

SSR Upgrade Programme

4676 Supply of LVAC Cable

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Transport for London

SSR Upgrade Programme

4676 Supply of LVAC Cable

Section 1: Contract Terms and Conditions

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1.1 Form of Agreement

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1.2 Contract Data Parts 1 and 2

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1.3 Consolidated NEC 3 Option B Conditions of Contract

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CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION B

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

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ORE CLAUSES

1 General

Actions 10

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

Identified and defined Terms 11

Z1.1

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

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

(2) Completion is when the *Contractor* has

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

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

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

Z1.1.2

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

Z1.1.3

(5) A Defect is

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

Z1.1.4

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

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

Z1.1.5

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

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

Z1.1.5A

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

Z1.1.6

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

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

(13) To Provide the Works means to do the work necessary to complete the *works* in accordance with this contract and all incidental work, services and actions which this contract requires.

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

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

(16) Site Information is information which

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

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

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

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

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

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

(21) The Bill of Quantities is the *bill of quantities* as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.

39B.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

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

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - comply with the requirements of the Works Information or
 - give an early warning which this contract required him to give
- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*,
- is attributable to a compensation event under a subcontract which is not also a compensation event under this contract,
- is due under a subcontract entered into in breach of clause 26.2 (Z1.14.2)

and the cost of

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

Z1.39B.2

- 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 Subcontractor¹ and

- [profit payable between each party comprising the *Contractor*]¹

Z1.40.1

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

- the quantity of the work which the *Contractor* has completed for each item in the Bill of Quantities multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the *Contractor* has completed.

Unless the *Project Manager* and the *Contractor* otherwise agree, the quantity of the work which the *Contractor* has completed is ascertained and determined by re-measurement in accordance with the *method of measurement*. Completed work is work without Defects which would either delay or be covered by immediately following work.

(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

Z1.2

11.3 Additional defined terms are included in Schedule 1.

Interpretation and the law 12

Z1.3

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

Z1.3.1

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

Z1.3.1A

12.1B In this contract, unless the context otherwise requires, references to:

- (a) "including" means "including without limitation", and
- (b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).

Z1.3.2

12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to the Dispute Resolution Procedure, the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

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

Z1.3.3

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

Z1.3.4

12.4 This contract ~~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

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

practice raised under any such law.

In performing his obligations under this contract, the *Contractor* complies with the law of the contract, the applicable law and the Standards to the extent that they impose duties, obligations or restrictions on the *Contractor*. Laws are regarded as applicable to the *Contractor* where they impose duties, obligations or restrictions on the *Employer* or TfL in relation to the Underground Network and/or its operation, and the *Contractor* performs his obligations under this contract in compliance with such duties, obligations and restrictions as if such laws imposed such duties, obligations and restrictions on the *Contractor*.

- Z1.3.7 12.8 (a) Subject to sub-clause 12.8(b), the *Employer* and the *Contractor* do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this contract.
- (b) The Contracts (Rights of Third Parties) Act 1999 applies to this contract to the extent that any member of the TfL Group has the right to enforce any provision contained in this contract against the *Contractor* where such provision confers any benefit or purports to confer a benefit on such member.
- Z1.3.8 12.9 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- Z1.3.9 12.10 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid.

Contract Administration Management System 12A

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

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

Communications 13

- Z1.4
- Z1.4.1 13.1 If and to the extent that clause 12A is not applicable to the contract, ~~e~~Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically).
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.

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

The Project Manager and 14

Z1.5

the Supervisor

Z1.5.1

- 14.1 Neither a communication from the *Employer*, *Project Manager* or *Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work ~~does not~~ changes the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.
- 14.5 The *Project Manager* is for relevant purposes the "specified person" as defined in section 110A(6) of the Act.

Y2.1/Z1.5.2

The Contractor's Representative

Z1.5A.1

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

Adding to the Working 15

Areas

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

Early warning 16

Z1.6

Z1.6.1

- 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - delay meeting a Key Date, or
 - impair the performance of the *works* in use

- change the Accepted Programme,
- adversely affect the work of Others,
- constitute a Defect,
- adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network,
- result in a breach of this contract or any subcontract,
- lead to the *Contractor* terminating or suspending any subcontract,
- cause a change to the Subcontractor Procurement Plan, or
- cause a breach of any applicable law.

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

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

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

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

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

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

Ambiguities and 17

Z1.7

Inconsistencies

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

Z1.7.1

Z1.7.2

17.2 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Such instruction is not a compensation event where the *Project Manager* assesses:

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

Illegal and impossible 18

requirements

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

Prevention 19

Z1.8

Z1.8.1

19.1 If an event occurs which

- stops the *Contractor* completing the works or

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

and which is not

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

and which

- neither Party could prevent and
- ~~an~~ 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.

