruction.

Insurance policies 85

Z1.35
Z1.35.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor*'s insurer or insurance broker. Reasons ~~A reason~~ for not accepting the certificates ~~is~~ include:

- that they do not comply with this contract,
- the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;
- the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.

Z1.35.2 85.2 ~~Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.~~ Not used.

85.3 The Parties comply with the terms and conditions of the insurance policies.

Z1.35.3 85.4 Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

Z1.35.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

If the *Contractor* does not insure

Z1.36

86

Z1.36.1 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

Insurance by the *Employer*

87

87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.

87.2 The *Contractor*'s acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.

87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

Z1.36.2 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 90

Z1.37

90.1 If either Party wishes to terminate the *Contractor*'s obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.

90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

	Terminating Party	Reason	Procedure	Amount due
Z1.37.1	The *Employer*	A reason other than ~~R1–R21~~the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
		R1–R15, R10A, ~~or~~ R18, R25	P1, P2 and P3	A1 and A3
		R17, ~~or~~ R20 or R26	P1 and P3	A1 and A2
		R21	P1 and P4	A1 and A2
		R22-R24, R25A	P1, P2 and P3	A1 and A3
	The *Contractor*	R1–R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
		R17 or R20	P1 and P4	A1 and A2

90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.

Z1.37.2

90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager*'s assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager*'s certificate or (where payment is due to the *Contractor*) within three weeks of receipt of the VAT invoice. Within 5 days of issue of the payment certificate the *Contractor* delivers to the *Employer* a VAT invoice in the amount of the certificate.

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

Reasons for termination 91

Z1.38

Z1.38.1

91.1 Either Party may terminate if the other Party has done one of the following or its equivalent in other jurisdictions.

- If the other Party is an individual and has
  - presented his petition for bankruptcy (R1),
  - had a bankruptcy order made against him (R2),
  - had a receiver appointed over his assets (R3) or
  - made an arrangement with his creditors (R4).

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

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

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

Z1.38.2 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.

- Substantially hindered the *Employer* or Others (R14).
- Substantially broken a health or safety regulation or requirement of this contract (R15).

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).

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

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

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

Z1.38.3 91.7 The *Employer* may terminate if an event occurs which

- stops the *Contractor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

- neither Party could prevent and
- an experienced and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.4 91.8 The *Employer* may terminate the *Contractor's* appointment in the event of:

- a Safety Breach or a Prohibited Act or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction in accordance with the provisions of Z2.18 (R23),
- any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),

- a Change of Control (R25),
- a breach by the *Contractor* of the provisions of Z2.13 in connection with SLNT and/or equality & diversity (R25A).

Z1.38.5 91.9 In the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union:

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

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

Procedures on termination **92**

Z1.39

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

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

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

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

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

Payment on termination **93**

93.1 The amount due on termination includes (A1)

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

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

A2 The forecast Defined Cost of removing the Equipment.

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

Z1.39.2 A4 The *direct fee percentage* applied to

- for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or

- for Options E and F, any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.

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

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:

- any member of the TfL Group notified to the *Contractor,*
- Network Rail,
- London Overground Rail Operations Limited,
- any person providing maintenance of the completed *works* or any part of the completed *works*,
- persons providing finance in connection with the *works*,
- any person constructing or financing any development over the railway forming part of the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- developers having or acquiring an interest in whole or any part of the *works*,
- any other person 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, duly executes and delivers to the *Employer* deeds of warranty in the appropriate form attached at Schedule 4 in favour of each such persons and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* procures that the Subcontractors (and Indirect Subcontractors with design responsibility, and other Indirect Subcontractors 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

- the *Employer*,
- Network Rail,
- London Overground Rail Operations Limited,
- any person providing maintenance of the completed *works* or any part of the completed *works*,
- any member of the TfL Group,
- persons providing finance in connection with the *works*,
- any person constructing or financing any development over the railway forming part of 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*,
- any other person having or acquiring an interest in the whole or any part of the *works*.

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

Z2.3 Not used

Warranties and Undertakings

Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication will be in

accordance with the Works Information and applicable law,

- the *works* will be carried out using only materials and goods which are of sound and good quality and that he will only specify substances and materials for incorporation in the *works* and only incorporate substances and materials which are in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground and Overground Network and/or the 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 Indirect Subcontractors);

(b) management accounts, information from management information systems and any other management records;

(c) accounting records (in hard copy as well as computer readable data);

(d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);

(e) original estimates;

(f) estimating worksheets;

(g) correspondence;

(h) compensation event files (including documentation covering negotiated settlements);

(i) schedules including capital works costs, timetable and progress towards Completion;

(j) general ledger entries detailing cash and trade discounts and rebates;

(k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);

(l) detailed inspection records;

(m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*,

(n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and

(o) test and commissioning results.

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

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

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

(a) granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* or Subcontractor's own premises or otherwise,

(b) granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,

(c) making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,

(d) providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and

(e) complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract or the project.

Nuisance
Z2.6

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

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

Intellectual Property Rights
Z2.7

Z2.7.1 The parties agree that the IPR in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or works created by a Subcontractor or Indirect Subcontractor) vests in the *Employer*. The *Contractor* procures that each Subcontractor and Indirect Subcontractor assigns such IPR to the *Employer.*

Z2.7.2 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of

- understanding the *works,*
- completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*,
- extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others, and
- enabling the *Employer* and/or any other member of the TfL Group to carry out the operation, maintenance, repair, renewal and enhancement of the Underground and Overground Network (where applicable).

Z2.7.3 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause Z2.7.2.

Z2.7.4 The *Contractor* indemnifies the *Employer* and members of the TfL Group against all losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause Z2.7.2 infringes the intellectual property rights or other rights of any third party.

Z2.7.5 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer*.

Z2.7.6 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *works*.

Z2.7.7 IPR in all items supplied and owned by the TfL Group to the *Contractor* remains the property of the TfL Group.

Z2.7.8 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the Works. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.

Z2.7.9 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *works*.

Z2.7.10 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims, demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

Z2.7.11 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim,

demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action.

Assignment

Z2.8

Z2.8.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it).

Z2.8.2 ~~The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.~~ The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any member of the TfL Group company. The *Employer* may not assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract to non members of the TfL Group without the consent of the Contractor (which consent shall not be unreasonably withheld or delayed.

Confidentiality

Z2.9

Z2.9.1 The *Contractor* shall, and shall ensure that his Subcontractors (and Indirect Subcontractors) treat all information obtained under, arising from or in connection with this contract and the project as confidential. Other than for the purpose of providing the *works* the *Contractor* does not disclose any information or documents concerning this contract to any other person.

Z2.9.2 The *Contractor* and his Subcontractors (and Indirect Subcontractors) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer* or the TfL Group to any other person.

Z2.9.3 The *Employer* may require as a precondition to the granting of such consent, that any such third party provides a confidentiality undertaking to the consenting party in terms satisfactory to the consenting party.

Z2.9.4 Clause Z2.9.1 does not apply to the disclosure of:

(a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,

(b) any information disclosed by the *Contractor* to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision;

(c) any information which is required to be disclosed by any applicable law, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

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

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

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

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

of all disks.

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

Z2.10 **Not Used.**

Dispute Resolution Procedure

Z2.11

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

Indemnity for Disruption (to the Underground and Overground Network)

Z2.12

Z2.12.1 In addition to the *Employer's* right to deduct or recover delay damages pursuant to Option X7 (if applicable) and/or or low performance damages pursuant to Option X17 (if applicable), the *Contractor* is responsible for and indemnifies the *Employer* against all Disruption Losses caused by a failure by the *Contractor* to Provide the Works or a breach of his obligations under this contract, including a failure by the *Contractor* to meet the Condition stated for a Key Date by the date stated and/or failure by the *Contractor* to Provide the Works so that Completion is on or before the Completion Date.

Manufacturer's Guarantees

Z2.12A

Z2.12A.1 The *Contractor* obtains manufacturers' guarantees in favour of the *Employer* for the items of Plant and Materials described in the Works Information in such terms as the *Project Manager* may reasonably require and delivers them to the *Employer* immediately prior to Completion together with 'as-built' drawings of the *works* in the number stated in the Works Information. The guarantees are assignable to any person notified to the *Contractor* by the *Project Manager*.

TfL GROUP REQUIREMENTS

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 to

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

and in the performance of the contract the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that his Subcontractors (and Indirect Subcontractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy his duty.

London Living Wage

Z2.15

Z2.15.1 In this clause:

"GLA Act"	means the Greater London Authority Act 1999;
"Greater London"	means that term as it is used in the GLA Act;
"London Living Wage"	means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*;
"Mayor"	means the person from time to time holding the office of Mayor of London as established by the GLA Act;
"RPIX"	means the All Items Retail Prices Index as adjusted to exclude mortgage interest payments and published monthly by the Office for National Statistics or, failing such publication, such other index as may replace or supersede the same, or in the absence of a replacement or superseding index, such other index as the parties may agree;

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

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

(a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground and Overground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,

(b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and

(c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Transparency

Z2.16

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

Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* shall make the final decision regarding publication and/or redaction of the Contract Information.

Z2.16.3 In this clause

"Contract Information"	means (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the *Contractor's* name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount
"Transparency Commitment"	means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received

Data Protection

Z2.17

Z2.17.1 Without prejudice to sub-clause Z2.5, the *Contractor* at all times complies with the Data Protection Act 1998 (including any subordinate legislation made under that Act from time to time) and any policies issued by the *Employer* from time to time in relation to the processing of data and does not by any act or fault cause the *Employer* to be in breach of these requirements.

