

London Underground Limited (LUL)

Deep Tube Upgrade Programme (DTUP)

One Person Operation (OPO) CCTV System Contract

Section 2

Implementation Work Terms

Schedule 1A

Master Conditions of Contract

FOR EXECUTION

Section 2:
Implementation Works Terms

Schedule 1A:

Master Conditions of Contract

SCHEDULE 1A: MASTER CONDITIONS OF CONTRACT

CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION D

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CORE CLAUSES

1 General

- Actions 10**
- 10.1 The *Employer*, the *Contractor* and the *Project Manager* ~~and the *Supervisor*~~ shall act as stated in this contract and in a spirit of mutual trust and co-operation.
- Identified and defined Terms 11**
- Z1.1
- 11.1 In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials.
- 11.1A These Implementation Works Terms comprise the documents listed below for the Order to which these Implementation Works Terms relate and the rights, duties and obligations contained therein:
- (a) these Master Conditions of Contract (and where applicable any references to the General Terms);
 - (b) the Specific Clauses;
 - (c) not used;
 - (d) the Specific Contract Data;
 - (e) the Specific Bill of Quantities;
 - (f) the Common Works Information; and
 - (g) the Specific Works Information,
- together in each case with all other documents, schedules, annexes and appendices referred to therein.
- 11.1B Except as otherwise expressly provided, if there is any inconsistency between the terms included in this contract for the relevant Order, the Appendices to these conditions and specific clauses (if any), the Works Information or any other document referred to or incorporated into this contract for the relevant Order, the order of priority for the purposes of construction is:
- First: the terms of this contract as amended by any specific clauses (including the references to the General Terms, the Specific Contract Data and any necessary parts of the Common Works Information and/or the Specific Works Information);
- Second: the Common Works Information as amended by the Specific Works Information;
- Third: the remaining Appendices to this contract; and
- Fourth: any other documents referred to in this contract.
- 11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the *Project Manager*. The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.
- (2) Completion is when the *Contractor* has
- done all the work which the Works Information states he is to do by the Completion Date; ~~and~~
 - satisfied all the pre-conditions which the Works Information states he is to satisfy by the Completion Date; and

- corrected notified Defects which would have prevented the *Employer* from using the *works* and Others from doing their work.

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

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

Z1.1.1 (4) The Contract Date is the date ~~when this contract came into existence of~~ **this contract.**

Z1.1.2 (5) A Defect is

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

Z1.1.3 (6) The Defects Certificate is either a list of Defects that the ~~*Supervisor*~~ *Project Manager* or **the Contractor** has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.

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

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

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

Z1.1.4 (10) Others are people or organisations who are not the *Employer*, the *Project Manager*, ~~the *Supervisor*, the *Adjudicator*,~~ **the Adjudicator**, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

Z1.1.5 (11) The Parties are the *Employer* (**which expression includes his successors in title and assigns**) and the *Contractor*.

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

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

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

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

(16) Site Information is information which

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

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

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

(18) The Working Areas are those parts of the the Underground Network which are

- necessary for Providing the Works and

- used only for work in this contract

unless later changed in accordance with this contract.

(19) Works Information is information which either

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

and is either

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

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

(23) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
 - retention,
 - payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,
 - the correction of Defects after Completion,
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract
 and
- the cost of components in the Schedule of Cost Components for other work

less Disallowed Cost and shall not include Defined Cost incurred or accrued for each assessment interval in excess of the Initial Design Phase Payments set out in Table A and, in the case of a termination under Clause 29.3 (a) of the General Terms, any Defined Cost reasonably incurred in expectation of completing the whole of the works during the Initial Design Phase.

(23A) The Defined Cost plus Fee shall not exceed the Initial Design Phase Payment for an assessment interval set out on Table A during the Initial Design Phase.

Z1.1.6

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

- is not justified by the *Contractor's* accounts and records or has not been reasonably incurred,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- is expressly stated in the contract or the Works Information to be Disallowed Cost
- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Works Information or
 - give an early warning which this contract required him to give
 - comply with this contract;
 - comply with a subcontract;
 - obtain the best value terms and conditions from responsible Subcontractors, suppliers or people in respect of any element of cost; or
 - proceed regularly or diligently with the *works*;
 - results from paying a Subcontractor more for a compensation event than is included in the quotation or assessment for the compensation event accepted by the *Project Manager*;

and the cost of

- correcting Defects and Software Defects after Final Completion,

- correcting Defects and Software Defects before Final Completion caused by the *Contractor*
 - not complying with the accepted quality plan referred to in the Works Information or in these Implementation Works Terms; or
 - not complying with a constraint on how he is to Provide the Works stated in the Works Information,
- correcting Recurrent Failures or Related Recurrent Failures,
- the cost of compliance with the *Contractor's* obligations under Clause 43.5 and/or the cost of providing any Recurrent Failure Solution;
- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and
- fines for contravening laws / regulations / procedures;
- payments that should not have been made under a subcontract or purchase order / agreement without said documents having been executed;
- wherever these Implementation Works Terms require an acceptance by the *Project Manager* before the *Contractor* can proceed but has not been accepted by the *Project Manager* for a reason provided in writing;
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requests, including personnel or staffing resources (after allowing for reasonable availability and usage);
- a Key Person not appointed in accordance with this contract,
- rework as a result of *Contractor's* act omission or default under or in connection with this contract and
- preparation for and conduct of an adjudication or proceedings of the tribunal and
- fines, charges, penalties and fees imposed on or accepted by the *Contractor* as a result of any unsafe, unlawful or criminal conduct or any infringement or disregard of any Statutory Requirement
- costs incurred by the Contractor pursuant to Clauses Z2.28.1 and Z2.28.2 where Malicious Software originates from:
 - (a) the Software supplied by the Contractor (unless the Employer has expressly agreed in writing to waive the obligation at Z2.28.1); or
 - (b) the Employer Data whilst it was under the control of the Contractor or a Subcontractor unless the Contractor demonstrates that such Malicious Software was present and not quarantined or otherwise identified by the Employer when provided to the Contractor.

(29) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee **save that in the following cases the Fee is not payable as part of the Price for Work Done to Date:**

- the cost of correcting Defects or Software Defects or Recurrent Failures or providing a solution for Recurrent Failures in the works whether or not notified before Completion;
- the cost of correcting Defects or Software Defects or Recurrent Failures or providing a solution for Recurrent Failures in the works arising after Completion;

No Fee is payable in respect of the cost of any bond provided by the *Contractor* under this contract.

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

Z1.1.7

(33) The Total of the Prices is the total of

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

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

Z1.2

11.3 Additional defined terms are included in Schedule 1.

Interpretation and the law

12

Z1.3

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

Z1.3.1

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

Z1.3.2

12.1B In this contract, unless the context otherwise requires, references to:
(a) "including" means "including without limitation", and
(b) "fault" of the *Employer* or the *Contractor* include the breach, unlawful act, negligence, omission, default or failure to comply with any provision of this contract of the *Employer* or the *Contractor* (as the case may be).

Z1.3.3

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

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

Z1.3.4

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

Z1.3.5

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

Z1.3.6

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

Y2.1(2)

12.6 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.

Z1.3.7

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

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

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

- Z1.3.8 12.8 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- Z1.3.9 12.9 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions continue to be valid.

Communications 13

Z1.4

Z1.4.1

- 13.1 ~~The *Employer*, the *Contractor*, the *Project Manager* and the *Supervisor*~~ comply with the communications requirements in the Works Information (including email and web based collaboration tools). Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. ~~For the avoidance of doubt, communications relating to termination of the *Contractor's* obligation to Provide the Works or notification of a dispute are not given by email.~~
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data. ~~Where a communication is uploaded to a web based collaboration tool in accordance with the Works Information, it has effect when it is properly posted on that web server.~~
- 13.3 If this contract requires the *Project Manager*, ~~the *Supervisor*~~ or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. ~~The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.~~
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.9 ~~Notwithstanding Clauses 13.1-13.2, unless the *Project Manager* gives an instruction suspending the operation of CAMS, communications are only effective if made through CAMS and the Parties follow any procedure necessary to give effect to CAMS. The *Employer* provides the *Contractor* with free and continuous access to CAMS. If the *Contractor's* access to CAMS is withdrawn by the *Employer* or the *Project Manager*, the *Contractor* and the *Employer* shall immediately be entitled to recover all shared contract data stored on CAMS.~~

The *Project Manager* and the *Supervisor* 14

Z1.5

- 14.1 ~~The *Project Manager's* or the *Supervisor's*~~ acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 ~~The *Project Manager* and the *Supervisor*~~, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* ~~or the *Supervisor*~~ in this contract includes an action by his delegate.

- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* ~~or the Supervisor~~ after he has notified the *Contractor* of the name of the replacement.
- Y2.1/Z1.5.1 14.5 The *Project Manager* is for relevant purposes the “specified person” as defined in section 110A(6) of the Act.

Adding to the Working Areas 15

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

Early warning 16

Z1.6
Z1.6.1

- 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - delay Completion,
 - delay meeting a Key Date, or
 - impair the performance of the works in use
 - adversely affect the work of Others,
 - adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged on the project) and/or cause any disruption to the operation of the Underground Network.

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

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

- 16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.
- 16.5 Where the Works Information requires the *Employer*, the *Project Manager* and/or the *Contractor* to maintain other risk registers, these other risk registers are not the Risk Register.

Ambiguities and Inconsistencies 17

- 17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency. Where the ambiguity or inconsistency relates to a standard of performance, the higher standard applies and a compensation event does not arise.

Illegal and impossible 18

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

Prevention 19

19.1 If an event occurs which

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

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works 20

- Z1.7
- 20.1 The *Contractor* Provides the Works in accordance with the Works Information.
- 20.2 The *Contractor* warrants, undertakes and represents to the *Employer* that the works:
- meet the requirements of, and are constructed in accordance with:
 - the Works Information;
 - any method statements accepted by the *Project Manager*; and
 - any *Contractor's* design which has been accepted by the *Project Manager*; and
 - are constructed, manufactured, fabricated, installed and tested in a good and workmanlike manner using Equipment and Materials which are of satisfactory quality, sound and free from Defects or Software Defects.
- 20.3 The *Contractor* advises the *Project Manager* on the practical implications of the design of the works and on subcontracting arrangements.
- Z1.7.1
- 20.4 The *Contractor* prepares forecasts of the total Defined Cost for the whole of the works in consultation with the *Project Manager* and submits them to the *Project Manager*. Forecasts are prepared at the intervals stated in the Contract Data from the *starting date* until Completion of the whole of the works. **Each forecast is in a format prescribed in the Works Information and contains an explanation of the changes made since the previous forecast is submitted with each forecast.**
- 20.5 The *Contractor* warns the *Project Manager* if he reasonably considers any construction method or design prescribed in the Works Information or instructed by the *Project Manager* to be dangerous or to be unsafe or hazardous to any party involved with the construction of the works or to any subsequent occupier or user of the works.
- Z1.7.2
- 20.6 These *conditions of contract* and the warranties and undertakings in them are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.
- 20.7 The *Project Manager* instructs the omission of any work which the *Contractor* is to have performed for any reason. Where the *Project Manager* instructs the omission of any work, the *Project Manager* includes in his instruction (where required) that the *Contractor* shall novate or assign to the *Employer* or *Others* the benefit of any subcontract or other contract relating to the performance of the omitted work. The instruction will be a change to the Works Information and the Prices will be reduced subject to the provision of clause 20.8.
- If the *Project Manager* issues instructions in the aggregate that omit any part of the works (whether or not the *Contractor* has started Providing the Works in relation to that part), that do not exceed 25% of the Prices, the *Contractor* is not entitled to claim loss of Fee or breach of contract for not Providing the Works in their entirety. If the *Project Manager* issues instructions in the aggregate that omit any part of the works (whether or not the *Contractor* has started Providing the Works in relation to that part), that exceeds 25% of the Prices, the *Contractor* is not entitled to claim for breach of contract but is entitled to claim loss of Fee for not Providing the Works in their entirety, but only to the extent that the loss of Fee is applied to those instructions that in the aggregate exceed 25% of the Prices.
- Such instruction to omit any part of the works may be made for any reason whatsoever and the *Employer* may, at its sole discretion, instruct *Others* to carry out any omitted part of the works.

- 20.8 The following cancellation costs relating to work in respect of which the *Project Manager* has instructed an omission of work are deemed to be a Defined Cost (save where such omission is as a result of an act, omission or default by the *Contractor* or any of its Subcontractors in Providing the Works):
- (a) the forecast Defined Cost of removing any Equipment no longer required as a result of the omission, and of making safe and protecting the works and of making safe the Site as required as a result of the omission;
 - (b) the costs reasonably incurred by the *Contractor* in expectation of completion the omitted work if and to the extent that the *Contractor* has previously notified those costs to the *Project Manager* in accordance with the Works Information and those costs could not be mitigated or avoided and save where the costs relate to a contract which is novated pursuant to clause 20.7.
- 20.9 The *Contractor* has no claim against the *Employer* on the *Contractor's* own account or on the account of any Subcontractor for any loss of profit, loss of business opportunity, loss of goodwill, loss of contract or any indirect or consequential loss.

The *Contractor's* design 21

Z1.8

Z1.8.1

Z1.8.2

- 21.1 The *Contractor* is responsible for the design of all the works.
- 21.2 The *Contractor* submits the particulars of his design as the Works Information requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Works Information, this contract or the applicable Law.

The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted his design. Without prejudice to the preceding parts of Clause 21.2, the *Project Manager* may make comments and recommendations as to the particulars of the *Contractor's* design. The *Contractor* takes notice of the *Project Manager's* comments and recommendations in his design. Acceptance of the *Project Manager's* recommendations and comments does not reduce or amend the *Contractor's* obligations and liability under this contract in respect of his design.

- 21.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.
- 21.4 The *Contractor* in Providing the Works complies with and adheres to the BIM Protocol.
- 21.5 Subject to Clause Z2.7, the *Contractor* obtains from or gives to Others all licences (including but not limited to licences of software, hardware and any computer product, application or system), consents, notices and approvals necessary or appropriate to enable him to Provide the Works, other than those which the Works Information states will be obtained by the *Employer*. The *Contractor* ensures that the conditions or requirements of licences (including but not limited to licences of software, hardware and any computer product, application or system), consents, notices and other approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that such licences, consents, notices and other approvals are renewed whenever necessary or appropriate.

