

## 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

### Bonus for early Completion X6

X6.1 The *Contractor* is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of

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

until the Completion Date.

## Option X7: Delay damages

### Delay damages X7

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

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

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

X7.3 If the *Employer* takes over a part of the *works* before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Employer* of taking over the part of the *works* as a proportion of the benefit to the *Employer* of taking over the whole of the *works* not previously taken over. The delay damages are reduced in this proportion.

## Option X12: Partnering

### Identified and defined terms X12

X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.

(2) An Own Contract is a contract between two Partners which includes this Option.

(3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.

(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data

states it is in or in an instruction given in accordance with this contract.

(5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

**Actions** X12.2 (1) Each Partner works with the other Partners to achieve the *Client's objective* stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.

(2) Each Partner nominates a representative to act for it in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

**Working together** X12.3 (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

Z1.42 1

(2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it, subject to any obligations of confidentiality owed by that Partner under his Own Contract.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Contractor* changes his programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work.

**Incentives** X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners

## Option X13: Performance bond

### Performance bond X13

Z1.43.1	X13.1 Not used.
Z1.43.2	X13.2 Not used.
Z1.43.3	X13.3 Not used.

## Option X14: Advanced payment to the *Contractor*

### Advanced payment X14

X14.1	Not used.
X14.2	Not used.
X14.3	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 <i>Contractor</i> is not liable for Defects in the <i>works</i> due to his design so far as he proves that he used all the reasonable skill care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the <i>works</i> 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 <i>Contractor</i> 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 <i>retention free amount</i> , an amount is retained in each amount due. Until the earlier of <ul style="list-style-type: none"><li>• Completion of the whole of the <i>works</i> and</li><li>• the date on which the <i>Employer</i> takes over the whole of the <i>works</i></li></ul> the amount retained is the <i>retention percentage</i> applied to the excess of the Price for Work Done to Date above the <i>retention free amount</i> .
	X16.2 The amount retained is halved <ul style="list-style-type: none"><li>• in the assessment made at Completion of the whole of the <i>works</i> or</li><li>• in the next assessment after the <i>Employer</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i>.</li></ul> 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 <i>Employer</i> is entitled to withhold money from the <i>Contractor</i> as a retention, the retention monies are retained by the <i>Employer</i> without obligation to invest and without creating any fiduciary obligation or duty on the part of the <i>Employer</i> to the <i>Contractor</i> or any other person with whom the <i>Contractor</i> has contracted.

- Z1.45.2 X16.4 After the Price for Work Done to Date has reached the *retention free amount*, as an alternative to a cash retention, the *Contractor* may provide a retention bond in a form acceptable to the *Employer* from a bank or an insurer with a minimum credit rating of no less than 'A+' (Standard & Poors) (or its equivalent from each of the rating agencies which rate the bond provider). If the provider of a retention bond no longer holds a long-term credit rating of least 'A' or its equivalent the *Contractor* provides to the *Employer* within 35 days of such request a bond in the same form and amount (net of any claims previously made on the bond) as that originally provided and from a bank or insurer which the *Project Manager* has accepted. Failure by the *Contractor* to provide to the *Employer* a replacement bond will constitute default under the contract sufficient to enable the *Employer* to make a demand under the original bond or terminate the contract.
- Z1.45.3 X16.5 The following applies in respect of a retention bond provided pursuant to clause X16.4:
- until Completion of the whole of the *works*, the amount of the retention bond is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*;
  - the amount of the retention bond is halved at Completion of the whole of the *works* and remains at this amount until the Defects Certificate is issued. No amount is retained after the Defects Certificate has been issued.

## Option X17: Low performance damages

Low performance X17  
Damages X17.1 Not used.