The Contractor's main responsibilities

Providing the Works 20

- Z1.9
Z1.9.1 20.1 The *Contractor* Provides the Works in a regular and diligent manner and in accordance with the Works Information.
- 20.2- Not used (as not Option B clauses)
20.5
- 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* designs the parts of the *works* which the Works Information states he is to design².
- 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 for not accepting the *Contractor's* design is are that it does not comply with either the Works Information, this contract or the applicable law- or that
- it is such that it will not allow the *works* to be constructed,
 - it is such that if constructed the *works* will not be capable of being used for their intended purpose.
- The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design.
- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

Using the Contractor's 22

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

Design of Equipment 23

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

People 24

- Z1.12
Z1.12.1 24.1 Subject to the provisions of Option X23 (if applicable), the *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
- Z1.2.2 24.1A Save where a key person is removed pursuant to sub-clause 24.2 or for other reasons which the *Project Manager* considers are outside the *Contractor's* reasonable control, if a key person:

² Where Option X21 (Single Point Design Responsibility) is selected delete the text of clause 21.1 and replace with "The *Contractor* is responsible for the design of all of the *works*".

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

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

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

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

Working with the 25

Z1.13 *Employer and Others* 25.1 The *Contractor* co-operates with the *Project Manager* and Others in obtaining and providing information which they need in connection with their work and the works. He co-operates with Others, coordinates his activities with them and shares the Working Areas with them as stated in the Works Information.

Z1.13.1 25.2 The *Employer* and the *Contractor* provide services and other things as stated in the Works Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the services and other things which he is to provide is assessed by the *Project Manager* and paid by the *Contractor*.

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

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

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

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

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

Subcontracting 26

Z1.14 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

14.1

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

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

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

Z1.14.2

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

~~an NEC contract is proposed or~~
the *Project Manager* has agreed that no submission is required.

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

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

Other responsibilities 27

Z1.15

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

27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for

- the *Project Manager*,
- the *Supervisor* and
- Others notified to him by the *Project Manager*.

27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* or the *Supervisor*.

Z1.15.1

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

3 Time

Starting, Completion and 30

Z1.16

Key Dates

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

Z1.16.1

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

Z1.16.2

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

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

The programme 31

Z1.17

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

Z1.17.1

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

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

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

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

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

Revising the programme 32

Z1.18
Z1.18.1

32.1 The *Contractor* shows on each revised programme

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

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

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

Access to and use of 33

Z1.19

the Site

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.

Z1.19.1

Z1.19.2

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

Instructions to stop or 34

not to start work

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

Take over 35

Z1.20

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

Z1.20.1

35.2 The *Employer* may use or permit Others to use any part of the *works* before Completion has been certified. If he does so, he does not ~~take~~ *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.
- 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 B clause).

Z1.40.1A

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.

42.1

- 42.2 Subject to sub-clause 46, until the *defects date*, the *Supervisor* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Supervisor* of each Defect as soon as he finds it.

Correcting Defects 43

Z1.22

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

Z1.22.1

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

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

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

Accepting Defects 44

44.1 The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.

44.2 If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

Uncorrected Defects 45

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

45.2 If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

Critical Defects 46

Z1.23

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

Payment

Assessing the amount 50

Z1.24

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

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

Z1.24.1

50.1A The *Contractor* submits an application for payment to the *Project Manager* in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated.

50.2 The amount due is

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

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

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

Z1.24.2

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

Z1.24.3

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

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

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

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

Z1.24.4

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

Z1.24.5

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

Z1.24.6

50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.

- Z1.24.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The *Project Manager* certifies a payment not later than five days after each payment due date and issues a copy of the payment certificate to the *Contractor* ~~within one week of each assessment date~~. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand. Payments are in the *currency of this contract* unless otherwise stated in this contract.
- Y1.1.2 51.1A The date on which payment becomes due is ~~seven days after the assessment date~~ the later of:
- the assessment date; and
 - fourteen days after the date of receipt by the *Project Manager* of the *Contractor's* application for payment in accordance with clause 50.1A.
- The final date for payment is ~~fourteen days or a different period for payment if 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.

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 B clause)

54 Not used (not an Option B clause)

The Bill of Quantities 55

55.1 **Information in the Bill of Quantities is not Works Information or Site Information.**

Z1.26.1

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

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

then the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this contract.

Z1.27.1

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

6 Compensation events

Compensation events 60

Z1.28

Z1.28.1

60.1 The following are compensation events³, 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 [and provided only to the extent that they are not attributable to the Olympic Embargo]³.

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) The *Contractor* encounters physical conditions which

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

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

(13) A *weather measurement* is recorded

³ Shaded text should be deleted from contract awarded after 2012 Olympics.