

TRANSPORT FOR LONDON

Tfl_scp_001262

**WESTMINSTER PONTOON EXTENSION
CONSTRUCTION**

CONTRACT FOR WORKS BETWEEN

LONDON RIVER SERVICES

AND

**HERBOSCH KIERE MARINE CONTRACTORS
LTD**

VOLUME 1

CONTENTS

London River Services – Westminster Pontoon Extension CONSTRUCTION WORKS

Volume 1: Conditions of Contract

Volume 2: Works Information - General

Volume 3: Pre-Construction Information

Volume 4: Site Information

Volume 5: Works Information - Contract Drawings

Volume 6: The Contractor's Quality and Financial Submission

CONTENTS

FORM OF AGREEMENT	1
CONTRACT DATA	3
Part one - Data provided by the Employer	3
<i>Part two - Data provided by the Contractor</i>	9
SCHEDULE 1 - THE 'Z' CLAUSES	13
Z1 Amendments to Core clauses and Main Option clauses	13
Dispute Resolution	34
SECONDARY OPTION CLAUSES	42
Z2 Warranties.....	44
Z3 Assignment.....	44
Z4 Responsibility for Statutory Undertakers.....	45
Z5 Nuisance	45
Z6 Best value	46
Z7 Data Transparency	46
Z8 Data Protection	47
Z9 Freedom of Information.....	47
Z10 Confidentiality and Publicity	47
Z11 Conflict of Interest.....	48
Z12 Corrupt Gifts, Fraud and the Payment of Commission.....	49
Z13 Quality Statement	49
Z14 2017 IAAF or IPC World Championships 2017	49
Z15 Equality & Diversity Compliance	49
Z21 Sustainable Timber.....	50
Z22 London Living Wage.....	52
SCHEDULE 2 - INSURANCE TABLE.....	53
ANNEX I PARENT COMPANY GUARANTEE.....	
ANNEX 2 KEY PERFORMANCE INDICATORS.....	
POST TENDER CORRESPONDENCE	67
PRE TENDER CORRESPONDENCE	68

FORM OF AGREEMENT**Amendments to NEC Third Edition: Option A**

THE CONTRACT DATE is the 4th day of September 2015

BETWEEN

1. **London River Services**^{LIMITED} **of Tower Pier, Lower Thames Street, London EC3N 4DT** (hereinafter called "the *Employer*") which expression shall include its successors in title and permitted assignees, and
2. **HERBOSCH-KIERE MARINE CONTRACTORS LTD**, a company incorporated in and in accordance with the laws of **ENGLAND** having as its registered number **291 8680** and its registered office at **3 HIGH STREET, ST. LAWRENCE, RAMSGATE, KENT, CT11 0QL** (hereinafter called "the *Contractor*").

RECITALS

- (A) The *Employer* wishes to appoint the *Contractor* to carry out works being **Westminster Pontoon Extension Construction** for which the *Employer* has submitted to the *Contractor* his invitation to tender.
- (B) The *Contractor* has submitted his tender offer dated **16th June 2015** in response to the *Employer's* invitation to tender. The *Employer* has examined the *Contractor's* said tender and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the works in accordance with this contract.

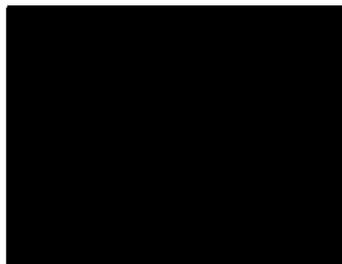
OPERATIVE PROVISIONS

1. In this Contract Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Engineering and Construction Contract Option A: Priced Contract with Activity Schedule (Third edition April 2013) together with and as amended by Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, and Z (being the amendments set out in Schedule 1).
3. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract
- 3.0 the conditions of contract (including, for the avoidance of doubt, the Option Z clauses set out in Schedule 1 to this document),
- 3.1 the Contract Data Part One,
- 3.2 the Contract Data Part Two,
- 3.3 the Post Tender Clarification Correspondence,
- 3.4 the Pre Tender Clarification Correspondence,

- 3.5 the Works Information and Pre-Construction Information,
 - 3.6 the Site Information,
 - 3.7 the Contractor’s Quality Submission
 - 3.8 the Contractor’s Financial Submission
4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Contract Agreement.
 5. The *Contractor* Provides the Works in accordance with this contract.
 6. The *Employer* pays the *Contractor* for complying with his obligations to Provide the Works the amount due in accordance with this contract.
 7. This contract and the warranties and undertakings in it are deemed to apply to all work and/or services performed by the *Contractor* both before and after the Contract Date.
 8. 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 his work in accordance with this contract. The *Contractor* shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *works*.

This Contract Agreement has been executed as a deed and delivered on the date stated at the start of this Contract Agreement.

Executed as a Deed by the Contractor acting by a Director and its Company Secretary or two Directors:

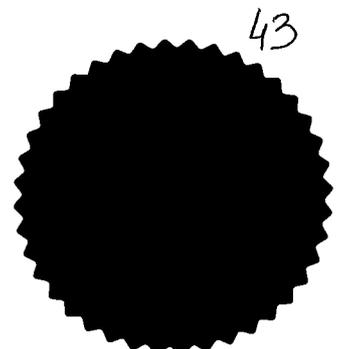
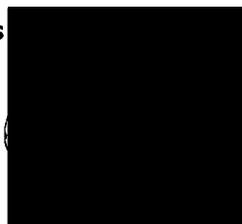


Director



Director/Secretary

The Common Seal/Corporate Seal of LONDON RIVER SERVICES was affixed to this Deed in the presence of: LIMITED



.....

Name and description of authorised signatory

CONTRACT DATA

- **Part One - Data provided by the *Employer***

**Statements given in
all contracts**

1 General

- The *conditions of contract* are the core clauses and the clauses for main Option A, dispute resolution Option W2 and secondary Options X4, X7, X15, X16, X18, X20 and Z of the NEC3 Engineering and Construction Contract (April 2013)

- The *works* are

Westminster Pontoon Extension Construction

- The *Employer* is

Name London River Services Ltd

Address Tower Pier, Lower Thames Street, London

EC3N 4DT

- The *Project Manager* is

Name [REDACTED]

Address Tower Pier, Lower Thames Street, London

EC3N 4DT

- The *Supervisor* is

Name [REDACTED]

Address Beckett Rankine, 270 Vauxhall Bridge Road

Westminster, SW1V 1BB

- The Works Information is in

Volume 2 Works Information General and Volume 5 Works Information – Contract Drawings

- The Site Information is in

Volume 4 – Site Information

- The *boundaries of the site* are As per Volume 4 Site Information

- The *language of this contract* is English

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

- The *period for reply* is 2 weeks

- The *tribunal* is The courts of England and Wales

- The following matters will be included in the Risk Register
As detailed in the Risk Register

2 Time

- The *starting date* is 16 July 2015

- The *access dates* are

Part of the Site	Date
1 Westminster Pier	TO BE CONFIRMED

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

4 Testing and Defects

- The *defects date* is 52 weeks after Completion of the whole of the *works*
- The *defect correction period* is 2 weeks

5 Payment

- The *currency of this contract* is the Pound Sterling (£)
- The *assessment interval* is 4 weeks
- The *interest rate* is 2% per annum (not less than 2) above the base rate of the Bank of England

6 Compensation events

- The place where weather is to be recorded is

Westminster Pier

-
- The *weather measurements* to be recorded for each calendar month are
 - the cumulative rainfall (mm)
 - the number of days with rainfall more than 5mm
 - the number of days with minimum air temperature less than 0 degrees Celsius
 - the number of days with snow lying at 09:00 hours GMT
 - The *weather measurements* are supplied by the Met Office
 - The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at London St James's Park Weather Station and which are available from
 - (a) The Met Office, FitzRoy Road, Exeter, Devon, EX1 3PB, United Kingdom
-

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

- The *completion date* for the whole of the works is 28th February 2016
- The *Employer* is not willing to take over the works before the Completion Date

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

They *key dates* and *conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
1 Installation of Two piles on Landward side of Existing Pontoon.	To be agreed by the <i>Project Manager</i> and the <i>Contractor</i> within 7 days of the Contract Date.
.....
2	
.....