## Option X18: Limitation of liability

- Limitation of liability X18
- Z1.46.1 X18.1 The *Contractor's* liability pursuant to this Contract for loss of profit, indirect or consequential loss, any loss of use, downtime costs, disruption to operations or increase in operating costs or any form of financial or economic loss is limited to the amount stated in the Contract Data (provided that this does not exclude or limit the *Contractor's* liability to pay liquidated damages clause Z2.12 and/or under X7).
- Z1.46.1A X18.1A The *Contractor's* liability to the *Employer* for delay damages under X7 is limited to the amount stated in the Contract Data.
- Z1.46.1B X18.1B The *Contractor's* liability to the *Employer* for liquidated damages under Z2.12 for disruption 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 (other than the *works*) arising out of or caused by the carrying out of the *works* by the *Contractor* and caused by default of the *Contractor* or anybody for whom the *Contractor* is responsible 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.
- Z1.46.3 X18.4 The *Contractor's* total liability pursuant to this Contract (including any collateral warranty provided by the *Contractor* pursuant to this Contract) for all matters arising under or in connection with this contract, including the *Contractor's* liability to pay liquidated damages under clause Z2.12 and/or X7 any losses arising from any nuisance or interference referred to in clause Z2.6, and loss of or damage to property real or personal other than to the *works* other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort including but limited

to negligence), breach of warranty, by way of indemnity (other than the indemnities at clause 83) 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 arising out of or caused by the carrying out of the works by the *Contractor* and caused by the default of the *Contractor* or anybody for whom the *Contractor* is responsible,
- and
- the matters listed in X18.6.

Z1.46.4	X18.5	The <i>Contractor</i> is not liable to the <i>Employer</i> for a matter unless it is notified to the <i>Contractor</i> before the <i>end of liability date</i> .
Z1.46.5	X18.6	The limitations in X18.1, X18.2 and X18.4 do not apply to any liability for: <ul style="list-style-type: none"> <li>• Losses caused by fraudulent acts or acts of a criminal nature;</li> <li>• Losses against which the <i>Contractor</i> is entitled to an indemnity under any policy of insurance; or</li> <li>• any other Losses against which the <i>Employer</i> is entitled to an indemnity under clause 83.</li> </ul>
Z1.46.6	X18.7	Notwithstanding any other clause in this contract the <i>Contractor's</i> , and its Subcontractors', liability for damage to existing structures belonging to the <i>Employer</i> which do not form part of the works and which arises during the carrying out of the works at the Site shall be limited to £25,000 per occurrence and the <i>Employer</i> will ensure that its property insurers waive rights of subrogation against the <i>Contractor</i> and its Subcontractors for such losses.
Z1.46.7	X18.8	Clause X18 shall survive termination or expiry of the contract regardless of cause.

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

<b>Incentives</b>	X20.1	A Key Performance Indicator is an aspect of performance by the <i>Contractor</i> for which a target is stated in the Incentive Schedule. The Incentive Schedule is the <i>incentive schedule</i> unless later changed in accordance with this contract.
	X20.2	From the <i>starting date</i> until the Defects Certificate has been issued, the <i>Contractor</i> reports to the <i>Project Manager</i> his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.
	X20.3	If the <i>Contractor's</i> forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the <i>Project Manager</i> his proposals for improving performance.
	X20.4	The <i>Contractor</i> is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.
	X20.5	The <i>Employer</i> may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

## Option X21: Single Point Design Responsibility

### Single Point Design X21

- Z1.47 **Responsibility**
- 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 responsible for the design of the *works* and for the accuracy of such *Employer's Design Information* listed in the Contract Data as being the responsibility of the *Contractor* except as stated in clause X21.3 below.
- X21.3 Subject to X21.2 the *Contractor* is not responsible for any error, inaccuracy or omission of any kind in the *Employer's Design Information* as originally included in the contract.
- The *Employer* is responsible for the correctness of the following elements of the *Employer's Design Information*:
- (a) data and information stated in the Works Information as being the responsibility of the *Employer*,
  - (b) definitions of intended purposes of the *works* or any part thereof, and
  - (c) criteria for the testing and performance of the completed *works*.
- X21.4 Where either party discovers a mistake, inaccuracy or discrepancy in or omission from the *Employer's Design Information*, it shall inform the other party in writing of his proposed amendment to remove the mistake, inaccuracy, discrepancy or omission. Within two weeks, the *Project Manager* may confirm the 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 confirms or resubmits the proposed amendment to the *Project Manager*. Such process is repeated until the *Project Manager* accepts the *Contractor's* proposed amendment.
- X21.5 Anything which is the *Contractor's* responsibility as set out in Option X21.2 does not give rise to a compensation event.

## Option X23: Key Person Succession Plan

### Key Person Succession Plan X23

- Z1.49
- 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.
- X23.3 Save where a key person is removed pursuant to sub-clause 23.2 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
  - the *Contractor* fails to comply with an accepted key person succession plan,
- 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* decides to reduce or waive this requirement.