Z2.17.2 The *Contractor*:

- takes appropriate technical and organisational security measures satisfactory to the *Employer* against unauthorised or unlawful Processing of Employer Personal Data (as those terms are defined in the Data Protection Act) and against accidental loss, destruction of, or damage to such Personal Data,
- provides the *Employer* and *Project Manager* with such information as they may reasonably require to satisfy themselves of compliance by the *Contractor* with the requirements of this clause Z2.11, and
- cooperates with the *Employer* and *Project Manager* in complying with requests or enquiries made pursuant to the Data Protection Act.

Conflict of Interest

Z2.18

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

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

Freedom of Information

Z2.19

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

- is subject to FOI Legislation and agrees to assist and co-operate with the

Employer to enable the *Employer* to comply with his obligations under the FOI Legislation, and

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

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

- transfer to the *Employer* or such other persons as may be notified by the *Employer* to the *Contractor* each Information Request relevant to this contract, the *works* or any member of the TfL Group that the *Contractor* or his Subcontractor (as the case may be) receive as soon as practicable and in any event within 3 days of receiving such Information Request; and
- in relation to Information held by the *Contractor* on behalf of the *Employer*, provide the *Employer* with details about and/or copies of all such Information that the *Employer* requests and such details and/or copies are provided within 6 days of a request from the *Employer* (or such other period as the *Employer* may reasonably specify), and in such forms as the *Employer* may reasonably specify.

Z2.19.3 The *Employer* (as may be directed by TfL) is responsible for determining whether Information is exempt or excepted information under the FOI Legislation and for determining what Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation. The *Contractor* shall not himself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so in writing by the *Employer*.

Z2.19.4 The *Contractor* acknowledges that the *Employer* (as may be directed by TfL) may be obliged under FOI Legislation to disclose Information without consulting or obtaining consent from the *Contractor*.

Criminal Record Declarations

Z2.20 Z2.20.1 In this section:

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

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

Z2.20.2 The *Contractor* shall procure from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (**"Declaration"**) or disclosure of any Relevant Convictions he has committed. A Declaration shall be procured prior to a Relevant Individual carrying out any aspect of the *works.* The *Contractor* shall confirm to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* shall procure that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* shall notify the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

Z2.20.3 The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.

Z2.20.4 The *Employer* may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.

Z2.20.5 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.2 and/or Z2.20.3, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.2) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.2.

Z2.20.6 A persistent breach of Clause Z2.20.2 and/or Z2.20.3 by the *Contractor* shall constitute a material breach of this contract and entitles the *Employer* to terminate

the contract in whole or in part with immediate effect in accordance with Clause 91.8.

Z2.20.7 In either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* shall remove or procure the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.

Z2.20.8 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor's* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

Quality Assurance and Best Value
Z2.21

Z2.21.1 The *Contractor* maintains an effective and economical quality control programme in accordance with the requirements of this contract. The *Contractor* acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL and the *Employer* are required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* (and, where appropriate, TfL) to discharge this duty and agrees to negotiate in good faith any changes to this contract in order for the *Employer* (and, where appropriate, TfL) to achieve best value.

Prohibited Acts
Z2.22

Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and Indirect Subcontractors) do not commit any Prohibited Act.

Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

Z2.22.3 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any Prohibited Act, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

Z2.22.4 If a Prohibited Act is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within thirty (30) days of receipt of such warning notice, the *Contractor* removes or procures the removal of the relevant employee or Subcontractor (as the case may be) from the Site and (if necessary) procures the provision of the affected *works* by another person or Subcontractor this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

Design Check Certificate
Z2.23

Z2.23.1 All design prepared by the *Contractor* and submitted to the *Project Manager* is supported by a design check certificate in the form attached to the Works Information signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor,* he is a Subcontractor.

Computer Equipment
Z2.24

Z2.24.1 Any software, electronic or magnetic media, hardware or computer system used or supplied by the *Contractor* in connection with this Contract:

- is Euro compliant; and
- is compliant with the UK Government's "e-government interoperability

framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk; and

- does not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any date related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system; and
- does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic
- media, hardware or computer system used by, for or on behalf of *the Employer* and/or any other member of the TfL Group on which it is used or with which it interfaces or comes into contact; and
- any variations, enhancements or actions undertaken by the *Contractor* in respect of such software, electronic or magnetic media, hardware or computer system does not affect the *Contractor's* compliance with this warranty.

IT Requirements

Z2.25

Z2.25.1 The *Contractor* warrants to the *Employer* that neither the functionality nor the performance of:

- the *works*;
- any computer product, application or system forming part of the *works*;
- any Plant and Materials;
- any Equipment; or
- any part of the railways on which works are undertaken

is affected, made inoperable, difficult or suffers any abnormality by reason of any date-related input or date related processing.

DISPUTE RESOLUTION

Option W1 – Not used

Option W2 – Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation – Not used

Option X2: Changes in the law – Not used

Option X4: Parent company guarantee

Parent company Guarantee
Z1.41.1

X4

X4.1 If a parent company owns the *Contractor*, the [parent company of each party comprising the][2] *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor*'s performance in the form~~ set out in the Works Information~~ attached at Schedule 3. If the guarantee was not given by the Contract Date, it is given to the *Employer* within ~~four~~ one week~~s~~ of the Contract Date.

Option X5: Sectional Completion

Sectional Completion

X5

X5.1 In these conditions *of contract*, unless stated as the whole of the *works*, each reference and clause relevant to

- the *works*,
- Completion and
- Completion Date

applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.

Option X6: Bonus for early Completion – Not used

Option X7: Delay damages

Delay damages

X7

X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of

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

X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

X7.3 If the *Employer* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project*

[2] Only applicable if *Contractor* is a joint venture

Manager assesses the benefit to the *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.

Option X12: Partnering – Not used

Option X13: Performance bond

Performance bond **X13**

Z1.43.1 X13.1 The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 2~~the Works Information~~. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within 1 ~~four~~ week~~s~~ of the Contract Date.

Option X14: Advanced payment to the *Contractor* – Not used

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

The *Contractor*'s design **X15**

Z1.44.1 X15.1 The *Contractor* is not liable for Defects in the *works* due to his design so far as he proves that he used all the reasonable skill ~~and~~ care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the *works* in connection with projects of a similar size, scope and complexity to the project to ensure that his design complied with the Works Information.

X15.2 If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X16: Retention

Retention **X16**

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

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

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

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or
- in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

Z1.45.1 X16.3 Where under this contract the *Employer* is entitled to withhold money from the *Contractor* as a retention, the retention monies are retained by the *Employer* without obligation to invest and without creating any fiduciary obligation or duty on the part of the *Employer* to the *Contractor* or any other person with whom the

Contractor has contracted.

Option X17: Low performance damages – Not used

Option X18: Limitation of liability

Limitation of liability **X18**

Z1.46.1 X18.1 Without prejudice to the *Employer's* entitlement to delay damages (Option X7) ~~or Disruption Losses pursuant to Z2.12~~, the *Contractor*'s liability to the *Employer* for the *Employer*'s indirect or consequential loss is limited to the amount stated in the Contract Data.

X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer*'s property is limited to the amount stated in the Contract Data.

Z1.46.2 X18.3 The *Contractor*'s liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate ~~is limited to the amount stated in the Contract Data~~ is not limited and is in addition to any damages stated in this contract for delay or disruption.

Z1.46.3 X18.4 The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in this contract for

- ~~loss of or damage to the *Employer*'s property,~~
- ~~Disruption Losses (Z2.12),~~
- delay damages if Option X7 applies and
- ~~low performance damages if Option X17 applies and~~
- ~~*Contractor's* share,~~
- the matters listed in X18.6.

Z1.46.4 ~~X18.5 The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.~~ Not used.

Z1.46.5 X18.6 The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for:

- death or bodily injury;
- Losses caused by fraudulent acts or acts or a criminal nature;
- Losses against which the *Contractor* is entitled to an indemnity under any policy of insurance (or would have been entitled but for any breach or failure to maintain such insurance); or
- ~~the *Contractor's* liability referred to in X18.3 (if applicable); or~~
- any other Losses against which the *Employer* or any member of the TfL Group is entitled to an indemnity under clause 83.

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

Single Point Design **X21**

Responsibility
Z1.48 X21.1 In this Option, "***Employer's* Design Information**" means any drawings, proposals, specifications, method statements, designs, plans, schemes or other documents,

or concepts prepared or developed by the *Employer* and included in the Works Information.

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

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

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

(a) data and information expressly stated in the Works Information as being the responsibility of the *Employer*,

(b) definitions of intended purposes of the *works* or any part thereof, and

(c) criteria for the testing and performance of the completed *works*.

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

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

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

Novation of Associated Contracts

X22

Z1.49

X22.1 In this Option:
"Associated Works or Services" means any preliminary or ancillary works or services which the *Employer* wishes to be carried out with a view to the same being integrated with this contract;
"Associated Contract" means a contract for the performance of Associated Works or Services; and
"Associated Contractor" means a contractor who has entered into an Associated Contract.

X22.2 The *Contractor* acknowledges that the *Employer* may procure an Associated Contract, and where the *Employer* has entered into an Associated Contract which it wishes to novate to the *Contractor*, the *Contractor* agrees to enter into a Deed of Novation with respect to such contract in the form attached at Schedule 9 hereto within 14 days of request from the *Employer* to do so.

X22.3 The *Contractor* procures that the Associated Contractor provides to the *Employer*, within 7 days of receiving a request from the *Employer*, a collateral warranty in the relevant form attached at Schedule 5 or 6 (as applicable) hereto in favour of the *Employer* and/or any of the beneficiaries listed in Z2.2.