Using the *Contractor's* Design 22

Z1.9

Z1.9.1

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

- 22.2 Without prejudice to its other obligations under this contract, if the *Contractor* acting as a reasonably competent and experienced contractor in Providing the Works (including related management processes defined or referenced in this contract) becomes aware of any error or inaccuracy in information, the *Employer* is obliged to provide pursuant to, or stated in, the Works Information, he shall:
- notify the *Project Manager* as soon as practicable after he becomes aware of any error or inaccuracy in such information; and
 - after becoming aware, take all steps reasonably required to mitigate the impact of the error or inaccuracy.

Design of Equipment 23

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

People 24

Z1.10
Z1.10.1

- 24.1 The *Contractor* complies with Option X23 and the *Contractor* either employs each Key Person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Project Manager*. The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

Z1.10.2

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

Z1.10.3

- 24.3 Subject always to clause 24.1 the *Contractor* shall give the *Project Manager* not less than 90 days' prior written notice of the proposed replacement of a Key Person.

Working with the Employer and Others 25

Z1.11

- 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others, and shares the Working Areas with them as stated in the Works Information.

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

Z1.11.1

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

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

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

- 25.4 In Providing the Works, the *Contractor* complies in all respects with the Systems Engineering Integration and Interface Schedule at Schedule 9 hereto.

- 25.5 Where the Systems Engineering Integration and Interface Schedule designates the *Contractor* to act as the principal delivery partner for any part of the Works, the *Contractor* acts diligently, provides all information required by the Rolling Stock Manufacturer and takes all reasonable steps to procure that the Rolling Stock Manufacturer carries out its obligations under the Systems Engineering Integration and Interface Schedule in accordance with the requirements of the Systems Engineering Integration and Interface Schedule.
- 25.6 Where the Systems Engineering Integration and Interface Schedule designates the Rolling Stock Manufacturer to act as the principal delivery partner for any part of the works, the *Contractor* Provides the Works for those parts of the works in accordance with the requirements of the Systems Engineering Integration and Interface Schedule.

Subcontracting 26

Z1.12
Z1.12.1

- 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted and he complies with the provisions of the Works Information. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.
- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance other than those nominated Subcontractors detailed in the Contract Data who were nominated in its accepted tender submission. The *Project Manager* accepts the identity of the nominated Subcontractors detailed in the Contract Data and, subject to the *Project Manager* accepting the terms of their subcontracts, the *Contractor* appoints those nominated Subcontractors in connection with the works. The *Contractor* submits details of all subcontracts (including a complete draft subcontract) proposed to be awarded to its proposed Subcontractors including those nominated Subcontractors listed in the Contract Data. Wherever appropriate, the *Contractor* uses the NEC Engineering and Construction Subcontract, Supply Contract or Professional Services Contract. A reason for not accepting the any Subcontractor or subcontract is that his appointment will not allow the *Contractor* to Provide the Works; or he or it is unable to meet to the *Project Manager's* reasonable satisfaction, the criteria set out in the Works Information. The *Project Manager* does not withhold his acceptance unreasonably. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.

The *Contractor* does not subcontract:

- to any division or subsidiary of the *Employer* or any division or subsidiary of the *Employer's* parent company; or
- to any division or subsidiary of the *Contractor* or to any division of the *Contractor's* parent company or to any other company in the same group as the *Contractor*,

without the prior written consent of the *Project Manager*, which shall not be unreasonably withheld.

This clause does not apply where the *Contractor* submitted the name of a subcontractor with design responsibility for the transmission element of the OPO CCTV System which is accepted by the *Project Manager* on condition that a collateral warranty is delivered pursuant to clause Z2.2 of this contract.

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

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

~~The Contractor does not appoint a Subcontractor on the proposed subcontract conditions submitted until the Project Manager has accepted them.~~

~~A reason for not accepting them is that:~~

- ~~• they will not allow the Contractor to Provide the Works, or~~
- ~~• they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.~~

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

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

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

Unless otherwise notified by the *Project Manager* (which shall be at his sole discretion), the *Contractor* ensures that the terms of any subcontract with a Subcontractor (including any nominated Subcontractor detailed in the Contract Data):

- contain provisions in substantially the same form as the equivalent provisions contained in these Implementation Works Terms:
 - requiring the Subcontractor to act in a spirit of mutual trust and cooperation;
 - requiring, where applicable, the Subcontractor to meet the Conditions stated for a Key Date on or before such Key Date and to achieve Completion on or before the Completion Date and to minimise the level of Defined Cost;
 - requiring the Subcontractor to maintain accounts and records and grant audit rights to the *Employer* and its authorised representatives of an equivalent extent and nature to those required by these Implementation Works Terms;
 - requiring the Subcontractor to assign to the *Employer* the IPR in all documents, drawings, materials, computer software and any other material or works prepared or developed by or on behalf of the Subcontractor in the performance of the subcontract other than Off the Shelf Software;
 - requiring the Subcontractor to grant a non-exclusive, royalty-free licence to the *Employer* for a period of not less than twenty years from Completion to use the IPR of an equivalent extent and nature to those required by these Implementation Works Terms other than Off the Shelf Software;
 - imposing equivalent obligations regarding software and escrow on the Subcontractor to those required by these Implementation Works Terms;
 - imposing equivalent obligations of confidentiality on the Subcontractor to those required by these Implementation Works Terms;

- require the Subcontractor to enter into:
 - a subcontractor warranty in the form included in Schedule 4, and where the Subcontractor is domiciled outside England and Wales, the *Contractor* shall also provide a legal opinion in the form attached in the General Terms.
 - except in the case of an Associated Company, a parent company guarantee in the form provided by the *Employer*, from the ultimate holding company of the Subcontractor in respect of any of the Subcontractor's obligations under any subcontractor warranty required under this sub-clause, and where the parent company is domiciled outside England and Wales, the *Contractor* shall also provide a legal opinion and shall ensure that the opinion is in a form to be agreed by the *Project Manager*,
 - in the case of any Subcontractor providing software, other than Off the Shelf Software, for incorporation or operation of the *works* a software escrow agreement on similar terms to the Escrow Agreement; and
 - in the case of Subcontractors supplying Equipment and Materials, a product warranty in favour of the *Employer* to repair or replace defective products for a period of 2 years after the item is delivered,

and the *Contractor* uses his best endeavours to obtain and provide the same if required by the *Employer*.

In addition to the product warranty referred to above, in the case of Subcontractors supplying Equipment and Materials, the *Contractor* shall provide to the *Employer* the benefit of any warranty or guarantee in relation to repairing or replacing defective products or parts in such Equipment and Materials which such Subcontractor has provided to the *Contractor*, to the extent the *Contractor* is able to transfer such benefit to the *Employer*

26.4 The *Contractor* gives the *Employer* a true copy of each subcontract entered into by the *Contractor* within 7 days of the date of that subcontract.

Other responsibilities 27

Z1.13

- 27.1 The *Contractor* obtains approval of his design from Others where necessary.
- 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for
- the *Project Manager*, and
 - ~~the Supervisor and~~
 - Others notified to him by the *Project Manager*.
- 27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* ~~or the Supervisor~~.

Z1.13.1

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

27.5 The *Contractor's* method statements contain information relating to the methods of constructing the *works*, including details of the Equipment and Materials which the *Contractor* proposes to adopt or use and, if requested by the *Project Manager*, such calculations of stresses, strains and deflections which will arise in the *works* and any parts of the *works* during construction. The *Contractor's* method statements include sufficient details to enable the *Project Manager* to decide whether, if the methods are adhered to, the *works* can be executed in accordance with the Works Information and without detriment or damage to the railway infrastructure, to the property of the *Employer* and Others or to the completed *works*.

3 Time

	Starting, Completion and Key Dates	30	
Z1.14		30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
Z1.14.1		30.1A	The <i>Contractor</i> notifies the <i>Project Manager</i> when in his opinion the <i>works</i> will have been completed in accordance with this contract and requests an inspection. The <i>Project Manager</i> and the <i>Contractor</i> undertake such inspection in accordance with the requirements set out in the Works Information and the applicable law.
Z1.14.2		30.2	The <i>Contractor</i> provides all information and evidence listed or identified in the Works Information as being required and all other information and evidence which is necessary to demonstrate that the <i>works</i> have been so completed. If the <i>Project Manager</i> is satisfied that the <i>works</i> have been so completed, he Project Manager decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion. If the <i>Project Manager</i> is not so satisfied, he notifies the <i>Contractor</i> of his reasons for not accepting that the <i>works</i> have been completed and the <i>Contractor</i> notifies the <i>Project Manager</i> in accordance with clause 30.1A when the necessary corrective action has been taken.
		30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
	The programme	31	
Z1.15		31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
Z1.15.1		31.2	The <i>Contractor</i> shows on each programme which he submits for acceptance <ul style="list-style-type: none">• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,• planned Completion,• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,• provisions for<ul style="list-style-type: none">• float,• time risk allowances,• environmental and health and safety requirements and• the procedures set out in this contract,• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none">• any access in accordance with the access requirements in the Works Information and access to a part of the Site if later than its <i>access date</i>,• acceptances,• Plant and Materials and other things to be provided by the <i>Employer</i> and• information from Others,• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use, and• other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.

- 31.3 Within two weeks of the *Contractor* submitting a programme to him for acceptance, the *Project Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a programme is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Works Information.

31.4 If, on three (3) consecutive submissions the *Project Manager* does not accept the *Contractor's* programme the Parties must agree to appoint a mediator within eight weeks of the *Project Manager's* notification of its non-acceptance. If the Parties have not reached agreement within eight weeks, either Party may apply within 10 days for a mediator to be nominated by the Centre for Effective Dispute Resolution ("CEDR"). Any mediation is carried out in accordance with the edition of the CEDR Model Mediation Procedure published by the Centre for Effective Dispute Resolution which is current at the *starting date*. The mediator shall be independent and have programming experience and shall seek to assist the Parties in agreeing a programme capable of acceptance by the *Project Manager*. The fees of the mediator shall be borne equally by the Parties and shall not form part of the Price for Work Done to Date.

Revising the programme 32

- 32.1 The *Contractor* shows on each revised programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
 - the effects of implemented compensation events,
 - how the *Contractor* plans to deal with any delays and to correct notified Defects and
 - any other changes which the *Contractor* proposes to make to the Accepted Programme.
- 32.2 The *Contractor* submits a revised programme to the *Project Manager* for acceptance
- within the *period for reply* after the *Project Manager* has instructed him to,
 - when the *Contractor* chooses to and, in any case,
 - at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *works*.

Access to and use of the Site 33

- Z1.16
Z1.16.1
Z1.16.2
- 33.1 Subject to the provisions of the Works Information regarding access, the ~~The~~ *Employer* allows access to and use of each part of the Site to the *Contractor* which is necessary for the work included in this contract. Access and use is allowed on or before the later of its *access date* and the date for access shown on the Accepted Programme.
- 33.1A The *Employer* does not guarantee uninterrupted or exclusive access to or use of the Site or any Working Area and that access is limited in accordance with this contract.

Instructions to stop or not to start work 34

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

Take over 35

- Z1.17
- 35.1 The *Employer* need not take over the *works* before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the *Employer* takes over the *works* not later than two weeks after Completion.

Z1.17.1

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

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

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

Acceleration 36

Z1.18

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

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

Z1.18.1

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

36.4 Not used.

36.5 The *Contractor* submits a Subcontractor's proposal to accelerate to the *Project Manager* for acceptance.

36.6 The *Project Manager* may instruct the *Contractor* to accelerate the *works* in accordance with the agreed quotation, revised programme and revised Works Plan.

4 Testing and Defects

Tests and inspections 40

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

Testing and inspection before delivery 41

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

Searching for and notifying Defects 42

- 42.1 Until the *defects date*, the ~~Supervisor~~ *Project Manager* may instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
 - providing facilities, materials and samples for tests and inspections done by the ~~Supervisor~~ *Project Manager* and
 - doing tests and inspections which the Works Information does not require.
- 42.2 Until the *defects date*, the ~~Supervisor~~ *Project Manager* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the ~~Supervisor~~ *Project Manager* of each Defect as soon as he finds it.

Correcting Defects 43

- 43.1 The *Contractor* corrects a Defect whether or not the ~~Supervisor~~ *Project Manager* notifies him of it.
- 43.2 The *Contractor* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.

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

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

43.5 The *Project Manager* issues the Recurrent Failure Certificate at the later of:

- the *recurrent failures date*;
- the end of the last *recurrent failure correction period*;
- the end of the last *recurrent failure solution correction period*; and

where the *Contractor* receives any instructions from the *Project Manager* to correct any Recurrent Failures, Related Recurrent Failures or to carry out any Recurrent Failure Solutions and any such Recurrent Failures, Related Recurrent Failure or Recurrent Failure Solution remains outstanding at the *recurrent failures date*, the date the last Recurrent Failure or Related Recurrent Failure is corrected or Recurrent Failure Solution is carried out.

43.6 Where the *Project Manager* notifies the *Contractor*, at any time, that a Recurrent Failure or Related Recurrent Failure has occurred, the *Project Manager* may require the *Contractor* to carry out, at its own cost, a root cause analysis in accordance with the Works Information and to propose a solution to prevent the occurrence or reoccurrence of the failure.

The *Contractor* submits the proposal for acceptance within 5 days of the *Project Manager's* request or such other time as the *Project Manager* may notify (acting reasonably). The *Project Manager* responds to the proposal within 5 days (or such other period as the *Project Manager* may notify, acting reasonably) either accepting the proposal or rejecting the proposal with reasons. A reason for the rejection is that the proposal will not, in the opinion of the *Project Manager*, provide a viable solution to prevent the occurrence or reoccurrence of the Recurrent Failure or Related Recurrent Failure. Where the *Project Manager* rejects the proposal with reasons the *Contractor* takes those reasons into account and re-submits a revised proposal for acceptance within the period referred to above. This process is repeated until the *Project Manager* accepts the proposal.

Accepting Defects 44

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

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

Uncorrected Defects 45

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

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

45.3 The *Contractor* remains liable under these Implementation Works Terms for Defects and Software Defects listed on the Defects Certificate or the Recurrent Failure Certificate (other than those which, pursuant to Clause 44, the *Project Manager* has instructed the *Contractor* not to correct) after:

- the issue of the Defects Certificate;
- the issue of the Recurrent Failure Certificate; and
- the termination of these Implementation Works Terms or the contract for any reason.