3

If there are additional *Employer's* risks

- These are additional *Employer's* risks
 - 1 Local borough and marine authority consents (not otherwise stated in the contract)

Option X1 is not used

Option X2 is not used

Option X3 is not used

Option X 4 is used

Option X5 is not used

-

section

1

2

3

4

Option X6 is not used

Option X5 and X7 are used together

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

<i>section</i>	description	amount per day
----------------	-------------	----------------

1

2

3

4

Remainder of the *works*

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

- Delay damages for Completion of the whole of the *works*

are [REDACTED] per day

Option X8 is not used

Option X9 is not used

Option X10 is not used

Option X11 is not used

If Option X12 is not used

If Option X13 is not used

If Option X14 is not used

If Option X16 is used

The *retention free amount* is £0

The *retention percentage* is [REDACTED]

If Option X17 is not used

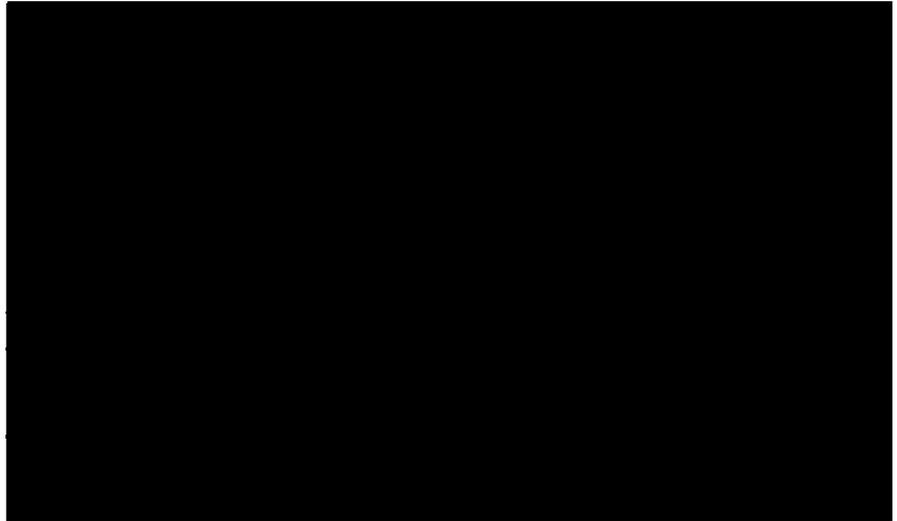
If Option X18 (limitation of liability) is used

To the extent that the *Contractor's* liability in respect of the matters set out in X18.1, X18.2, X18.3 and X18.4 is insured under the following insurance policies which the *Contractor* is required to maintain under the contract:

- Contractor's All Risk,
- Public Liability,
- Professional Indemnity

then the *Contractor's* liability for those matters, other than the excluded matters and whether or not the relevant insurance policies have in fact been taken out and maintained, is limited to:

- €10 million per contract for matters insured under the Contractor's All Risk insurance policy;
- €5 million for each and every claim for matters insured under the Public Liability insurance policy;
- £1 million for each claim for matters insured under the Professional Indemnity insurance policy,



Option X20 (KPIs) is used

The *incentive schedule* for Key Performance Indicators is to be agreed but will be based on the KPIs contained in Annex 2 of Volume 1.

A report of performance against each Key Performance Indicator is provided at intervals of 1 month

Option Y(UK)3 is not used

Option Z is used

The *additional conditions of contract* are those set out in Schedule 1 to the Contract Agreement

Part Two - Data provided by the Contractor**Statements given in contracts**

The Contractor is

Name Herbosch-Kiere Marine Contractors Ltd

Address Power Road Studios, Studio 3.4, 114 Power Road, Chiswick, London, W4 5PY

The *direct fee percentage* is [REDACTED]

The *subcontracted fee percentage* is [REDACTED]

The *working areas* are the Site and offsite barge fabrication yard, on board barges and offsite quay areas (location to be advised)

The key people are

(1) Name [REDACTED]

Job Operations Manager

Responsibilities Overall project responsibility

Qualifications Please refer to CV section 4.1

Experience Please refer to CV section 4.1

(2) Name [REDACTED]

Job Site Manager

Responsibilities All on site H & S , production, procurement, programming and liaison with PM

Qualifications Please refer to CV section 4.1

Experience Please refer to CV section 4.1

Other Key
Personnel

██████████
SHEAQ
Manager

██████████
Marine Works
Supervisor

The following matters will be included in the Risk Register

To be agreed post contract.

Optional statements

The Works Information for the *Contractor's* design is in

Volume 2

The designs submitted by the *Contractor*

If a *quality statement* which sets out the *Contractor's* proposals for the management and resourcing of the works is to be identified in the Contract Data

The *quality statement* is

The *Contractor's Quality Submission*.

If a programme is to be identified in the Contract Data

The programme identified in the Contract Data is

The *Contractor's* submitted programme at tender stage
Westminster Pier Extension – dated 16/06/15 (see section
3 of *Contractor's Submission*).

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

The *completion date* for the whole of the works is



~~19 November 2015~~ 28th FEBRUARY 2016

**Data for the Shorter
Schedule of Cost
Components**

The *activity schedule* is contained in the contract, Volume 6

The tendered total of the Prices is [REDACTED]

The percentage for people overheads is [REDACTED]

The published list of Equipment is the last edition of the list published by CECA schedule of dayworks

The percentage for adjustment for Equipment in the published list is [REDACTED] (state plus or minus) (excludes all fuel, labour/crew – see below)

The rates for other Equipment are

Equipment	size or capacity	Rate per hour (based on 10hr day)
Floating pontoon	+/- 55 x 14m	[REDACTED]
Storage Barge	+/- 20 x 10m	
BargeCrawler Crane	+/- 160t	
Piling equipment	PVE110	
Piling hammer	S150 or similar	
Safety Boat	RIB	
Tug/work boat	<10tBP	
Hydraulic Pile gate		

The hourly rates for Defined Cost of design outside the Working Areas and for works inside the Working Areas are

category of employee	hourly rate
Site manager	[REDACTED]
Site Engineer/marine super	
Operations Manager	
QS/Commercial Manager	
foreman	
Bargemaster/captain	

Crane op/Piling op
Welder
Marine op/boatman
Diver
Diver Supervisor
Tradesman
Electrician
Design
Senior Designer
Principal Technician/Jnr designer



The percentage for design overheads is



The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are

SCHEDULE 1 - THE "Z" CLAUSES**Z1 Amendments to Core clauses and Main Option clauses**

Z1.2 The Core clauses, Main Option A clauses and the Secondary Option clauses are amended as follows

Clause 11.2(5) At the end of first bullet point insert: "the requirements of this contract or".