X22.4 The *Contractor* does not dismiss the Associated Contractor, vary the terms of the Associated Contract nor waive or release any of the material obligations of the Associated Contractor without the prior written approval of the *Employer.* Such approval is not to be unreasonably withheld or delayed, but the *Contractor* acknowledges that if any organisation providing finance in relation to the project objects to the proposed waiver or release, this will be a reasonable ground for the *Employer* to withhold his consent. If the employment of the Associated Contractor is terminated before Completion, the *Contractor*, as soon as is practicable but on 7 days' notice to the *Employer*, appoints another contractor to complete the Associated Works or Services (save any contractor to whom the *Employer* makes reasonable objection in writing).

X22.5 The *Contractor* warrants to the *Employer* that he will promptly pay in accordance with the terms of the Associated Contract any monies due and owing to the Associated Contractor in respect of the works or services novated to the *Contractor*.

Key Person Succession Plan **X23**

Z1.50

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

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

Specified Termination Event **X24**

X24.1 Insert a new clause 11.2 (34):

"Specified Termination Event means a *specified termination event*."

X24.2 In the amendment to the Termination Table in clause Z1.37.1 (clause 90.2) insert the following new entries in the Termination Table:

"R27	P1 and P2	A1 and A2"

X24.3 Insert new sub-clause 91.10:

"The *Employer* may terminate the *Contractor's* appointment in the event of a Specified Termination Event (R27)."

OPTION Y

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

Definitions ***Note: incorporated in Schedule 1 and 12.6.***	**Y(UK)2** Y2.1	(1) The Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
~~**Dates for payment**~~	~~Y2.2~~	~~The date on which a payment becomes due is seven days after the assessment date.~~ ~~The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.~~ ~~The *Project Manager*'s certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.~~
~~**Notice of intention to withhold payment**~~	~~Y2.3~~	~~If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated.~~ ~~A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.~~
Suspension of performance	Y2.4	If the *Contractor* exercises his right under the Act to suspend performance, it is a compensation event.
Payment	Y1	
Z1.51.1	Y1.1	***NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.***

Option Z: *Additional conditions of contract*

Additional conditions of contract Z1.52.1	The *additional conditions of contract* stated in the Contract Data are ~~part of this contract~~ incorporated into these consolidated conditions of contract.

SHORTER SCHEDULE OF COST COMPONENTS

Z1.53.1 An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

People **1** The following components of the cost of

- people who are directly employed by the *Contractor,* and whose normal place of working is within the Working Areas,
- people who are directly employed by the *Contractor,* and whose normal place of working is not within the Working Areas but who are working in the Working Areas and
- people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.

11 Amounts paid by the *Contractor* including those for meeting the requirements of the law and for pension provision.

Equipment **2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).

21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.

22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.

24 Unless the item is in the published list and the rate includes the cost component, payments for

- transporting Equipment to and from the Working Areas other than for repair and maintenance,
- erecting and dismantling Equipment and
- constructing, fabricating or modifying Equipment as a result of a compensation event.

25 Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.

26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.

27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

Plant and Materials **3** The following components of the cost of Plant and Materials.

31 Payments for

- purchasing Plant and Materials,
- delivery to and removal from the Working Areas,
- providing and removing packaging and
- samples and tests.

32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

Charges **4** The following components of the cost of charges paid by the *Contractor*.

41 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of

- payments for the provision and use in the Working Areas of water, gas and electricity,

- payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and
- payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.

42 Payments for cancellation charges arising from a compensation event.

43 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.

44 Consumables and equipment provided by the *Contractor* for the *Project Manager*'s and *Supervisor*'s office.

45 Specialist services.

Manufacture and fabrication

5 The following components of the cost of manufacture and fabrication of Plant and Materials, which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

51 Amounts paid by the *Contractor*.

Design

6 The following components of the cost of design of the *works* and Equipment done outside the Working Areas.

61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.

62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.

63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.

Insurance

7 The following are deducted from cost

- costs against which this contract required the *Contractor* to insure~~and~~
- other costs paid to the *Contractor* by insurers and
- the cost of excess payments or deductibles.

SUPPLEMENTARY NOTES TO THE SHORTER SCHEDULE OF COST COMPONENTS

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

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

Part A Notes

Section 1 : People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

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

Payments made to people for overtime:

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

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

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

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

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

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

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

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

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

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

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

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

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

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

2 - Reasonably Incurred Costs

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

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

3 - Cost Verification

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

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

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

LOCROS Lift Schemes East

Maryland, Manor Park and Seven Kings Lift Schemes

Section 3 – Consolidated Conditions of Contract

Contract Data Part 1

CROS-ALLW-MPM-TEN-RFL-00007

March 2016

Issue Record

Client	Rail for London
Project	Maryland, Manor Park and Seven Kings Lift Schemes
Report no.	CROS-ALLW-MPM-TEN-RFL-00007
Title	Section 3 – Consolidated Conditions of Contract: Contract Data Part 1

Issue record

Issue	*Date*	*Author*	*Approved*	*Description*
T01	08.08.15	SO	P Herridge	For ITT
B01	23.03.16	SO	P Herridge	For Contract

Note: this report is uncontrolled when printed.

MAIN OPTION A

CONTRACT DATA

PART 1

CONTRACT DATA

Part One – Data provided by the *Employer*

Statements given in all contracts

1. General

- The *conditions of contract* are the core clauses and the clauses for main Option A and secondary Options clauses **X4, X5, X7, X15, X16, X18, X21, X22, X23, X24** and Y(UK)2 and Z clauses of the NEC3 Engineering and Construction Contract June 2005 (incorporating amendments June 2006 and September 2011) as amended or inserted in each case in accordance with secondary Option Z.

- The *works* are the 'Lift Schemes' works to Maryland, Manor Park and Seven Kings station as more particularly described in the Works Information

- The *Employer* is

  Name: Rail for London Limited

  Address: Windsor House, 42 – 50 Victoria Street, London SW1H 0TL

- The *Project Manager* is

  Name: Mr Peter Herridge

  Address: Rail for London, Stratford Broadway Offices, 5th Floor, 29-35 West Ham Lane, London, E15 4PH

- The *Supervisor* is

Name: To Be Confirmed

Address: Rail for London, Stratford Broadway Offices, 5th Floor, 29-35 West Ham Lane, London, E15 4PH

- The *Principal Designer* is

  Name: Hochtief (UK) Construction Ltd

  Address: Whitehill House, Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PE

- The Works Information is in Section 005 of the contract documents

- The Site Information is in Section 006 of the contract documents

- [redacted]

- The *language of this contract* is English

- The *law of the contract* is the law of England and Wales

- Except as where noted as otherwise in the Works Information, the *period for reply* is

  - 6 weeks for submissions (other than those set out in the 2nd bullet point below) requiring acceptance by Network Rail and the *Employer*
  - 4 weeks for submissions (PM 2370 Approve DMP Design Management Plan, MS.DES.1390 Approve Detail Telecom Design, MS.DES.1370 Approve Detail MEP Design, MS.DES.1380 Approve Detail MEP Design and MS.DES.1400 Approve Detail Telecom Design) requiring acceptance by Network Rail and the *Employer*
  - 4 weeks for submissions requiring a secondary review by

Network Rail and the *Employer*

- 2 weeks for all other communications provided that if the *Employer* marks a communication as 'Urgent' the *Contractor* responds within such shorter period of time as the *Employer* may reasonably require

- The following matters will be included in the Risk Register:

  Not applicable

- The Principal Contractor for the purposes of the CDM Regulations is the *Contractor* in respect of those areas of the Site where no other Principal Contractor has been appointed by the *Employer* and notified to the *Contractor*; and

  Others as may be notified by the *Project Manager* from time to time in respect of other areas of and adjacent to the Site.

- The Principal Contractor for the purposes of the Site Waste Management Plan Regulations is:

  the *Contractor*

3. Time

- The *starting date* is: 11 March 2016

- The *access dates* are:

Part of the Site	Date
(within the boundaries as confirmed by the *Project Manager* prior to commencement of any *works* on the relevant part of the Site)	

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

9. [redacted]

10. [redacted]

- The *Contractor* submits revised programmes at intervals no longer than 4 weeks.

4. Testing and Defects

- The *defects date* is 52 weeks after Completion of the whole of the *works.*
- The *defect correction period* is 4 weeks except that

• the *defect correction period* for Defects that would affect and/or disrupt train or freight operational and /or maintenance

services is 24 hours.

5. Payment

- The *currency of this contract* is UK Pounds Sterling (£UK)
- The *assessment interval* is 4 weeks in accordance with UK railway accounting periods
- The *interest rate* is 2 % per annum above the base lending rate of the Bank of England.
- The *Contractor* submits invoices to Transport for London, Financial Services Centre, PO Box 45279, 14 Pier Walk, London, SE10 1AP, for the attention of Dianne Wadsworth MBE, Accounts Payable Manager and such invoices contain the following information Purchase Order Number, SAP Vendor Number, LOCROS Contract Number and Title on the company letter head.

8. Risks and insurance

Insurances taken out by the *Employer*

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

Insurances taken out by the *Contractor*

- ***Employer's* liability insurance -** details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £10,000,000 per occurrence.

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

- **Professional indemnity insurance** - details as set out in the Insurance Table in clause 84.2 of the consolidated conditions of contract with a minimum limit of indemnity in the amount of £10,000,000 for each and every claim.

Optional statements

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

- The *completion date* for the whole of the *works* is 25th August 2017

If the *Employer* is not willing to take over the *works* before the Completion Date

- The *Employer* is ~~not~~ willing to take over the *works* before the Completion Date.