45.4 Without prejudice to Clause 45.3 and notwithstanding issue of the Defects Certificate, until the *recurrent failures date*, the *Project Manager* may notify the *Contractor* that it requires a Recurrent Failure, Related Recurrent Failure or Recurrent Failure Solution to be corrected. The *Contractor* corrects such notified Recurrent Failures or Related Recurrent Failures before the end of the *recurrent failure correction period* at its own cost. The *recurrent failure correction period* begins at Completion for Recurrent Failures or Related Recurrent Failures notified before Completion and when the Recurrent Failure or Related Recurrent Failure is notified for other Recurrent Failures or Related Recurrent Failures. If a root cause analysis undertaken pursuant to Clause 43.5 confirms that the Recurrent Failure or Related Recurrent Failure is the fault of the *Contractor* and a proposed Recurrent Failure Solution requested by the *Project Manager* has been accepted by the *Project Manager*, the *Contractor* carries out the Recurrent Failure Solution at its own cost by the *recurrent failure solution correction period*. The *recurrent failure solution correction period* begins on the date of acceptance by the *Project Manager* of the *Contractor's* proposed Recurrent Failure Solution.

If the *Contractor* fails to:

- correct the Recurrent Failure or Related Recurrent Failure by the end of the *recurrent failure correction period*, or
- perform the Recurrent Failure Solution by the end of the *recurrent failure solution correction period*, or
- otherwise fails to comply with its obligations under Clause 43.5 or this Clause 45.4;

the *Employer* may correct the Recurrent Failure or Related Recurrent Failure or prepare and/or carry out the Recurrent Failure Solution itself or instruct others to do so. The *Contractor* indemnifies the *Employer* and the TfL Group against the costs of carrying out those works and any other Losses resulting from the failure. Nothing in Clause 43.5 or this Clause 45.4 shall amount to a compensation event.

5 Payment

Assessing the amount due 50

Z1.19

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

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

Z1.19.1	<p>50.1A The <i>Contractor</i> submits an application for payment to the <i>Project Manager</i> in a form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the <i>Contractor</i> considers to be due to him at the payment due date and the basis on which that sum is calculated.</p> <p>50.2 The amount due is</p> <ul style="list-style-type: none"> • the Price for Work Done to Date save that the amount due in respect of the Initial Design Phase whether incurred or accrued shall not exceed the Initial Design Phase Cap and, in the case of a termination under Clause 29.3 (a) of the General Terms, any Defined Cost reasonably incurred in expectation of completing the whole of the works, • plus other amounts to be paid to the <i>Contractor</i>, • less amounts to be paid by or retained from the <i>Contractor</i>. <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Contractor</i> is included in the amount due.</p> <p>50.3 If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the <i>Contractor</i> has submitted a first programme to the <i>Project Manager</i> for acceptance showing the information which this contract requires.</p>
Z1.19.2	<p>50.3A If any revised programme is not submitted by the <i>Contractor</i> to the <i>Project Manager</i> for acceptance showing the information which this contract requires within the timescales required by clause 32.2, one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until such revised programme has been submitted to the <i>Project Manager</i> for acceptance.</p> <p>50.3B If any parent company guarantee and/or legal opinion required by the contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Clauses 4.1 or 4.4 of the General Terms or Clause X4 of this contract, 100% of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until the earlier of when such parent company guarantee and/or legal opinion has been delivered and Final Completion.</p> <p>50.3C If any performance bond required by this contract is not procured by the <i>Contractor</i> and delivered to the <i>Employer</i> in accordance with Clause 4.5 of the General terms and/or Option X13 of this contract one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the <i>Contractor</i> until the earlier of such performance bond has been delivered and final Completion.</p> <p>50.3D If a warranty required under Clause 26.3 is not delivered to the <i>Employer</i> in accordance with the provisions of Clause 26.3, one tenth of the total cumulative increase in the amount due since the assessment date following the end of the period for provision of such warranty relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in all assessments of the amount due and in each case is not payable to the <i>Contractor</i> until such warranty is delivered.</p>
Z1.19.3	<p>50.4 In assessing the amount due, the <i>Project Manager</i> considers any application for payment the <i>Contractor</i> has submitted in accordance with clause 50.1A on or before the assessment date. The <i>Project Manager</i> gives the <i>Contractor</i> details of how the amount due has been assessed.</p> <p>50.5 The <i>Project Manager</i> corrects any wrongly assessed amount due in a later payment certificate.</p> <p>50.6 Payments of Defined Cost made by the <i>Contractor</i> in a currency other than the <i>currency of this contract</i> are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the <i>currency of this contract</i> in order to calculate the Fee and any <i>Contractor's</i> share using the exchange rates.</p> <p>50.7 Not used.</p>
Z1.19.4	<p>50.8 Not used.</p>

- Z1.19.5 50.9 If any of the warranties required under sub-clauses Z2.1.2 and/or Z2.2 are not delivered to the *Employer* in accordance with the provisions of sub-clauses Z2.1.2 or Z2.2 as applicable, one quarter of the Price for Work Done to Date (or in the case of warranties required under sub-clause Z2.2, one quarter of the Price for Work Done to Date relative to the work carried out and/or goods supplied by the relevant Subcontractor and/or consultant) is retained in assessments of the amount due and is not payable to the *Contractor* until such warranties have been delivered.
- Z1.19.6 50.10 If any of the Management Plans are not provided by the times or within the timescales required by this contract, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until such Management Plans are delivered.
- Z1.19.7 50.11 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either:
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Project Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- Y1.1.1 51.1 The *Project Manager* certifies a payment within ~~one week~~ ~~seven days of each assessment date~~ ~~five days of the due date for payment~~. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract. ~~If a certificate is not issued by the *Project Manager* in accordance with this clause 51.1, the sum to be paid by the *Employer* is the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.~~
- Y1.1.2 51.1A The date on which payment becomes due is ~~seven days after the assessment date~~ ~~within seven days of each assessment date~~. The final date for payment is ~~fourteen days or a different period for payment if stated in the Contract Data~~ after the date on which payment becomes due.
- Y1.1.2A 51.1B The *Project Manager's* certificate is the *Employer's* notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which ~~the amount that sum~~ is calculated.
- Y1.1.2B 51.1C Not later than five days after receipt of the payment certificate the *Contractor* delivers to the *Employer* (copied to the *Project Manager*) a VAT invoice in the amount of the certificate with a copy of the certificate attached. The *Contractor* issues a corrected VAT invoice, where required, within five days of receipt of a Pay Less Notice.
- Y1.1.3 51.2 Each certified payment is made within twenty one days of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue, or ~~either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment~~, interest is paid on the late payment. Interest is assessed from the ~~final date~~ by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
- Y1.1.3A 51.2A If the amount to be paid to the *Contractor* is less than the amount to be paid by or retained from the *Contractor*, the difference is recoverable from the *Contractor* as a debt due on demand.
- Y1.1.4 51.2B If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. ~~In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*.~~

- 51.3 If an amount due is corrected in a later certificate either
- by the *Project Manager* in relation to a mistake or a compensation event or
 - following a decision of the *Adjudicator* or the *tribunal*,

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

- 51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Defined Cost 52

- 52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2 The *Contractor* keeps these records

- accounts of payments of Defined Cost,
- proof that the payments have been made,
- communications about and assessments of compensation events for Subcontractors and
- other records as stated in the Works Information.

- 52.3 The *Contractor* allows the *Project Manager* to inspect at any time within working hours the accounts and records which he is required to keep.

The *Contractor's* share 53

Z1.20

- 53.5 The *Project Manager* assesses the *Contractor's* share of the difference between the Total of the Prices and the Price for Work Done to Date. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date divided by the Total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

- 53.6 If the Price for Work Done to Date is less than the Total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Work Done to Date is greater than the Total of the Prices, the *Contractor* pays his share of the excess **up to but not exceeding the Pain Share Cap**.

- 53.7 The *Project Manager* makes a preliminary assessment of the *Contractor's* share at Completion of the whole of the *works* using his forecasts of the final Price for Work Done to Date and the final Total of the Prices. This share is included in the amount due following Completion of the whole of the *works*.

- 53.8 The *Project Manager* makes a final assessment of the *Contractor's* share using the final Price for Work Done to Date and the final Total of the Prices. This share is included in the final amount due.

Z1.20.1	<p>53.9 Without limiting sub-clauses 53.5 to 53.8 and 93, if at any time prior to Completion:</p> <ul style="list-style-type: none"> • the Price for Work Done to Date exceeds the total of the Prices (excluding, for the avoidance of doubt, any adjustment to the Prices arising from compensation events which have not yet been implemented); and • the <i>Project Manager</i> assesses that the final Price for Work Done to Date is likely to exceed the final total of the Prices <p>the <i>Project Manager</i> may deduct from sums otherwise due to the <i>Contractor</i> a sum equivalent to the <i>Project Manager's</i> reasonable assessment of the likely <i>Contractor's</i> share of the excess of the forecast final Price for Work Done to Date over the forecast final total of the Prices. Any sum so deducted is taken into account in assessing the amount due under clauses 53.7 and 53.8 or, if applicable, clause 93.</p>
	<p>53.10 <u>The Fee is payable on the Total of the Prices.</u> The Fee is not payable on the amount by which the Price for Work Done to Date exceeds the Total of the Prices.</p>
	<p>54 Not used.</p>
The Bill of Quantities	<p>55</p> <p>55.1 Information in the Bill of Quantities is not Works Information or Site Information.</p>
Z1.21.1	<p>56 In addition to any other rights of the <i>Employer</i> whether at law or equity under this contract, whenever</p> <ul style="list-style-type: none"> • under this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i> any sum of money is recoverable from or payable by the <i>Contractor</i> or • any Losses are reasonably and properly owed to, or incurred by, the <i>Employer</i> or any member of the TfL Group under or arising out of this contract or any other contract between the <i>Employer</i> and the <i>Contractor</i> <p>the same may be set-off and/or deducted from any sum then due or which at any time thereafter may become due to the <i>Contractor</i> under this contract.</p>
Z1.22.1	<p>57.1 If the <i>Employer</i> is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and requirements of the Construction Industry Scheme and the <i>Contractor</i> complies with the provisions of the Works Information regarding the Construction Industry Scheme.</p>

6 Compensation events

Compensation events 60

Z1.23

Z1.23.1

60.1 The following are compensation events.

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

- a change made in order to accept a Defect or ~~Software Defect~~
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer* or a change made in order to accept a value engineering proposal under Clause Z2.37, or
- an instruction which is stated in this contract not to give rise to a compensation event.

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

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

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

(5) The *Employer* or Others

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

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

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

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

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

(10) The ~~Supervisor~~ *Project Manager* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection or because the ~~Supervisor~~ *Project Manager* has reasonable cause to believe that there may be Defects in the Works because of defective work found elsewhere in the Works.

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

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- have not arisen as a result of the interface between the *Contractor* and the Rolling Stock Manufacturer
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

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

(13) A weather measurement is recorded

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

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

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

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

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

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

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

(18) A breach of contract or act of prevention on the part of ~~by the~~ *Employer* which is not one of the other compensation events in this contract.

(19) An event which

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

and which

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

60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

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

60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

60.4 A difference between the final total quantity of work done and the quantity stated for an item in the Bill of Quantities is a compensation event if

- **the difference does not result from a change to the Works Information,**
- **the difference causes the Defined Cost per unit of quantity to change and**
- **the rate in the Bill of Quantities for the item multiplied by the final total quantity of work done is more than 0.5% of the total of the Prices for that item at the Contract Date.**

If the Defined Cost per unit of quantity is reduced, the affected rate is reduced.

60.5 A difference between the final total quantity of work done and the quantity for an item stated in the Bill of Quantities which delays Completion or the meeting of the Condition stated for a Key Date is a compensation event.

60.6 The *Project Manager* corrects mistakes in the Bill of Quantities which are departures from the rules for item descriptions and for division of the work into items in the *method of measurement* or are due to ambiguities or inconsistencies. Each such correction is a compensation event which may lead to reduced Prices.

60.7 In assessing a compensation event which results from a correction of an inconsistency between the Bill of Quantities and another document, the Contractor is assumed to have taken the Bill of Quantities as correct.

Notifying compensation events 61

Z1.24

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

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

Z1.24.1

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

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

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware or when he ought reasonably to have become aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the *Project Manager* should have notified the event to the *Contractor* but did not.

Z1.24.2

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

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

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

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

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

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

If the *Project Manager's* decision is that the Prices, the Completion Date or the Key Dates are not to be changed, the *Contractor* notifies the *Project Manager* if he does not accept the decision and at the same time of his reasons for not accepting the decision. The *Contractor's* notification does not affect the *Project Manager's* decision that the Prices, Completion Date or the Key Dates are not to be changed. If the *Contractor* does not provide this notification within four weeks of notification of the *Project Manager's* decision, he is treated as having accepted the *Project Manager's* decision.

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

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

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

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

Quotations for compensation events 62

- Z1.25** 62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.
- Z1.25.1** 62.2 Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment **in accordance with the requirements of the Works Information** with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.
- 62.2A** If the *Contractor* includes assumptions in his quotation other than those notified by the *Project Manager* under Clause 61.6, he brings these to the *Project Manager's* attention when he submits the quotation. If the *Project Manager* accepts the *Contractor's* assumptions, then he re-states those assumptions when he accepts the quotation or when he makes his own assessment. If any of the re-stated assumptions is later found to have been wrong, the *Project Manager* notifies a correction.
- A reason for not accepting the *Contractor's* quotation is that the effects of any assumption included in the quotation on the compensation event are capable of being reasonably forecast.
- 62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. His reply is
- an instruction to submit a revised quotation,
 - an acceptance of a quotation,
 - a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
 - a notification that he will be making his own assessment.
- 62.4 The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
- 62.5 The *Project Manager* extends the time allowed for
- the *Contractor* to submit quotations for a compensation event and
 - the *Project Manager* to reply to a quotation
- if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.
- 62.6 If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* to this effect. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply to the notification within two **weeks**, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Project Manager*.

Assessing compensation events 63

- Z1.26** 63.1 The changes to the Prices are assessed as the effect of the compensation event upon
- the actual Defined Cost of the work already done,
 - the forecast Defined Cost of the work not yet done and
 - the resulting Fee.