Clause 11.2(10) Delete "the *Adjudicator*" and replace with "the Adjudicator".

Clause 11.2 Insert the following new definitions

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

(35) Adjudicator means an independent person appointed to act as an adjudicator in accordance with clause W2.2.

(36) Agreed SLNT Plan means the *Contractor's* strategic labour needs and training plan set out in Appendix 2 (*Outline/Agreed SLNT Plan*) to this contact, to be prepared in accordance with the SLNT Plan Template and approved by the *Employer*.

(37) Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause 22.1.

(38) Change of Control means

- a change in the ownership of the *Contractor* or the Holding Company where such change relates to fifty percent or more of the issued share capital of the *Contractor* or the Holding Company (as applicable) and/or
- in the case of an unincorporated *Contractor* there is any change in the management personnel of the *Contractor*, which alone or taken with any other change in management personnel not previously notified to the *Employer*, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the *Contractor*.

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

underwriters.

- (40) Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005.
- (41) The Contract Agreement is the document executed by the *Employer* and the *Contractor* under which the *Contractor* has agreed to Provide the Works.
- (42) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.
- (43) Diversity Infraction means any breach by the *Contractor* of its obligations specified in clauses Z15, Z16 and Z17 of this contract and/or any failure by a Subcontractor to implement and comply with the Equality and Diversity Strategic Plan.
- (44) Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract.
- (45) Equality Act means the Equality Act 2010.
- (45a) Existing Barge means the existing barge which is currently at the Site and to which the Contractor will carry out certain works as more particularly described in the Works Information.
- (46) FOI Legislation means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation.
- (47) Holding Company means any company which from time to time directly or indirectly controls the *Contractor* where "control" is as defined by Section 1124 of the Corporation Tax Act 2010.
- (48) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *works*.
- (49) Initial SLNT Plan means the initial strategic labour needs and training plan set out at Appendix 2 (*Initial/Agreed SLNT Plan*), submitted by the *Contractor* prior to the Contract Date and to be

agreed between the Parties in accordance with clause Z20.

- (50) IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names and other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- (51) Legal Timber means in respect of which the organisation that felled the trees and/or provided the Timber from which the wood supplied under the contract derived
- had legal rights to use the forest,
 - holds a register of all local and national laws and codes of practice relevant to forest operations and
 - complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.
- (52) Losses means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising.
- (53) Minimum Records means all information relating to the *Contractor's* performance of and compliance with clause Z16 and the implementation of, and compliance with, the Equality and Diversity Strategic Plan by each Subcontractor and Indirect Subcontractor.
- (54) Monthly SLNT Monitoring Report means the report to be prepared by the *Contractor* in the form set out at Appendix 3 (Monthly SLNT Monitoring Report Template) and submitted to the *Employer* in accordance with clause Z20.9.1.
- (55) Nominating Authority means the President or Vice President or other duly authorised officer of the London Court of International Arbitration.
- (56) Notice of Adjudication means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute,
- details of where and when the Dispute arose; and
- the nature of the redress which is sought.

- (57) Pay Less Notice means the notice referred to in clause 51.2B.
- (58) Prevention Event has the meaning ascribed to that term in clause 19.1.
- (59) Recycled Timber means recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms 'recycled' and 'reclaimed' are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. Recycled or reclaimed Timber must be capable of being evidenced as such to the *Employer's* satisfaction in order to satisfy this definition.
- (60) Referral Notice means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5.
- (61) Relevant Employment Vacancy means an employment vacancy within the *Contractor's* organisation relating to the *services*.
- (62) Relevant Protected Characteristics, as at the Contract Date, include: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.
- (63) Senior Representative means a representative of a Party at senior executive level.
- (64) Skills and Employment Strategy means the TfL Group's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy can be obtained from the Transport for London website.
- (65) SLNT Plan Template means the template for the Agreed SLNT Plan set out at Appendix 1 (*SLNT Template*) to this contract, to be completed by the *Contractor*.
- (66) SLNT Output means the minimum number of Apprentice positions or

equivalent to be delivered by the *Contractor* (either directly through its own personnel and the personnel of its Subcontractors) under this contract, as identified and agreed in the Agreed SLNT Plan.

(67) Statutory Undertaker means any governmental or local authority or statutory undertaker

- which has any jurisdiction with regard to the *works* including without limitation any jurisdiction to control development of the site or any part of it
- with whose requirements the *Employer* is required to comply or
- with whose systems and/or utilities the *works* will be associated.

(68) Sustainable Timber means Timber, which in order to meet the *Employer's* criteria for sustainable timber, must be

- Recycled Timber, or
- Sustainably Sourced Timber, or
- a combination of Recycled Timber and Sustainably Sourced Timber.

(69) Sustainably Sourced Timber means Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council (FSC) or equivalent. Where it is not practicable to use Forest Stewardship Council (FSC) standard accredited timber, the *Employer* will accept Timber accredited through other schemes approved by the Central Point of Expertise on Timber (CPET), as listed below

- Canadian Standards Association (CSA),
- Programme for the Endorsement of Forest Certification (PEFC) or
- Sustainable Forestry Initiative (SFI),

or such other source as the *Contractor* may demonstrate to the *Employer's* satisfaction is equivalent.

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

the TfL Group.

(71) Timber means wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element, (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber.

(72) Virgin Timber means Timber supplied or used in performance of this contract that is not Recycled Timber."

Clause 12.2 Delete the existing wording and replace with

"12.2 This contract is governed by and shall be construed in accordance with the *law of the contract* and, without prejudice to clause W2, the parties submit to the exclusive jurisdiction of the courts of England and Wales."

Clause 12.4 Delete the existing wording and replace with

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

Clause 12.5 Insert a new clause:

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

Clause 12.6 Insert a new clause:

"12.6 Save that any member of the TfL Group has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999, the *Employer* and the *Contractor* do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party. Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all members of the TfL Group (other than the *Employer*)."

Clause 12.7 Insert a new clause:

"12.7 If any provision of this contract is held by any court or competent authority to be void or unenforceable in whole or in part, the other provisions of this contract and the remainder of the affected provisions shall continue to be valid."

Clause 12.8 Insert a new clause:

"12.8 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*."

Clause 12.9 Insert a new clause:

"12.9 A reference in these *conditions of contract* to any applicable law or statutory requirement includes

- that law or statutory requirement 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 or statutory requirement."

Clause 12.10 Insert a new clause:

"12.10 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."

Clause 12A Insert a new clause:

"Contract Administration Management System

12A Notwithstanding clauses 13.1 – 13.2:

- the parties agree to utilise a web-based contract administration management system for the project as more particularly described in the Works Information ("CAMS");
- all communications provided for in the contract are to be made exclusively through the CAMS ("CAMS Communications") except for any categories of communications which the *Project Manager* notifies the *Contractor* from time to time are not to be made exclusively

through CAMS; and

- unless the *Project Manager* gives an instruction suspending the operation of the CAMS, CAMS Communications are only effective if made through the CAMS and the parties following any procedure necessary to give effect to the CAMS.

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

Clause 13.1 Delete and substitute:

"If and to the extent that clause 12A is not applicable to the contract, each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*. Other than signed documents which have been electronically scanned, notifications, instructions and quotations for compensation events under this contract are not effective if made by electronic format ('for information' copies of notifications may however be issued electronically)."