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

- The *Contractor* is to submit a first programme for acceptance at: 2 weeks after contract award.

If the *Employer* has identified work which is to meet a stated *condition* by a *key date*

- The *key dates* and *conditions* to be met are

condition to be met	*key date*
[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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

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

If there are additional *Employer's* risks

- These are the additional *Employer's* risks

[redacted]

[redacted]

Cover/deductibles for insurances provided by the *Employer*

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

Item A - the permanent and/or temporary works, materials and supplies (including free issue materials) and any other property for which the Insured is responsible, intended for use in connection with or for incorporation in the Project Site including temporary buildings and constructional plant and equipment for which Insured (1) (3) and/or (11) is responsible

Item B - Employees tools and effects in respect of the employees of Insureds (1) (3) and/or (11)

Item C-Assets infrastructure and/or other property owned by Insured 1 or leased hired rented by Insured 1 for which Insured

1 is responsible or has agreed or is required to insure at the Project Site and not forming part of the works

The following Deductible is for 100% unless otherwise stated.

Item (A) & (C)

(1) GBP 150,000 (but GBP 250,000 in respect of Civil Works) each Occurrence or damage caused to the works by defects in design plan specification materials or workmanship (DE5). This Deductible shall only apply in respect of reinstatement making good and the like of that part which is itself defective

(2) GBP 25,000 each Occurrence in respect of loss or damage caused by storm tempest water damage subsidence or collapse

(3) GBP 25,000 each Occurrence in respect of loss or damage caused by defect in design plan specification materials or workmanship (DE3)

(4) GBP 5,000 each Occurrence

(5) GBP 10,000 each Occurrence in respect of loss or damage to temporary buildings and or constructional plant and equipment

Item (B)

GBP 100 each Occurrence

Item (C)

GBP 250 each Occurrence

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

Cover/indemnity is not less than £25,000,000 per occurrence.

The deductibles are: £10,000 each and every loss

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

Cover/indemnity is not less than £25,000,000 per occurrence.

The deductibles are: £10,000 per occurrence

If additional insurances are to be provided

- The *Contractor* provides these additional insurances

Not applicable.

If Option X1 is used

- Not applicable

Option X5 is used

- The *completion date* for each *section* of the *works* is

section	description	*completion date*
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

If Options X5 and X6 are used together

- Not applicable

Options X5 and X7 are used together

- [redacted]

[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

- Delay damages for each *section* of the *works* are

section	description	amount per day
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Remainder of the *works*

If Option X6 is used (but not if Option X5 is also used)

- Not applicable

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

- Not applicable

If Option X12 is used

- Not applicable

If Option X13 is used

- Not applicable

If Option X14 is used

- Not applicable

Option X16 is used

- The *retention free amount* is nil
- The *retention percentage* is 3%

If Option X17 is used

- Not applicable

Option X18 is used

- The *Contractor*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters is limited to an amount equal to the total of the Prices in the aggregate.

If Option X20 is used (but not if Option X12 is also used)

- Not applicable

Option X24 is used:

- These are the *specified termination events*

1. Employer is not granted planning permission or permitted development rights for the *works* or part of them on reasonable terms

2. The project of which the works form part is terminated or postponed for political reasons

Option Z

- The *additional conditions of contract* are the amendments to core, main and secondary option clauses and additional conditions of contract incorporated in the consolidated conditions of contract and included in section 002 of the contract documents.

LOCROS Lift Schemes East

Maryland, Manor Park and Seven Kings Lift Schemes

Section 3 – Consolidated Conditions of Contract

Contract Data Part 2

CROS-ALLW-MPM-TEN-RFL-00008

March 2016

Issue Record

Client	Rail for London
Project	Maryland, Manor Park and Seven Kings Lift Schemes
Report no.	CROS-ALLW-MPM-TEN-RFL-00008
Title	Section 3 – Consolidated Conditions of Contract: Contract Data Part 2

Issue record

Issue	*Date*	*Author*	*Approved*	*Description*
T01	12.08.15	SO	P Herridge	For ITT
B01	01.03.16	SO	P Herridge	For Contract

Note: this report is uncontrolled when printed.

MAIN OPTION A

CONTRACT DATA

PART 2

Data provided by the Contractor for the Works

- The *Contractor* is

  Name: HOCHTIEF (UK) Construction Limited
  Address: Whitehill House, Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PE

- The *direct fee percentage* is 10%

- The *subcontracted fee percentage* is 10%

- The *working* areas[1] are the Site and

- The *Contractor's Representative* is

  Name: Tom King
  Address: Whitehill House, Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PE

  Telephone Number: [redacted]

- The key people are

  Name: Tom King

  Job: Project Manager
  handover period : 4 weeks

  Responsibilities: [redacted]
  Allocation: [redacted]
  Qualifications: [redacted]

  Experience: [redacted]

  Name: Donnie Dolan

  Job: Contractor's Responsible Engineer (Construction)
  handover period: 4 weeks

  Responsibilities: [redacted]

  Allocation: [redacted]
  Qualifications: [redacted]

  Experience: [redacted]

[1] The *working areas* should not include the *contractor's* head or satellite offices

Name: Richard Clough

Job: Contractor's Responsible Engineer (Design)

handover period: 4 weeks

Responsibilities: [redacted]

Allocation: [redacted]

Qualifications: [redacted]

Experience: [redacted]

Name: Rob John

Job: Contractors Engineering Manager

handover period: 4 weeks

Responsibilities: [redacted]

Allocation: [redacted]

Qualifications: [redacted]

Experience: [redacted]

Name : Kevin Parsons

Job: Health and Safety Manager

handover period: 4 weeks

Responsibilities: [redacted]

Allocation: [redacted]

Qualifications: [redacted]

Experience: [redacted]

Name : David Cornberg

Job: Principal Designer Representative

handover period: 4 weeks

Responsibilities: [redacted]

Allocation: [redacted]

Qualifications: [redacted]

Experience: [redacted]

Name: Paul Burgon

Job: NR Possession Manager

handover period: 2 weeks

Responsibilities: [redacted]
Allocation: [redacted]
Qualifications: [redacted]
Experience: [redacted]

Name: Diamuid Barry
Job: Seven Kings Sub Agent
handover period: 4 weeks
Responsibilities: [redacted]
Allocation: [redacted]
Qualifications: [redacted]
Experience: [redacted]

Name: Paul Curtis
Job: Maryland Sub Agent
handover period: 4 weeks
Responsibilities: [redacted]
Allocation: [redacted]
Qualifications: [redacted]
Experience: [redacted]

Name Ryno Harmse
Job: Manor Park Sub Agent
handover period: 4 weeks
Responsibilities: [redacted]
Allocation: [redacted]
Qualifications: [redacted]
Experience: [redacted]

- The following matters will be included in the Risk Register:
  Refer to Attachment A to Contract Data Part 2

Optional Statements

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

- The Works Information for the *Contractor's* design is in: Attachment B to Contract Data Part 2

If a programme is to be identified in the Contract Data

- The Programme identified in the Contract Data is: Not Applicable

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

- The *completion date* for the whole of the *works* is: Not Applicable

- The *activity schedule* is: the *Contractor* is to submit an activity schedule for acceptance 2 weeks after contract award.
- The tendered total of the Prices is £18,944,039.79.

DATA FOR THE SHORTER SCHEDULE OF COSTS COMPONENTS

- The percentage for people overheads is : 13.21%
- The published list of Equipment is the last edition of the list published by CECA
- The percentage for adjustment for Equipment in the published list is minus 20% (state plus or minus)
- The rates for other Equipment are :

	Equipment	**size or capacity**	**rate**
1.		[ ]	[ ]
2.	[ ]	[ ]	[ ]

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

	category of employee	hourly rate
[redacted]	[redacted]	[redacted]

- The percentage for design overheads is 12.5%

- The categories of design employees whose travelling expenses to and from the Working Areas are included in the Defined Cost are: None of the above.

[redacted]

[redacted]

THE SCHEDULES

Schedule

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

Access Agreement means an access contract or an access agreement as defined in the Railways Act.

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

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

Asset Protection Agreements has the meaning ascribed to it in the 'Schedule of Network Rail Asset Protection Requirements' set out in Section 005 of the Works Information.

Available means:

(a) the *works* comply with the Standards,

(b) the *works* ~~are safe and fit for purpose~~ will comply with the Works Information provided always that nothing in the Works Information shall be construed as imposing a fitness for purpose obligation for the Works,

(c) there are no foreseeable hazards to the use of the *works* except insofar as a risk assessment has been carried out and any risk is expressly accepted by the *Employer*, and

(d) the *works* are readily accessible and operable by the *Employer* throughout the periods stipulated and agreed.

Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause Z2.7.1.

British Standards means those Standards produced by the British Standards Institution of 389 Chiswick High Road.

CDM Regulations means the Construction (Design and Management) Regulations 2007 and any amendment, consolidation, revision and/or replacement thereto and the related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.

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

Competent Authority means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (other than Transport for London) (whether autonomous or not), whether of the United Kingdom or of the European Union, which has, in respect of the Asset Protection Agreements and/or this Contract jurisdiction over either of the *Employer*, the *Contractor*, any Subcontractors or Indirect Subcontractors, Network Rail or the subject matter of this Contract.

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

Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance

Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005.

Critical Defect means a Defect which appears on or before the *defects date* and which is:

(a) critical to the operation and/or safety of the Underground and Overground Network and/or the Network or any part of them;

(b) within a category of Defects identified in the Works Information as Critical Defects; or

(c) deemed by the *Project Manager* to be critical to the carrying out and completion of the *works* and/or the work of Others.