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

- Z1.26.1 63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.
- Z1.26.1 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme **provided always that the delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent that the compensation event is the principal cause of the delay.**
- The *Project Manager* may assess and fix an earlier Completion Date or Key Date if the effect of the compensation event is to reduce the time required for Completion or meeting a Key Date.
- Z1.26.2 63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event **and the *Employer* has no financial liability to the *Contractor* other than amounts to which the *Contractor* is entitled under this contract.**
- 63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given the event is assessed as if the *Contractor* had given early warning.
- Z1.26.3 63.6 Assessment of the effect of a compensation event includes **reasonable and proportionate** risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract. **Assessments take into account the extent to which the compensation event is caused or contributed to by any fault of the *Contractor* and assumes that the *Contractor* has taken all reasonable steps to mitigate the actual or potential effects of the event.**
- 63.6A For the purposes of this clause 63, a "Concurrent Delay" means any delay or part of any delay caused by a compensation event which runs concurrently with any delay or part of any delay caused by a matter other than a compensation event regardless of which delay arose first.**
- Where there is a Concurrent Delay, the period of Concurrent Delay is taken into account in assessing any delay to the Completion Date or the Key Dates due to a compensation event and the *Contractor* may be entitled to a change to the Completion Dates and/or Key Dates. The *Contractor* shall not be entitled to any change in the Prices as a result of a Concurrent Delay.**
- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.10 Not used.**
- 63.11 If the effect of a compensation event is to reduce the total Defined Cost and the event is**
- a change to the Works Information, other than a change to the Works Information provided by the *Employer* which the *Contractor* proposed and the *Project Manager* has accepted or**
 - a correction of an assumption stated by the *Project Manager* for assessing an earlier compensation event,**

the Prices are reduced.

63.12 Not used.

Z1.27

63.13 Assessments for changed Prices for compensation events are in the form of changes to the Bill of Quantities.

- For the whole or a part of a compensation event for work not yet done and for which there is an item in the Bill of Quantities, the changes are
 - a changed rate,
 - a changed quantity or
 - a changed lump sum.
- For the whole or a part of a compensation event for work not yet done and for which there is no item in the Bill of Quantities, the changes is a new priced item which, unless the *Project Manager* and the *Contractor* agree otherwise, is compiled in accordance with the method of measurement.
- For the whole or a part of a compensation event for work already done, the change is a new lump sum item.

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

63.14 Not used.

The *Project Manager's* Assessments 64

Z1.27

Z1.27.1

64.1 The *Project Manager* assesses a compensation event

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

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

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

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

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

Implementing compensation events 65

Z1.28

65.1 A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or

- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

Z1.28.1

65.3 The *Contractor* notifies the *Project Manager* if he does not accept the *Project Manager's* assessment and at the same time of his reasons for not accepting the *Project Manager's* assessment. If the *Contractor* does not provide this notification within four weeks of notification of the *Project Manager's* assessment, he is treated as having accepted the *Project Manager's* assessment.

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

7 Title

The Employer's title to Plant and Materials	70	
Z1.29	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> as soon as the <i>Contractor</i> or or Supervisor <i>Project Manager</i> has marked them as for this contract or the <i>Employer</i> makes payment (partial or otherwise) for them, whichever is the earlier if the Supervisor has marked it as for this contract . The <i>Contractor</i> ensures that such Plant and Materials are clearly identified as belonging to the <i>Employer</i> , insured for their full reinstatement value and are set aside for the <i>Employer</i> .
Z1.29.1	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Z1.29.2	70.3	If requested by the <i>Project Manager</i> , the <i>Contractor</i> provides proof of his title to Plant and Materials prior to their value being included in the assessment of any amount due under this contract in the form of a vesting certificate to be provided in the form appended to this contract at Schedule 2.
Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The Supervisor <i>Project Manager</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the <i>works</i> .
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

- Employer's risks 80**
- Z1.30** 80.1 The following are *Employer's* risks.
- Claims, proceedings, compensation and costs payable which are due to
 - use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*,
 - negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor* or
 - a fault of the *Employer* other than a fault in his design.
 - Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
 - Loss of or damage to the *works*, Plant and Materials **on the Site** due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees;
 - **acts of terrorism; or**
 - radioactive contamination.
 - Loss of or wear or damage to the parts of the *works* taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect **or Software Defect** which existed at take over,
 - an event occurring before take over which was not itself an *Employer's* risk or
 - the activities of the *Contractor* on the Site after take over.
 - Loss of or wear or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination.
 - Additional *Employer's* risks stated in the Contract Data.
- The Contractor's risks 81**
- 81.1 From the *starting date* until the Defects Certificate has been issued, the risks which are not carried by the *Employer* are carried by the *Contractor*.
- Repairs 82**
- 82.1 Until the Defects Certificate has been issued and unless otherwise instructed by the *Project Manager*, the *Contractor* promptly replaces loss of and repairs damage to the *works*, Plant and Materials.

Indemnity 83

Z1.31
Z1.31.1

83.1 ~~Each Party~~ The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents and members of the TfL Group against all Losses in respect of events or matters ~~the other~~ against claims, proceedings, compensation and costs due to an event which is ~~are~~ at his risk including:

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

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

- all Losses arising from any infringement of any intellectual property right of any third party (including a Subcontractor) arising out of the design, construction or use of the works or the project, and
- any Losses arising from any nuisance or interference referred to in clause Z2.6 and which could not have been avoided by the *Contractor* using all reasonable and practical means.

Z1.31.2

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

Z1.31.3

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

Remedies

Z1.32

Z1.32.1

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

- (a) liquidated damages for disruption to the Underground Network pursuant to clause Z2.12 is without prejudice to the *Employer's* right to delay damages pursuant to Option X7; and
- (b) delay damages pursuant to Option X7 is without prejudice to the *Employer's* right to delay damages under Option X7 (as the case may be) and liquidated damages pursuant to clause Z2.12.

Insurance cover 84

Z1.33

Z1.33.1

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

Z1.33.2

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

INSURANCE TABLE

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

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

Insurance Table

Insurance Against	Party Responsible for ensuring insurance is in place	Minimum amount of cover or minimum limit of indemnity
<p>Construction All Risks insurance</p> <p>All risks of loss of or damage to (not excluded by the terms and conditions of the policy) the <i>works</i> and Plant and Materials, temporary works (i.e. works erected or constructed for the purpose of making possible the erection or installation of the <i>works</i>), equipment, temporary buildings and property owned by or supplied by the <i>Employer</i>.</p>	<p><i>Employer</i></p> <p>in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the <i>works</i> on the Site and any associated compounds storage and transit locations and other places accepted by the <i>Project Manager</i> and used solely for the purposes of carrying out of the physical works within the United Kingdom.</p>	<p>The full reinstatement value of the <i>works</i></p>

Public liability insurance

All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property, obstruction, loss of amenities, trespass, nuisance or any like cause happening during the period of insurance and arising out of or in connection with this contract (unless excluded by the terms and conditions of the policy).

Employer
in the joint names of the Parties and any other contractors or subcontractors of any tier engaged in carrying out the works on the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

Not less than £25,000,000 per occurrence

Non-negligence insurance

Any expense, liability, loss claim or proceedings which the *Employer* incurs or sustains by reason of injury, loss of or damage to any property other than the works, Site materials or existing property of the *Employer* caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of carrying out the works (unless excluded by the terms and conditions of the policy)

Employer
in the joint names of the Parties

Not less than £25,000,000 per occurrence

Employer's liability insurance

Liability for death of or bodily injury or illness sustained by employees of the *Contractor* arising out of or in the course of their employment in connection with this contract or the project

Contractor

Not less than £10,000,000 per occurrence or as otherwise stated in the Contract Data, whichever is the greater

Contractor's Equipment loss insurance

Loss of or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the *Contractor*

Contractor

The replacement cost

Professional Indemnity Insurance

Fault in respect of design of the works or other professional services for which the *Contractor* or his Subcontractors is responsible

Contractor

£10,000,000 in the annual aggregate.

- Z1.33.3 84.3 In respect of the insurances provided by the *Contractor*:
- the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later, provided however that the *Contractor* ensures that his professional indemnity insurance is in place from the Contract Date until not less than 12 years after Completion;
 - the *Contractor* bears the cost of all premiums, which is deemed to be included in the Fee;
 - if such professional indemnity insurance ceases to be available at commercially reasonable rates and on reasonable terms, the Parties meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not acceptable to the *Employer* (acting reasonably), the Parties agree an alternative method of managing such risk.
- Z1.33.4 84.4 The *Contractor* does not by any act or fault prejudice, lose or forgo the Parties' right or the right of either of them to make or proceed with a claim against any insurer.
- Z1.33.5 84.5 The *Contractor* procures that his Subcontractors (and sub-subcontractors of any tier) maintain
- employer's liability (and where appropriate) motor liability insurances as required by law; and
 - professional indemnity insurance covering their liabilities under subcontracts in respect of their design with a limit of indemnity appropriate to the value and complexity of the package as the *Employer* may reasonably require.
- Z1.33.6 84.6 The insurances provided pursuant to this contract do not relieve the *Contractor* from any of his obligations and liabilities under this contract.

Insurance policies 85

- Z1.34
Z1.34.1 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that:
- ~~that~~ they do not comply with this contract,
 - the proposed insurer is not a reputable insurer authorised to underwrite the insurances in the United Kingdom;
 - the proposed insurer is not, having regard, without limitation, to the size, nature and complexity of the *works*, of sufficient financial strength.
- Z1.34.2 85.2 ~~Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud. Not used.~~
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- Z1.34.3 85.4 Any amount not recovered from an insurer (including, excesses or deductibles) is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- Z1.34.4 85.5 In the event of the insolvency of an insurer of either Party, the insuring Party informs the other Party forthwith on becoming aware thereof and submits documentary evidence of alternative insurance to the other Party for acceptance.

If the *Contractor* does not insure 86

- Z1.35
Z1.36.1 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance (including all reasonable expenses incurred by the *Employer* in respect of taking out such insurance) to the *Employer* is paid by the *Contractor*. If the *Employer* insures a risk which this contract requires the *Contractor* to insure, this is without prejudice to any of the *Employer's* other rights, powers or remedies under this contract.

Insurance by the Employer 87

- Z1.36 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.
- Z1.36.1 87.4 The *Contractor* co-operates with the *Employer* regarding the handling and settlement of claims under the *Employer's* insurances and complies with the requirements of the *Employer's* insurers in connection with the handling and settlement of claims, including where appropriate the provision of such information, documents and records as the *Employer*, its claims handler and its insurers require.
- Z1.36.2 87.5 The *Contractor* complies, and ensures that its subcontractors comply, with the requirements of the *Employer's* claims handling procedures, such procedure to be provided to the *Contractor* by the *Employer*.
- Z1.36.3 87.6 The *Contractor* does not compromise, settle or waive any claim which the *Contractor* may have under the *Employer's* insurances without the prior written consent of the *Employer*.
- Z1.36.4 87.7 The insurances provided by the *Employer* are in effect for the duration of the works at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.
- Z1.36.5 87.8 The *Contractor* ensures that each *subcontract* with its Subcontractors includes an acknowledgement that the Subcontractor is an insured party under the insurances provided by the *Employer* while the Subcontractor is engaged in carrying out the works at the Site and any associated compounds storage and transit locations and other places accepted by the *Project Manager* and used solely for the purposes of carrying out of the physical works within the United Kingdom.

9 Termination

Termination 90

Z1.37

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

TERMINATION TABLE

Z1.37.1

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21 the reasons listed in this Termination Table	P1 and P2	A1, A2 and A4
	R1–R15, R10A, or R18, R25A	P1, P2 and P3	A1 and A3
	R17, or R20 or R26	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R22-R24	P1, P2 and P3	A1 and A3
	R25	P1 and P4	A1 and A2
	R27	P1, P2 and P3	A1 and A3
The <i>Contractor</i>	R1–R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

Z1.37.2

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

**Reasons for 91
termination**

Z1.38
Z1.38.1

Z1.38.2

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent **in other jurisdictions**.
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
 - **If the other Party has become insolvent as defined in section 113 of the Act (R10A).**
- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
 - Not provided a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
 - Substantially broken a health or safety regulation **or requirement of this contract** (R15).
- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount certified by the *Project Manager* within thirteen weeks of the date of the certificate (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
 - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
 - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the *works* or
 - stops the *Contractor* completing the *works* by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

Z1.38.3

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

- a Safety Breach, a Prohibited Act or a breach of the Modern Slavery Act 2015 pursuant to clause Z2.24 or in the event the *Contractor* has persistently failed to comply with his obligations under Clause Z2.20 (Criminal Record Declarations) or failed to comply with his obligations under clause Z2.23 (Data Protection) (R22),
- a conflict of interest which has not been resolved to the *Employer's* satisfaction (R23),
- any cap on the *Contractor's* liability under this contract has been or is reasonably likely to be exceeded (R24),
- the *Employer* not obtaining any necessary funding for the project and/or the necessary funding is curtailed (R25),
- A Change of Control other than in accordance with Clause 15 of the General Terms (R25A).

Z1.38.4

91.9 In the event that either:

- any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union: or
- this contract has been subject to any substantial modification which would require a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 or regulation 88(8) of the Utilities Contract Regulations 2016; or
- the *Contractor* has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (to the extent not already covered by this clause 91.9) and should therefore have been excluded from the procurement procedure in accordance with those Regulations; or
- to the extent not already provided for in this clause 91.9, the *Employer* may terminate if it determines that the contract should not have been awarded to the *Contractor* in view of a serious infringement of the obligations contained under the EU Treaties and applicable procurement regulations

then

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

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

Z1.38.5

91.10 Not Used

Z1.38.6

91.11 Without limiting sub-clauses 53.5 to 53.8 and 93, the Employer may terminate if the Project Manager assesses at any time that (having regard to the Price for Work Done to Date and the total of the Prices at the relevant time):

- **the final Price for Work Done to Date is likely to exceed the final total of the Prices; and**
- **the resulting forecast of the Contractor's share of the excess is likely to exceed or exceeds the Pain Share Cap (R27).**

Procedures on termination 92

Z1.39

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

Z1.39.1

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

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

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

P4 The Contractor leaves the Working Areas and removes the Equipment.

92.3 **On termination or expiry of the contract or these Implementation Works Terms for whatever reason and without affecting any other rights or remedies of either Party, the Contractor shall, at the Employer's cost, provide to the Employer any and all assistance required under Schedule 12 of the General Terms and in accordance with the Exit Plan (as defined under the General Terms). Any payments applicable to the termination or expiry of this contract which are payable pursuant to Schedule 12 of the General Terms shall be paid as an amount due on termination (A1) under Clause 93.1 of this contract.**

Payment on termination 93

Z1.40

93.1 The amount due on termination includes (A1)

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

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

A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the Employer of completing the whole of the works subject always to the Pain Share Cap.

A4 The ~~direct fee percentage~~ **fee percentage** applied to any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date.