Clause 14.1 Delete and substitute:

"14.1 Neither a communication from the *Employer, Project Manager or Supervisor* nor the *Project Manager's* or the *Supervisor's* review or acceptance of a communication from the *Contractor* or of his work changes the *Contractor's* responsibility to Provide the Works or his liability for his design."

Clause 14.5 Insert a new clause:

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

Clause 16.1 After the bullet points, delete the first sentence and replace with:

"The *Contractor* may give an early warning by notifying the *Project Manager* of any other matter which could increase total cost to the *Contractor* or the *Employer*."

Clause 16.2 Delete "Either the *Project Manager* or the *Contractor* may instruct the other" and substitute "*The Project Manager* may instruct the *Contractor* or the *Contractor* may request the *Project Manager* (such

request not to be unreasonably refused)".

Clause 17.1 Delete and substitute:

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

Clause 17.2 Insert a new clause:

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

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

Clause 19.1 Insert a new second paragraph before "and which":

"and which is not

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

After "and which" delete the second bullet point and insert the following:

- "a prudent and experienced contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a contractor would have judged at the Contract Date to have such a small chance of occurring that it would have

been unreasonable for him to have allowed for it and

- the *Contractor* can demonstrate that he did not allow for it in his tender,"

In the final paragraph insert at the beginning "then this is a "Prevention Event" and"

Clause 22 Delete and replace with:

"22 **Intellectual Property Rights**

22.1 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*.

22.2 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor's or other third party's Background IPR) a non-exclusive, world-wide, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* to use the Background IPR for all purposes.

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

22.4 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*.

22.5 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.

22.6 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* shall conduct 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.

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

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

Clause 24.2 In the first sentence delete "an employee" and replace with "any person under his control."

In the second sentence delete "the employee" and replace with "such person".

Clause 25.3 Delete the last sentence and replace with:

"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."

Clause 26.3 Delete the first bullet point.

Insert the following bullet point after the last bullet:

- they do not comply with a requirement identified in the Works Information."

Clause 26.5 Insert a new clause:

"26.5 On or before the *starting date* the *Contractor* notifies the *Employer* of the name, contact details and details of the legal representatives of each Subcontractor and Indirect Subcontractor, to the extent that such information has not already been provided by the *Contractor* to the *Employer* under this contract."

Clause 26.6 Insert a new clause:

- "26.6 The *Contractor* promptly notifies the *Employer* of any change to the information notified under clause 26.5 and provides the name, contact details and details of the legal representatives of any Subcontractor or Indirect Subcontractor who is engaged after the *starting date*."
- Clause 27.5 Insert a new clause:
- "27.5 The *Contractor* gives notice to the *Employer* within 10 days if there is a Change of Control."
- Clause 33.1 In the first sentence delete "The" and replace with "Subject to the provisions of the Works Information regarding access, the".
- Clause 45.3 Insert a new clause:
- "45.3 For the avoidance of doubt, the operation of this section 4 does not affect the *Employer's* rights against the *Contractor* for breach of this contract."
- Clause 50.1 Insert a new paragraph at the beginning of the clause:
- "The *Contractor* submits an application for payment to the *Project Manager* in the form prescribed by the Works Information not less than fourteen days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated."
- Clause 50.4 In line two delete "on or before the assessment date" and substitute "in accordance with clause 50.1".
- Clause 50.8 Insert a new clause:
- "50.8 If any performance bond or parent company guarantee required by this contract is not procured by the *Contractor* and delivered to the *Employer* in accordance with Option X4 and/or Option X13 (as applicable) then one quarter of the Price for Work Done to Date is retained in assessments of the amount due and is not payable to the Contractor until such documents have been delivered."
- Clause 50.9 Insert a new clause:
- "50.9 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract any sum of money is recoverable from

or payable by the *Contractor* or

- any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer* or any member of the TfL Group under or arising out of this contract,

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

Clause 50.10 Insert a new clause:

"50.10 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."

Clause 51.1 Delete the first sentence and replace it with:

"The *Project Manager* certifies a payment not later than five days after each payment due date."

Clause 51.1A Insert a new clause:

"51.1A The date on which payment becomes due is the later of

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

The final date for payment is twenty eight days after the date on which payment becomes due."

Clause 51.1B Insert a new clause:

- "51.1B The *Project Manager's* certificate is the *Employer's* notice of payment specifying the amount due at the payment due date (the notified sum) and stating the basis on which that sum is calculated."
- Clause 51.1C Insert a new clause:
- "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."
- Clause 51.2 Delete and substitute:
- "Subject to clause 51.2B, if either Party fails to pay a sum or any part of it due to the other Party by the final date for its payment, interest is paid on the late payment. Interest is assessed from the final date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made."
- Clause 51.2A Insert a new clause:
- "51.2A If a certificate is not issued by the *Project Manager* in accordance with clause 51.1, the sum to be paid by the *Employer* is, subject to clause 51.2B, the sum stated as due in the *Contractor's* application in accordance with clause 50.1."
- Clause 51.2B Insert a new clause:
- "51.2B If either Party intends to pay less than the notified sum, he notifies the other Party not later than one day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Project Manager*."
- Clause 51.3 In the second bullet point delete "the *Adjudicator*" and replace with "the Adjudicator".
- Clause 51.5 Insert a new clause:
- "51.5 If the *Employer* is or at any time up to the making of the final payment under this contract becomes a 'contractor' for the purposes of the Construction Industry Scheme, his obligation to make any payment under this contract is subject to the provisions and

requirements of the Construction Industry Scheme and the *Contractor* complies with the provisions of the Works Information regarding the Construction Industry Scheme.”

Clause 60.1 Amend as set out below:

60.1(5) After “Others” insert “(which for these purposes does not include any Statutory Undertaker)”.

60.1(5A) Insert a new sub-clause:

“60.1(5A) Subject to clause Z4, Statutory Undertakers

- do not work within the times shown on the Accepted Programme or
- do not work within the conditions stated in the Works Information

provided that the *Contractor* is not entitled under this sub-clause 60.1(5A) to any change to the Prices.

60.1(18) After “of contract by” insert “or act of prevention on the part of”. After “Employer” insert “(except to the extent that it is caused or contributed to by the *Contractor* any Subcontractor or Indirect Subcontractor or any person for whom those parties are responsible)”.

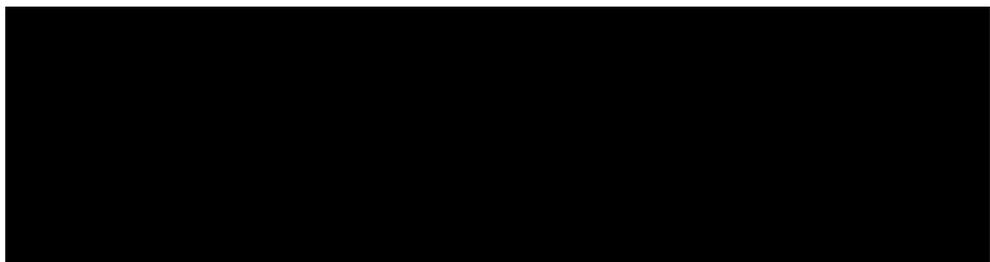
60.1(19) Delete the existing wording and substitute:

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

60.1(20) Insert a new sub-clauses:

“(20) The *Contractor* exercises his right under the Act to suspend performance, whether or not the event has been notified by the *Contractor* within the period specified in clause 61.3.”