Customer means a customer on the Underground and Overground Network.

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

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

Disruption Losses means Losses (including any liability of the *Employer* to Others, including any liability under any asset protection agreements (including the Asset Protection Agreements) and/or implementation agreements entered into between the *Employer* and Network Rail) resulting from any interference with, disruption to, or closure of the Underground and Overground Network and/or the Network or any part thereof.

European Standards means those standards ratified by the European Committee for Standardization (CEN) of Rue de Stassart, 36, B 1050 Brussels, Belgium, the European Committee for Electrotechnical Standardization (CENELEC) of F - 06921, Sophia Anipolis Cedix, France or the European Telecommunications Standards Institute (ETSI) of Rue de Stassart, 36 1050 Brussels, Belgium.

FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation.

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

Group Standards means Railway Group Standards produced pursuant to the Railway Group Standards Code (or equivalent predecessor documents, including previous versions of the Railway Group Standards Code) defining mandatory requirements in respect of the mainline railway in each case as published by the Rail Safety and Standards Board Limited or imposed by the Office of Rail Regulation. Such standards can be accessed on the website www.rgsonline.co.uk.

Indirect Subcontractor means any subcontractor of whatever tier beneath any Subcontractor appointed in relation to the w*orks*.

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

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

Infrastructure Manager means an infrastructure manager for the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

Interfacing Others means Others identified or referred to in the Works Information with whom the *Contractor* is to interface.

Interfacing Project means any other project in relation to and/or which affects the Network and which may affect and/or have an impact on the *works*, including the projects listed at paragraph 10 of Schedule 3 of the Asset Protection Agreements.

International Standards means those Standards produced by the International Standards Organisation or the International Electrotechnical Commission of 3 Rue de Varembe, CH1211, Geneva 20, Switzerland.

IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

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

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

Management Plans mean any management plans (including any plans relating to key person succession (if Option X23 applies), the subcontracting plan referred to in clause 26 and any other plan identified in or required by the Works Information) identified as such in the Works Information.

Network means the railway network which, unless otherwise agreed, is on Network Rail Land or any other railway assets and facilities of which Network Rail or an Operator is the facility owner (as defined in section 17(6) of the Railways Act).

Network Code means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995.

Network Rail means Network Rail Infrastructure Limited, registered in England and Wales under company number 2904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG.

Network Rail Land means land in which Network Rail has proprietary interest.

Network Rail Standard means a standards document (or the equivalent of such document) issued by Network Rail from time to time in relation to the Network as a whole which applies to the performance of the w*orks, as published on the website www.uk.ihs.com.*

On-Network Works means the whole of the design and construction of that part of the *works* which are to be executed on or adjacent to the Network as more particularly described in the Works Information and the On-Network Works Requirements and any works which, in Network Rail's reasonable opinion, could affect the operation of the Network.

On-Network Works Requirements has the meaning ascribed to it in the 'Schedule of Network Rail Asset Protection Requirements' set out in Section 005 of the Works Information.

Operator means an operator of passenger or freight trains which has entered into an Access Agreement with Network Rail.

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

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

Prohibited Act means:

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

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

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

(c) committing any offence:

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

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

Railway means the Network and the provision of railway services as defined in section 82 of the Railways Act and Network Rail's operations in connection with the Network.

Railways Act means the Railways Act 1993 as amended.

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

Safety Authorisation means the relevant party's safety authorisation, as amended from time to time (as defined in the Railways and Other Guided Transport Systems (Safety) Regulations 2006).

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

Site Waste Management Plan means the site waste management plan in respect of the *works* required to be produced and implemented under the Site Waste Management Plan Regulations 2008.

Standards means European Standards, British Standards, International Standards, Group Standards, Network Rail Standards (including in each case but without limitation any associated codes of practice), any individual requirements contained within standards documents issued to the *Contractor* by the *Employer* and/or as specified in the Works Information and any equivalent standards or any standards replacing or superseding any of them.

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

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

Statutory Undertaker means any governmental or local authority or statutory undertaker:

- which has any jurisdiction with regard to the *works* and/or the project including any jurisdiction to control development of the Site or any part of it;
- with whose requirements the *Employer* is accustomed to comply; or
- with whose systems and/or utilities the project and/or the *works* will be connected.

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

Taking Into Use means the act of taking into use of the On-Network Works or part thereof, and the taking out of use of other assets as part of a transport system on the basis that the applicable duty holder under the Railway and Other Guided Transport Systems (Safety) Regulations 2006 for those assets is satisfied that the assets in question have been inspected, tested and commissioned, and risks to the transport system arising have been controlled to the As Low As Reasonably Practicable standard as applicable, in accordance with the On-Network Works Requirements and the requirements set out in paragraph 10 of the 'Schedule of Network Rail Asset Protection Requirements' set out in Section 005 of the Works Information and "**Take Into Use**" and "**Taken Into Use**" shall be construed accordingly

TfL Group means Transport for London ("**TfL**"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.

TfL Policies means the *Employer's* policies on workplace harassment, drugs, alcohol and other matters as updated from time to time.

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

SCHEDULE 2

(Not Used)

SCHEDULE 3

(Form of Parent Company Guarantee)

THIS DEED OF GUARANTEE is effective as of the _____ day of _____201[ ]

BETWEEN:

(1) [●], a company incorporated in [●] with registered number [●] and having its registered office at [●] (the **"Guarantor"**); and

(2) [**RAIL FOR LONDON LIMITED**, a company incorporated in England with registered number 05965930 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL][1] (the **"Company"**).

WHEREAS:

(A) Pursuant to an agreement (the **"Contract"**) dated on or about the date hereof between the Company and [ ] (the **"Contractor"**), the Contractor has agreed to carry out the works as described therein.

(B) It is a condition of the entering into of the Contract that the Guarantor enters into and delivers this Guarantee in favour of the Company to guarantee the due performance of the Contract by the Contractor, in the manner hereinafter described.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Guarantee:

1.1.1 **"Contractor's Obligations":** shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;

1.1.2 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;

1.1.3 references to **"Contractor"**, **"Guarantor"** and/or **"Company"** shall include their respective transferees, successors and assigns whether immediate or derivative;

[1] If the Employer is not Rail for London Limited, delete and substitute relevant details of relevant member of the TfL Group.

1.1.4 the headings to Clauses are for convenience only and have no legal effect;

1.1.5 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;

1.1.6 the expression **"person"** shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and

1.1.7 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.

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

2. Guarantee and Indemnity

2.1 The Guarantor irrevocably and unconditionally:

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

2.1.2 undertakes with the Company that whenever the Contractor:

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

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

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

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

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

3. Continuing Guarantee

This Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by the Contractor, the Guarantor or any other person) until all obligations (whether actual or contingent), warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor and the Company under the Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full and will extend to the ultimate balance of all sums payable by the Contractor in respect of the Contractor's Obligations, regardless of any intermediate payment or discharge thereof in whole or in part.

4. Reinstatement

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

4.2 The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

5. Waiver of Defences

5.1 The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):

5.1.1 any time or waiver granted to, or composition with, the Contractor or any other person;

5.1.2 any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;

5.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

5.1.4 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;

5.1.5 any variation (however fundamental) or replacement of the Contract or any other document or security so that references to such documents in this Guarantee shall include each variation or replacement;

5.1.6 any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity; or

5.1.7 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

6. Immediate Recourse

6.1 The Guarantor:

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

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

7. Appropriations

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

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

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

8. Non-Competition

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

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

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

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

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

9. Additional Security

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

10. Assignment

~~The Company may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor, provided that the Company shall give a written notice to the Guarantor to that effect.~~ The Company may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any member of the TfL Group company. The Company may not assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract to non members of the TfL Group without the consent of the Contractor (which consent shall not be unreasonably withheld or delayed).

11. Notices

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

Guarantor:

Address:

Attention:

Company:

Address: [Rail for London Limited, Windsor House, 42-50 Victoria Street, London SW1H 0TL]

Attention: [ ]

with a copy to

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

12. Miscellaneous

12.1 The Company is entitled to make any number of demands under this Guarantee.

12.2 The invalidity, illegality or unenforceability in whole of in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

12.3 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

12.4 The Company acknowledges and agrees that it will notify the Guarantor within five (5) Business Days of any claim made against the performance bond provided pursuant to the Contract.

13. Counterparts

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

14. Governing Law and Jurisdiction

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

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

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

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

Date:_____

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

Signature of Director/Secretary .....

Print name of Director/Secretary
.....

Date:_____

SCHEDULE 4A

(Form of Warranty from *Contractor*)

THIS DEED is made on ● 201●

BETWEEN:

(1) ● whose registered office is situate at ● (the **"Beneficiary"**);

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

(3) ● of ● (the "***Employer***") (which expression shall include its successors in title and assigns).

WHEREAS:

(A) By a contract dated ● (the **"Contract"**) the *Employer* appointed the *Contractor* to design, carry out and complete certain works and/or services as defined in the Contract at ● (the **"*works*"**).

B) [Insert details of Beneficiary's interest in the *works*].

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.

2. The *Contractor* warrants and undertakes to the Beneficiary that:

   (a) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out works of a similar scope, size and complexity to the *works*; and

   (b) it has complied with and will continue to comply with the terms of the Contract.

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

4. The *Contractor* further warrants and undertakes to the Beneficiary that:

   (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;

(b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;

(c) the *works* are integrated with the designs of Others as specified in the Contract;

(d) *works* will on Completion be Available;

(e) the *works* will on Completion comply with all applicable law and all relevant Standards; and

(f) the *works* will be carried out and completed timeously in accordance with the Accepted Programme.

5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[●][1] in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.