## [Option X24: Fee Cap

### Fee Cap X24

- Z1.50
- X.24.1 The Fee is capped at, and will in no event exceed the *fee cap* stated in the Contract Data.]<sup>6</sup>

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<sup>6</sup> To be agreed on a contract by contract basis  
CLLE LUL - Siemens - NEC3 ECC Option E  
Consolidated Conditions of Contract

## Option X25: Escrow Agreement

Escrow Agreement  
Z1.51

### X25

X25.1 In this Secondary Option X25:

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

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

**"Escrow Agreement"** means the form of escrow agreement to be reasonably agreed between the *Employer* and the *Contractor*.

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

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

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

X25.2 Where the Contract Data specifies that this Option is to apply, the *Contractor*, no later than the Contract Date procures that the *Employer*, the Escrow Agent and the *Contractor* execute the Escrow Agreement and thereafter maintains the agreement for a minimum period of 12 years from Completion of the whole of the *works* or earlier termination of the contract. All costs in relation thereto including the costs and fees of the Escrow Agent (including in relation to the amendments to the Escrow Agent's standard form agreement required in order to comply with this Agreement) is borne by the *Employer*. The *Employer* and the *Contractor* mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

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

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

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

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

## OPTION Y

### Option Y(UK)1: Project Bank Account

Not used



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

### Definitions

**Note: incorporated in Schedule 1 and 12.6.**

Z1.54

### 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.

Y2.2 Not used

Y2.3 Not used

### Suspension of performance

Y2.4 If the *Contractor* exercises his right under the Act to suspend performance, it is a compensation event.

### Payment

Y1

Y1.1 **NOTE: As incorporated into clauses 50 and 51 of these consolidated conditions of contract.**

## Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

### Third Party Rights

### Y(UK)3

Y3.1 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation are stated in the Contract Data.

## Option Z: Additional conditions of contract

### Additional conditions of contract

Z1.55.1

The *additional conditions of contract* stated in the Contract Data are incorporated into these consolidated conditions of contract.

## SCHEDULE OF COST COMPONENTS

Z1.56.1

In this Schedule the *Contractor* means the *Contractor* and not his Subcontractors. 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 and
- 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.

The *Contractor* and the *Employer* may agree a schedule of rates for People costs. Where rates are agreed they shall be treated as Defined costs. Agreed rates shall state whether they are inclusive of Fee.

1.1 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Working Areas.

1.2 Payments to people for

- (a) bonuses and incentives
- (b) overtime
- (c) working in special circumstances
- (d) special allowances
- (e) absence due to sickness and holidays
- (f) severance related to work on this contract where such cost arises from a compensation event and has been authorised in writing by the *Project Manager*

1.3 Payments made in relation to people for

- (a) travel
- (b) subsistence and lodging where such costs are incurred wholly and necessarily in connection with the *works* and are agreed in advance by the *Project Manager*
- (c) relocation
- (d) medical examinations
- (e) passports and visas
- (f) travel insurance
- (g) items (a) to (f) for dependants
- (h) protective clothing
- (i) meeting the requirements of the law (save for employer's liability insurance)
- (j) pensions and life assurance
- (k) death benefit
- (l) occupational accident benefits
- (m) medical aid
- (n) a vehicle
- (o) safety training save for project specific safety training which has been authorised in advance by the *Project Manager*
- (p) IT charges and levies for people with the Working Areas.

1.4 The following components of the cost of 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.

Amounts paid by the *Contractor*.

### 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 Working Areas overheads).

2.1 Payments for the hire or rent of Equipment not owned by

- the *Contractor*,
- his parent company or
- by a company with the same parent company

at the hire or rental rate multiplied by the time for which the Equipment is required.

2.2 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

at open market rates, multiplied by the time for which the Equipment is required.

2.3 Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.

If the *Project Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

2.4 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Project Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

2.5 Payments for the purchase price of Equipment which is consumed.

2.6 Unless included in the hire or rental rates, 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.

2.7 Payments for purchase of materials used to construct or fabricate Equipment.

2.8 Unless included in the hire rates, the cost of operatives is included in the cost of people.

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

3.1 Payments for

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

3.2 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*.