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

93.3 Not used.

93.4 Not used.

Z1.40.1

- 93.5 If there is a termination, the *Project Manager* assesses the *Contractor's* share after he has certified termination. His assessment uses, as the Price for Work Done to Date, the total of the Defined Cost which the *Contractor* has paid and which he is committed to pay for work done before termination **and the resulting Fee.**
- 93.6 The *Project Manager's* assessment of the *Contractor's* share is added to the amounts due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess **(up to but not exceeding the Pain Share Cap) provided that the Contractor is not entitled to have any saving added to the amount due where the termination arises or becomes due under Clauses 91.2, 91.3 and 91.8 and/or pursuant to Clause 29.1 of the General Terms.**

2. Additional Conditions of Contract

Contractor's Warranties

Z2.1

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

- any member of the TfL Group
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- any other persons having or acquiring an interest in neighbouring or adjacent property;

Z2.1.2 The *Contractor*, within 21 days of the *Employer's* request made no later than the Completion Date, duly executes and delivers to the *Employer* deeds of warranty substantially in the appropriate form with any changes approved by the *Project Manager* attached at Schedule 3 in favour of each such person and/or in favour of any member of the TfL Group.

Subcontractors' Warranties

Z2.2

Z2.2.1 This clause applies to Subcontractors identified as being those from whom collateral warranties are required in the Works Information. Unless informed by the *Project Manager* in writing that such warranties are not required, the *Contractor* uses his best endeavours to procure that the Subcontractors (and sub-sub-contractors of any tier with design responsibility, and other sub-sub-contractors as the *Project Manager* may advise) duly execute and deliver to the *Employer*, within 21 days of the date of their appointment, deeds of warranty substantially in the appropriate form with any changes approved by the *Project Manager* attached at Schedule 4 or (in the case of Subcontractors providing a service necessary to Provide the Works) Schedule 5 in favour of

- any member of the TfL Group,
- persons providing finance in connection with the *works*,
- purchasers and tenants of the whole or any part of the *works*,
- any other persons having or acquiring an interest in neighbouring or adjacent property;

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

Z2.2.3 The *Contractor* uses his best endeavours to procure that each Critical Subcontractor duly executes and delivers to the *Employer*, within 21 days of the date of their appointment, a deed of warranty in the form attached at Schedule 4.

Z2.2.4 The *Contractor* shall procure as a condition precedent to payment under this contract that any Critical Subcontractor with design responsibility for the Transmission System duly executes and delivers to the *Employer*, within 21 days of the date of this contract, a deed of warranty in the form attached at Schedule 4.

Warranties and Undertakings

Z2.4

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

- he has all the resources including financial, technical and human resources as are required to carry out and complete the *works* in accordance with the *conditions of contract*,
- all design, workmanship, manufacture and fabrication is in accordance with the Works Information and applicable law,
- the *works* are carried out using only materials and goods which are of sound and good quality and that he only specifies substances and materials for incorporation in the *works* and only incorporates substances and materials which are in accordance with the Standards, the Construction Products Regulations, general good building and engineering practice and the requirements of the Works Information,
- the Plant and Materials will on Completion be capable of being used, operated and maintained in a safe, economic and efficient manner, free from any unreasonable risk to the health and well-being of persons using it and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard,
- Plant and Materials will not deteriorate at a greater rate than that reasonably to be expected of high quality, reliable, well-designed plant and materials of a similar nature and manufacture,
- neither the functionality nor the performance of the *works*, or any computer product, application or system forming part of the *works*, or any Plant, Materials or Equipment, or any part of the railways on which works are undertaken, or any part of the Underground Network is affected, made inoperable, difficult or suffers any abnormality by reason of any software defect,
- the Plant and Materials will at take-over operate safely and efficiently in combination with any plant, equipment or system to which it is to be connected,
- he maintains a sufficient supply of the spare parts (including software) necessary for the operation and maintenance of the *works* as specified in the Works Information, and
- the proceeds of insurance taken out by the *Contractor* pursuant to clause 84 of the *conditions of contract* are used solely for the purposes of the *works* and for no other purpose.

Accounts and Records

Z2.5

- Z2.5.1 The *Contractor* maintains and retains (and procures that his Subcontractors maintain and retain) the Minimum Records in accordance with Schedule 4 of the General Terms.
- Z2.5.2 The *Contractor* complies with (and ensures his Subcontractors comply with) the provisions of the Works Information (including the Subcontractor Procurement Plan) regarding accounts and records. The *Employer* and his authorised representatives are entitled to audit the Minimum Records in accordance with the provisions set out in the Works Information.
- Z2.5.3 The *Contractor* ensures that any requirements of the Data Protection Legislation are complied with to enable the *Employer* to exercise its rights under or pursuant to this clause Z2.5.

Nuisance

Z2.6

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

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

Intellectual Property Rights

Z2.7

Z2.7.1 Vesting of IPR

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

To the extent permitted by applicable law, the *Contractor* hereby waives and confirms it has obtained all necessary waivers in relation to all Moral Rights comprised in any rights assigned to the *Employer* (or nominee, as applicable) pursuant to these Implementation Works Terms.

Z2.7.2 Background IPR

In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor's or other third party's Background IPR) a non-exclusive, irrevocable, royalty free licence to the *Employer* to use the Background IPR for a period of not less than twenty years from Completion for the following purposes:

- (a) understanding the *works*,
- (b) operating, maintaining, repairing, 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*.

Z2.7.3 The *Contractor* agrees to provide to the *Employer* or any person nominated by the *Project Manager* immediate access to all Documentation requested by the *Project Manager* at any time in a reasonable form but at the latest on termination or expiry of this contract.

Z2.7.4 IPR Claims

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

Z2.7.5 Corporate IPR

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

Z2.7.6 Computer Data

Z2.7.6.1 To the extent that any element of the IPR is generated by or maintained on a computer or similar system, the *Contractor*:

- (a) uses all reasonable endeavours to procure at no charge the grant of a licence or sub-licence for any relevant software in which the IPR is not owned by the *Contractor* to enable the *Employer* or any third party nominated by the *Employer* to access and otherwise use such data. As an alternative, the *Contractor* may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time;
- (b) where the *Contractor* owns the IPR in any customisations of software which is generally available to be licensed, the *Contractor* grants to the *Employer* a perpetual licence to use such customisations (in machine-executable form and if the underlying source code has been amended as a result of the customisation in source code form) and provides or procures that any Subcontractor provides the same together with the relevant version of the commercially available software package to which the customisations have been applied.

IPR Register

Z2.7.7

Z2.7.7.1 The *Contractor* shall produce, keep up-to-date and provide to LUL each LUL Accounting Period (and at such other times as LUL may request in writing) a table which sets out details of the following:

- (a) IPR owned by the *Contractor*;
- (b) IPR owned by Others;
- (c) OPO CCTV System Features;
- (d) Software (other than OPO CCTV Support Software and Software generated from IPR owned by Others);
- (e) Third Party Software; and
- (f) OPO CCTV Support Software,

used by the *Contractor* in connection with the OPO CCTV System and the *works*.

Assignment

Z2.8

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

Z2.8.2 The *Employer* may assign, transfer, novate, charge or otherwise deal in whole or in part any benefit or right under this contract at any time to any person.

Confidentiality

Z2.9

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

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

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

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

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

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

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

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

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

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

Z2.10 Not used.

Dispute Resolution Procedure

Z2.11

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

Liquidated Damages for Disruption (to the Underground Network)

Z2.12

Z2.12.1 The *Contractor* pays and/or *Employer* may deduct from the amount due by way of liquidated damages such sums as may be identified and calculated in accordance with Schedule 8 in respect of any interference with, disruption to, or closure of the Underground Network or any part thereof which is caused by a failure by the *Contractor* to Provide the Works or a breach of his obligations under this contract.

Responsible Procurement

Z2.13

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

Crime and Disorder

Z2.14

- Z2.14.1 The *Contractor* acknowledges that the *Employer* is under a duty in accordance with Section 17 of the Crime and Disorder Act, 1998 to
- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
 - where appropriate, identify actions to reduce levels of crime and disorder,
 - without prejudice to any other obligation imposed on the *Employer*, exercise his functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,
- and in the performance of the contract the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that his Subcontractors (and sub-sub-contractors) assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy his duty.

London Living Wage

Z2.15

- Z2.15.1 The *Contractor* acknowledges and agrees that the Mayor, pursuant to section 155 of the GLA Act has directed the TfL Group (including the *Employer*) to ensure that the London Living Wage is paid to anyone engaged by the TfL Group who is required to perform contractual obligations in Greater London or on the Underground Network.
- Z2.15.2 Without prejudice to the generality of Clause Z2.15.2, the *Contractor* ensures that he and procures that his Subcontractors (if any):
- (a) ensure that none of his employees engaged in the performance of the *works* in Greater London or on the Underground Network (but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage,
 - (b) ensure that none of his employees engaged in the performance of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and
 - (c) co-operate and provide all reasonable assistance to the *Employer* and any member of the TfL Group in monitoring the effect of the London Living Wage.

Data Transparency

Z2.16

- Z2.16.1 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clauses Z2.19 and Z2.9, the *Contractor* hereby gives his consent for the *Employer* to publish the Contract Information to the general public.
- Z2.16.2 The *Employer* may in his absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in his absolute discretion the *Employer* may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The *Employer* may in his absolute discretion consult with the *Contractor* regarding any redactions to the Contract Information to be published pursuant to clause Z2.16.1. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z2.17 Not Used

Conflict of Interest

Z2.18

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

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

Freedom of Information

Z2.19

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

- is subject to FOI Legislation and agrees to assist and co-operate with the *Employer* to enable the *Employer* to comply with his obligations under the FOI Legislation, and
- may be obliged under the FOI Legislation to disclose Information without consulting and/or obtaining consent from the *Contractor*.

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

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

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

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

Criminal Record Declarations

Z2.20

- Z2.20.1 The *Contractor* procures from each Relevant Individual (as the case may be) a declaration that he has no Relevant Convictions (“**Declaration**”) or disclosure of any Relevant Convictions he has committed. A Declaration is procured prior to a Relevant Individual carrying out any aspect of the *works*. The *Contractor* confirms to the *Employer* in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The *Contractor* procures that a Relevant Individual notifies the *Contractor* immediately if he commits a Relevant Conviction throughout the duration of this contract and the *Contractor* notifies the *Employer* in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.
- Z2.20.2 The *Contractor* is not permitted to engage or allow to act on behalf of the *Contractor* or any Subcontractor in the performance of any aspect of the *works* any Relevant Individual who has disclosed a Relevant Conviction.
- Z2.20.3 The *Employer* may in accordance with the audit rights set out in Clause Z2.5 audit and check any and all such records as are necessary in order to monitor compliance with this Clause at any time during performance of this contract.
- Z2.20.4 If the *Contractor* fails to comply with the requirements under Clauses Z2.20.1 and/or Z2.20.2, the *Employer* may, without prejudice to his rights under Clause 91.8, serve notice on the *Contractor* requiring the *Contractor* to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration from the Site with immediate effect and take such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works* unless (in the case of non-compliance with Clause Z2.20.1) within 7 days of receipt of the notice the *Contractor* confirms to the *Employer* he has procured all of the Declarations required under Clause Z2.20.1.
- Z2.20.6 A persistent breach of Clause Z2.20.1 and/or Z2.20.2 by the *Contractor* constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with Clause 91.8.
- Z2.20.6 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the *Contractor* removes or procures the removal (as the case may be) of such Relevant Individual from the Site with immediate effect and takes such steps as are necessary to ensure that such Relevant Individual has no further involvement with the carrying out of the *works*.
- Z2.20.7 Nothing in this Clause Z2.20 in any way waives, limits or amends any obligation of the *Contractor* to the *Employer* arising under this contract and the *Contractor’s* obligation to Provide the Works remain in full force and effect and the *Contractor* cannot claim any extra costs or time as a result of any actions under this Clause Z2.20.

Best Value

Z2.21

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

Prohibited Acts

Z2.22

- Z2.22.1 The *Contractor* does not and uses his reasonable endeavours to procure that his Subcontractors (and sub-subcontractors of any tier) do not commit any Prohibited Act.
- Z2.22.2 Without prejudice to his rights under Clause Z2.5 the *Employer* may audit and check any and all such records as are necessary in order to monitor compliance with this clause at any time during performance of this contract and during the 12 years thereafter.

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

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

Data Protection

Z2.23

Z2.23.1 The *Contractor* complies with all of its obligations under the Data Protection Legislation and, if Processing Personal Data on behalf of the *Employer*, only carries out such Processing to Provide the Works in accordance with this contract. With respect to the Parties' rights and obligations under this contract, the Parties acknowledge that the *Employer* is a Data Controller solely responsible for determining the purposes and manner in which Personal Data is to be Processed and the *Contractor* is a Data Processor.

Z2.23.2 Details of the Employer Personal Data to be Processed by the *Contractor* and the purposes of such Processing are as set out in the Processing Statement, which the Parties complete before any Processing takes place.