(21)



(22)

(23)

Clause 61.3 In the second paragraph replace "becoming" with the words "when he becomes aware or ought reasonably to have become".

At the end of the second paragraph include the words "The *Employer* may, in his absolute discretion, assess a change to the Completion Date or a Key Date (but not a change to the Prices) in the absence of a notice from the *Contractor* in accordance with this sub-clause."

Clause 62.2 After "details of his assessment" in the second sentence include "in accordance with the requirements of the Works Information".

Clause 63.3 At the end of the second sentence insert:

"provided always that the delay is only assessed as giving rise to a change in the Completion Date or a Key Date if and to the extent

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

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

Clause 63.4 At the end of the clause delete the full stop and insert:

"and the *Employer* has no financial liability to the *Contractor* other than amounts claimable and recoverable under this contract."

Clause 64.1 Insert after "details of his assessment" in the first bullet point "in

accordance with the Works Information.”

Clause 70.1 Delete and substitute:

“70.1 No payment is made to the *Contractor* on account of Plant and Materials which are outside the Working Areas unless immediately on payment and without any further act being necessary title passes to the *Employer* and the *Contractor* ensures that the Plant and Materials are clearly tagged, identified as the *Employer’s* and set aside for the *Employer*. Risk in such Plant and Materials does not pass on payment.”

Clause 82.1 Add at the end of the clause after “Plant and Materials”:

“and (when required) undertakes the removal and disposal of debris. The *Contractor* bears the cost of dismantling and replacing any Plant necessary to affect such replacements or repairs. The *Employer* in his sole and absolute discretion is entitled to decide not to replace and/or repair any loss and/or damage to the *works*, Plant & Materials.”

Clause 83.1 Delete clause 83.1 and replace with the following new clause:

“83.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against Losses incurred in respect of the following (subject always to any applicable limitation of liability under secondary Option X18)

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible) and

to the extent that such Losses are due to any negligence, breach of contract or breach of statutory duty by the *Contractor*, his employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are at the *Contractor’s* risk.

Clause 83.2 Delete clause 83.2 and replace with the following new clause:

“83.2 The *Contractor’s* indemnity under sub-clause 83.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the *Contractor’s* appointment under this contract and/or the expiry or termination of this contract. Without prejudice to the survival of any other clauses or schedules, the clauses or schedules of this contract necessary to give effect to the *Contractor’s* indemnity under clause 83.1 also survive expiry or termination of the *Contractor’s* appointment under this contract

and/or the expiry or termination of this contract.

Clause 83.3 Add new clause 83.3 as follows:

"83.3 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, breach of contract or breach of statutory duty of the *Employer*, his employees or agents."

Clause 84.1 Delete "Insurance Table" and substitute with "Insurance Table set out in **Schedule 2.**" Replace the reference to Contract Data in line two and in line 3 with "Insurance Table set out in **Schedule 2.**"

At the end of the clause insert:

"Subject to clause 84.4, the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later (or for such other period as stated in the Contract Data)."

Clause 84.2 Delete the "Insurance Table" in its entirety. Insert "not used".

Clause 84.3 Insert a new clause as follows:

"84.3 The insurance requirements under this contract do not relieve the *Contractor* from any of his other obligations and liabilities under this contract".

Clause 84.4 Insert a new clause:

"84.4 (1) The *Contractor shall procure that its Design Consultant(s)*, at their own cost, takes out and maintains professional indemnity insurance with a limit of indemnity of not less than the sum stated in **Schedule 2** for any one occurrence or series of occurrences arising out of any one event, in relation to the *works* provided always that

- such insurance is in place from the Contract Date until no less than twelve (12) years after Completion of the *works*
- the insurance premiums in respect of the insurance are at all times the responsibility of the *Contractor's Design Consultant(s)* and
- if such insurance ceases to be available to the *Contractor's Design Consultant(s)* and/or design and build contractors engaged in services of a similar size, nature and complexity as the *Contractor*) at commercially reasonable rates and

terms (such non availability to be confirmed by an independent insurance agent operating in the European market), excluding any increase in premiums attributable to the actions, omissions, claims record, error or defaults of the *Contractor's Design Consultants(s)*, the *Contractor will ensure that the Design Consultant(s)* immediately notifies the *Employer* and the *Contractors Design Consultant(s)* and the *Employer* then meet and the *Contractors Design Consultant(s)* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractors Design Consultant(s)* are not reasonably acceptable to the *Employer*, the parties shall agree an alternative method of managing such risk.

- (2) The *Contractor* carries out his obligations under this contract and ensures that his servants or agents carry out their respective obligations in such manner that all requirements, terms, conditions, stipulations and provisos of the insurance required by clause 84.4 (1) are at all times fully complied with".

Clause 84.5 Insert a new clause:

"84.5 The *Contractor* provides insurance covering loss or damage to motor vehicles and liability to third parties arising out of the use of motor vehicles used in connection with the *works*. Such insurance shall contain an indemnity to principals clause. The minimum amount of cover/indemnity provided by such insurance shall be the replacement cost in respect of loss or damage and the amount required by the applicable law in respect of third party liability."

Clause 84.6 Insert a new clause:

"84.6 The *Employer* provides the insurances set out in the Contract Data Part One to the extent such insurance is available at reasonable commercial rates. Nothing in such insurance changes the allocation of risks to the *Contractor* and the *Employer* as set out in clause 80 and clause 81."

Clause 85.6 Insert a new clause:

"85.6 The *Contractor* effects any insurances which it is required to provide under this contract promptly with a reputable insurer or insurers accepted by the *Project Manager* and authorised to underwrite such risks in the United Kingdom."

- Clause 85.7 Insert a new clause:
- "85.7 The *Contractor* promptly notifies the *Project Manager* in writing of any claim, event, fact, matter or circumstance which may give rise to the right to make any claim on any insurance."
- Clause 85.8 Insert a new clause:
- "85.8 The *Contractor* does not compromise, surrender, release, settle or waive any claim or potential claim which the *Contractor* has or may have the right to bring, or has brought, under any insurance without the prior consent of the *Project Manager* which will not be unreasonably with-held or delayed"
- Clause 85.9 Insert a new clause:
- "85.9 The *Contractor* does not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the *Contractor's* and/or the *Employer's* rights to make or proceed with a claim against any insurer."
- Clause 85.10 Insert a new clause:
- "85.10 If the *Contractor* is informed that any insurer providing insurance required by this contract intends to cancel or change any term of any insurance required by this contract, the *Contractor* promptly notifies the *Project Manager* of such intention."
- Clause 85.11 Insert a new clause:
- "85.11 The *Contractor* promptly notifies the *Project Manager* in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this contract lapsing or being terminated or the cover under it being reduced or modified."
- Clause 85.12 Insert a new clause:
- "85.12 To the extent that the *Contractor* is entitled to bring any claim or claims under any insurance relating to this contract then the *Contractor* deals with all such claims promptly and diligently and (subject to the requirements of this contract) in accordance with all insurer requirements and recommendations."
- Clause 85.13 Insert a new clause:
- "85.13 The *Contractor* acknowledges that the *Employer* has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event,

claim or action arising in connection with this contract.”

Clause 85.14 Insert a new clause:

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

Clause 90.2 In the “Termination Table” in the *Employer’s* “Reason” column, after the words “A reason other than” delete “R1-R21” and substitute “the reasons listed in this Termination Table”.

In the “Termination Table” in the *Employer’s* “Reason” column, after “R1-R15 or R18” add “or R10A or R22”.