4.1 Payments for provision and use in the Working Areas of

- water,
- gas and
- electricity.

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

4.3 Payments for

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land
- (c) compensation for loss of crops or buildings
- (d) royalties
- (e) inspection certificates
- (f) charges for access to the Working Areas
- (g) facilities for visits to the Working Areas by Others
- (h) specialist services
- (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.

4.4 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for

- (a) catering
- (b) medical facilities and first aid
- (c) recreation
- (d) sanitation
- (e) security
- (f) copying
- (g) telephone, telex, fax, radio and CCTV
- (h) surveying and setting out
- (i) computing
- (j) hand tools not powered by compressed air.

**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.

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

5.2 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.

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

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

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

6.3 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

Z1.56.6

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

## SHORTER SCHEDULE OF COST COMPONENTS

Z1.57.1

This schedule is used by agreement for assessing compensation events. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. 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.

The Contractor and the Client may agree a schedule of rates for People costs. Where rates are agreed they shall be treated as Defined costs. Agreed rates shall state whether they are inclusive of Fee.

1.1 Amounts paid by the *Contractor* including those for meeting the requirements of the law (save for employer's liability insurance) 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).

2.1 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.

2.2 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.

2.3 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.

2.4 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.

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

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

2.7 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.
- 3.1 Payments for
- purchasing Plant and Materials,
  - delivery to and removal from the Working Areas,
  - providing and removing packaging and
  - samples and tests.
- 3.2 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*.
- 4.1 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 the provision and use of equipment, supplies and services (excluding accommodation) for 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.
- 4.2 Payments for cancellation charges arising from a compensation event.
- 4.3 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 4.4 Consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* office.
- 4.5 Specialist services.
- 4.6 Payments to a surety for the provision of any performance bond required under Option X13 if Option X13 is used and/or advance payment bond required under Option X14 if Option X14 is used and/or retention bond required under Option X16 if Option X16 is used.
- 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.
- 5.1 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.
- 6.1 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
- 6.2 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 6.3 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,
  - other costs paid to the *Contractor* by insurers and,
  - the cost of excess payments or deductibles.

## **SUPPLEMENTARY NOTES TO THE SCHEDULE OF COST COMPONENTS AND 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 Schedule of Cost Components/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 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*

*Payments made to people for bonuses and incentives:*

*Payments made to people for overtime:*

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

- in excess of 7.5 hours per day (up to a maximum of 37.5 hours per week) by an individual carrying out physical construction works; or
- in excess of 7.5 hours per day (up to a maximum of 37.5 hours per week) by an individual carrying out any other activity

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

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

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

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

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

*Payments made to people for non-productive time*

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

*Payments made to people for training*

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

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

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

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

#### **Section 2: Equipment**

*Payments made for overhead to group companies for Equipment*

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

#### **Section 3: Plant and Materials**

*Payments made for overhead to group companies for Plant and Materials*

Plant and materials overhead cost of group companies subcontracted under this contract will be considered Defined Cost.



## **Section 4: Charges**

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14 (or in the case of the Shorter Schedule of Cost Components, item 11). The charge includes provision and use of equipment, supplies and services for items 44 (a) through (j) (or in the case of the Shorter Schedule of Cost Components, item 41).

Any costs relating to the provision of a replacement retention bond and/or provision of any replacement performance bond and/or replacement advance payment bond 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*

Where not already included in the Plant and Materials charges, hourly rates for categories of employee represent the cost of employment, exclusive of any overheads and the percentage for manufacture and fabrication overhead 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 represent the cost of employment, exclusive of any local and corporate overhead and the percentage for design overhead 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**

### Insurance premiums

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

## **Part B Notes**

Where the *Contractor* is unable to demonstrate that costs have been reasonably incurred by either the *Contractor* or his Subcontractors such costs are Disallowed Costs and not payable Defined Cost.

### **1 - Reasonably Incurred Costs**

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

- 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.

### **2 - 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 clause Z2.5, the *Employer* or his representatives will carry out a range of reviews and detailed open-book audits to verify and provide internal assurances that all costs have been reasonably incurred by the *Contractor* and his Subcontractors and that they accord with the Schedule of Cost Components (or Shorter Schedule of Cost Components) and these Supplementary Notes.