Z2.23.3 The *Contractor*:

- (a) Processes the Employer Personal Data only in accordance with documented instructions from the *Employer* to perform its obligations under this contract;
- (b) uses its reasonable endeavours to assist the *Employer* in complying with its obligations under Data Protection Legislation and does not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of its obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (c) notifies the *Employer* immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the *Employer* is incompatible with any obligations under Data Protection Legislation to the extent the *Contractor* is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;
- (d) maintains, and makes available to the *Employer* on its request, documentation which describes the Processing operations for which it is responsible under this contract including:
 - the purposes for which Employer Personal Data is Processed,
 - the types of Personal Data and categories of Data Subject involved,

- the source(s) of the Personal Data,
 - any recipients of the Personal Data,
 - the location(s) of any overseas Processing of Employer Personal Data,
 - retention periods for different types of Employer Personal Data and
 - where possible a general description of the security measures in place to protect Employer Personal Data.
- (e) where requested to do so by the *Employer*, or where Processing Employer Personal Data presents a specific risk to privacy, carries out or assists the *Employer* to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and makes the results of such an assessment available to the *Employer*;
- (f) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, takes appropriate technical and organisational security measures that are satisfactory to the *Employer* from time to time, against unauthorised or unlawful Processing of Employer Personal Data and against accidental loss, destruction of, or damage to such Employer Personal Data;
- (g) without prejudice to any cyber security and/or payment card industry data security standard obligations in this contract, provides the *Employer* with such information as the *Employer* may from time to time require to satisfy itself of compliance by the *Contractor* (including any Subcontractor) with clauses Z2.23.3(f) and Z2.23.3(h), including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this includes a full report recording the results of any privacy or security audit carried out at the request of the *Contractor* itself or the *Employer*;
- (h) notifies the *Employer* without undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this clause Z2.23, including the unauthorised or unlawful Processing of Employer Personal Data, or its accidental loss, destruction or damage;
- (i) having notified the *Employer* of a breach in accordance with clause Z2.23.3(h), keeps the *Employer* properly and regularly informed in writing until the breach has been resolved to the satisfaction of the *Employer*;
- (j) fully cooperates as the *Employer* requires with any investigation or audit in relation to Employer Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the *Employer* (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and does so both during the contract and after its termination or expiry (for so long as the *Contractor* retains and/or Processes Employer Personal Data);

- (k) notifies the *Employer* within two (2) business days if the *Contractor* (including any Subcontractor), receives:
- from a Data Subject (or third party on their behalf):
 - a Subject Access Request (or purported Subject Access Request),
 - a request to rectify, block or erase any Employer Personal Data or
 - any other request, complaint or communication relating to the Employer's obligations under Data Protection Legislation;
 - any communication from the Information Commissioner or any other regulatory authority in connection with Employer Personal Data; or
 - a request from any third party for disclosure of Employer Personal Data where compliance with such request is required or purported to be required by law;
- (l) provides the *Employer* with full cooperation and assistance (within the timescales reasonably required by the *Employer*) in relation to any complaint, communication or request made as referred to in clause Z2.23.3(k), including by promptly providing:
- the *Employer* with full details and copies of the complaint, communication or request;
 - where applicable, such assistance as is reasonably requested by the *Employer* to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
 - where applicable, such assistance as is reasonably required by the *Employer* to enable it to comply with a request from a Data Subject to rectify, block or erase any Employer Personal Data.
- (m) when notified in writing by the *Employer*, supplies a copy of, or information about, any Employer Personal Data. The *Contractor* supplies such information or data to the *Employer* within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within two (2) business days from the date of the request;
- (n) prepares and securely maintains a record of all categories of Processing activities carried out on behalf of the *Employer* in relation to the Employer Personal Data, as a minimum: (i) its name and contact details and details of a Data Protection Officer (if appointed) or other person with responsibility for data protection compliance; (ii) the categories of Processing it carries out on behalf of the *Employer*; (iii) transfers to Restricted Countries; (iv) a general description of the technical and organisational security measures referred to in this clause Z2.23; and (v) the same information in relation to any Subcontractor, together with its name and contact details and when notified in writing by the *Employer*, complies with any agreement between the *Employer* and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Employer Personal Data;
- (o) if required to do so by Data Protection Legislation, appoints a designated Data Protection Officer; and

- (p) makes available to the *Employer* all information necessary to demonstrate compliance with the obligations set out in this clause Z2.23.

Z2.23.4 The *Contractor* does not share Employer Personal Data with any Subcontractor without prior written consent from the *Employer* and only where there is a written contract in place between the *Contractor* and the Subcontractor which requires the Subcontractor to:

- (a) only Process Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor*; and
- (b) comply with the same obligations which the *Contractor* is required to comply with under this clause Z2.23.

The *Contractor* remains responsible and liable to the *Employer* for all acts and omissions of any Subcontractor as if they were its own.

Z2.23.5 The *Contractor* itself, and procures that any Subcontractor:

- (a) only Processes Employer Personal Data in accordance with the *Employer's* documented instructions to the *Contractor* and as reasonably necessary to perform this contract in accordance with its terms;
- (b) does not Process Employer Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with the *Employer*;
- (c) does not Process Employer Personal Data in such a way as to:
- place the *Employer* in breach of Data Protection Legislation,
 - expose the *Employer* to the risk of actual or potential liability to the Information Commissioner or Data Subjects,
 - expose the *Employer* to reputational damage including adverse publicity;
- (d) the *Contractor* does not allow its personnel to access Employer Personal Data unless such access is necessary to Provide the Works;
- (e) the *Contractor* takes all reasonable steps to ensure the reliability and integrity of the Connected Persons who can access Employer Personal Data;
- (f) the *Contractor* ensures that all Connected Persons who can access Employer Personal Data:
- are informed of its confidential nature,
 - are made subject to an explicit duty of confidence,
 - understand and comply with any relevant obligations created by either this contract or Data Protection Legislation and
 - receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;

- (g) does not disclose or transfer Employer Personal Data to any third party without the *Contractor* having obtained the prior written consent of the *Employer* (save where such disclosure or transfer is specifically authorised under this contract);
- (h) without prejudice to clause Z2.23.3, wherever the *Contractor* uses any mobile or portable device for the transmission or storage of Employer Personal Data, ensures that each such device encrypts Employer Personal Data; and
- (i) complies during the course of this contract with any written retention and/or deletion policy or schedule provided by the *Employer* to the *Contractor* from time to time.

Z2.23.6 The *Contractor* does not, and procures that any Subcontractor does not, Process or otherwise transfer any Employer Personal Data in or to any Restricted Countries without prior written consent from the *Employer* (which consent may be subject to additional conditions imposed by the *Employer*).

Z2.23.7 If, after the Contract Date, the *Contractor* (including any Subcontractor) wishes to Process and/or transfer any Employer Personal Data in or to any Restricted Countries, the following provisions apply:

- (a) the *Contractor* submits a written request to the *Employer* setting out details of the following:
 - the Employer Personal Data which will be transferred to and/or Processed in any Restricted Countries,
 - the Restricted Countries which the Employer Personal Data will be transferred to and/or Processed in,
 - any Subcontractor or other third parties who will be Processing and/or receiving Employer Personal Data in Restricted Countries,
 - how the *Contractor* ensures an adequate level of protection and adequate safeguards in respect of the Employer Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the *Employer's* compliance with Data Protection Legislation,
- (b) in preparing and evaluating such a request, the Parties refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
- (c) the *Contractor* complies with any instructions and carries out such actions as the *Employer* may notify in writing when providing its consent to such Processing or transfers, including:
 - incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this contract or a separate data processing agreement between the Parties; and
 - procuring that any Subcontractor or other third party who will be Processing and/or receiving or accessing the Employer Personal Data in any Restricted Countries enters into a data processing agreement with the *Contractor* on terms which are equivalent to those agreed between the *Employer* and the *Contractor* in connection with the Processing of Employer Personal Data in (and/or transfer of Employer Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in the bullet point above.

Z2.23.8 The *Contractor* and any Subcontractor (if any), acknowledges:

- (a) the importance to Data Subjects and the *Employer* of safeguarding Employer Personal Data and Processing it only in accordance with the *Employer's* instructions and this contract;
- (b) the loss and damage the *Employer* is likely to suffer in the event of a breach of this contract or negligence in relation to Employer Personal Data;
- (c) any breach of any obligation in relation to Employer Personal Data and/or negligence in relation to performance or non-performance of such obligation is deemed a material breach of this contract and a substantial failure by the *Contractor* to comply with his obligations;
- (d) notwithstanding clause 90.3, if the *Contractor* has committed a material breach under clause Z2.23.8(c) on two or more separate occasions, the *Employer* may at its option:
 - withdraw authorisation for Processing by a specific Subcontractor by immediate written notice; or
 - terminate the *Contractor's* obligation to Provide the Works in whole or part with immediate written notice to the *Contractor*.

Z2.23.9 Compliance by the *Contractor* with this clause Z2.23 is without additional charge to the *Employer* and compliance with this clause is not a compensation event.

Z2.23.10 Following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works, in each case howsoever arising, the *Contractor*:

- (a) may Process the Employer Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with clause Z2.23.10(b));
- (b) subject to clause Z2.23.10(a)
 - on written instructions from the *Employer* either securely destroys or securely and promptly returns to the *Employer* or a recipient nominated by the *Employer* (in such usable format as and to the extent the *Employer* may reasonably require) the Employer Personal Data or
 - in the absence of instructions from the *Employer* after 12 months from the expiry or termination of this contract or termination of the *Contractor's* obligation to Provide the Works securely destroys the Employer Personal Data.

Z2.23.11 Employer Personal Data may not be Processed following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works save as permitted by clause Z2.23.10

Z2.23.12 For the avoidance of doubt, and without prejudice to clause Z2.23.10, the obligations in this clause Z2.23 apply following termination or expiry of this contract or termination of the *Contractor's* obligation to Provide the Works to the extent the Party concerned retains or Processes Employer Personal Data.

Z2.23.13 The *Contractor* takes reasonable precautions to preserve the integrity of the Employer Data and to prevent any corruption or loss of the Employer Data.

Z2.23.14 The *Contractor* indemnifies the *Employer* and other members of the TfL Group from and against all Losses resulting from any breach by the *Contractor* or any Subcontractor of the Data Protection Legislation or clause Z2.23. The *Contractor's* liability in respect of any breach of this clause Z2.23 insofar as they relate to fines, court awards, settlements and legal costs is unlimited.

**Anti-Slavery and Human
Trafficking
Z2.24**

Z.24.1 The *Contractor* represents warrants and undertakes that it conducts its business in a manner which is consistent with the Modern Slavery Statement.

Z2.24.2 In Providing the Works, the *Contractor*:

- (a) complies with all applicable anti-slavery and human trafficking law from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) has and maintains throughout the currency of this agreement its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;
- (c) does not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom; and
- (d) includes in its sub-contracts and supply chain contracts anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause Z.24 and procures that each Subcontractor and supplier complies with the Modern Slavery Statement and all applicable anti-slavery and human trafficking law.

Z2.24.3 The *Contractor* notifies the *Employer* as soon as it becomes aware of any breach or potential breach of the Modern Slavery Act 2015 or any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract.

Z2.24.4 If the *Contractor*, any of his shareholders or any Subcontractor or anyone employed by or acting on behalf of the *Contractor* or any of his agents commits any breach of the Modern Slavery Act 2015, this constitutes a material breach of this contract and entitles the *Employer* to terminate the contract in whole or in part with immediate effect in accordance with clause 91.8.

Z2.24.5 The *Contractor* maintains complete and accurate records and information to demonstrate its compliance with this clause Z2.24.

Z2.24.6 The *Contractor* allows for audits of its records demonstrating compliance with the Modern Slavery Act 2015 and/or the Modern Slavery Statement by the *Employer* or the *Employer's* designated auditor.

Third Party Agreements

Z2.25

Z2.25.1 The *Contractor* carries out and completes the *works* in conformity with the obligations under the Third Party Agreements and without infringing any right, reservation, covenant, restriction, stipulation or other encumbrance that is binding upon or affects the Site.

Z2.25.2 The *Contractor* undertakes to the *Employer* that he has performed and will perform his obligations under this contract in such a manner and at such times that no act, omission or default by the *Contractor* or any of the Subcontractors or their respective employees or agents causes or contributes to any breach of any of the obligations under the Third Party Agreements and, to the extent that the *Contractor* causes or contributes to any breach of any of obligations under the Third Party Agreements, the *Contractor* indemnifies the *Employer* against any liability, claims, damages, costs and losses that the *Employer* may incur as a result of or arising out of a breach by the *Contractor* of his obligations under this clause Z2.25.

Joint and Several Liability

Z2.26

Z2.26.1 If the *Contractor* is a joint venture:

- (a) each of the parties comprising the joint venture are jointly and severally liable to the *Employer* for the performance of this contract and all liabilities, acts and omissions of the *Contractor* and of each other party comprising the joint venture or in connection with this contract;
- (b) without limiting or prejudicing any other provision of this contract if any of the parties comprising the joint venture ceases to be a member of the joint venture or suffers one of the events described in clause 91.1 the other parties or party carry out and complete the works in accordance with the contract;
- (c) the *Contractor* gives notice to the *Employer* and the *Project Manager* as to which of the parties comprising the joint venture has the authority to bind the *Contractor* for all the purposes of this contract; and
- (d) the *Contractor* keeps the *Employer* and the *Project Manager* informed promptly of any changes in the joint venture whether in relation to any incorporated entity or its constituent entities or the entities forming an unincorporated joint venture, including changes in legal status, the occurrence of any of the events described in clause 91.1, amalgamation, demerger, merger, deterioration in financial condition de-ratings, major legal claims and any other matter or circumstance that could reasonably be deemed to be of concern to the *Employer* or the *Project Manager*.

Z2.27 Not used.

Cyber Security

Z2.28

Z2.28.1 The *Contractor* Provides the Works in accordance with the requirements on cyber security set out in Schedule 13 of the General Terms.

Criminal Finances Act

Z2.29

Z2.29.1 The *Contractor* does not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017.

Z2.29.2 The *Contractor* complies with the *Employer's* policies on ethics, anti-bribery and corruption as listed in the Works Information and as are updated from time to time.

Z2.29.3 The *Contractor* has and maintains throughout the currency of the Works such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the *Contractor*) ensuring compliance with clause Z2.29.1.

Z2.29.4 The *Contractor* shall promptly report to the *Employer* any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the Providing of the Works.

Z2.29.5 The *Contractor* certifies to the *Employer* in writing in a form agreed between the parties and signed by an officer of the *Contractor* compliance with clause Z2.29.1 within 6 months of the *starting date* and annually thereafter. Where the *Employer* requests supporting evidence of compliance, the *Contractor* provides such evidence to the *Employer's* satisfaction.

Z2.29.6 The *Contractor* ensures that any Subcontract entered into by the *Contractor* for the Works contains terms no less onerous than those imposed on the *Contractor* by this clause Z2.29. The *Contractor* is responsible for the observance and performance by Subcontractors of those terms.

Access Arrangements

Z2.30

Z2.30.1 The *Contractor* acknowledges that the *Employer* does not guarantee uninterrupted or exclusive possession of the Site and that Access is limited in accordance with this contract.

Z2.30.2 The *Contractor* submits a Works Plan to the *Project Manager* each week in accordance with the Access Procedure from the *starting date* until Completion.

Z2.30.3 The *Contractor* shows on each Works Plan he submits for acceptance:

- Access requests;
- Access bookings;
- cancelled Access which was previously booked;
- changes to booked Access; and

any other information required to be shown on the Works Plan pursuant to the Works Information and this Clause Z2.30.

Z2.30.4 The Parties follow the process for agreeing Access requests on the *Contractor's* Works Plan and producing the Access Plan as set out in the Access Procedure. Reasons for the *Project Manager* not accepting an Access request within a Works Plan are set out in the Works Information.

Z2.30.5 The *Project Manager* may at any time amend the Access Plan provided that:

- the Access has not been booked; and
- the *Project Manager* offers equivalent alternative Access.

Z2.30.6 The *Contractor* complies with the Access Procedure.

Z2.30.7 The *Contractor* may only apply for Access if it is from a permitted Access Type.

Z2.30.8 The *Contractor* submits an Access request on the Works Plan in accordance with the Access Procedure. The *Contractor* identifies in each Access request whether the Access is Restrictive Access.

Z2.30.9 The *Contractor* provides the *Project Manager* without delay such additional information as the *Project Manager* may reasonably require in respect of the *Contractor's* Access requests.