In the “Termination Table” in the *Employer’s* “Reason” column, after “R17 or R20” add “or R23”.

In the “Termination Table” in the *Contractor’s* “Reason” column, after, after “R1-R10” add “R10A,”.

Clause 90.4 At the end of the clause add:

“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.”

Clause 91.1 Add the following bullet point at the end of the clause:

- “If the other Party has become insolvent as defined in section 113 of the Act (R10A).”

Clause 91.7 In the fourth bullet point after “experienced” insert “and prudent contractor familiar with works similar to the *works* and exercising the foresight appropriate to such a”

Clause 91.8 Add a new clause:

“91.8 The *Employer* may terminate the contract if the *Contractor* is in breach of clause Z11 (Conflict of Interest) and/or clause Z12 (Corrupt Gifts and Payments), or if there is a Change of Control (regardless of whether or not the notice required by clause 27.7 is given by the *Contractor*) (R22)”.

Clause 91.9 Add a new clause:

"91.9 In the event that any court or other competent authority declares or orders that this contract is ineffective or shortened pursuant to the *law of the contract* from time to time including any applicable law, directive or requirement of the European Union (R23).

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

Clause 92.1 Add a new sentence at the end of the clause "The *Contractor* makes available to the *Employer* within seven (7) days all information prepared in relation to the works in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format".

Clause 92.2 In procedure P2 after "assign the benefit of" insert "and/or enter into a novation of".

Dispute Resolution

Option W2 Delete option W2 and replace with:

W2.A The *Employer*, *Contractor* and the *Project Manager* follow the procedure set out in W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may in the first instance be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.

- W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.
- W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.
- W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.
- W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.
- W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.
- In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.
- The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:

- is a natural person acting in his personal capacity; and
- is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.

W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

W2.6 The Referral Notice includes:

- the facts relied upon by the referring party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring

party relies.

- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator

within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.

W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.

W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.

W2.14 The Adjudicator:

- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any)

which the Adjudicator may decide;

- reaches his decision in accordance with the *law of the contract*;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15

The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute.

W2.16

The Adjudicator is not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.

W2.17

All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.

- W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates

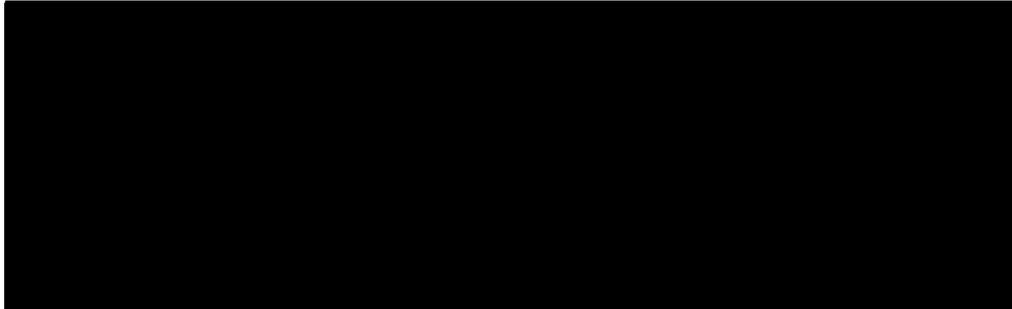
payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.

- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If either Party is dissatisfied with the Adjudicator's decision on a Dispute then either party may notify the other Party of the matter which he disputes and state that he intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six weeks of the notification of the Adjudicator's decision.

SECONDARY OPTION CLAUSES

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

Delete X15.1 and substitute:



Option X16
(Retention)

Insert a new clause:

"X16.3

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

Option X18
(Limitation of
Liability)

Insert at the start of clause X18.1:

"Without prejudice to the *Employer's* entitlement to delay damages (Option X7), or damages for low performance (Option X17),"

Option X18.4

Delete the first bullet point.

In the second bullet point delete the word "and" and replace with ",".

In the third bullet point delete the full stop and insert "and".

Add a new fourth bullet point:

- "the matters listed in X18.6."

Option X18.6

Insert new clause X18.6:

"X18.6

The limitations set out in Contract Data Part 1, Option X18 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"



Option X21:

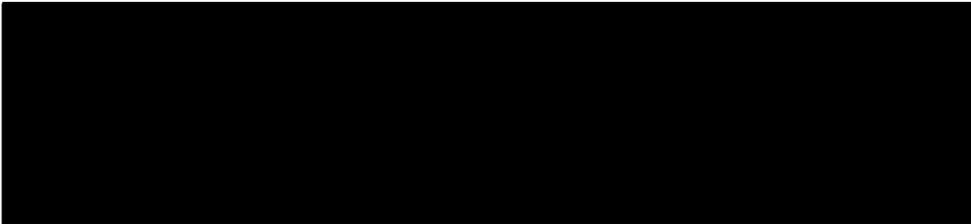
Single Point Design Responsibility

"X21.1

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

X21.2

Delete clause 21.1 and substitute:



X21.3

The *Contractor* is deemed to have reviewed, 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 X21.4 below.

X21.4

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*.

- the data, records, surveys, reports and other information about the current design of the Existing Barge
- all data, records, surveys, report and other information contained in the Works Information or the Employer's Design Information in relation to the condition, dimensions and physical make up of the Existing Barge.
- All reports, surveys or other information relating to the underwater ground conditions and obstructions in the Works Information.

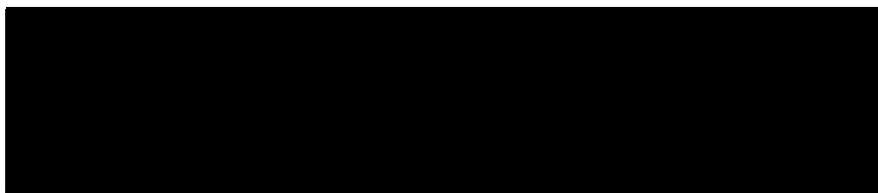
X21.5

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.

X21.6

The following shall not give rise to a compensation event:

- anything which is the *Contractor's* responsibility as set out in this Option X21,
- any comment, failure to comment or delay in commenting by the *Project Manager* in connection with this Option X21 (which shall also not be treated as an act of prevention or breach of contract by the *Employer*) or

- 

Z2 Not used**Z3 Assignment**

The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it). The *Employer* may assign and/or charge in whole or in part any benefit or right under this contract at any time to any person.

Z4 Responsibility for Statutory Undertakers

Z4.1 The *Contractor* complies with the requirements of the Works Information concerning

- interface with, engagement of or management of Statutory Undertakers and
- the assets and infrastructure for which Statutory Undertakers are responsible.

Z4.2 The *Contractor* takes into account and allows in any programme required under this contract the requirements of this clause Z4.

Z4.3 If the *Project Manager* decides that the *Contractor* has not complied with the requirements of the Works Information referred to at clause Z4.1 and as a result the *Employer* incurs additional cost either

- in carrying out work or taking measures,
- in managing Statutory Undertakers or any interface with Statutory Undertakers or
- by paying an additional amount to Others (including for the avoidance of doubt but without limitation Statutory Undertakers) in carrying out work, taking measures or in managing Statutory Undertakers or any interface with Statutory Undertakers

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost and deducts from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* assessment, or where no such sums are due the *Employer* recovers the *Project Manager's* assessment as a debt from the *Contractor*.