6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.

7.

7.1 Subject to the following provisions of this Deed, all IPR in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Contractor in the course of performing its obligations under the Contract ("the **Documents**") will remain vested in the Employer and all Background IPR will remain vested in the Contractor.

7.2 To the extent that it is able to do so, the Employer (in respect of the IPR) and the Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of any intellectual property not yet in existence with effect from the creation of

such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the *works* including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the *works*. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

7.3 The Employer will not be liable for any use the Beneficiary may make of the IPR or the Documents.

8. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary in connection with the whole or any part of the works, or member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Contractor* being required and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.

9. **[CLAUSE 9 TO BE USED IN FINANCIER WARRANTY ONLY**

9.1 Subject to Clause 9.7, the *Contractor* will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the *Contractor's* grounds for terminating or treating as terminated or repudiated the Contract or its employment under it or discontinuing or suspending its performance of the Contract and stating the amount (if any) of monies outstanding under the Contract. Within such period of notice:

(a) the Beneficiary may give written notice to the *Contractor* expressly confirming its intention to comply with Clause 9.1(c) and that the Beneficiary shall become the employer under the Contract to the exclusion of the *Employer* and, upon giving such notice, that will be the case and the Contract will be and remain in full force and effect notwithstanding any of the grounds in the *Contractor's* notice under Clause 9.1; and

(b) if the Beneficiary has given notice under Clause 9.1(a) or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the *Employer*; and

(c) if:

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[1] The PI figure should be the same as the figure inserted in the Contract Data.

(i) the Beneficiary has given such notice under Clause 9.1(a) then from the date of the *Contractor's* notice; or

(ii) the Beneficiary has given notice under Clause 9.3 then from the date of the Beneficiary's notice

(d) the Beneficiary will, by Clause 9.1(a), become responsible for all sums properly payable to the *Contractor* under the Contract and for the observance and performance of all the other duties and obligations on the part of the *Employer* to be observed and performed under the Contract accruing due after the service of such *Contractor's* notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the *Employer* under the Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the *Contractor* the Beneficiary will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Contractor under either Clause 9.1(a) or Clause 9.3.

9.3 The *Contractor* further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with Clause 9.1(c) and subject to Clause 9.1(b) and Clause 9.1(c), it will accept the instructions of the Beneficiary to the exclusion of the *Employer* in respect of the *works* upon the terms and conditions of the Contract. The Beneficiary shall then become the employer under the Contract to the exclusion of the *Employer* and the *Contractor* will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the *Employer* under the Contract.

9.4 [Where the *Contractor* has given rights in relation to the Contract similar to those contained in this Clause 9 to any other person then if both the Beneficiary and any such other person serve notice under Clause 9.1(a) or Clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].

9.5 The *Employer* acknowledges that the *Contractor* will be entitled to rely on a notice given to the *Contractor* by the Beneficiary under Clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.

9.6 The Beneficiary may by written notice to the *Contractor* appoint another person to exercise its rights under this Clause 9 subject to the Beneficiary remaining liable to the *Contractor* as guarantor for its appointee in respect of its obligations under this Deed.

9.7 Notwithstanding the other provisions of this Clause 9, if the Contract has for any reason been terminated prior to receipt by the *Contractor* of a notice from the Beneficiary served under Clause 9.1(a) or Clause 9.3 the *Contractor* shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Contract to continue the *works* in all respects as if the Contract had been transferred to the Beneficiary in accordance with the provisions of this Clause 9.]

10. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 8 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

11. The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after Completion of the whole of the *works*.

12. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.

13. The *Contractor's* liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

14.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer* provided that the *Contractor* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Contractor* from the *Employer*.

14.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as he would have thereunder if the Beneficiary was named in the Contract as a joint employer with the *Employer*.

15. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.

16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.

17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

[EXECUTED AND DELIVERED AS
A DEED for and on behalf of
[THE BENEFICIARY] BY
being duly authorised in the presence of:

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]

acting by:

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

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

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

SCHEDULE 4B

(Form of Warranty from *Contractor* to Network Rail Infrastructure Limited)

THIS DEED is made on ● 201●

BETWEEN:

(1) **Network Rail Infrastructure Limited** whose registered office is situate at Kings Place 90 York Way, London N1 9AG (the **"Beneficiary"**); and

(2) ● whose registered office is situate at ● (the **"*Contractor*"**).

WHEREAS:

(A) The Beneficiary has entered into an agreement dated ● with ● of ● (the "***Employer***") (which expression shall include its successors in title and assigns) in connection with the Works.

(B) The *Contractor* has entered into the Contract with the *Employer* to carry out the Works.

(C) The *Contractor* has agreed to enter into this Deed for the benefit of the Beneficiary.

NOW IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

1.1.1 **Contract** means the agreement dated ● between (1) the *Employer* and (2) the *Contractor;*

1.1.2 **Intellectual Property** means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the *Contractor* in connection with the Works;

1.1.3 **Network** means the railway network of which Network Rail Infrastructure Limited is the facility owner (as defined in section 17(6) of the Railways Act 1993);

1.1.4 **Network Licence** means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended); and

1.1.5 **Works means** [*insert description of relevant Works*].

1.2 This Deed unless the context otherwise requires:

1.2.1 words importing any gender include every gender;

1.2.2 words importing the singular number only include the plural number and vice versa;

1.2.3 words importing persons include firms, companies and corporations and vice versa;

1.2.4 any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;

1.2.5 references to Clauses are references to the relevant clause in this Deed;

1.2.6 the words **include** and **including** are to be construed without limitation;

1.2.7 where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and

1.2.8 the headings to the Clauses are for convenience only and shall not affect the interpretation of this Deed.

2 CONTRACTOR'S OBLIGATIONS

2.1 The *Contractor* represents, warrants and undertakes to the Beneficiary:

2.1.1 that in performing the Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent contractor which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Works;

2.1.2 that it has complied with and will comply with each and all of the obligations, duties and undertakings of the *Contractor* under and pursuant to the Contract;

2.1.3 that on completion the Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and

2.1.4 that the Beneficiary shall be deemed to have relied upon the *Contractor's* skill and judgment in respect of those matters relating to the Works as lie within the scope of the Contract and that the *Contractor* owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the *Employer* under the Contract).

3 LIABILITY

3.1 No approvals, comments, instructions, consents, attendance at meetings relating to the Works or advices from the Beneficiary shall in any way relieve the *Contractor* from its obligations under this Deed.

3.2 Notwithstanding anything that may be contained elsewhere in this Deed, the *Contractor* shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.

3.3 No action or proceedings for any breach of this Deed shall be commenced against the *Contractor* after the expiry of 12 years from the date of practical completion of the Works.

4 INTELLECTUAL PROPERTY

4.1 The *Contractor* as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this Deed (and notwithstanding that the Contract may be completed or terminated) a royalty-free, non-exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:

4.1.1 in connection with the maintenance, repair, reinstatement, renewal or extension of the Works; or

4.1.2 in order for the Beneficiary to comply with the obligations on its part under the Network Licence or to comply with any standard or requirement affecting the Beneficiary.

4.2 Insofar as the beneficial ownership of any Intellectual Property provided by the *Contractor* in connection with the Works is vested in a person other than the *Contractor*, the *Contractor* shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in Clause 4.1.

4.2.1 The licence referred to in Clauses 4.1 and 4.2 shall carry the right to grant sub-licences in the same terms and shall be transferable to third parties.

4.2.2 All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the *Contractor* and the *Contractor* shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the *Contractor* infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract or the licence granted in Clause 4.1 or 4.2 above.

5 INSURANCE

5.1 The *Contractor* has effected and will maintain professional indemnity insurance in an amount of not less than £10 million for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of 12 years from the date of the issue of the certificate of practical completion of the Works. As and when reasonably requested to do so by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

6 NOTICES

6.1 Any notices to be given under this Deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the *Contractor* shall be as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

6.1.1 if personally delivered, at the time of delivery; or

6.1.2 if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.

6.2 In proving such service, it shall be sufficient to prove that personal delivery was made or that

the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

7 GENERAL

7.1 The *Contractor* shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the *Contractor* thereunder.

7.2 The Beneficiary may assign the benefit of this Deed on a maximum of four occasions without the consent of the *Contractor*. The benefit of this Deed may also be assigned by way of security or charged without the consent of the *Contractor* to any mortgagee of the Beneficiary or its assignees on any number of occasions.

7.3 The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

7.4 If for any reason any Clause in this Deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this Deed and in such event the remaining provisions of this Deed shall continue to have full force and effect.

7.5 This Deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the Courts of England.

In Witness whereof the parties have caused this agreement to be executed (as a Deed in the case of the *Contractor*) on the date first before written.

EXECUTED AS A DEED by)
[**CONTRACTOR**])
acting by Director)
Director/Secretary

SIGNED by)
duly authorised on behalf of)
NETWORK RAIL)
INFRASTRUCTURE LIMITED)

SCHEDULE 5A

(Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 201●

BETWEEN:

(1) ● whose registered office is●[3] (the **"*Employer*"** which expression shall include its successors and assigns);

(2) ● whose registered office is situate at ● (the **"Subcontractor"**); and

(3) ● whose registered office is situate at ● (the **"*Contractor*"**).

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the **"Contract"**) with the *Employer* for the design and carrying out of certain works and/or services as defined in the Contract at ● (the **"*works*"**).

(B) The Subcontractor [has entered] [will shortly enter] into a subcontract (the **"Subcontract"**) with the *Contractor* for the design and carrying out of certain parts (the **"*subcontract works*"**) of the *works* more particularly defined in *Annex* ● hereto[4].