Z2.30.10 The *Employer* confirms Access bookings in accordance with the Access Procedure, subject to the following:

- the *Contractor* having complied with the Access Procedure and Clause Z2.30;
- the *Employer* uses reasonable endeavours to obtain bookings but does not warrant or guarantee to the *Contractor* that those bookings will be granted (and failure to obtain such bookings does not constitute a compensation event); and
- only those events set out in Clauses 60.1(2) and 14.3 may constitute compensation events in respect of Access.

Z2.30.11 The *Project Manager* may instruct the *Contractor* to use Access booked by the *Employer*, provided reasonable written notice is given by the *Project Manager*.

Z2.30.12 The *Contractor* shall use all booked Access unless:

- it is unused Contingency Access (as defined in the Access Procedure) that is not required; or
- the *Contractor* is instructed by the *Project Manager* not to use the Access.

The *Contractor* uses any booked Access remaining after the period of delay has ended provided it is reasonable and practicable to do so.

- Z2.30.13 If the *Contractor* breaches its obligations in respect of Access as described in this contract, or fails to use any booked Access, other than by reason of a compensation event or an event described under Clause 19.1, without limiting its other obligations or liabilities under these Implementation Works Terms, the *Contractor* shall pay the *Employer* all charges directly incurred by the *Employer* in respect of the *Contractor* not handing back the Site at the end of any period of booked Access, provided that:
- where Access is not dedicated to the *Contractor*, the *Contractor* shall pay to the *Employer* an amount representing such charges divided by the number of Others to whom such Access was made available and who similarly failed; and
 - the *Employer* provides the *Contractor* with written substantiation of such charges.
- Z2.30.14 The *Contractor* undertakes all preparation work required to ensure that all booked Access is taken up promptly and efficiently.
- Z2.30.15 The *Contractor* uses booked Access in an efficient and productive manner so as to ensure optimal use of the Access with minimal disruption and disturbance to Others or damage to the Site. The *Contractor* makes good any such damage at his own cost at the earliest opportunity and to the reasonable satisfaction of the *Employer*.
- Z2.30.16 The *Contractor* indemnifies the *Employer* in respect of any claims by Others relating to the disruption, delay or cancellation of their Access due to the *Contractor* not working in accordance with this contract. For the avoidance of doubt the *Contractor* does not indemnify the *Employer* in respect of any claims by Others where Access was provided by the *Employer* to the *Contractor* at the detriment of Others (other than those Others under the direction and control of the *Contractor*) or arising out of the *Contractor* discharging his duties as Principal Contractor.
- Z2.30.17 Subject to the right of the *Employer* to terminate under Clause 91.8, payment of such sums shall be in full satisfaction of the *Contractor's* liability arising under Z2.30.13 and Z2.30.16 and the *Employer's* sole remedy. The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*). For the avoidance of doubt, the liabilities and indemnities provided under Z2.30.13 and Z2.30.16 are part of the aggregate cap as at Clause X18.4.

CDM Regulations

Z2.31

- Z2.31.1 The *Employer* appoints the *Contractor* to act as Principal Contractor and Principal Designer as more particularly described in the Works Information for the purposes of the CDM Regulations.
- Z2.31.2 The *Contractor* warrants to the *Employer* that he:
- allocates adequate and competent resources to enable the *Employer* to comply with his obligations under the CDM Regulations;
 - provides to the *Employer*, or such other person as the *Employer* may direct, as soon as reasonably practical following a request, any information regarding the *works* that may be required in connection with the CDM Regulations; and
 - assists the *Employer* in performing his duties under the CDM Regulations so as to minimise any delay to, or additional costs in connection with, the *works* and so as to enable any other party with duties under the CDM Regulations with regard to the *works* to perform such duties timeously.

Z2.31.3 The *Contractor* shall not commit a Safety Breach or a Prohibited Act or be in breach of the CDM Regulations, health and safety laws or any other applicable safety legislation and the *Contractor* advises the *Employer* if it becomes aware of the *Employer* or the *Contractor* being in breach of such requirements.

**Spares and Obsolescence
Management
Z2.32**

Z2.32.1 The *Contractor* warrants, undertakes and represents to the *Employer* that until the *defects date* it will:

- (i) supply spares and parts in accordance with the Works Information;
- (ii) when instructed by the *Project Manager*, obtain regular updates from its suppliers as to the availability of components and trigger a design review whenever there is a significant change in the status of either cost or availability; and
- (iii) comply with its other obligations in the Works Information in relation to Obsolescence.

Without prejudice to its other rights and remedies (including a right to recover damages at common law) if the *Contractor* is in material breach of this warranty and fails to rectify the breach within five (5) days of the *Project Manager's* notification, the *Project Manager* arranges for the spares, replacement parts or obsolescence management to be corrected by Others and the *Contractor* pays the *Employer* for the reasonable cost of the same.

**Working on and adjacent to the
Railway
Z2.33**

Z2.33.1 The *works* are carried out in such a manner as not to endanger or interfere in any way with the railway or any railway operator and in accordance with the *Contractor's* duties as Principal Contractor. The *Contractor* strictly observes all rules, regulations or instructions which he may from time to time receive from the *Project Manager* for the working and protection of the railway or for the protection of persons on or adjacent to the railway or railway operations.

Z2.33.2 At the end of Engineering Hours or at the end of a period of Access the *Contractor* returns possession of the Site to the *Employer*. The *Contractor* complies with the procedure set out or referred to in the Works Information in returning the Site to the *Employer*.

Z2.33.3 In all cases where the *works* have to be carried out on or adjacent to railway traffic the *Contractor* must observe special precautions for the protection of such railway traffic in accordance with the requirements stated in the Works Information.

**Free Issue Materials
Z2.34**

Z2.34.1 The *Employer* supplies the *Contractor* with the *free issue materials* at the times specified in the Works Information or as otherwise agreed between the Parties to enable the *Contractor* to comply with its obligations under this contract.

Z2.34.2 The *Contractor* at the time of delivery of the *free issue materials* checks that they are in a good condition. Any damage or loss is reported immediately by the *Contractor* to the *Project Manager*. In the event that this report is not made, the *Contractor* is responsible for any loss or damage existing at the time of receipt which ought reasonably to have been apparent on a visual check of quantities and conditions.

Escrow Materials
Z2.35

Z2.35.1 The *Contractor* shall enter into the Escrow Agreement with the Escrow Agent no later than the within 20 days of the *starting date*. The *Contractor* shall place the "Escrow Materials", in escrow with the Escrow Agent on the terms set out in the Escrow Agreement as soon as reasonably possible and in any event:

- (a) as a condition to achieving each Sectional Functional Completion;
- (b) as a condition to achieving System Functional Completion; and
- (c) as a condition to achieving Final Completion,

unless the Escrow Agreement states more frequently in which case the *Contractor* shall update the Source Code in accordance with this Clause Z2.23.1 and the Escrow Agreement. Thereafter, the *Contractor* shall update the versions of the Escrow Material in escrow within 20 days of any change to the Escrow Materials that may impact on the Software and every time the Escrow Materials are updated, and the *Contractor* shall otherwise ensure that the Escrow Material versions in escrow shall be up to date on any termination or partial termination of this contract.

Z2.35.2 The *Contractor* shall ensure that it is able to use the Escrow Materials to recreate Software used by the OPO CCTV System and shall demonstrate such ability on request from the *Employer*.

Z2.35.3 The *Employer* shall pay the fees of the Escrow Agent.

Z2.35.4 Without prejudice to the IPR provisions of this contract, the *Contractor* hereby grants to the *Employer* a perpetual, non-exclusive, irrevocable, cost-free licence to use, reproduce, modify, adapt and enhance the Escrow Material and to authorise a third party to do so for all of the purposes set out in Clause Z.2.7.2. The *Employer* shall be entitled to grant sub-licences to any number of tiers, and to assign this licence provided that the licence granted under this Clause Z2.23.4 shall only become effective if the *Employer* becomes entitled to obtain access to the Escrow Material pursuant to the terms of the Escrow Agreement.

Z2.35.5 The Escrow Material shall be released to the *Employer* pursuant to the Escrow Agreement on the occurrence of any one or more of the following events (each an "Escrow Release Event"):

- (a) the *Contractor* ceases to carry on its business or the part of its business which relates to the Escrow Material;
- (b) the *Contractor* assigns its rights to the Intellectual Property Rights in the Escrow Material to a third party ("Assignee") and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the *Employer* by failing to enter into either:
 - (i) a novation agreement with the *Employer* and Escrow Agent for the assumption of the *Contractor's* rights and obligations under the Escrow Agreement by the Assignee; or
 - (ii) a new escrow agreement with the *Employer* for the Escrow Material which offers the *Employer* substantially similar protection to that provided by the Escrow Agreement without significantly increasing the overall cost to the *Employer*,

provided that if the Assignee offers to enter into a novation or new escrow agreement within 60 days of all parties to the Escrow Agreement's knowledge of the assignment and the *Employer* fails to accept the Assignee's offer within 30 days of such offer being notified to the *Employer*, there shall be no Escrow Release Event under this Clause Z2.35.5(b); or

a Contractor Termination Event and as a result this contract is terminated or partially terminated.

Z2.35.6 Subject to earlier termination in accordance with its terms, the Escrow Agreement shall remain in place until the end of the Termination Assistance Period as defined under Schedule 7 of the General Terms.

Z2.36 Not used.

Value Engineering

Z2.37

Z2.37.1 The *Contractor* may propose to the *Project Manager* that the Works Information provided by the *Employer* should be changed so as to result in a reduction to the forecast Defined Cost and/or result in a saving in the time required to Provide the Works or any part thereof. In such event the *Contractor* submits details of the proposal to the *Project Manager* in accordance with the requirements set out in the Works Information. The *Project Manager* may provide the *Contractor* with details of the *Employer's* estimated additional costs resulting from a *Contractor's* proposal.

Z2.37.2 If the *Project Manager* accepts the proposal referred to in Clause Z2.37.1 above, he gives an instruction changing the Works Information and:

- the Prices are not reduced save as agreed between the *Project Manager* and the *Contractor* in order to reflect the *Employer's* estimated additional costs; and
- the Completion Dates are not changed.

Z2.38 The *Contractor* complies with Schedules 10 and 11.

Work Related Road Risk

Z2.39 Environmental Claims

- Z2.39.1 The *Contractor* indemnifies the *Employer* against Losses in respect of any Environmental Claims and any Remediation costs and expenses which may arise out of or by reason of the *Contractor's* negligent acts, negligent omissions or breach of statutory duty by the *Contractor*, his employees, Subcontractors or agents.
- Z2.39.2 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses and any Remediation costs and expenses to the extent that such Losses or Remediation costs and expenses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).
- Z2.39.3 The *Contractor's* indemnity under Clause Z2.39.1 remains in force until twelve (12) months after the *defects date*.
- Z2.39.4 Environmental Law means all and any laws, including common law, legislation, codes of practice, notices, judgements, decrees, regulations, applicable clean-up standards, circulars, guidance notes (statutory or otherwise), as may be enacted, adopted, amended or supplemented, concerning the protection of human health, or the Environment or the conditions of the work place.
- Z2.39.5 The Environment means:
- land, including but without limitation, surface land, sub-surface strata, seabed and riverbed and natural and man-made structures;
 - water, including but without limitation, coastal and inland waters, surface waters, aquatic sediment, ground water and water in drains and sewers;
 - air, including but without limitation, air inside and outside buildings and other natural and man-made structures above or below the ground; and
- any living system or organism supported by the media referred to in this Sub-Clause.
- Z2.39.6 Environmental Claim means receipt by the *Employer* in connection with any pollution or contamination of the Environment of:
- any written claim, proceeding, demand, suit requirement, or notice from a third party, including a Regulatory Authority ("Regulatory Authority" means any government entity or other public or quasi public authority or privatised utility having responsibility for any matters concerning the Environment, or Environmental Law) or any order of the court or competent jurisdiction in connection with an alleged breach of Environmental Law; or
 - any charge or condition imposed by any Regulatory Authority or any notice served by any Regulatory Authority requiring Remediation (including any written indication from any Regulatory Authority that a requirement to carry out Remediation will be imposed on the Employer unless the Employer agrees to carry out Remediation voluntarily).
- Z2.39.7 Remediation means any or all audit, investigation, sampling, analysing, assessing, removing, remedying, cleaning up, treating, abating, containing, controlling or ameliorating the presence in or effects on the Environment of any contamination or pollution including, but without limitation, the removal, treatment and disposal of material and the treatment and monitoring of ground, ground waters and gases and emissions and the obtaining of expert technical, legal and other professional advice (including all project management functions).
- Z2.39.8 If the *Contractor* discovers that the Site has been contaminated or polluted, or he suspects that the Site has been contaminated or polluted by some other party, then the *Contractor* is to notify the *Employer* immediately in writing naming the other party, where known. The *Contractor* will use reasonable measures to ensure that its employees, Subcontractors and agents similarly notify it of the same.

- Z2.39.9 The *Contractor* shall act in accordance with Good Industry Practice and take reasonable mitigation measures in relation to the presence of any Hazardous Materials at the Site (whether pre-existing or otherwise).
“Hazardous Material” means anything whether in solid, liquid or gaseous form, or any form of energy, which alone, or in combination with other things, is capable of causing any injury or damage to, or pollution or impairment of, the Environment.
- Z2.39.10 If the *Contractor* or its employees, Subcontractors or agents causes the sudden and accidental discharge, spillage, leak or release of Hazardous Materials or leaves waste at the Site, then the *Contractor* shall be responsible for undertaking Remediation necessary as a result of the same or for any Losses directly arising as a result of the *Employer* undertaking reasonable steps by way of Remediation (the *Employer* being entitled to elect to have conduct of Remediation in such circumstances).
- Z2.39.11 The *Contractor* is not responsible for and does not indemnify the *Employer* for such Remediation or Losses to the extent that such Remediation or Losses are caused by the negligence of the *Employer*, his employees or agents or Others (other than those Others under the direction and control of the *Contractor*).

DISPUTE RESOLUTION

Option W1 - Not used

Option W2 - Not used (see Z2.11)

SECONDARY OPTION CLAUSES

Option X1: Price adjustment for inflation

Defined terms X1

- X1.1 (a) The Base Date Index (B) is the latest available index before the *base date*.
(b) The Latest Index (L) is the latest available index before the date of assessment of an amount due.
(c) The Price Adjustment Factor is the total of the products of each of the proportions stated in the Contract Data multiplied by $(L - B)/B$ for the index linked to it.

Price Adjustment Factor X1.2 If an index is changed after it has been used in calculating a Price Adjustment Factor, the calculation is repeated and a correction included in the next assessment of the amount due.