**Siemens Mobility Limited**

## **FRAMEWORK**

**Central Line Signal Life Extension and other works**

**TfL 01042**

**Appendix E**

**Schedules 1 - 9**

## THE SCHEDULES

### Schedule

- 1 Additional Definitions
- 2 Form of Parent Company Guarantee [see "APPENDIX A"]
- 3 Legal Opinion Template [see "APPENDIX B"]
- 4 Form of Warranty from Contractor
- 5 Forms of Warranty from Subcontractor:
  - A. Form of Warranty from Subcontractor to Employer
  - B. Form of Warranty from Subcontractor to Beneficiary
- 6 Forms of Warranty from Subconsultant:
  - A. Form of Warranty from Subconsultant to Employer
  - B. Form of Warranty from Subconsultant to Beneficiary
- 7 Corporate IPR
- 8 Dispute Resolution Procedure
- 9 *Limited Damages*

X

## SCHEDULE 1

### (Additional Definitions)

The following defined terms apply to this contract:

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

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

**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.

**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).

**Commercially Sensitive Information** means the information listed in Appendix K of the Framework Agreement which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss.

**Conflict Avoidance Panel** means an independent person or persons appointed from time to time in accordance with clause Z2.10.

**Connect Contract** means the telecommunications contract between the Employer and the Connect Contractor.

**Connect Contractor** means Citylink Telecommunications Limited.

**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.

**Contractor's Group** means the companies in which the Contractor's Parent Company including the Contractor incorporated in the United Kingdom holds an interest greater than 51%.

**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 and amendments to those regulations.

**Contract Information** means, for the purposes of Z2.16 and Z2.19, (i) this contract in its entirety (including from time to time agreed changes to this contract), but excluding to the extent the Employer is able to Commercially Sensitive Information belonging to the Contractor or Group Companies including any price breakdown 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. The Employer in exercising its discretion referred to in (i) will take reasonable steps to consult the Contractor.

**Controller** has the meaning given to it in the GDPR.

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

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Legislation** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Officer** has the meaning given to it in the GDPR.

**Data Subject** has the meaning given to it in the GDPR.

**Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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

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

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

**DPA2018** means the Data Protection Act 2018.

**European Standards** means those standards ratified by the European Committee for Standardization (CEN) of Rue de la Science 23, B-1040 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.

**Framework Agreement** means the framework agreement entered into by the Employer and the Contractor under which this contract is a “Project Contract”;

**GDPR** means the General Data Protection Regulation (Regulation EU 2016/679).

**GLA Act** means the Greater London Authority Act 1999.

**Greater London** means that term as it is used in the GLA Act.

**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** has the meaning as ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

**International Standards** means those Standards produced by the International Standards Organisation (ISO)) BIBC II, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland.

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

**LED** means the Law Enforcement Directive (Directive EU 2016/680).

**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*.

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

**LUL Standards** means the individual LUL standards as specified in section WI 200 of the Works Information.

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

**Mayor** means the person from time to time holding the office of Mayor of London as established by the GLA Act.

**Minimum Records** means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-sub-contractors of any tier);
- (b) correspondence between the *Employer* and the *Contractor*;
- (c) detailed inspection records;
- (d) accounting records (in hard copy as well as computer readable data) (OPTION E ONLY);
- (e) general ledger entries detailing cash and trade discounts and rebates (OPTION E ONLY);
- (f) records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and



(g) test and commissioning results.

**Operator** means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway.

**Pay Less Notice** means the notice referred to in clause Y2.3.

**Personal Data** has the meaning given to it in the GDPR and relates only to personal data, or any part of such personal data, for which the *Employer* either alone or jointly with others is the Controller.

**Personal Data Breach** has the meaning given to it in the GDPR.

**Processor** has the meaning given to it in the GDPR.

**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 the Part 3 of the Criminal Finances Act 2017,
  - under any law or legislation creating offences in respect of fraudulent acts, or
  - at common law in respect of fraudulent actsin relation to this contract or any other contract with the *Employer*; or
- (d) defrauding or attempting to defraud the *Employer*.

**Project** means the project to carry out and complete the *works* as described in the Works Information.

**Protective Measures** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

**Relevant Individual** means, for the purposes of Z2.20, 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, for the purposes of Z2.20, any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

**Responsible Procurement Principles** mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated June 2017 and as may be updated from time to time.