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

   (a) "**Connected Persons**" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

   (b) "**Documents**" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);

---

[3] Insert details of the relevant member of the TfL Group.
[4] A description of the works should be provided in the Annex.

(c) "**Minimum Records**" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.

(d) "**Prohibited Act**" means:

(i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the *Employer* or the *Contractor;*

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

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

(iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.

(e) "**Safety Breach**" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *subcontract works*, the safe operation of the Underground and Overground Network and/or the safety of the *Employer's* employees, or the public or any other persons.

(f) "**TfL Group**" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

(g) "**Underground and Overground Network**" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground" and/or the overground service known as "London Overground" (as applicable)".

2. The Subcontractor warrants and undertakes to the *Employer* that:

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

(b) he has complied with and will continue to comply with the terms of the Subcontract.

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

4. The Subcontractor further warrants and undertakes to the *Employer* that:

(a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;

(b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;

(c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;

(d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor:

(e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;

(f) he shall not commit a Prohibited Act and/or Safety Breach; and

(g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.

5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[●][5] in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the *Employer* an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for all purposes including (without limitation) the following:

   (a) understanding the *works*;

   (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*, any Equipment or Plant and Materials;

   (c) extending, interfacing with, integrating with, connection into and adjusting the *works* and/or the works of Others;

   (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground and Overground Network;

   (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground and Overground Network;

   (f) executing or completing the *works;* and

[5] The PI figure should be the same as the figure inserted in the Subcontract.

(g) designing, testing and commissioning the *works*

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

8. The Subcontractor agrees:

(a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer*'s expense to provide copies of any such material; and

(b) at the Subcontractor's expense to provide the *Employer* with a set of all such material on Completion of the *subcontract works*.

9. If called upon to do so by the *Employer*, the Subcontractor shall provide the *Employer* with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* nor the approval by the *Employer* of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.

10. The Subcontractor warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the *Employer* that the Subcontract contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the 12 years thereafter.

11. The Subcontractor shall provide such assistance to the *Employer* as it may reasonably require in connection with the *subcontract works*.

12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:

    (a) continue to observe and carry out his obligations under the Subcontract and this Deed;

    (b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and

    (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.

13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Subcontract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.

13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.

14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer*'s appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer*'s appointee. For the avoidance of doubt neither the

Employer nor his appointee shall be liable for any work carried out prior to the date of the *Employer*'s notice.

15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.

16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.

17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.

19. The Subcontractor hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *subcontract works*. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*.

20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the *Employer* that:

(a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;

(b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and

(c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.

20.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.

20.3 Clause 20.1 does not apply to the disclosure of:

(a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,

(b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and

(c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.

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

21.1 The Subcontractor shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Subcontract as if the *Employer* was named in the Subcontract as a joint employer with the *Contractor* provided that the Subcontractor shall not be entitled to set-off

or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the Subcontractor from the *Contractor*.

21.2 The Subcontractor shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as he would have thereunder if the *Employer* was named in the Subcontract as a joint employer with the *Contractor*.

22. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subcontractor including without limitation any remedies in negligence.

23. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subcontractor to the *Contractor* under the Subcontract.

24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.

25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.

26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

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

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

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

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]

acting by:

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

ANNEX

(*subcontract works*)

SCHEDULE 5B

(Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 201●

BETWEEN:

(1) ● whose registered office is situate at ● (the "**Beneficiary**")

(2) ● whose registered office is situate at ● (the **"Subcontractor"**); and

(3) ● whose registered office is situate at ● (the **"*Contractor*"**).

WHEREAS:

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

(B) The Subcontractor [has entered] [will shortly enter] into a subcontract (the **"Subcontract"**) with the *Contractor* for the design and carrying out of certain parts (the **"*subcontract works*"**) of the *works* more particularly defined in *Annex* ● hereto[1].

(C) [Insert description of Beneficiary's interest in the *works*]

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

   (a) "**Documents**" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);

   (b) "**Intellectual Property**" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the

[1] A description of the works should be provided in the Annex.

registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

(c) "**TfL Group**" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

(d) "**Underground and Overground Network**" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground" and/or the over ground service know as "London Overground" (as applicable).

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

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

(b) he has complied with and will continue to comply with the terms of the Subcontract.

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

4. The Subcontractor further warrants and undertakes to the Beneficiary that:

(a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;

(b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;

(c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;

(d) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards; and

(e) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.

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

6. As and when reasonably requested by the Beneficiary, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7.

7.1 The parties acknowledge that all Intellectual Property in the Documents will remain vested in the *Employer*.

7.2 To the extent that it is able to do so, the *Employer* grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the *works* including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the *works*. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

7.3 The *Employer* will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 7.2.

8. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary in connection with the whole or part of the *works*, or to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.

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[2] The PI figure should be the same as the figure inserted in the Subcontract.

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY ONLY

9.

9.1 [Subject to Clause 9.7, the Subcontractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Subcontract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Subcontract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Subcontractor's grounds for terminating or treating as terminated or repudiated the Subcontract or its employment under it or discontinuing or suspending its performance of the Subcontract and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice:

(a) the Beneficiary may give written notice to the Subcontractor expressly confirming its intention to comply with clause 9.1(c) and that the Beneficiary shall become the employer under the Subcontract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Subcontract will be and remain in full force and effect notwithstanding any of the grounds in the Subcontractor's notice under Clause 9.1; and

(b) if the Beneficiary has given notice under clause 9.1(a) or under Clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

(c) if:

(i) the Beneficiary has given such notice under clause 9.1(a) then from the date of the Subcontractor's notice; or

(ii) the Beneficiary has given notice under Clause 9.3 then from the date of the Beneficiary's notice,

the Beneficiary will, by Clause 9.1(a), become responsible for all sums properly payable to the Subcontractor under the Subcontract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Subcontract accruing due after the service of such Subcontractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Subcontract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Subcontractor the Beneficiary will not be under any obligation to the Subcontractor nor will the Subcontractor have any claim or cause of action

against the Beneficiary unless and until the Beneficiary has given written notice to the Subcontractor under either Clause 9.1(a) or Clause 9.3.

9.3 The Subcontractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with Clause 9.1(c) and subject to clause 9.1(b) and clause 9.1(c)**,** it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the *subcontract works* upon the terms and conditions of the Subcontract. The Beneficiary shall then become the employer under the Subcontract to the exclusion of the Contractor; and the Subcontractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Subcontract.

9.4 [Where the Subcontractor has given rights in relation to the Subcontract similar to those contained in this Clause 9 to any other person then if both the Beneficiary and any such other person serve notice under Clause 9.1 or Clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].

9.5 The Contractor acknowledges that the Subcontractor will be entitled to rely on a notice given to the Subcontractor by the Beneficiary under Clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.

9.6 The Beneficiary may by written notice to the Subcontractor appoint another person to exercise its rights under this Clause 9 subject to the Beneficiary remaining liable to the Subcontractor as guarantor for its appointee in respect of its obligations under this Deed.

9.7 Notwithstanding the other provisions of this Clause 9, if the Subcontract has for any reason been terminated prior to receipt by the Subcontractor of a notice from the Beneficiary served under Clause 9.1(a) or Clause 9.1(c), the Subcontractor shall on receipt of any such notice from the Beneficiary enter into a new sub-contract with the Beneficiary on the same terms as the Subcontract to continue the *subcontract works* in all respects as if the Subcontract had been transferred to the Beneficiary in accordance with the provisions of this Clause 9.]

10. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 8 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

11. The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of Completion of the whole of the *works*.

12.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract as if the Beneficiary was named in the Subcontract as a

joint employer with the *Contractor* provided that the Subcontractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subcontractor from the *Contractor*.

12.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as he would have thereunder if the Beneficiary was named in the Subcontract as a joint employer with the *Contractor*.

13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.

14. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.

15. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.

16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.

17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

(*subcontract works*)

SCHEDULE 6A

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

THIS DEED is made on ● 201●

BETWEEN:

(1) ● whose registered office is at ● ("the ***Employer***" which expression shall include its successors and assigns);

(2) ● whose registered office is situate at ● (the **"Subconsultant"**); and

(3) ● whose registered office is situate at ● (the **"*Contractor*"**).

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the **"Contract"**) with the *Employer* for the carrying out of certain works and/or services as defined in the Contract at ● (the **"*works*"**).

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

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

   (a) "**Connected Persons**" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;

   (b) "**Documents**" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);

   (c) "**Minimum Records**" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to

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

(d) "**Prohibited Act**" means:

(i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Contractor;*

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

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

(iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.

(e) "**Safety Breach**" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground and Overground Network and/or the safety of the *Employer's* employees, or the public or any other persons.

(f) "**TfL Group**" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

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

Underground" and/or the over ground service known as "London Overground" (as applicable)".

2. The Subconsultant warrants and undertakes to the *Employer* that;

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

   (b) he has complied with and will continue to comply with the terms of the Appointment.

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

4. The Subconsultant further warrants and undertakes to the *Employer* that:

   (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;

   (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;

   (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;

   (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;

   (e) he shall not commit a Prohibited Act and/or Safety Breach; and

   (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[●][1] in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such

professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for all purposes including (without limitation) the following:

   (a) understanding the *works*;

   (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *works*, any Equipment or Plant and Materials;

   (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;

   (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground and Overground Network;

   (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground and Overground Network;

   (f) executing or completing the *works;* and

   (g) designing, testing and commissioning the *works*

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

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[1] The PI figure should be the same as the figure inserted in the Appointment.

8. The Subconsultant agrees:

(a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer*'s expense to provide copies of any such material; and

(b) at the Subconsultant's expense to provide the *Employer* with a set of all such material on Completion of the *design works*.

9. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.

10. The Subconsultant warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the whole of the *works* with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the *Employer* that the Appointment contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.

11. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.

12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:

(a) continue to observe and carry out his obligations under the Appointment and this Deed;

(b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Appointment shall thereafter be exercisable and performed by the *Employer*; and

(c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.

13.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Appointment and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Appointment.

13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.

14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer*'s appointee, the *Employer* shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the *Employer*'s appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer*'s notice.

15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.

16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the

Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.

19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:

(d) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the *design works* relate;

(e) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and

(f) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.

19.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer.*

19.3 Clause 19.1 does not apply to the disclosure of:

(a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,

(b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and

(c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an

order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.

19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

19.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.

19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.

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

20.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment as if the *Employer* was named in the Appointment as a joint employer with the *Contractor* provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the *Employer* under this Deed any sums due or claimed as due by the Subconsultant from the *Contractor*.

20.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as he would have thereunder if the *Employer* was named in the Appointment as a joint employer with the *Contractor*.

21. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.

22. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the

Employer in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.

23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.

23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.

24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

THE COMMON/CORPORATE SEAL of
[THE EMPLOYER]

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

Signature of Director .....

Print name of Director .....

Signature of Director/Secretary .....

Print name of Director/Secretary .....

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 6B

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

THIS DEED is made on ● 201●

BETWEEN:

(1) ● whose registered office is situate at ● (the "**Beneficiary**");

(2) ● whose registered office is situate at ● (the **"Subconsultant"**); and

(3) ● whose registered office is situate at ● (the **"*Contractor*"**).

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the **"Contract"**) with ●[1] (the "***Employer***") which expression shall include its successors and assigns for the carrying out of certain works and/or services as defined in the Contract at ● (the **"*works*"**).

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

(C) [Insert details of Beneficiary's interest in the *works*].

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:

   (a) "**Documents**" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);

   (b) "**TfL Group**" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

   (c) "**Underground and Overground Network**" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the

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

maintenance and provision of the underground service known as the "London Underground" and/or the over ground service known as “London Overground” (as applicable).

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

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

   (b) he has complied with and will continue to comply with the terms of the Appointment.

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

4. The Subconsultant further warrants and undertakes to the Beneficiary that:

   (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;

   (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;

   (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;

   (d) the *design works* will on Completion comply with all applicable law and all relevant Standards; and

   (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than £[●][2] in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of

the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the Beneficiary, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for any purpose including (without limitation) the following purposes:

   (a) understanding the *works*;

   (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;

   (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;

   (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground and Overground Network;

   (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground and Overground Network;

   (f) executing or completing the *works;* and

   (g) designing, testing and commissioning the *works*

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

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[2] The PI figure should be the same as the figure inserted in the Appointment.

8. The Subconsultant agrees:

(a) on request at any time to give the Beneficiary or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and

(b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.

9. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.

10. This Deed may be assigned by the Beneficiary to any person providing finance to the Beneficiary in connection with the whole or part of the *works*, or to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

11. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

12. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.

13.

13.1 The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment as if the Beneficiary was named in the Appointment as a joint employer with the *Contractor* provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Contractor*.

13.2 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability

(but excluding set-offs and counterclaims) as he would have thereunder if the Beneficiary was named in the Appointment as a joint employer with the *Contractor*.

14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.

15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.

16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.

16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.

17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 7

(Conditions Precedent)

1 The *Contractor* shall provide the following documents to the *Employer*:

[1.1 the original executed Parent Company Guarantee

1.2 a certified copy of a resolution of the board of directors of the *Contractor* or, where the *Contractor* is not incorporated in England and Wales, an equivalent statement of authority (in either case in a form and substance satisfactory to the *Employer*) passed at a duly convened and held meeting: (1) approving the terms of and the transactions contemplated by this contract and all other related documents to which it is a party; and (2) authorising a specified person to approve amendments to and execute this contract as a deed and all the other related documents to which it is a Party,

1.3 certified copies of the most recent statutory audited accounts, memorandum of association and articles of association (or the equivalent documentation in any jurisdiction other than England and Wales) in respect of the *Contractor* and the Guarantor under the Parent Company Guarantee,

1.4 evidence that the *Contractor* has obtained all insurances required to be held by it under the contract ~~and consents which it is required to obtain in accordance with this contract,~~

1.5 written confirmation signed by a director of the *Contractor* that, as at the Contract Date, no circumstances have arisen under or by virtue of which the *Employer* would be entitled to terminate the appointment of the *Contractor* to Provide the Works under the provisions of this contract and the *Employer* is not entitled to terminate the contract or to accept any repudiation of the contract by the *Contractor,* and

1.6 within 2 weeks of the first Accepted Programme, an Activity Schedule that aligns with the Accepted Programme. The total of the Activity Schedule must be identical to the agreed total of the Prices as at the Contract Date and activities must be fully capable of reconciliation back to the items contained in the Activity Schedule as at the Contract Date.

SCHEDULE 8

(Dispute Resolution Procedure)

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

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

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

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

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

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

"Senior Representative" means a representative of a Party at senior executive level;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

W2.6 The Referral Notice includes:

- the facts relied upon by the referring party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.

W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.

W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.

W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.

W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.

W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice

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

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

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

W2.14 The Adjudicator:

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

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

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

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

- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;

- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;

- inspect any part of the Underground and Overground Network.

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

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

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

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

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

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

W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.

W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.

W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).

W2.26 If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.

SCHEDULE 9

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

THIS AGREEMENT is made ● day of ● 201●

BETWEEN:

(1) [●of ●][1] (the **"Employer"** which expression includes its successors in title and assigns);

(2) **[INSERT NAME OF CONTRACTOR]** whose registered office is situated at **[INSERT REGISTERED ADDRESS OF CONTRACTOR]** (the **" Contractor"**); and

(3) **[INSERT NAME OF ASSOCIATED CONTRACTOR]** whose registered office is at **[INSERT REGISTERED ADDRESS OF ASSOCIATED CONTRACTOR]** (the **"Associated Contractor"**).

WHEREAS:

(A) The Employer has appointed the Associated Contractor to **[INSERT DESCRIPTION OF THE WORKS AND/OR THE SERVICES]** (the **"Services"**) by an agreement dated ● (the **"Associated Contract "**).

(B) The Employer has appointed the Contractor under a contract (the **"Contract"**) to design and construct certain works as therein described (the **"Works"**).

(C) The Parties novate the Associated Contract from the Employer and the Associated Contractor to the Contractor and the Associated Contractor on the terms of this deed.

NOW IT IS HEREBY AGREED as follows:

1. **NOVATION**

1.1 The Employer as beneficial owner hereby novates to the Contractor its entire rights, benefits, liabilities and obligations under and pursuant to the Associated Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.

1.2 The Associated Contractor releases and discharges the Employer from any and all obligations and liabilities owed to the Associated Contractor under the Associated Contract and accepts

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

the liability of the Contractor under the Associated Contract in lieu of the liability of the Employer.

1.3 The Associated Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer. The Contractor agrees that it will not hereafter terminate the Associated Contractor's engagement under the Associated Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

1.4 The Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer.

1.5 The Contractor shall not be prevented from recovering any loss, damage, cost or expense (including legal costs) ("Losses") incurred by the Contractor that result from any breach of clause 1.3 because:

(a) the acts or omissions causing that breach occurred before this deed took effect; or

(b) the Employer will not incur, has not or would not have incurred those Losses.

1.6 All rights of action and remedies vested in the Employer against the Associated Contractor in respect of the Associated Contract shall vest in the Contractor from the date of this deed. All rights and remedies vested in the Associated Contractor against the Employer in respect of the Associated Contract shall lie against the Contractor from the date of this deed.

1.7 The Associated Contractor acknowledges that all fees and expenses properly due to the Associated Contractor under the Associated Contract up to the date of this Agreement have been paid by the Employer.

2. SERVICES FOR THE EMPLOYER

2.1 The Associated Contractor agrees that, notwithstanding the novation of the Associated Contract pursuant to this Agreement, it will perform the services (**"Further Services"**) set out in Annex 2 to this Agreement for the Employer for the remuneration referred to in Annex 3 hereof[2].

2.2 The Associated Contractor warrants to the Employer that:

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[2] Annexures 2 and 3 should be completed when the *Employer* requires the Associated Contractor to perform services for it after novation. Annex 2 lists the services to be performed while Annex 3 sets out the level of remuneration that will be paid for these services (e.g. a lump sum figure or hourly rate of specified staff).

(a) it will perform the Further Services using the reasonable skill, care and diligence to be expected of an appropriately qualified [**insert profession**][3] holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms set out in the Associated Contract as if they were set out in this Agreement; and

(b) it will have in place professional indemnity insurance on the terms set out in the Associated Contract in respect of such Further Services.

3. **PROPER LAW AND JURISDICTION**

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

4. **CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999**

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any third person (save the Employer's successors in title or permitted assignees) any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

[3] [To be completed prior to signing deed of novation]

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

THE COMMON/CORPORATE SEAL of
[RAIL FOR LONDON LIMITED]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX 1

Not used.

ANNEX 2[4]

(FURTHER SERVICES)

[4] If further services are to be provided by the Associated Contractor to the *Employer* the relevant services should be inserted. If no further services are to be provided leave blank.

ANNEX 3[5]

(FURTHER SERVICES REMUNERATION)

[5] If further services are to be provided by the Associated Contractor to the *Employer* and Annex 2 is

completed, the level of remuneration for these further services should be inserted into Annex 3. If no further services are to be provided leave blank.