The Price Adjustment Factor calculated at the Completion Date for the whole of the *works* is used for calculating price adjustment after this date.

Compensation events X1.3 The Defined Cost for compensation events is assessed using the

- Defined Cost current at the time of assessing the compensation event adjusted to *base date* by dividing by one plus the Price Adjustment Factor for the last assessment of the amount due and
- Defined Cost at *base date* levels for amounts calculated from rates stated in the Contract Data for employees and Equipment.

Price adjustment X1.5 Each time the amount due is assessed, an amount for price adjustment is added to or deducted from the total of the Prices (as the case may be) which is the sum of

- the change in the Price for Work Done to Date since the last assessment of the amount due multiplied by $(PAF/(1 + PAF))$ where PAF is the Price Adjustment Factor for the date of the current assessment and
- correcting amounts, not included elsewhere, which arise from changes to indices used for assessing previous amounts for price adjustment.

Option X2: Changes in the law

Changes in the law Z1.40A.1

X2

- X2.1 A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date. The *Project Manager* may notify the *Contractor* of a compensation event for such a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X3: Multiple currencies

Multiple currencies

X3

- X3.1 ~~The Contractor is paid in currencies other than the currency of this contract for the items or activities listed in the Contract Data. The exchange rates are used to convert from the currency of this contract to other currencies.~~
- X3.2 ~~Payments to the Contractor in currencies other than the currency of this contract do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the currency of this contract.~~

Option X4: Parent company guarantee

Parent company Guarantee Z1.41.1

X4

- X4.1 If a parent company owns the *Contractor* and the *Contractor* has not given a guarantee under the General Terms, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor's* performance in the form set out in the Works Information attached at Schedule 8 of the General Terms (with such amendments as the *Contractor* requests and the *Employer* approves in its discretion). ~~If the~~ The guarantee was not is given by at the Contract Date it is given to the *Employer* within four weeks of the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- Z1.41.2 X4.2 If the *Contractor* is an incorporated joint venture, the parent company of each shareholder in the *Contractor* gives to the *Employer* a guarantee of the *Contractor's* performance in the form set out in Schedule 8 of the General Terms. The guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- Z1.41.3 X4.3 If the *Contractor* comprises two or more companies acting in an unincorporated joint venture, consortium, partnership or otherwise, each such company gives to the *Employer* a guarantee by its parent company of such company's performance in the form set out in Schedule 8 of the General Terms. The guarantee is given at the Contract Date unless the *Employer* (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.
- Z1.41.4 X4.4 If the guarantor providing a guarantee required pursuant to this clause X4 is not a company registered in England and Wales, such guarantor provides to the *Employer* a legal opinion substantially in the form set out in Schedule 8 of the General Terms on the guarantor's execution of any such guarantee.
- Z1.41.5 X4.5 Upon any novation of this contract the *Contractor* gives to the *Employer* further guarantees and legal opinions on identical terms as any guarantees and legal opinions required pursuant to clause X4.1 to X4.4.

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 **meeting key date 1**

Bonus for early Completion meeting key date 1	X6	The <i>Contractor</i> is paid a bonus calculated at the rate stated in the Contract Data for meeting key date 1 each day from the earlier of <ul style="list-style-type: none"> ●—Completion and ●—the date on which the <i>Employer</i> takes over the works until the Completion Date.
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Option X7: Delay damages

Delay damages	X7	<p>X7.1 The <i>Contractor</i> pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of</p> <ul style="list-style-type: none"> ● Completion and ● the date on which the <i>Employer</i> takes over the works. <p>X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the <i>Employer</i> 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.</p> <p>X7.3 If the <i>Employer</i> takes over a part of the <i>works</i> before Completion, the delay damages are reduced from the date on which the part is taken over. The <i>Project Manager</i> assesses the benefit to the <i>Employer</i> of taking over the part of the <i>works</i> as a proportion of the benefit to the <i>Employer</i> of taking over the whole of the <i>works</i> not previously taken over. The delay damages are reduced in this proportion.</p>
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Option X12: Partnering

Identified and defined terms	X12	<p>X12.1 (1) The Partners are those named in the Schedule of Partners. The <i>Employer</i> 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.</p>
Actions	X12.2	<p>(1) Each Partner works with the other Partners to achieve the <i>Employer's objective</i> 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 <i>Employer's</i> 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.</p>
Working together Z1.42.1	X12.3	<p>(1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation. (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.</p>

(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 Employer 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

Z1.43.1

X13

X13.1 Save to the extent the Contractor has in place a performance bond pursuant to the General Terms, the Contractor gives the Employer a performance bond, provided by a bank or insurer which the Project Manager has accepted, for the amount stated in the Contract Data and in the form set out in Schedule 9 to the General Terms (with such amendments as the Contractor requests and the Employer approves in its discretion) ~~the Works Information~~. A reason for not accepting the bank or insurer is that it is not licensed to carry out surety business in the United Kingdom or that it is a Group Company of the provider of a bond under Option X4 or that its commercial position is not strong enough to carry the bond. Its commercial position will not (unless the Project Manager agrees otherwise) be strong enough if it is rated less than 'A+' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider). ~~If the bond is was not given by at the Contract Date, it is given to the Employer within four weeks of the Contract Date unless the Employer (in its sole discretion) gives its prior written consent to the guarantee being given by a later date.~~

Z1.43.2

X13.2 If a performance bond expires in accordance with its terms prior to the issue of the Defects Certificate or the provider of a performance bond no longer holds a long-term credit rating of at least 'A' (Standard & Poors) (or its equivalent from each of the ratings agencies which rate the bond provider) and if the Employer so requests, the Contractor provides to the Employer 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:

- in the case of an expired bond, not later than 7 days before the expiry of the original bond; or
- in the case of a downgraded credit rating, within 35 days of the Employer's request for a replacement bond.

Failure by the Contractor to provide to the Employer a replacement bond constitutes default under the contract sufficient to enable the Employer to make a demand under the original bond or terminate the contract.

Option X14: Advanced payment to the Contractor

Advanced payment	X14
X14.1	The Employer makes an advanced payment to the Contractor of the amount stated in the Contract Data.
X14.2	The advanced payment is made either within four weeks of the Contract Date or, if an advanced payment bond is required, within four weeks of the later of <ul style="list-style-type: none">the Contract Date andthe date when the Employer receives the advanced payment bond. The advanced payment bond is issued by a bank or insurer which the Project Manager has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the Contractor has not repaid and is in the form set out in the Works Information. Delay in making the advanced payment is a compensation event.
X14.3	The advanced payment is repaid to the Employer by the Contractor in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

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

The Contractor's design Z1.44.1	X15
X15.1	The Contractor is not liable for Defects in the works due to his design so far as he proves that he used all the reasonable skill and care and diligence normally used by an appropriate and competent professional designer experienced in carrying out design works similar to those included in the works in connection with projects of a similar size, scope and complexity to the project to ensure that his design complied with the Works Information.
X15.2	If the Contractor corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X17: Low performance damages

Low performance Damages	X17
X17.1	If a Defect included in the Defects Certificate shows low performance with respect to a performance level stated in the Contract Data, the Contractor pays the amount of low performance damages stated in the Contract Data.

Option X18: Limitation of liability

Limitation of liability Z1.46.1	X18
X18.1	Without prejudice to the Employer's entitlement to delay damages (Option X7) or liquidated damages pursuant to Z2.12, the The Contractor shall not be liable to the Employer for Consequential Loss.
X18.2	For any one event, the liability of the Contractor to the Employer for loss of or damage to the Employer's property is limited to the amount stated in the Contract Data.
Z1.46.2	X18.3 The Contractor's liability to the Employer for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data is not limited and is in addition to any damages stated in this contract for delay, low performance or disruption.
Z1.46.3	X18.4 The Contractor's total liability to the Employer for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the <i>law of the contract</i> . The excluded matters are amounts payable by the Contractor as stated in this contract for

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

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

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

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

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

Not used

Single Point Design Responsibility Z1.47

X21

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

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

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

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

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

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

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

**Key Person Succession
Plan**
Z1.49

X23

- 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.

OPTION Y

Option Y(UK)1: Project Bank Account

Definitions	Y(UK)1	
	Y1.1	<p>(1) The Authorisation is a document authorising the <i>project bank</i> to make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(2) Named Suppliers are <i>named suppliers</i> and other Suppliers who have signed the Joining Deed.</p> <p>(3) Project Bank Account is the account used to receive payments from the <i>Employer</i> and the <i>Contractor</i> and make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(4) A Supplier is a person or organisation who has a contract to</p> <ul style="list-style-type: none">• construct or install part of the <i>works</i>,• provide a service necessary to Provide the Works or• supply Plant and Materials for the <i>works</i>. <p>(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.</p> <p>(6) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.</p>
Project Bank Account	Y1.2	The <i>Contractor</i> establishes the Project Bank Account with the <i>project bank</i> within three weeks of the Contract Date.
	Y1.3	Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
	Y1.4	The <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The <i>Contractor</i> provides to the <i>Project Manager</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
Named Suppliers	Y1.5	The <i>Contractor</i> includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
	Y1.6	The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Project Manager</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The <i>Employer</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.
Payments	Y1.7	On or before each assessment date, the <i>Contractor</i> submits to the <i>Project Manager</i> an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.

	Y1.8	<p>Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract,</p> <ul style="list-style-type: none"> • the <i>Employer</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract and • the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Employer</i> has notified the <i>Contractor</i> he intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
	Y1.9	<p>The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Contractor</i> for the balance of the payment due under the contract. After signing the Authorisation, the <i>Contractor</i> submits it to the <i>Project Manager</i> no later than four days before the final date for payment. The <i>Employer</i> signs the Authorisation and submits it to the <i>project bank</i> no later than one day before the final date for payment.</p>
	Y1.10	<p>The <i>Contractor</i> and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.</p>
	Y1.11	<p>A payment which is due from the <i>Contractor</i> to the <i>Employer</i> is not made through the Project Bank Account.</p>
Effect of payment	Y1.12	<p>Payments made from the Project Bank Account are treated as payments from the <i>Employer</i> to the <i>Contractor</i> in accordance with this contract or from the <i>Contractor</i> or <i>Subcontractor</i> to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the <i>Contractor</i> to comply with the requirements of this clause is not treated as late payment under this contract.</p>
Trust Deed	Y1.13	<p>The <i>Employer</i>, the <i>Contractor</i> and <i>named suppliers</i> sign the Trust Deed before the first assessment date.</p>
Termination	Y1.14	<p>If the <i>Project Manager</i> issues a termination certificate, no further payment is made into the Project Bank Account.</p>

Trust Deed

This agreement is made between the *Employer*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between and for (the works).

Background

The *Employer* and the *Contractor* have entered into a contract for the works.

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the works.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account;
- further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *Contractor*. The agreement of the *Employer* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed;
- this deed is subject to the law of the contract for the works;
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (*Employer*)

..... (*Contractor*)

.....

.....

.....

.....

(Named Suppliers)

Joining Deed

This agreement is made between the *Employer*, the *Contractor* and
(the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between ..
..... and for (the works).

Background

The *Employer* and the *Contractor* have entered into a contract for the works.

The Named Suppliers have entered into contracts with the *Contractor* or a
Subcontractor in connection with the works.

The *Contractor* has established a Project Bank Account to make provision for
payment to the *Contractor* and the Named Suppliers.

The *Employer*, the *Contractor* and the Named Suppliers have entered into a
deed as set out in Annex 1 (the Trust Deed), and have agreed that the
Additional Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date
set out below,
- this deed is subject to the law of the contract for the works,
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (*Employer*)

..... (*Contractor*)

..... (*Additional Supplier*)

OPTION Y

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

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

Option Z: Additional conditions of contract

Additional conditions of contract Z1.55.1	The <i>additional conditions of contract</i> stated in the Contract Data are part of this contract incorporated into these consolidated conditions of contract.
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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.
- 11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Working Areas.
- 12 Payments to people for
- (a) bonuses and incentives (contract specific)
 - (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*
- 13 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.
- 14 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).
- 21 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.
- 22 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.
- 23 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.
- 24 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.
- 25 Payments for the purchase price of Equipment which is consumed.
- 26 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.
- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 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.
- 31 Payments for
 - purchasing Plant and Materials,
 - delivery to and removal from the Working Areas,
 - providing and removing packaging and
 - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
- Charges** 4 The following components of the cost of charges paid by the *Contractor*.
- 41 Payments for provision and use in the Working Areas of
 - water,
 - gas and
 - electricity.
- 42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *works*.
- 43 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.

	44		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.
	45		Payments to a surety for the provision any performance bond required under Option X13 if Option X13 is used.
Manufacture and fabrication	5		The following components of the cost of manufacture and fabrication of Plant and Materials which are
			<ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51		The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	52		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 <i>works</i> and Equipment done outside the Working Areas.
	61		The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62		An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63		The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7		The following are deducted from cost
Z1.56.6			<ul style="list-style-type: none"> • the cost of events for which this contract requires the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers and • the cost of excess payments or deductibles

SUPPLEMENTARY NOTES TO THE 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. Without prejudice to the effect of clause 52.1 (by virtue of which all items not included in the Defined Cost are deemed to be included in the Fee):

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

Part A Notes

Section 1: People

Wages, salaries and amounts paid by the Contractor

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

Payments made to people for bonuses and incentives:

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

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

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

Payments made to people for overtime:

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

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

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

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

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

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

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

Payments made to people for non-productive time

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

Payments made to people for training

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

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

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

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

Section 2: Equipment

Payments made for overhead to group companies for Equipment

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

Section 3: Plant and Materials

Payments made for overhead to group companies for Plant and Materials

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

Section 4: Charges

A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14.

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

Section 5: Manufacture and Fabrication

Payments made for overhead to group companies

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

Section 6: Design

Payments made for overhead to group companies for design:

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

Design consultants – overhead charge

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

Section 7: Insurance

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

Part B Notes applicable to all cost components

1 - Properly Incurred Costs

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

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

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

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

2 - Reasonably Incurred Costs

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

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

3 - Cost Verification

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

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

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

THE SCHEDULES TO CONSOLIDATED CONDITIONS OF CONTRACT FOR MAIN OPTION D

Schedule

- 1 Additional definitions
- 2 Form of Vesting Certificate
- 3 Form of Warranty from Contractor
- 4 Form of Warranty from Subcontractor
- 5 Form of Warranty from Subconsultant
- 6 Corporate IPR
- 7 Dispute Resolution Procedure
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- 9 Systems Engineering, Integration and Interface Schedule
- 10 Work Related Road Risk
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