**RICS** means the Royal Institution of Chartered Surveyors.

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

**Standards** means the following standards listed in order of priority with a lower ranking standard only applicable where a higher ranking standard is not applicable:

- First: LUL Standards;
- Second: European Standards;
- Third: International Standards and associated codes of practice.

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

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

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

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

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

**Systems** means any components, computers, software, firmware and operating systems, printed circuit boards, assemblies, sub-systems, line-side equipment, wiring, and associated support equipment including power systems supplied, or designed by, the Contractor or its predecessors on the Underground Network;

**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.

**Transparency Commitment** means, for the purpose of Z2.16, Local Government Transparency Code dated February 2015 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and data from invoices received.

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

**SCHEDULE 2**  
Form of Parent Company Guarantee



**SCHEDULE 3**

Form of Legal Opinion Letter



## Schedule 4

### (Form of Warranty from *Contractor* to a TfL Group Party or Connect Contractor)

**THIS DEED** is made on ● 201 ●  
**BETWEEN:**

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

#### **WHEREAS:**

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

B) The Beneficiary is a member of the TfL Group [and has an interest in the works as ●.]

#### **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. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed, the *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;

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<sup>1</sup> Insert the details of the relevant member of the TfL Group.



- (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* will on Completion comply with all applicable law and all relevant Standards.
- 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 £10 million 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. To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the *works* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:
  - (a) understanding the *works*;
  - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
  - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
  - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;

- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose.

7A. The granting of the licences in clause 7 is with the proviso that:

- (a) The Beneficiary has no right to decompile any software which forms part of the intellectual property rights licensed to the Beneficiary nor shall the Beneficiary attempt to derive any algorithms, techniques or other features of the software; and
- (b) Notwithstanding any foregoing provisions of this clause no license shall be granted to the Beneficiary to reproduce or have reproduced the *works* in part or in whole; and neither shall any licence be granted to the Beneficiary to make or have made components or spare parts which are protected by intellectual property rights vested in the *Contractor* or any of its Subcontractors or suppliers.

8. The *Contractor* agrees:

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

9. If called upon to do so by the Beneficiary, the *Contractor* shall provide the Beneficiary with such information relating to the *works* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Contractor* for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Contractor* under the Contract or relieve the *Contractor* from any liability which it has in relation to the *works*.

10. This Deed may be assigned by the Beneficiary to any member of the TfL Group and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "TfL Group" means Transport for

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

11. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works*.
13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.
14. The *Contractor* shall not be liable to the Beneficiary under this Deed for any delay to Completion of the *works*.
- 15.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations, and no greater liability, to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer*.
- 15.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.

18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]<sup>2</sup>

In the presence of:

Authorised Signatory \_\_\_\_\_

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

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 CONTRACTOR ]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary ]

<sup>2</sup> Insert name of member of TfL Group



## SCHEDULE 5A

### (Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 201 ●  
BETWEEN:

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

#### WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "*Contract*") with the *Employer* for the design and carrying out of certain [**Works and/ or Services**] at ● (the "*works*").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "*Subcontract*") with the *Contractor* for the design and carrying out of certain parts (the "*subcontract works*") of the *works* more particularly defined in Annex ● hereto<sup>3</sup>.

#### NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
  - (a) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
  - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
  - (c) Not Used.
  - (d) "Prohibited Act" means:

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<sup>3</sup> A description of the works should be provided in the Annex.



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

2. The Subcontractor warrants and undertakes to the *Employer* that:

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

- (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subcontractor further warrants and undertakes to the *Employer* that:
- (a) [*the subcontract works will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract*<sup>4</sup>];
  - (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) Not Used;
  - (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][product liability]<sup>5</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>6</sup> 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 *subcontract works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available.

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<sup>4</sup> Only relevant where the Subcontract is entered into a performance or output based specification.

<sup>5</sup> Delete as appropriate



When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record].

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

provided always that the licence shall not include any right decompile any computer software, or to manufacture spare parts or components and the *Employer* shall not attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub-licensee and the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

(a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and

(b) at the Subcontractor's expense to provide the *Employer* with a set of all such material on Completion of the *subcontract works*.

9. *Not Used.*

10. Not Used.

11. *Not Used.*

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* 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 on two further 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 *subcontract works*.
19. *Not Used.*
- 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 Not Used.