Z5 Nuisance

Z5.1 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. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

Z5.2 Without prejudice to the *Contractor's* obligations under clause Z5.1 (above) 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.

Z6 Best value

The *Contractor* acknowledges that the *Employer* is a best value authority for the purposes of the Local Government Act 1999 and as such the *Employer* is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The *Contractor* assists the *Employer* to discharge the *Employer's* duty where possible, and in doing so, inter alia carries out any reviews of the *works* reasonably requested by the *Employer* from time to time. The *Contractor* negotiates in good faith (acting reasonably) any changes to this contract in order for the *Employer* to achieve best value.

Z7 Data Transparency

Z7.1 The *Contractor* acknowledges that the *Employer* is subject to the Transparency Commitment. Accordingly, notwithstanding clauses Z9 and Z10, the *Contractor* hereby gives his consent for the *Employer* to publish the Contract Information to the general public.

Z7.2 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 Z7.1. The *Employer* makes the final decision regarding publication and/or redaction of the Contract Information.

Z7.3 In this clause

"Contract Information" means (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount,

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the TfL Group is committed to publishing its contracts, tender documents and

data from invoices received.

Z8 Data Protection

The *Contractor* complies with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the *Employer*, only carries out such Processing for the purposes of providing the *works* in accordance with this contract and acts in accordance with instructions from the *Employer*.

Z9 Freedom of Information

The *Contractor* acknowledges that the *Employer*

- is subject to FOI Legislation and agrees to assist and co-operate with the *Employer*, including providing information relevant to this contract held by the *Contractor* on behalf of 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*.

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*. For the purposes of this clause "Information" means information recorded in any form held by or on behalf of the *Employer*.

Z10 Confidentiality and Publicity

Z10.1 The *Contractor* shall, and shall ensure 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.

Z10.2 The *Contractor* and his Subcontractors (and sub-subcontractors of any tier) shall not without the prior written consent of the *Employer* disclose any information obtained by the *Contractor* concerning the *Employer* or the TfL Group to any other person.

Z10.3 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.

Z10.4 Clause Z10.1 does not apply to the disclosure of

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

- 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.

Z10.5 The *Contractor* procures that the Connected Persons comply with the provisions of this clause Z10 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.

Z10.6 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.

Z10.7 The *Contractor* acknowledges that damages would not be an adequate remedy for any breach of this Clause by the *Contractor* and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause.

Z10.8 At the *Employer's* request and in any event upon the termination or expiry of the contract, the *Contractor* shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the *Contractor* (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.

Z10.9 Except as provided under deeds of warranty required by the *Employer* under clause Z2, 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.

Z11 Conflict of Interest

Z11.1 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*.

Z11.2 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 shall work with the *Employer* to do whatever is necessary (including the separation of staff working and/or data relating to the *works* from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* shall be entitled to terminate the contract.

Z12 Corrupt Gifts, Fraud and the Payment of Commission

The *Contractor* does not, and ensures that its employees, agents and Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the *Employer* or, where TfL is the *Employer*, any member of the TfL Group nor favour any employee, officer or agent of the *Employer* or, where TfL is the *Employer*, any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the *Employer* or, where TfL is the *Employer*, any member of the TfL Group other than as a representative of the *Employer*, without the *Employer's* prior written approval. Breach of clause Z12 shall entitle the *Employer* to terminate this contract and any other contracts between the *Contractor* and the TfL Group immediately.

Z13 Quality Statement

Z13.1 The *Contractor* warrants that the representations contained in the *quality statement* are accurate in every respect and may be fully relied upon by the *Employer*, including where the standards represented exceed the minimum originally specified by the *Employer*.

Z13.2 Should any discrepancy arise between the *quality statement* and other contract documents the Works Information takes precedence except where the *quality statement* includes a standard which exceeds that specified in the other contract documents, in which case the *quality statement* shall take precedence over those other documents.

Z14 2017 IAAF or IPC World Championships 2017

The *Contractor* does not (without the prior written approval of the London 2017 Limited in each case) represent that any products or services provided under this contract have been endorsed or approved by the *Employer*, the International Association of Athletics Federations ("**IAAF**"), International Paralympic Committee ("**IPC**"), UK Athletics, UK Sport or London 2017 Limited or any other official IAAF or IPC World Championships 2017 body, or that the *Contractor* (including any of its products or services) are in any way associated with those organisations, the IAAF or IPC World Championships 2017, including by publishing or issuing any statement (factual or otherwise) about the *Contractor's* provision of the *works* for the *Employer*.

Z15 Equality & Diversity Compliance

Z15.1 Without limiting the generality of any other provision of this contract, the *Contractor*, in relation to the *works*:

- does not unlawfully discriminate, and

- procures that its Subcontractors and any Indirect Subcontractors do not unlawfully discriminate,

within the meaning and scope of the Equality Act and any other relevant enactments in force from time to time relating to discrimination in employment.

Z15.2 The *Contractor* acknowledges that under Section 149 of the Equality Act the *Employer* is under a duty to have due regard to, amongst other things

- the need to eliminate unlawful racial discrimination, harassment and victimisation and other conduct prohibited by or under the Equality Act,
- advance equality of opportunity between people who share a Relevant Protected Characteristic and persons who do not share it and
- foster good relations between people who share a Relevant Protected Characteristic and persons who do not.

Z15.3 In the performance of this contract, the *Contractor* shall, and procure that its Subcontractors and Indirect Subcontractors shall, assist and co-operate with the *Employer* where possible to enable the *Employer* to satisfy its duty.

Z21 Sustainable Timber

Z21.1 The *Contractor* shall ensure that all Timber supplied or used in the performance of this contract shall be Sustainable Timber. If it is not practicable for the *Contractor* to meet this condition the *Contractor* must inform the *Employer* in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The *Employer* reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Alternatively the *Employer* has the right to reject the proposed Timber. Where the *Employer* exercises its right to reject any Timber, the provisions of clause Z21.4 shall apply.

Z21.2 Without prejudice to clauses Z21.1 and Z21.8, all Virgin Timber procured by the *Contractor* for supply or use in performance of the contract shall be Legal Timber.

Z21.3 The *Contractor* shall ensure that Virgin Timber it procures for supply or use in performance of the contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.

Z21.4 The *Employer* reserves the right to reject at any time any Timber that does not comply with the conditions of contract or the Works Information. Where the *Employer* exercises its right to reject any Timber, the *Contractor* shall supply contractually compliant alternative Timber, at no additional cost to the *Employer* and without causing delay to the performance of this contract.

Z21.5 The *Contractor* shall maintain records of all Timber supplied and used in the performance of the contract. Such information shall be made available to the *Employer* promptly if requested at any time.

Z21.6 Employer's Reporting Requirements

Z21.6.1 Unless the *Employer* has given its written approval in accordance with clause Z21.1 that Timber that is not Sustainable Timber may be used, then, if requested, the *Contractor* shall promptly provide evidence to the *Employer's* satisfaction that the Timber is Sustainable Timber.

Z21.6.2 Upon a request by the *Employer* referred to in clause Z21.6.1, in the event that the *Contractor* does not promptly provide such evidence, or the evidence provided does not satisfy the *Employer's* requirements, then (and without prejudice to clause Z21.7), the *Employer* reserves the right to retain 25% of any monies payable to the *Contractor* under this contract until such date as the *Employer* is in receipt of such evidence and the *Employer* is satisfied that the evidence establishes that the Timber is Sustainable Timber.

Z21.6.3 The *Contractor* shall report quarterly on its use of Sustainable Timber in the performance of this contract, in the form set out in the Works Information.

Z21.6.4 The *Contractor* shall report on the amount of Timber that has been supplied to the *Employer* in accordance with clause Z21.1 which is not Sustainable Timber.

Z21.7 Evidence of Sustainable Timber

The *Employer* reserves the right to determine whether the evidence supplied by the *Contractor* is sufficient to satisfy it that the Works Information and the contract have been fully complied with. In the event that the *Employer* is not so satisfied, the *Contractor* shall, on

written request by the *Employer*, commission and meet the costs of an Independent Report to verify the source of the Timber, and assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

Z21.8 Evidence of Legal Timber

The *Contractor* shall, before delivering any Virgin Timber under this contract, obtain documentary evidence to the *Employer's* satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the *Employer*, the *Contractor* shall submit such documentary evidence to the *Employer* either prior to delivery or at such other times as the *Employer* may require. For the avoidance of doubt, the *Contractor* shall identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

- Z21.9** The *Employer* reserves the right at any time during the execution of the contract and for a period of six years from final delivery of any Timber under this contract to require the *Contractor* to produce the evidence required for the *Employer's* inspection within 14 days of the *Employer's* written request.

Z22 London Living Wage

- Z22.1** For the purposes of this clause the "London Living Wage" is the basic hourly wage published on http://www.london.gov.uk/mayor/economic_unit/workstreams/living-wage.jsp (or any replacement web address) as may be updated from time to time.

Without prejudice to any other provision of this contract the *Contractor*

- Z22.1.1** ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors engaged in the provision of the *works* is paid an hourly wage (or equivalent hourly wage) less than the London Living Wage,

- Z22.1.2** ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors, engaged in the provision of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and

Z22.1.3 disseminates on behalf of the *Employer* to those of its employees who are engaged in the provision of the *works* and were paid the London Living Wage and to its Subcontractors and Indirect Subcontractors such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the Employer responses to such questionnaires.

Z22.2 Any breach by the *Contractor* of the provisions of clause Z22.1 is treated as a substantial failure by the *Contractor* to comply with an obligation under this contract for the purposes of clause 91.2.

Z23 Ethical Sourcing and Work Related Road Risk

The *Contractor* shall, and shall procure that his Subcontractors and Indirect Subcontractors shall, observe and comply with the ethical sourcing and work related road risk and fleet operator recognition scheme obligations and requirements set out in the Works Information.

SCHEDULE 2 - INSURANCE TABLE

INSURANCE AGAINST	WHICH PARTY PROVIDES	MINIMUM AMOUNT OF COVER OR MINIMUM LEVEL OF INDEMNITY
All risks of loss or damage (not excluded by the terms and conditions of the policy) to the permanent <i>works</i> and materials or equipment for incorporation therein, the temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of the permanent <i>works</i>) constructional plant and equipment temporary buildings and other property owned by or supplied by the <i>Employer</i> .	<i>Contractor</i> <i>Employer</i> in the joint names of the Parties	The total sum being the total cost of the <i>works</i> plus architect and other professional fees plus debris removal costs

<p>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</p>	<p><i>Contractor</i> <i>Employer</i> in the joint names of the Parties</p>	<p>€5 million any one occurrence and unlimited in the period of insurance</p>
<p>Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with this contract</p>	<p><i>Contractor</i></p>	<p>The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event</p>
<p>Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the <i>Contractor</i></p>	<p><i>Contractor</i></p>	<p>The replacement cost</p>
<p>Professional Indemnity Insurance Negligence omission or default in respect of design of the <i>works</i> for which the <i>Contractor's Design Consultant</i> is responsible</p>	<p><i>By Contractor's Design Consultant(s)</i></p>	<p>£1 million each and every incident and per year</p>

ANNEX 1 – PARENT COMPANY GUARANTEE

Parent Company Guarantee

between

[GUARANTOR]

and

[EMPLOYER]

relating to [PROJECT]

ANNEX 1 – PARENT COMPANY GUARANTEE

Parent Company Guarantee

between

[GUARANTOR]

and

[EMPLOYER]

relating to [PROJECT]

THIS DEED is made on 20[]

BETWEEN:

- (1) [GUARANTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Guarantor”); and
- (2) [EMPLOYER] [of] [Address] (“the Employer”).

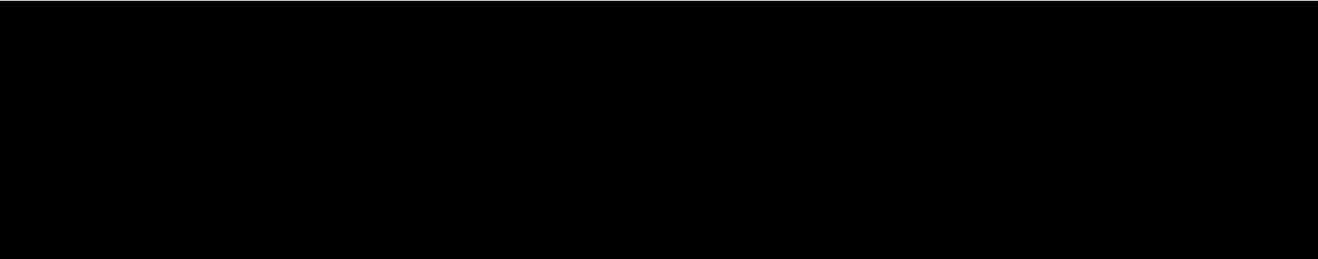
BACKGROUND:

- (A) The Employer has entered into a contract (“the Contract”) with [Name] (“the Contractor”) dated [date] for the provision of Works (as defined in the Contract).
- (B) The Employer has requested and the Guarantor has agreed to provide a guarantee of the Contractor’s obligations under the Contract.

IT IS NOW AGREED:

1. GUARANTEE

This Deed is supplemental to the Contract.



2. REIMBURSEMENT

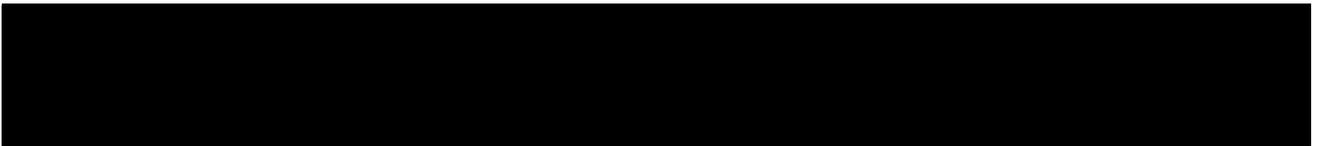
The Guarantor by this Deed indemnifies the Employer against all losses, damages, costs and expenses (including legal costs and expenses incurred in enforcing the provisions of the Contract or this Deed), or otherwise which may be incurred by the Employer by reason of any breach on the part of the Contractor in fully and duly performing and observing the terms and conditions on its part contained in the Contract. However, Guarantor’s liability shall never exceed the liability (neither as to conditions nor as to limits) of the Contractor under the Contract.

All requests under this Guarantee shall be made by registered letter to the Guarantor latest before the Completion Date of the Contract failing which this Deed shall be considered as expired.

3. NO DISCHARGE OF LIABILITY

3.1 The liability of the Guarantor will not be discharged or affected in any way by:

3.1.1 [Redacted]



3.1.2 [Redacted]

4. CONTINUING GUARANTEE