21.1 The Subcontractor shall owe no greater obligations or liability to the *Employer* than he owes to the *Contractor* under the Subcontract.

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

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

**EXECUTED AND DELIVERED AS A DEED**

by affixing the Common Seal of

[ ]

In the presence of:

Authorised Signatory

\_\_\_\_\_

**THE COMMON SEAL of  
[THE SUB-CONTRACTOR]**

was affixed to **THIS DEED**

in the presence of:

Signature of Director

.....

Print name of Director

.....

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

]

**ANNEX**

***(subcontract works)***

## SCHEDULE 5B

### (Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 201 ●

#### BETWEEN:

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

#### WHEREAS:

- (A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ● whose registered office is situate at ● (the "**Employer**") which expression shall include its successors and assigns for the design and carrying out of certain [**Works and/ or Services**] at ● (the "**works**").
- (B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the *Contractor* for the design and carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in *Annex* ● hereto<sup>7</sup>.
- (C) The Beneficiary is a member of the TfL Group [and has an interest in the *works* as ●]

#### NOW IT IS AGREED:

- 27. 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) "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 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".

<sup>7</sup> A description of the works should be provided in the Annex.



28. 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.
29. 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.
30. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed the 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<sup>8</sup>];
  - (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; and
  - (c) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards.
31. 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][product liability]<sup>9</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>10</sup> 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 *subcontract 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.

<sup>8</sup> Only relevant where the Subcontract is entered into an a performance or output based specification.

<sup>9</sup> Delete as appropriate

<sup>10</sup> The PI figure should be the same as the figure inserted in the Contract Data.

32. 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.
33. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the Beneficiary an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
  - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
  - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
  - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
  - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
  - (f) executing or completing the *works*; and
  - (g) designing, testing and commissioning the *works*

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

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

35. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.
36. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and on two further 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.
37. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
38. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 39.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract.
- 39.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
40. 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.
41. 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.
42. 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.

- 43.1 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).
- 43.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 43.3 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.
44. 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**

by affixing the Common Seal of

[ ]<sup>11</sup>

In the presence of:

Authorised Signatory

\_\_\_\_\_

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

acting by:

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:**

<sup>11</sup> Insert name of member of TfL Group

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 Subconsultant to Employer (where Subconsultant is providing consulting services))

THIS DEED is made on ● 201 ●

#### BETWEEN:

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

#### WHEREAS:

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

#### NOW IT IS AGREED:

45. 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) "Prohibited Act" means:

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<sup>1</sup> Insert details of relevant member of the TfL Group.



- (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*.
- (d) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (e) "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.
- (f) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".

46. 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.
47. 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 is not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
48. 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) Not Used;
  - (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.
49. 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][product liability]<sup>2</sup> insurance with a limit of indemnity of not less than £[2 million]<sup>3</sup> 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 *design 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].
50. 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.

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<sup>2</sup> Delete as appropriate

<sup>3</sup> The PI figure should be the same as the figure inserted in the Contract Data.

51. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:

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

provided always that the licence shall not include any right decompile any computer software, or to manufacture spare parts or components and the *Employer* shall not attempt to derive any algorithms, techniques or other features of the software and any sub-licence granted by the *Employer* shall similarly apply these prohibitions to the sub- licensee and Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

52. 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*.

53. 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*.

54. 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.
55. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
56. 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*.
- 57.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* 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.
- 57.2 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.

58. 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.
59. 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.
60. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and on two further 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.
61. 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.
62. The liability of the Subconsultant under this Deed shall cease 12 years following completion of the whole of the *design works*.
- 63.1 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.
- 63.2 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*.
- 63.3 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.
- 63.4 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.
- 63.5 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.
- 63.6 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.
- 63.7 Not Used.
- 64.1 The Subconsultant shall owe no greater obligations or liability to the *Employer* than he owes to the *Contractor* under the Appointment.
- 64.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.

65. 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.
66. 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.
67. 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.
- 67.1 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).
- 67.2 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.
- 67.3 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.
68. 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**

by affixing the Common Seal of

[ ]<sup>4</sup>

In the presence of:

Authorised Signatory

\_\_\_\_\_

<sup>4</sup> Insert name of member of TfL Group

**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